

everspring



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Everspring

Terms of Service

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Flora Logistics

Terms of Service

Below are the Everspring Terms of Service (the "**Agreement**") that covers the services provided by Flora Logistics B.V. and its affiliates and entities (collectively "**Flora Logistics**") to you (the "**Customer**").

Article 1 - Subscription to Flora Logistics.

1. During the term and in accordance with this Agreement, the Customer will have access to and may use the products to which the Customer has subscribed, either through a paid subscription or through a free trial subscription (each a "**Product**"), as set forth in the quotation, contract, Service Agreement or invoice signed by the Customer (the "**Order Form**").
2. Each Product may contain updates, cloud-based services, support services, applications or documentation, each of which is subject to the terms of this Agreement, as applicable.
3. Flora Logistics may add to, modify or discontinue any part of the Products at any time, provided, however, that such modification shall not materially increase Customer's obligations under this Agreement or materially diminish Customer's rights under this Agreement.
4. Customer is responsible for all actions performed under its Flora Logistics account, regardless of whether these actions are performed by Customer, its employees or a third party.
5. Customer shall adequately secure all account information in its possession or under its control.
6. Flora Logistics shall not be liable for any loss or damage resulting from unauthorized use of Customer's account.

Article 2 - Grant of a License

1. During the Term, Flora Logistics grants Customer a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use the Products, by Customer, its employees and all other users accessing and using the Products on behalf of Customer (collectively, the "**Users**") under the terms and conditions set forth in this Agreement.
2. Customer agrees that all right, title and interest in and to all intellectual property rights in the Products, and all modifications, extensions, scripts and other derivative works of the Products provided or developed by Flora Logistics, are the sole property of Flora Logistics or its licensors. All rights not granted to Customer in this Agreement are reserved by Flora Logistics.

Article 3 - Limitations of the License

1. Customer and any Users shall not and shall not permit Users or third parties:
 - a. decompile, disassemble or reverse engineer or attempt to reconstruct or discover the source code, underlying ideas, algorithms, file formats or programming interface, interoperability interfaces of the Products by any means;
 - b. spread viruses or other harmful or malicious computer code through or in the Products;
 - c. exhibit conduct that interferes with or prevents the use and enjoyment of the Products by a third party;
 - d. remove any product identification, copyright or other notices from the Products;
 - e. sell, lease, lend, sublicense, access or otherwise transfer or disclose the Products in whole or in part to third parties;
 - f. use the Products for timesharing, service bureau or hosting purposes or otherwise use, resell, sublicense, distribute or transfer or permit others to use the Products for or on behalf of third parties;
 - g. modify or integrate the Products into or with other software or create a derivative work of any part of the Products, unless agreed in writing by Flora Logistics;
 - h. use the output or other information generated by the Products for any purpose other than as contemplated by this Agreement;
 - i. Use the Products for any use other than Customer's internal business use;
 - j. Use unauthorized modified versions of the Products, including, but not limited to, building similar or competing products or services or obtaining unauthorized access



- To the Product; or
- k. use the Products in a manner that violates applicable local, state, federal, regional and foreign laws, including, but not limited to, tax and VAT regulations, and privacy, data protection, electronic communications and anti-spam laws.
- 2. Flora Logistics retains all rights in the Products, all copies, derivatives and improvements thereof and all related materials, except as expressly licensed herein.

Article 4 - Duration of the Agreement

1. **"Initial Term"** means the number of months in the term as specified in the Order Form, beginning on the start date specified in the Order Form. Upon expiration of the Initial Term and unless otherwise specified in the Order Form, this Agreement will automatically renew for a term equal to the lesser of the Initial Term; or one year (each a **"Renewal Term,"** and the Initial Term and all Renewal Terms together, the **"Term"**) until terminated by Customer or Flora Logistics by written notice to the other party at least ninety (90) days prior to the end of the Initial Term or the Renewal Term then in effect, as the case may be. In the case of Products *l i c e n s e d* on a trial basis, the term of this Agreement is limited to the duration of the trial period specified in the Order Form.

