

# General Terms and Conditions

## Preamble

Like a Bird offers the online service « Like a Bird Apps », an embedded solution which includes online marketing functionalities to help managing each client's Social Network account by giving them a tool to manage easily the contests they want to organize on social networks such as Twitter or Instagram. Like a Bird Apps is used through a secured web site, by using dedicated logins and passwords, and gives access to the functionalities described below.

The present General Terms and Conditions describe the conditions of utilization of "Like a Bird Apps" as a SaaS software. Any use of the service constitutes acceptance of these General Terms and Conditions, which constitutes the sole contractual framework to the exclusion of any other document. The present General Terms and Conditions prevails on any other commercial document, except in case of a formal agreement from Like a Bird related to a Commercial agreement signed with a Customer.

## 1. Definitions

**Account:** Personal / Brand profile created by the customer on the Like a Bird Apps platform under the rules of the present Terms and Conditions,

**Contest:** Type of contest/operation that can be organized and managed by using Like a Bird Apps

**Customer:** User of the Like a Bird Apps platform, which has accepted the present Terms and Conditions,

**Operation:** Marketing operation (contest and al.) which can be organized and managed with Like a Bird Apps through the customer's social network account.

**Functionality:** Option that can be picked by the customer to upgrade their contests on the Like a Bird Apps platform

**Service:** Marketing management functionality offered by Like a Bird Apps

**File:** Any computer data, which contains personal data

**Record:** Part of a File,

**Computer process:** Process applied to a file or one or several records

## 2/ Purpose and Duration

The present document describes the usage rules of Like a Bird Apps Service. Its appliance starts at the account creation date for an unlimited duration.

### **3/ Account Creation**

The Account creation is made on the website [www.likeabirdapps.com](http://www.likeabirdapps.com), once the Account creation form is correctly and completely filled in. The login and password used to create the Account are strictly personal and confidential, under the responsibility of the Customer only. Any action or operation made by using these Customer's information are considered as its own. Like a Bird claims no responsibility for any fraud, illicit or misuse of the Service made by using the login and the password of the Customer.

In case of loss of these login and password, the Customer will inform Like a Bird with no delay, to refrain any fraudulent action. The Customer will only support the consequences of this loss.

### **4/ Operation**

The Service gives access to the following type of Contests among others:

- 1/ Instant-Win
- 2/ RT & Follow
- 3/ Lottery
- 4/ Tweet Sweepstakes
- 5/ Strip Tweet
- 6/ Photo Contest
- 7/ Retweet Contest
- 8/ Vote
- 9/ Bot -o-Reply

The Customer shall determine the appropriate type of Contest he wants to organize with regard to the goals he wants to achieve.

### **5/ Promotional Contest Operation**

As part of the Service, Like a Bird Apps gives the possibility to the Customer to organize and manage promotional Contests through its platform on social networks such as Twitter or Instagram. It is duly noticed that the Customer is solely responsible for the personal data of the participants collected through the Contest.

Furthermore, the Customer guarantees that:

- the Customer has the prior consent of the participants with regard to a potential transmission of their personal data to a third-party
- the participants have been duly informed of their rights related to the French data protection law of the 6<sup>th</sup> of January 1978, modified by the law n° 2004-801 of the 6<sup>th</sup> of August 2004.

Therefore, the Customer shall not consider Like a Bird responsible for any transmission of personal data without consent. Like a Bird reserves the right to use the data collected for statistic purpose only, and in an anonymous way.

## **6/ Published Content**

The Customer is solely responsible for the content published on its social network accounts via Like a Bird Apps.

## **7/ Rights to use the service**

By accepting the present Terms and Conditions, the Customer benefits from a strictly personal, worldwide, non-exclusive, non-assignable and non-transferable right to use the service delivered by Like a Bird for the validity duration of the Account created by the Customer.

The right to use the Service includes the right to remote use of the Service in accordance with its intent, under these General Terms and Conditions, to meet the Customer's professional needs only.

Consequently, any other use of the Service by the Customer is prohibited. As such, the Customer shall refrain from any dissemination, distribution, direct or indirect provision to the Service to the benefit of third parties or the public, at no cost or for consideration. Moreover, the Customer shall refrain from any temporary or permanent reproduction of the Service by any means whatsoever, as well as any translation, adaptation, arrangement or modification of the Service, especially to create a similar service.

The Customer shall refrain from providing any Data or information via the Service that is unlawful pursuant to laws and regulations or public order, or is detrimental to rights of third parties. More generally, the Customer shall refrain from using the Service contrary to the regulations applicable to electronic communications or providing assistance for such use.

