

# App Terms of Sale (CGV app)

## Article 1 - Terms and Conditions jurisdiction and definitions

These Terms and Conditions of Use and Sale are governed by the laws of France and will be interpreted in accordance with the French courts. You can get on this page, for your reading comfort and understanding, a full translation in English of the Terms and Conditions of the current mobile application.

The below listed words define :

- 'Mobile application', 'mobile app' or 'app' : the mobile application Whac-A-Mole and all its screens.
- 'Publisher' : the legal or natural person responsible for editing and publishing content on the app.
- 'User' : the person using the app.
- 'Products' : all digital goods or services that it is possible to buy or to which it is possible to subscribe via in-app purchases.
- 'Customer' : the user buying a product via an in-app purchase.
- 'Store' : The digital distribution platform used by the publisher to publish the app, and by the user to download the app.

## Article 2 - Mentions imposed by French trust law in the digital economy and app purpose

The app is published by Hikinest Studio Micro Entreprise.

Legal mentions concerning the publisher can be found in the app Legal Notices ; its policy regarding the gathering and use of its users data can be found in the app Privacy Policy.

Custom keyboard

The acquisition of a product or in a broader sense the use of the app implies acceptance by the user of the whole current Terms and Conditions, the user thus acknowledging to have taken full knowledge and accepted the latter. This acceptance will be considered to have the same value as a handwritten signature from the user. The user recognizes the value of evidence from the publisher automatic recording systems and, unless able to provide evidence to the contrary, will not contest this evidence in the event of a complaint.

The acceptance of these Terms and Conditions implies on the part of the user that he or she does have the legal capacity necessary to do so. If the user is a minor or has not the legal capacity to enter into contracts, he or she declares having the consent of a parent or legal guardian.

## Article 3 - Characteristics of products offered

The products offered are those listed in the catalog published on the app, and each product is listed along with a description provided by the publisher. The app customer service is available by e-mail at the following address: [contact@hikinest-studio.com](mailto:contact@hikinest-studio.com) or through mail at this address 4 Rue du Stade, 58200 Cosne-Cours-Sur-Loire in case of which the publisher agrees to provide a response within 7 days.

## Article 4 - Prices

The prices listed in the catalog are prices shown in Euros , net (VAT is non applicable according to article 293 B of French CGI).

Hikinest Studio reserves the right to change prices at any time. However, only the price appearing in the catalog on the day of the order shall be applicable to the buyer.

## Article 5 - App member account

The registered user on the app (member) has the ability to access his or her account by logging in, using the e-mail address specified during registration and a password or using third-party social network login buttons. The user is responsible for protecting the password he or she has chosen, and is encouraged to use complex passwords. In case of forgotten password, the member can ask for a generate a new one. This password is the guarantee of confidentiality of information contained in the user account, and the user will refrain from transmitting or communicating it to third parties. Otherwise, the publisher will not be held liable for unauthorized access to a user account.

The user can be asked to provide a few personal information when buying products within the app ; he or she agrees to provide accurate information.

The account allows the customer to check all orders made on the app with the account. The app publisher can not be held responsible if the data contained in the account were to disappear as a result of a technical failure or force majeure event, this information having no probative value, but only an informative one. The account pages and screens cannot be taken as evidence ; they only have informative value and aim to effectively help the user to manage his or her orders or contributions.

The publisher reserves the exclusive right to delete the account of any user who may have breached these Terms and Conditions, including but not limited to the following cases :

- \* the user has knowingly provided false information during his or her registration and the creation of an account
- \* the user has been inactive on the app for at least a year.

Said deletion cannot be considered harmful to the excluded user, who can not claim any compensation for this the account deletion. This deletion does not prevent the publisher to initiate legal actions or a lawsuit against the member, should the facts warrant it.

Members are free to delete their account on the app. In order to do so, the member can send a e-mail to the app publisher stating that he or she wants to delete the account. No data recovery is possible after account deletion.

#### **Article 6 - Publisher waiver of responsibility**

Failure to access the app is not considered harmful to the users, and will not result in any right to any kind of compensation. The unavailability, even extended without any time limit and concerning one or several products, can not be considered harmful to users and can not result in the award of damages from the publisher. The hypertext links on the current app may refer to other apps or sites and the responsibility of the publisher of the current app can not be engaged if the content of these sites and apps contravenes the laws. The current app publisher will not be held responsible of any harm caused to the user by his or her visit on those third-party sites or apps.

