

General Terms and Conditions (GTC) for the use of Flyernator

Valid from: November 18th, 2019

These GTC replace any previous versions

1. Introduction

1. Pingen GmbH (hereinafter referred to as „Provider“) operates a web application (hereinafter referred to as „App“) at <https://www.flyernator.com> as well as other top-level domains and application-specific subdomains.
2. These GTC for the use of the App shall be deemed accepted if the user (hereinafter referred to as Participant) accepts these general terms and conditions when placing the order or through a process provided for this purpose.
3. If the Participant refuses to accept the GTC or the intended process, the Participant will be excluded from using the App from the time the updated GTC come into effect.
4. These GTC are valid for all current and future business relationships between the Participant and the Provider.
5. If individual provisions of these GTC should become or be found to be invalid, the validity of the remaining provisions shall be unaffected thereby.
6. The Provider reserves the right to modify or amend the GTC at any time without prior notice.
7. By violating the provisions of these GTC, the Participant forfeits the right to use the App and entitles the provider to block the account or access to the App as well as the data and to cancel orders that have not yet been completed. The Participant also forfeits all claims concerning the reimbursement of paid services.
8. Only the Participant is liable for any damages resulting from violations of these provisions.

2. Conditions of Use

1. The use of the App and its interfaces is only permitted to legal entities or legally competent natural persons.
2. The Participant is obliged to provide truthful information when placing orders or registering as a natural person or as an authorized representative of a legal entity. Furthermore, the Participant agrees to keep his/her data, in particular a deliverable postal and e-mail address, always up to date.

2. Scope of Service

1. Participants can use the App to transfer PDF documents to the Provider, have them printed and distributed as flyers to recipients in Switzerland. An Internet connection and a current browser are required to use the App.
2. There is no guarantee that the App will be available continuously, securely and without errors at all times.
3. Unless otherwise specified by the Provider, technical support shall be provided exclusively via e-mail and on a „best effort“ basis.

4. Participant's Rights and Obligations

1. The Participant is obliged not to misuse the App. The Participant assumes full responsibility for the motifs transferred as well as the printed and distributed flyers.
2. The Provider assumes no responsibility for any copyright infringements of the motifs transferred by the Participant or the flyers printed and distributed on behalf of the Participant.
3. The Participant is obliged not to use the App to create or distribute any content whose provision, publication or use violates applicable law, agreements with third parties or racial discrimination. The Participant is also prohibited from using the App to disseminate content that is sexist or that could hurt people's religious feelings.

4. The Provider neither checks the business basis nor the correctness of the contents or the legal validity and completeness of the flyers which the Participant distributes by means of the App.
5. The access data to the App must be handled carefully by the Participant and protected against misuse.
6. Passwords shall not be easily identifiable (no license plates, telephone numbers, simple number sequences, etc.).
7. The Participant bears all consequences resulting from the use of his/her access information to the App. After successful logon the Provider must assume that the App is rightfully used by the Participant.
8. The Participant is obliged to minimize the risk of unauthorized access to the App by using appropriate measurements to secure the devices he uses to access the App (for example use an up to date anti-virus solution). In particular the Participant shall keep the operating system and the applications used to access the App up to date and install any updates or patches from the respective vendors immediately.
9. In case of suspicion of misuse of the App, the Provider must be notified immediately via the following email address in order to temporarily suspend the Participant's account: support@flyernator.com.

5. Prices and Scope of Service

1. There are no costs for the participant when using the App as well as most features.
2. In the case of the chargeable features of the App or paid services of the Provider (hereinafter referred to as "Paid Services"), the prices are communicated to the Participant before the purchase.
3. When using the App or the Paid Services, the Participant is granted the non-transferable and non-exclusive right to use the respective service for a limited period of time. All rights of use not expressly listed shall remain with the Provider as the owner of all copyrights and intellectual property rights in this regard.
4. The contract for the use of a paid service is established when the Participant orders it.
5. Unless stated otherwise, prices are including of statutory value-added tax (VAT).