Article 5 - Fees and Payment.

1. Customer shall pay to Flora Logistics the annual and/or monthly fees specified in the Order Form (**"Fees"**), in accordance with the time and currency specified in the Order Form.
2. All payments by Customer to Flora Logistics under this Agreement shall be non-refundable and shall be made via the method of payment specified by Customer in the Order Form, or as otherwise agreed to in writing by the parties.
3. Customer shall take all additional actions reasonably requested by Flora Logistics to establish an automated payment process, if applicable.
4. All amounts overdue by Customer under this Agreement shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum rate *p e r m i t t e d* by law, whichever is *l o w e r*, without prejudice to Flora Logistics' right to suspend Customer's access to the Products.
5. Any applicable VAT or other taxes will be added to the Fees payable under this Agreement.

Article 6 - Confidential Information

1. Flora Logistics and Customer (each a **"Receiving Party"**) shall keep confidential all information received from the other party (the **"Disclosing Party"**) under or in connection with this Agreement that the Disclosing Party identifies as proprietary and/or confidential or that, due to the nature of the circumstances surrounding the disclosure, should in good faith be treated as proprietary and/or confidential (**"Confidential Information"**) and shall not use such Confidential Information except as necessary to perform their respective obligations under this Agreement. Each party shall treat the terms and conditions of this Agreement as confidential, but each party may share such information in confidence with its legal and financial advisors as required in that party's normal course of business. Notwithstanding the foregoing, the restrictions set forth above shall not apply to:
 - a. information previously known to the Receiving Party without reference to the Disclosing Party's Confidential Information;
 - b. information that is or becomes publicly known without any wrongful act by the Receiving Party;
 - c. information independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information; or
 - d. information required to be disclosed under applicable law by enforceable orders of a court or other governmental authority. The foregoing also does not prevent Flora Logistics from using Customer Data on an aggregate, anonymized basis. Customer shall ensure that its Users fully comply with the provisions of this section and shall be responsible for any damages suffered by Flora Logistics as a result of a User's failure to do so.



Article 7 - Customer representations and warranties

1. Customer represents and warrants that, at this time and throughout the term of the Agreement:
 - a. Customer is fully authorized to enter into this Agreement and that Customer and any Users are fully authorized to use the Products;
 - b. Customer and any Users are and will remain in compliance with all Flora Logistics policies, applicable laws and regulations regarding its and their use of the Products and activities related to this Agreement, including but not limited to tax and privacy laws; and
 - c. If Customer or any of its Users enters lists in the Products for the purpose of sending electronic communications (e.g., emails, text messages) to such list of Customers, or otherwise collects electronic addresses for the purpose of sending electronic messages, then Customer warrants that each person on such list has previously opted in to receive promotional electronic communications from Customer (as applicable) and that the content of such communications by Customer will comply with applicable laws and regulations.