#### **Article 7 - Intellectual property rights relating to information published on the app**

Unless otherwise stated, the publisher or its licensors own the intellectual property rights of the app and material on the app. Copying any content, including but not limited to logos, text content, pictures or videos is strictly prohibited and will be considered counterfeiting. Any member found guilty of counterfeiting would likely see his or her account deleted without notice or compensation, this deletion not preventing the publisher or its representative to initiate legal actions or a lawsuit against the member, should the facts warrant it.

#### **Article 8 - Limitation of Liability**

The publisher, especially in the app sales process, is bound by an obligation of means; he or she can not be held liable for damages resulting from the use of the app such as data loss, hacking, viruses, failure in service, or other. The publisher can not be held liable for breach of contract due to a force majeure event, including but not limited to disasters caused by floods or fires. Regarding purchased products, the publisher shall not be liable for any consequential damages because of present, trading loss, operating loss, loss of profit, damage or expense that might arise. The choice and purchase of a product are under the sole responsibility of the customer. The total or partial inability to use such product due to incompatibility of equipment cannot lead to any compensation, reimbursement or questioning the responsibility of the publisher, except in the case of a proven hidden defect or non-compliance. In case of non delivery of an order (purchased product is not made available to the customer), the customer has up to six months (starting at the date of the purchase) to come forward. No claim will be accepted beyond this time period. The user expressly agrees to use the app at his or her own risk and under his or her sole responsibility. The app provides the user with indicative information and flaws, errors, omissions, misstatements and other ambivalences may exist. In any event the publisher will no be liable for :- any direct or indirect damage, including but not limited to lost profits, revenue shortfall, loss of customers or data that may result from the use of this app or conversely the inability to use it- any malfunction, impossibility of access, misuse, improper configuration of the user's device, or for the use by the user of an unusual or obsolete device- the advertisements content and other links or external sources the user may access through the app

#### **Article 9 - App Internet accessibility**

The publisher cannot be liable for any technical hinderance of the connection, including but not limited to hinderance due to a force majeure event, a maintenance, an update, an intervention by the hosting company, an internal or external strike, a network outage, a power failure, or a bad setup or operation of the user device.

#### **Article 10 - Eligible law and consumer mediation**

These Terms and Conditions are subject to the application of French law. They may be modified at any time by the published or one of its representative. The Terms and Conditions applicable to the user are those in effect on the date of the order or of the connection to the site. The publisher obviously agrees to archive its older version of the Terms and Conditions, and to send them to any user who so requests.

Excepting public policy provisions, any dispute that may arise regarding the execution of these Terms and Conditions may be submitted to the discretion of the publisher with a view to a friendly settlement, before any legal proceedings. It is expressly stated that the claims for friendly settlements do not suspend nor set aside the deadlines fixed for instigating legal proceedings. Unless otherwise provided by public policy provisions, any legal proceedings regarding the execution of this contract shall be subject to the jurisdiction of the Court of Appeal that has been referred to.

#### **Consumer mediation**

As required in the article L.612-1 of the French Code de la consommation, Hikinest Studio Micro Entreprise guarantees that the customer can seek a free-of-charge consumer mediation for the amicable resolution of any dispute with the publisher.

Hikinest Studio Micro Entreprise offers its nonprofessional customers the mediation of the following mediator :

- Médiateur du centre de médiation agréé Médicys
- [contact@medicys.fr](mailto:contact@medicys.fr)
- <http://www.medicys.fr/index.php/consommateurs/>

Mediation is not mandatory but only offered to allow informal resolution of disputes and avoid unnecessary litigation.

#### **Article 11 - Use of cookies and files recorded on the device**

« Cookies » are hereby defined in the broad sense of any file stored on the user's device in order to identify him or her, or to sustainably record data on the device. Cookies allow the app to identify its user, to customize his or her experience and speed up the display of the app through a data file saved on their device. Cookies are typically used on the app to 1) allow the app to memorize the user settings and action within the app, 2) gather user navigation data to provide analytics and optimize user experience and 3) allow the user to log in to and access password-protected content, including but not limited to his or her account pages and screens. The user acknowledges he or she has been informed of the use of cookies by the app, and authorizes the app and its publisher to use it. The user can refuse the recording of cookies by changing the settings of the app and/or of the device, but without any guarantee from the publisher that the app will run as expected. The publisher cannot be held responsible if the app does not work as expected without the use of cookies.

