

GoPro

SERVICE AND CUSTOMIZATION TERMS

These Professional Services Terms ("SCT") apply between You and GoPro Consulting Ltd (Hugvit hf) (reg.no. 661196-2119) ("GoPro Consulting" or "We", "Our", "Us"). If You are agreeing to this Agreement not as an individual but on behalf of Your company, then "Customer" or "You" means Your company, and that You are binding Your company to this Agreement and You represent and warrant that You have all necessary authority to do so.

These SCT´s form a part of Our Customer Agreement ("Agreement"). All terms used herein shall have the meanings ascribed to them in the Agreement, unless specifically defined in these SCT´s.

These SCT´s set forth the terms under which We will provide You with certain professional services, and custom development, that are not provided by Us under Our Maintenance and Support Terms of Service, and which shall be described in an Order referencing these SCT´s ("Order Forms" and such services and customizations, "Professional Services"). Telephone requests for minor or simple Professional Services shall constitute an Order Form. If We chose to do so, We may confirm such telephone request, or elaborate on the content of the Your Order Form, by e-mail to You and if You do not object to Our description of the type and scope of Professional Services within 24 hours, that description will form a part of the Order Form. These SCT´s govern Your initial purchase of Professional Services as well as any future purchases of Professional Services. These SCT´s are also subject to Our Documentation as applicable, as well as any specific provisions of Order Forms.

The Professional Services provided under these SCT´s are separate from the Products and Services provided only under the Agreement. We reserve the right to reject requests for Custom solutions or other Professional Services in Our own discretion and without providing reasoning or justification. If You request substantial Custom solutions or significant Professional Services we reserve the right to require that a specific agreement is concluded.

These SCT´s do not have to be signed in order to be binding. You indicate your assent to be bound by these terms by submitting a request for professional services via e-mail, by submitting an order form, and by using or accessing professional services. Every time You pay an invoice for the Professional Services, you actively re-confirm your continued commitment under these terms. You may also be required to click "I agree" (or a similar prompt or button) when placing an Order, downloading or accessing Our Solutions. By doing so You are confirming Your agreement to be bound by these terms.

1. SERVICES AND DELIVERABLES.

During the applicable Subscription Term We agree to use diligent efforts to render the Professional Services by the delivery dates specified on the applicable Order Form, if any. Subject to Section 4 (Our Products) below, any reports, recommendations or other deliverables provided by Us to You as part of the Professional Services are "**Deliverables**". In consideration of the applicable payments from You, We grant You a perpetual, worldwide, royalty-free, non-exclusive and non-transferrable license to use the Deliverables internally in connection with the applicable Products, under these SCT 's.

2. CUSTOMER MATERIALS.

You agree to provide Us with reasonable access to Your materials, personnel, equipment or facilities (including without limitation Your instances of Our Products) to the extent such access is necessary for the performance of Professional Services. To the extent that You do not timely provide the foregoing access required by Us to perform the Professional Services or deliver the Deliverables, We shall be excused from performance until such items are provided. You hereby grant Us a limited right to use any of Your materials provided to Us in connection with the Professional Services (the "**Customer Materials**") solely for the purpose of performing the Professional Services for You. You own and will retain ownership (including all intellectual property rights) in and to the Customer Materials (subject to Our ownership of any underlying Products, and Our Documentation. Depending on the circumstances, the use of any Customer Materials that constitute personal data (within the meaning of the General Data Protection Regulation) will be governed by either Our [Data Protection Policy](#) or Our [Processing Agreement](#).

3. OWNERSHIP OF DELIVERABLES; FEEDBACK.

We grant You, a worldwide, royalty-free, non-exclusive, perpetual, non-transferrable and irrevocable license to use, integrate, copy, modify and otherwise exploit Deliverables ("**Deliverables License**").

We own and will retain ownership, including all intellectual property rights (including but not limited to Copyright, design rights, trade mark rights, proprietary rights, professional- and industrial secrets, expert know-how connected to the Deliverable now or at a later time) in and to the Deliverables and any modifications, improvements and derivative works thereof (including any such materials to the extent incorporating any Feedback, ideas, process descriptions or other information). If You provide any feedback, comments, suggestions, ideas, description of processes, or other information to Us about or in connection with the Products, Services, Deliverables or Professional Services, including without limitation any ideas, concepts, know-how or techniques contained therein ("**Feedback**"), then You grant Us a worldwide, royalty-free, non-exclusive, perpetual and irrevocable license to use, integrate, copy, modify and otherwise exploit the Feedback for any purpose, without any compensation to You or any restriction or obligation on account of intellectual property rights or otherwise. For clarity, no Feedback will be deemed Customer's Confidential Information, and nothing in this Agreement, including without limitation Section 9 (Confidential Information), limits Our right to independently use, develop, evaluate, or market Products, whether incorporating Feedback or otherwise.