Article 8 - Customer data and privacy

1. **"Customer Data"** means any data Customer or its Users enter into the Products for processing in connection with this Agreement, including any personally identifiable information ("**Personal Data**") that is part of such data.
2. Customer may select the Personal Data it enters into the Products in its sole discretion; Flora Logistics has no control over the nature, extent or origin of the Personal Data, or the manner in which Customer acquires the Personal Data processed by the Products. Flora Logistics shall comply with, and ensure that its personnel comply with, the requirements of applicable privacy laws with respect to Customer's Personal Data in the possession or under the control of Flora Logistics. Customer is solely responsible for compliance with any legal, regulatory or similar restrictions applicable to the types of data Customer elects to process with the Products. Customer remains responsible for the proper handling and processing of notifications regarding Personal Data of Customers and Users of Customer.
3. The Products allow Customer to independently back up and archive Customer Data. Accordingly, Customer is responsible for performing regular backups of Customer Data. Nonetheless, Flora Logistics will perform regular backups of Customer Data stored in the Products. Flora Logistics will assist Customer in restoring and restoring Customer Data to the Products to the extent commercially feasible. Customer understands and agrees that Flora Logistics is not responsible for any loss or damage to Customer Data or other software.
4. Flora Logistics uses and protects Customer Data, including information transmitted through the Products, in accordance with the Flora Logistics Privacy Policy, found at www.floralogistics.nl/legal/privacybeleid (the "**Privacy Policy**") and the Flora Logistics Data Processing Agreement, found at www.floralogistics.nl/legal/verwerkersovereenkomst (the "**Processor Agreement**").
5. Both the Privacy Policy and the Processor Agreement are incorporated into this Agreement by these references.
6. In addition to the permissions granted in the Privacy Policy and Processor Agreement, Customer permits Flora Logistics to use and share non-personal data with third parties to create anonymous data profiles, provide segmented marketing information, create aggregate statistical reports, and create and improve existing and new products and services.

Article 9 - Feedback

1. Customer agrees that all feedback it provides to Flora Logistics, including but not limited to questions, comments, suggestions, ideas, plans, notes, drawings, original or creative materials or other information relating to Flora Logistics or the Products, whether such materials are provided in e-mail, feedback forms or any other form, belong exclusively to Flora Logistics, without any obligation to acknowledge or compensate Customer.

Article 10 - Third Party Services.

1. **"Third Party Services"** are logistics systems, sales platforms, marketplaces, products, applications, services,



software, networks, systems, directories, websites, web shops, databases and information of third parties, including Flora Logistics to which one or more Products are linked, or which the Customer may connect or activate in conjunction with one or more Products. Customer may choose to activate, log in or use Third Party Services (as defined above). Customer agrees that access to and use of such Third Party Services is governed solely by the terms of such Third Party Services and that Flora Logistics is not responsible or liable for, and makes no representations or warranties with respect to, any aspect of such Third Party Services, including, but not limited to, their content functionality or data practices (including with respect to Customer Data and Personal Data) or any interaction between Customer and the provider of such Third Party Services, regardless of whether such Third Party Services are provided by a third party that is a member of an Flora Logistics partner program or is otherwise designated by Flora Logistics as "certified," "integrated" or "approved" by Flora Logistics. Customer's use of Third Party Services shall be solely between Customer and the applicable provider. Customer irrevocably waives any claim against Flora Logistics regarding such Third Party Services. Flora Logistics shall not be liable for any damage or loss caused or alleged to be caused by or in connection with Customer's activation, access or use of such Third Party Services, or Customer's reliance on the privacy policy, Processor Agreement or other policies of such Third Party Services.

Article 11 - Maintenance work

1. It may be necessary for Flora Logistics to perform scheduled and/or unscheduled repairs or maintenance, or to remotely repair or upgrade the Product. This may temporarily affect the quality of services or may result in partial or complete interruption of the Product. Flora Logistics shall endeavor to perform such works at times that cause the least disruption to Customer's business. Customer shall, if necessary, cooperate with such works.

Article 12 - Termination and Suspension.