#### **Article 12 - Payment information**

The user can place an order on this app and pay using the credit card which details he or she provided to the Store. All payments are made through secure transactions provided by the Store. The app has no access to any user payments data ; payment is made directly by and to the Store

#### **Article 13 - Delivery and withdrawal right waiver**

The publisher promises to make purchased products available as soon as the payment is made by the user for those products. The purchase of products offered within the app will not allow the customer to exert his or her right of withdrawal, as stated in article L.221-28 of the French Code de la consommation, because of the nature of those products (contracts beginning immediately and concerning digital contents not provided on a hard medium or services delivery that are complete within the withdrawal right period). The customer acknowledges the orders will be regarded as irreversible, and waive his or her withdrawal right regarding those products, provided his or her express consent to this waiver had been given during the order process.

#### **Article 14 - Products warranty**

All products purchased on this app are protected by the following legal guarantees (French Code Civil) ; Guarantee of conformity : According to Articles L.217-4 and following of the French Code de la Consommation, the seller must deliver goods in conformity with the contract and is responsible for defects existing during product delivery. The guarantee of conformity may be exercised if a defect were to exist on product delivery. Hidden defects guarantee : According to Articles 1641 to 1649 of the French Code Civil, the customer may request the exercise of a hidden defects guarantee if the considered defects do not appear at the time of delivery and be serious enough (the defect must render the product unfit for the use for which it is intended, or hinder this use to such an extent that the buyer would not have bought the product or would not have purchased it at such a price if he or she had known the default). In case of non-conformity of a product sold on the app, it can be refunded by the publisher. All claims of exchange or refund must be made by post to the following address : 4 Rue du Stade, 58200 Cosne-Cours-Sur-Loire or by e-mail at [contact@hikine-studio.com](mailto:contact@hikine-studio.com).

#### **Article 15 - Archiving**

The publisher will archive purchase orders and invoices on a reliable and durable medium, as a true copy. Digital records will be considered by both parties as proof of communications, orders, payments and transactions between them.

#### **Article 16 - Terms and Conditions framework**

If any of these terms and conditions should be declared null and void by a court, such nullity shall not extend to any other clauses, which continue to be in effect. The present Terms and Conditions describe the entire agreement between the user and the publisher. They supersede all previous or contemporary written or oral agreements. The Terms and Conditions are not assignable, transferable or sublicensable by the user himself. A printed version of the Terms and any notice given in electronic form may be requested in judicial or administrative proceedings in connection with the terms and conditions. The parties agree that all correspondence relating to these Terms of Use, shall be in the French language.

#### **Article 17 - Notice**

Any notice concerning the Terms and Conditions, Legal Notices or Privacy Policy must be made in writing and delivered by hand, by registered or certified mail, by post or any other well-known courier service at national level that allows regular review of its prices and conditions, or by e-mail, using the addresses mentioned in the Legal Notices of the app, stating your full name, contact details and subject of the notice .

### **Article 18 - Claims**

Any claim or cause of action you may have with respect to your use of this app, its pages or screens, services or the social network pages of the publisher, or which is the subject of these Terms and Conditions must be initiated within one (1) year after the claim or cause of action arises. If it is not, such a claim or cause of action will never be applicable before a court.

### **Article 19 - Inaccuracies**

It is possible that there are, on the whole app and the products offered, and to a limited extent, inaccuracies or errors, or information that is at odds with the Terms and Conditions, Legal Notices or Privacy Policy. In addition, it is possible that unauthorized modifications happen to be made by third parties on this app or related services (social networks ...). We make every effort to ensure that such discrepancies be corrected. In case we miss one, please contact us using the addresses mentioned in the Legal Notices of this app, to give, if possible, a description of the error and location (URL), as well as sufficient information for us to be able to contact you. For requests involving copyright, please refer to the section of this document related to intellectual property.

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