## **8/ Service availability**

The Customer can access the Service on the website [www.likeabirdapps.com](http://www.likeabirdapps.com) . Like a Bird and its contractor will make their best to ensure a 24/7 Service availability. However, the Customer is aware of the technical risks related to the Internet. Like a Bird shall not be held responsible for any shutdown or slowdown that may occur due to these issues.

Moreover, due to the Service structure, maintenance periods may occur on the platform. Like a Bird and its contractor will make their best efforts to reduce these periods, and will notify the Customer in advance. Like a Bird shall not be responsible for any impact of this temporary unavailability on the effectiveness of the ongoing Operations of the Customer.

As a result, Like a Bird does not guarantee the continuity or availability of the Service.

In an event of malfunction, the Customer shall contact Like a Bird immediately by email or telephone, and describe the malfunction he has to face. Like a Bird will solve this malfunction or anomaly in less than 48 hours (for the record: Like a Bird support team works from 9 am to 6 pm French time from Monday to Friday).

No extra corrective maintenance costs will be charged to the Customer, as long as the maintenance period dedicated to the Customer does not exceed 4 hours per month. Beyond that, Like a Bird will charge the Customer for the time spent on their maintenance, based on the hourly rate applicable at the time of the maintenance on Like a Bird own reports.

Like a Bird is free to shut down the access to the Service to the Customer if the Customer do not use the Service in respect of the present General Terms and Conditions.

Like a Bird is free to modify partly or entirely the Service, if such modifications do not alter the Service performances.

## **9/ Financial Conditions**

### **9.1/ Service Fee**

Service usage is based on credit utilization (called "Birdies"). The Customer has to buy online these credits (<http://likeabirdapps.com/en/back/#/credit-packs>), and can spend it freely on the platform, depending on the Options the Customer wants to use for his Operation.

3 different credit packs are available:

- 5 Birdies
- 10 Birdies
- 20 Birdies

Like a Bird edits an invoice at the end of each month and the Customer can access to it through its personal dashboard.

The Customer and Like a Bird could have signed a "special agreement" with negotiated Service fees and conditions. In this particular case, the applicable Service fee is described in the related agreement signed by both Like a Bird and the Customer.

### **9.2/ Service Fee modification**

Like a Bird shall modify the pricing conditions of the Service fee at any time.

### **9.3/ Service Fee modification**

In case of any incident during the payment, the Customer has fifteen (15) working days to solve the situation, starting from the date of the incident.

The Customer is duly informed that any delay on the payment after this fifteen (15) working days period shall lead to the following consequences:

- Immediate collectability of the payable amount,
- Termination of the access to the Service until the amount is paid,
- Payment by the Customer of a delay penalty equals to the European Central Bank's key interest, increased by 10 points, and a lump sum payment of 40 euros

### **10/ Intellectual Property**

Like a Bird remains the sole owner of the Service and its relative components (software, database, website, interfaces, trademarks, logos, corporate identity guide, etc.). In particular, Like a Bird remains the sole party to be authorized to operate the database.

Like a Bird grants the Customer to use the database under the rules described in the Article 8.

The Customer remains the sole owner of its own Files and Records needed to use the Service.

For the sole purpose of Service execution, the Customer grants Like a Bird the non-exclusive, personal, non-assignable, and non-transferable right to reproduce, process, qualify, enrich, and deploy its data and Files within the Service worldwide for the duration of the present agreement.

### **11/ Authorizations and Personal Data**

The Customer is responsible for getting all the necessary legal authorizations to use the files and the Data collected via the use of the Service, especially with regard of the French law:

Like a Bird reminds the Customer of its obligations respecting any person performing automated Data Processing in accordance with Law 78-17 of the 6<sup>th</sup> of January 1978 and its subsequent amendments and implementing regulations, including the obligation of prior declaration to the CNIL.

The Customer acknowledges that as the Customer is solely responsible for the file, it is required to inform the individuals referenced therein of their rights, and to perform any necessary CNIL declaration for the collection and use of personal data.

It is further noted that the Records cannot under any circumstances disclose, directly or indirectly, racial origins, political, philosophical, or religious opinions, or trade union memberships of individuals, or any unlawful comments.

## **12/ Conditions of Proof**

In the event of a dispute between the parties, the Customer is aware that connexion and operation logs related to the Customer's activity on the Service would be used as certified proofs.

## **13/ Warantees**

The Customer guarantees it has all the intellectual property rights that allow him to use the Service, and in particular, all the needed intellectual property rights with regard to the information contained in the Files, whether these information are leased or owned by the Customer.