1. **"Termination for Breach"** - In the event of a material breach of this Agreement by either party, the non-breaching party may terminate this Agreement by notifying the breaching party in writing of the nature of the breach in reasonable detail and the non-breaching party's intent to terminate (a "Termination **Notice**"). If the breach is not cured within the thirty (30) day period after delivery of the Termination Notice, this Agreement shall automatically terminate.
2. **"Suspension"** - Notwithstanding the foregoing, Flora Logistics may immediately suspend Customer's access to the Products and without prior notice suspend if Flora Logistics believes in its sole discretion:
 - a. that this suspension is required by law;
 - b. That there is a security or privacy risk to Customer;
 - c. That Customer violates or infringes the rights of third parties, or acts in a manner that is unlawful, defamatory or offensive; or
 - d. Customer fails to pay its Fees or any invoices in a timely manner; or
 - e. that Customer is in violation of any material provisions of this Agreement, including its licensing or confidentiality restrictions. A suspension of Customer's access to the Products shall not restrict Flora Logistics or waive Flora Logistics' right to terminate this Agreement or Customer's access to the Products.
3. **"Effect of Termination"** - Upon termination of this Agreement, Customer shall cease using the Product(s). Notwithstanding the foregoing, termination of this Agreement by Flora Logistics shall not limit Customer's obligation to pay all applicable fees, nor limit Flora Logistics' ability to pursue other available remedies, including injunctive relief. Outstanding installments shall become immediately due and payable upon termination. Customer agrees that upon termination of Customer's account and/or use of the Product, Flora Logistics may immediately deactivate Customer's account and delete Customer's data. Customer further agrees that Flora Logistics shall not be liable to Customer, nor to any third party, for the termination of Customer's access to the Product or for the deletion of Customer Data in accordance with this Agreement. The clauses on license restrictions, fees and payment, confidentiality, C u s t o m e r representations, indemnification and limitation of liability shall survive termination of this Agreement, together with all other provisions intended to survive by their terms.

Article 13 - Indemnification



1. Customer shall indemnify, hold harmless and defend Flora Logistics and its officers, employees and agents from, against and against all losses, expenses, liabilities, damages and costs including, but not limited to, reasonable attorneys' fees (collectively "**Costs**"), to the extent such Costs are attributable to a breach by Customer or any of its Users, employees, independent contractors or affiliates, of any representations, warranties or other obligations contained in this Agreement.
2. Flora Logistics shall indemnify, defend and hold Customer and its officers, employees and agents harmless from and against all Costs, to the extent such Costs are attributable to the Products infringing or misappropriating any registered intellectual property right of a third party, including trademarks, patents and copyrights, if Flora Logistics is promptly notified in writing and given permission, information and assistance in the defense or settlement of any related proceeding.

Article 14 - Limitation of liability.

1. To the extent permitted by applicable law, the total liability of Flora Logistics under this agreement shall be limited to the fees paid by the customer during the three-month period immediately preceding the date on which the claim giving rise to such liability was first made.
2. To the extent permitted by applicable law, neither party shall be liable for any indirect, incidental, consequential or special damages or for implied costs or lost profits or royalties, lost data or costs of procuring substitute goods or services, regardless of whether the alleged damages would result from breach of contract, warranty, tort, statutory remedy or any other obligation and regardless of whether either party has been advised or has been advised of the possibility of such loss or damages.
3. To the extent permitted by applicable law, Customer hereby waives any claim that these exclusions would deprive it of an adequate remedy.
4. The Parties acknowledge that the provisions of this paragraph fairly allocate the risks under this Agreement among them.
5. The parties acknowledge that the limitations set forth in this clause are an integral part of the amount of the fees charged to the customer in connection with making the products available to the customer, and that if Flora Logistics were to assume more or additional liability than set forth in this clause, such fees would necessarily be set substantially higher.

Article 15 - Exclusion of Warranties.

1. Customer confirms and accepts that:
 - a. Flora Logistics offers no guarantees regarding the results expected, desired or obtained through the use of the products and services, or that the products will be available for use without interruption;
 - b. the products are provided on an "as is" and "as available" basis and without any representation, warranty or conditions, and Flora Logistics disclaims any and all liability, representation or warranty with respect to the products, whether express or implied by law or otherwise arising, including but not limited to warranty of merchantability or fitness for a particular purpose;
 - c. implied warranties arising from certain manners, trade or usage practices, (c) warranties of title or conformity; or
 - d. legal recourse on the part of the customer; and
 - e. Flora Logistics is not responsible for any product settings or product changes applied by or on behalf of customer. Flora Logistics expressly disclaims any service level agreement or service level commitments.

Article 16 - Assignment and Subcontractors.