6. Prices and periods of validity of the paid services shall be communicated in the App or directly by the Provider. The Provider reserves the right to change the prices at any time. New prices shall come into effect with the next order.
7. Within the scope of product development, the Provider may decide to extend or restrict the scope of products and services, to no longer support specific operating systems and browser versions. By continuing to use the App, the Participant automatically agrees to the changes.
8. The Provider reserves the right to refuse orders at any time, especially if the Participant violates the obligations mentioned under clause 4 at his discretion. In this case, the Provider will refund the fees paid for the respective order. Further claims or compensation on the part of the Participant are excluded.

6. Availability and Liability

1. The Provider endeavors to ensure that access to the App is as seamless and uninterrupted as possible at all times.
2. The Provider reserves the right to interrupt access to the App and/or the services it offers at any time, particularly in the event of increased security risks or malfunctions or for maintenance work.
3. The Provider is neither liable for the correctness of the motifs created by the Participant nor for the proper distribution.
4. All information about the dispatch and distribution times in the App or by the Provider are to the best of the Provider's knowledge and belief. However, the Provider expressly points out that no liability is assumed for items posted too late or for items delivered too late or items not delivered at all. There is also no entitlement to financial compensation for the Participant in this respect.
5. Data backups of the App are performed regularly. The Provider expressly disclaims any liability for the security and availability of the entrusted data and services.
6. Technical access to the App and any costs incurred to access the App are the responsibility of the Participant. The Provider assumes no liability for the network operators (providers) and, as far as legally permitted, also rejects any liability for the hardware and software required to use the App.
7. In the case of defects caused by App, the Provider only assumes liability for damages in the event of gross negligence or intent.

8. In any case the liability of the Provider is limited exclusively to direct damage and to a maximum of CHF 100.00 per account. Any further liability, in particular for consequential damage, indirect damage or loss of profit, is expressly rejected.

7. Termination of Contract and Periods of Notice

1. The Participant agrees not to intentionally disrupt, interrupt or manipulate the App or the offered functions in any way.
2. Selling, reproducing, copying and redistribution of the offered App is prohibited for the Participant.
3. Insufficient system knowledge and lack of security precautions can facilitate unauthorized access to the Participant's computer by third parties. It is the responsibility of the Participant to inform himself/herself about the necessary safety precautions and to apply them accordingly.
4. The Provider has the right to terminate the Participant's account at any time and without giving reasons, in whole or in part, subject to a minimum notice period of 10 days, in particular, but not exclusively, if the Provider becomes aware that the account is used in whole or in part to create or send abusive motifs or is used in such a way that is negatively impacting App in general.
5. For the immediate prevention of misuse, access to the Participant's account can be blocked by the Provider with immediate effect, without any right for compensation by the Participant.
6. If the Participant used means of payment (e.g. bank accounts, PayPal accounts or credit cards) to transfer funds or to pay for services, for the use of which the Participant was not authorized, all claims to any credit balances of the Participant with the Provider lapse.
7. If the payment processor cancels or reverses transactions of the Participant, the Provider is authorised to reclaim from the Participant the costs for any services already provided, plus compensation for the expenses effectively incurred by the Provider at an hourly rate of CHF 160.00.

8. Data Backup

1. The Participant is responsible for the retention of the motifs created and the flyers distributed with the App within the scope of legal regulations. The Participant notes, that even the data is regularly backed up by the Provider, it is not available for the individual recovery at the request of the Participant.
2. The Participant is responsible to ensure he/she has a copy (backup) of any data entered in the App. The Provider does not provide any means to restore data in the Participant's account.

10. Data Privacy

1. Provisions concerning data privacy and the EU-GDPR regulation are defined in our separate privacy www.flyernator.ch/privacy which forms an integral part of these GTC.

11. Final Provisions

1. Regardless of the Participant's location, Swiss law shall apply exclusively
2. The place of jurisdiction is Zurich, Switzerland