4. OUR PRODUCTS.

For the avoidance of doubt, the rights to and delivery and use of any Solution, with the sole exception of Custom solutions, is governed by the terms of the Agreement and not the terms of these SCT, and, even if listed in an Order Form, no Solution (including any updates, upgrades, patches and bug fixes), with the sole exception of Custom solutions, shall be considered a Deliverable hereunder. You acknowledge that the Professional Services are being purchased separately from any Solution license or subscription and that no such license or subscription is being provided or offered under these SCT ´s. Fees for the Professional Services are separate from any fees paid for Solutions, and Your payment obligations hereunder are not contingent on the purchase or use of any Solution.

5. PAYMENT, DELIVERY AND OBLIGATIONS OF THE PARTIES

5.1. Payment.

You will pay Us the amounts and at dates in accordance with agreed payment terms in the Order Form, or (if not specified in an Order Form) on demand at regular intervals in correlation with how much of the requested Professional Services have been provided.

You agree to reimburse Us for reasonable travel cost. In the event that there is significant travel cost, You agree to reimburse Us for pre-approved travel and per diem incurred in the course of performing the Professional Services at any location other than Our site.

We will invoice You for expenses incurred. All payments are non-refundable and all payment obligations non-cancellable unless otherwise specified on an Order Form.

Payments shall be made within twenty one (21) days from the date of Our invoice. You will be responsible for all taxes, withholdings, duties and levies in connection with the Professional Services (excluding taxes based on Our net income).

Upon termination all payments for Professional Services shall be accelerated and become immediately due and payable. Any late payments will be subject to a late interest charge at the maximum rate permitted.

5.2. Delivery.

A Custom solution shall be considered satisfactorily delivered when We have demonstrated that it functions in accordance with the Order Form. Receipt of the Custom solution shall be conducted in accordance with relevant industry standards.

If delivery is delayed for reasons under Your control, we reserve the right to change the delivery date and to charge any additional cost that results from such delay.

If Customer Materials contain data that requires alterations of the Custom solutions functionality, such work will be invoiced at Our then applicable rates.

5.3. Alterations of the Custom solution.

Until two months prior to the scheduled delivery date, You can request changes to the Custom solution. If such changes are technically possible and We deem it possible to deliver them as requested, a new price, delivery date and work schedule will be mutually agreed and an updated Order Form concluded.

5.4. Your obligations. You commit Yourself to:

- (a) provide Us with all necessary information on Your needs and requirements for the requested Professional Service and on such other software or hardware that Custom solutions need to be able to interact with,
- (b) to provide Us with the necessary access to Your premises and computer systems if required,
- (c) ensure that all software that You provide is owned by You or You have all the necessary Licenses to use the software. You further warrant to hold Us harmless of any third-party claims that may arise due to such software,
- (d) to provide sufficient and acceptable facilities at Your premises to test Custom solutions,
- (e) to provide the necessary assistance and know-how in preparing the Custom solution,
- (f) to provide satisfactory data to test the Custom solution.

5.5. Our obligations. We commit Ourselves to:

- (a) carry out Our work diligently and at a normal pace and with sufficient accuracy,
- (b) use qualified and experienced staff to carry out the Professional Services,
- (c) use appropriate means to make sure that Our staff follows the protocols in force at Your premises,
- (d) produce supporting documents as required and agreed between You and Us,
- (e) handle the training and education of Your staff necessary for them to utilize Custom software, as agreed between You and Us.

6. TERM AND TERMINATION.

These SCT ´s take effect on the Effective Date and, unless earlier terminated in accordance with this Section 6, remain in effect until expiration or termination. The "**Effective Date**" of these SCT ´s is the date, which is the earlier of: **a)** Your initial receipt of Professional Services or **b)** the effective date of the first Order Form referencing these SCT ´s.

Either Party may terminate these SCT ´s or any Order Form if the other Party: **a)** fails to cure any material breach of these SCT ´s within thirty (30) days after written notice of such breach, except in the case of delayed delivery of Custom solutions, where termination is only permitted if We have not delivered the Custom solution within 10 weeks of the scheduled delivery date and the reason for delay is not due to Your breach of any of the terms of these SCT ´s; **b)** ceases operation without a successor; or **c)** seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such Party (and not dismissed within sixty (60) days thereafter).

Sections 3 (Ownership of Deliverables; Feedback), 4 (Our Products), 5.1 (Payment) (but only with respect to orders placed during the term hereof), 7 (Warranty Disclaimer), 8 (Limitation of Liability), 9 (Confidential Information), 10 (Dispute Resolution; Governing Law), 13 (Assignment), 14 (Publicity), and 15 (General) will survive any termination or expiration of these SCT ´s.

Unless termination is due to Your breach, Your right under Section 1 (Services and Deliverables) to use Deliverables shall survive so long as You have a valid right under the Agreement to use the applicable Product and provided that You remain in compliance with the applicable Documentation and confidentiality obligations in Sections 1 and 9 herein, and make full payment of all amounts that have become due under Section 5 herein.