1. Customer may not assign any of its rights or obligations under this Agreement without the prior written consent of Flora Logistics;
2. Flora Logistics may assign its rights and obligations under this Agreement without Customer's prior consent. Subject to the foregoing, the provisions of this Agreement shall be binding on and in force in favor of not only the parties to this Agreement, but also their legal successors and permitted assigns. Flora Logistics shall be free to execute this Agreement in whole or in part through one or more subcontractors.



Article 17 - Applicable law

1. This Agreement shall be governed by and construed in accordance with the laws of Dutch jurisdiction. In the event of any controversy or claim arising out of or relating to this Agreement, or the breach or interpretation thereof, the parties agree to submit to the exclusive jurisdiction of the applicable court. Each party hereby waives all defenses for lack of personal jurisdiction and Forum non conveniens in connection with any claim brought in the foregoing courts. The prevailing party in any action or proceeding brought pursuant to this Agreement shall be entitled to recover from the other party, in addition to all other forms of relief, the reasonable fees of its attorneys and other experts and expenses incurred in connection with such action or proceeding.
2. Any claim, dispute or controversy (whether in contract, tort, statute or regulation, or otherwise, and whether pre-existing, present or future) arising out of or relating to:
 - a. this agreement;
 - b. the services or equipment provided by Flora Logistics;
 - c. oral or written statements, or advertisements or promotions regarding this agreement or the services or equipment; or
 - d. the relationships arising under this Agreement (collectively, the "**Claim**") will be determined through of arbitration to the exclusion of the courts. Arbitration will be conducted by a single arbitrator in accordance with the laws and rules relating to commercial arbitration in the jurisdiction indicated in Section III below in effect on the date of notice.
3. Customer agrees to waive any right Customer may have to bring or participate in any class action or representative action against Flora Logistics with respect to any Claim and, if applicable, Customer also agrees to exclude itself from any class action or representative action against Flora Logistics.
4. Notwithstanding the foregoing:
 - a. each party reserves the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights; and
 - b. Flora Logistics reserves the right to collect Fees owed by Customer to Flora Logistics in a competent court or through an extrajudicial collection procedure

Article 18 - Export compliance and other restrictions

1. Products that Flora Logistics may deliver or make available to Customer may be subject to U.S. export control laws and economic sanctions. Customer agrees to comply with all laws or regulations governing access to and use of the Products. Customer agrees not to provide access to the Product from any jurisdiction where delivery of the Product is prohibited by U.S. or other applicable law or regulation (a "**Prohibited Country**") or provide access to the Product to any government, entity or person located in a Prohibited Country. Customer represents, warrants and covenants that:
 - a. Customer is not a national of, or company registered in, a Prohibited Country; and
 - b. Customer does not permit third parties to access or use the Product in violation of U.S. or other applicable export embargoes, prohibitions or restrictions.

Article 19 - General

1. If one or more provisions of this Agreement are held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected.
2. Flora Logistics may provide all notices, statements and other communications to Customer by e-mail, posting on its website, by in-product notice, or by mail or express mail. Flora Logistics may also issue notices, including press releases, for the purpose of referring to Customer as a customer of Flora Logistics.
3. Neither party shall be deemed in default or otherwise liable for any delay in or failure to perform this Agreement (other than payment obligations) due to acts of God, fire, natural disasters, accidents, governmental action, lack of materials, lack of transportation or



communications or from suppliers of goods or services, or any other cause to the extent beyond the reasonable control of such party.

4. This Agreement, including all applicable Order Forms, Privacy Policy and Processor Agreement (incorporated by reference in Section 8.4) constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written, electronic or oral communications, statements, agreements or understandings between the parties with respect thereto.
5. Flora Logistics reserves the right, at any time and upon thirty (30) days notice, to modify this Agreement, including making changes to the fees and scope of Services.
6. Customer has reviewed, understood and accepted the terms and conditions contained in this Agreement and has consulted with legal counsel prior to execution of this Agreement or has knowingly waived its right to consult with legal counsel prior to signing.