Like a Bird guarantees the applications compliance to the operations, but provides no guarantee of compliance with the Customer's needs, as the Customer is the sole responsible for the selection, the relevance, the completeness, the integrity and the quality of the data contained in the Customer's Files, and the choices the Customer makes by using the Service. If needed, the Customer could ask Like a Bird to provide help to prepare and manage the Operation. Therefore, Like a Bird will charge the Customer for an extra cost related to this tailor-made service.

## **14/ Confidentiality**

Each party is committed to respect the following confidentiality rules:

- i/ To keep confidential information it will receive from the other party,
- ii/ To not disclose any confidential information to a third Party (except the ones necessary for the Service to operate correctly)
- iii/ To only use the confidential information from the other Party under the rules decribed in the present Terms and Conditions

This confidentiality clause lasts for the whole duration of the present Terms and Conditions, and for three (3) years after the end of this agreement.

The Parties further undertake to ensure that their employees comply with these provisions, as well as any agent or third party that may become involved for any reason whatsoever under the terms of the present Terms and Conditions.

## **15/ Liability**

Each party shall be considered responsible for the direct consequences of their mistakes or omissions that could harm the other party.

The Service is an online tool designed to help Customers managing and organize their marketing campaigns on social networks, and could not be considered as a substitute of the decision-making process of the Customers. In particular, Like a Bird shall not be held liable regarding the suitability of the Service with the Customer's needs.

Like a Bird shall not under any circumstances be held liable for any consequential damages, even though they are foreseeable or anticipated, including loss of business, contracts, markets, loss of profits, increased costs, actions or claims brought by third parties against the Customer, or poor response to business development actions. In addition, the liability of Like a Bird is expressly limited to the amount of fees collected by it for the failure of service in question.

The Customer undertakes the liability of using the Service in accordance with the general Terms and Conditions of the social networks they want to use for their Operations.

The Customer acknowledges that it is aware of the technical characteristics and hazards related to loading time, viewing or other online transactions conducted via the Service, since the constitution of the network makes it impossible to know the recipient's connection speed, the path taken by the data or the availability rate of bandwidth. The Customer also acknowledges that it is aware of the risks of faults relating to the security and confidentiality of data sent or received via the Internet. It assumes sole responsibility for the data that it views, sends, or receives through the Service.

The Customer is responsible for implementing physical and logical security solutions to protect its system and its data from any fraudulent intrusion or computer virus.

## **16/ Termination**

The Customer may terminate the Service access, or an ongoing Operation any time it wants by sending an email to [contact@likeabirdapps.com](mailto:contact@likeabirdapps.com).

Like a Bird may terminate the Service access, by denying the access to the Service for the Customer's Account, or an Operation any time if the Customer does not respect the rules described in the present Terms and Conditions.

It is duly noticed that, in case of a termination, no reimbursement of the credits bought before the termination date will be made.

## **17/ Miscellaneous provisions**

The Customer acts on its own name and on its own behalf. The Customer cannot commit Like a Bird in any way. Nothing herein shall be construed as creating between the Customer and Like a Bird a mandate, subsidiary, or agent or employee-to-employer relationship.

Each Party waives the commitment or employment, directly or through intermediaries, of any employee of the other party, without the party's prior express consent. This

waiver is valid for the term of the Agreement and for the twelve months following its termination. In the event that one of the Parties does not comply with this obligation, it shall indemnify the other Party by paying, immediately and upon request, a lump sum equal to twelve times the gross monthly salary of the employee at the time of his or her departure.

In the event of force majeure, the obligations of the present General Terms and Conditions shall be suspended for the duration of the cause. Only those events normally admitted by the case law of French courts and tribunals shall be considered events of force majeure. However, in case of an event of force majeure that should last over 3 months, each party can terminate the contract without any damages.

In the event of the invalidity of any provision of the General Terms and Conditions, the other provisions shall remain in force. The parties shall then agree to adopt a new provision that will replace the provision in question.

The Customer expressly authorizes Like a Bird to mention the name and/or trademark of the Customer for commercial reference purposes and reproduce them on its promotional materials.

Like a Bird reserves the right to amend at any time the content of these General Terms and Conditions, and it shall be responsible for communicating or making available the new General Terms and Conditions to the Customer. Like a Bird reserves the right to assign all or part of its obligations to any third party of its choice.

The fact that a Party does not require the application of any provision of these General Terms and Conditions shall in no way be considered a waiver of its rights.

## **18. LAW AND JURISDICTION**

These General Terms and Conditions are governed by French law. Any dispute between the Parties arising from the formation, interpretation, performance, termination, or cancellation of this Agreement shall be brought before the competent Court in LYON, even in cases of multiple defendants or third-party proceedings.

The language in which these General Terms and Conditions should be interpreted is the French. In case of a contradiction, the sole French version will be used as the reference.