7. WARRANTY DISCLAIMER.

ALL SERVICES AND DELIVERABLES ARE PROVIDED "AS IS" AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN ADDITION, THE TERMS OF THE AGREEMENT SHALL APPLY TO WARRANTY DISCLAIMERS UNDER THESE TERMS.

8. LIMITATION OF LIABILITY AND LIABILITY CAP.

THE TERMS OF THE AGREEMENT SHALL APPLY TO LIMITATION OF LIABILITY AND THE CAP ON LIABILITY AND DAMAGES UNDER THESE SECTIONS.

IN ADDITION TO THOSE TERMS, IN NO EVENT WILL WE, OUR PARENT OR SUBSIDIARIES OR ANY OF OUR LICENSORS, DIRECTORS, OFFICERS, EMPLOYEES OR AFFILIATES OF ANY OF THE FOREGOING BE LIABLE TO YOU FOR DEFECTS:

- (A) THAT ARE CAUSED BY YOUR OR A THIRD-PARTY'S INSTALLATION OR ANY HARDWARE, OPERATING SYSTEMS, FILE SYSTEMS, DATABASES OR OTHER COMPUTER SYSTEMS OR SOFTWARE FROM THIRD-PARTIES,
- (B) THAT ARE CAUSED BY OUTSIDE INTERRUPTIONS OR INSUFFICIENCIES IN THE DATA THAT THE SYSTEM USES DIRECTLY OR INDIRECTLY,

- (C) THAT ARE THE CAUSE BY A CHANGE TO OR ADAPTION OF (OR ATTEMPT TO CHANGE OR ADAPT) THE CUSTOM SOLUTION BY YOU OR A THIRD-PARTY,
- (D) THAT ARE THE RESULT OF THE SOLUTION BEING INSTALLED ON ANOTHER COMPUTER SYSTEM OR HARDWARE THEN ANTICIAPTED IN THE ORDER FORM,
- (E) THAT IS THE RESULT OF THE CUSTOM SOFTWARE BEING USED DIFFERENTLY THEN DESCRIBED IN INSTRUCTIONS OR SUPPORTING DOCUMENTS, AND
- (F) THAT IS CAUSED BY THE USE OF THIRD PARTIES OR OTHERS THAT WE HAVE NOT LICENCED TO USE THE CUSTOM SOFTWARE.

If there are defects in the Custom solution that are not subject to the liability limitations and warranty disclaimers of these SCT ´s and the Agreement, We undertake to fix the defects at Our cost, if the defect is reported within three months from delivery. If, after analysis of the defect, it turns out that the defect is not subject to Our liability, Our cost in analysing the defect, and possibly fixing it, will be invoiced to You.

9. CONFIDENTIAL INFORMATION.

The Confidentiality provisions of the Agreement apply to these SCT 's.

10. GOVERNING LAW AND DISPUTE RESOLUTION

Governing Law. These SCT ´s shall be subject to the laws and procedures of Iceland and the District Court of Reykjavík, shall be the court of jurisdiction.

Injunctive relief. Notwithstanding the foregoing, the Parties reserve the right to seek and obtain injunctive relief, whether in the form of a temporary restraining order, preliminary injunction, injunction to enforce an judgment, or other order of similar import, from any court of competent jurisdiction prior to, during, or after commencement or prosecution of court proceedings or the final decision and award of the competent court.

Exclusion of UN Convention and UCITA. The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to these SCT ´s. The Uniform Computer Information Transactions Act (UCITA) shall not apply to these SCT ´s regardless of when or where adopted.

11. FORCE MAJEURE.

Neither Party shall be liable to the other for any delay or failure to perform any obligation under these SCT 's (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency.

12. SUBCONTRACTORS.

We may use the services of subcontractors for performance of Professional Services under these SCT ´s, provided that We remain responsible for: **a)** compliance of any such subcontractor with the terms of these SCT ´s, and **b)** for the overall performance of the Professional Services as required under these SCT ´s.

13. ASSIGNMENT.

You may not assign the contractual relationship between the Parties subject to these SCT ´s without Our prior written consent (which consent will not be unreasonably withheld). We may assign our rights and obligations under the contractual relationship between the Parties subject to these SCT ´s in whole or in part without Your consent. Any permitted assignee shall be bound by these SCT ´s.

14. PUBLICITY RIGHTS.

We may identify You as Our customer in Our promotional materials. You may request that We stop doing so by submitting an email to sales@GoPro.net at any time. Please note that it may take Us up to 30 days to process Your request.

15. GENERAL.

These SCT ´s and the Agreement form the entire agreement between You and Us relating to the Professional Services and supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Professional Services or any other subject matter covered by these SCT ´s.

If either Party to these SCT ´s breaches any of their provisions relating to Confidential Information or intellectual property rights, there may not be an adequate remedy available solely at law; therefore, an injunction, specific performance or other form of equitable relief or monetary damages or any combination thereof may be sought by the injured Party.

The provisions of Sections 19, 20 and 21 of the Agreement also apply to these SCT ´s.