

General terms and conditions | PackControl

Version 1.0 | January 2022

These are the general terms and conditions of PackControl B.V., having its registered office at Daalwijkdreef 47 (1103 AD) in Amsterdam, the Netherlands, and registered with the Chamber of Commerce under registration number 84637854 ('PackControl'). PackControl offers a cloud-based software solution that enables its customers to administer the use and movements of reusable packaging. All agreements entered between PackControl and its customers are governed by these general terms and conditions.

Article 1. Definitions

In these general terms and conditions, all capitalised terms have the meanings set out in this article, both in their singular forms and in their plural forms.

- 1.1. **Account:** the username, password and any other means of authorisation required by an End User to log in to – and use – certain parts of the Services.
- 1.2. **Agreement:** the entire agreement between PackControl and the Customer, which in any case includes, without limitation, PackControl's quotation or offer, these general terms and conditions, and any data processing agreement entered into between the parties.
- 1.3. **Confidential Information:** any information that has been marked as being confidential, or that the receiving party should reasonably be able to understand is of a confidential nature.
- 1.4. **Customer:** any legal entity or natural person acting in the course of a profession or business that or who enters into an Agreement with PackControl.
- 1.5. **Customer Data:** any data stored by the Customer or individual End Users with the Services, or otherwise made available to PackControl by the Customer or End Users in the context of the Agreement.
- 1.6. **End Users:** any natural person using the Services under the Agreement, whether or not through his or her Account.
- 1.7. **Intellectual Property Rights:** all intellectual property rights and related rights, including but not limited to copyright, database rights, rights to domain names, trade name rights, trademark rights, design rights, neighboring rights, patent rights as well as rights to know-how.
- 1.8. **Materials:** all websites, web applications, software, data, documentation, concepts, texts, images, opinions, reports and other products of the mind in the broadest sense of the word.
- 1.9. **Services:** all work that PackControl will perform for the Customer under the Agreement, as described in PackControl's quotation or offer. These activities may include – among other things – (i) providing the Software, (ii) configuring or modifying the Software, (iii) maintaining the Software, and (iv) providing support to End Users.
- 1.10. **Software:** PackControl's cloud-based software solution made available to Customer under the Agreement that enables the Customer to administer the use and movements of reusable packaging, as further described on the Website.
- 1.11. **Website:** PackControl's website, accessible via www.packcontrol.eu, or related sub-domains.

Article 2. Applicability and formation of the Agreement

- 2.1. These general terms and conditions apply to all Agreements entered into between the parties, even if – in the event of a future quotation or offer – these general terms and conditions are not made available to the Customer again.
- 2.2. All PackControl's quotations and offers are free of obligation and are valid for 30 days after the date stated in the quotation or offer. PackControl is not obliged to accept an indication of acceptance after the expiry of this period, but if PackControl does so, the quotation or offer will be deemed to have been accepted. The Agreement is concluded at the moment the offer is accepted in writing.
- 2.3. PackControl will not be bound by an acceptance by the Customer that deviates from the quotation or offer, including where the deviation only relates to minor aspects as referred to in Section 6:225(2) of the Dutch Civil Code ("*Burgerlijk Wetboek*").
- 2.4. The Agreement between the parties may comprise several documents. In principle, these documents apply supplementary to each other. In the event of inconsistencies, the below ranking order will apply, in which a document listed first prevails over a document listed further down:
 - a. PackControl's quotation/offer;
 - b. any additional written agreements signed by the Parties;
 - c. these general terms and conditions.

Article 3. Performance of the Agreement

- 3.1. After the Customer has accepted the quotation or offer, PackControl will make every effort to provide the Services as soon as possible, in accordance with the Agreement. Any deadlines stated by PackControl are always indicative and are not to be considered as strict deadlines ("*fatale termijnen*").
- 3.2. The Customer is obliged to do what is reasonably required to ensure that the Services can be provided correctly and in time. In particular, the Customer must ensure that all information that PackControl indicates are necessary or that the Customer should be able to understand are necessary are provided to PackControl in time and free of charge.
- 3.3. The Customer guarantees that the information and Materials provided to PackControl are correct and complete. PackControl is entitled but not obliged to check these for correctness and completeness. If the information or Materials are found to contain inaccuracies or is incomplete, PackControl will be entitled to suspend the Services until the Customer has remedied the shortcomings.
- 3.4. PackControl is not obliged to implement or configure the Services on behalf of the Customer, unless explicitly agreed upon otherwise. If the Customer requests support from PackControl in this regard, PackControl preserves the right to invoice the associated costs separately based on the customary rates of PackControl, but only if the Customer is informed of these additional costs in advance.
- 3.5. In the performance of the Agreement, PackControl will take account of reasonable requests of the Customer or state its reasons for not doing so. If, despite those reasons, the Customer insists that the request be complied with, PackControl will (insofar as the request can reasonably be carried out) perform the work at the Customer's risk. PackControl has the right to charge a fee for carrying out such a request. If a Customer's request cannot be granted, PackControl will state the reasons why.
- 3.6. When using the Services, the Customer is obliged to comply with any reasonable advice and instructions provided by PackControl.
- 3.7. PackControl is entitled to engage third parties in the performance of the Agreement. Any costs associated with this will only be at the Customer's expense if this has been agreed in advance.

Article 4. Accounts

- 4.1. The Customer and/or End User may need an Account in order to use the Services. The Customer itself is responsible for ensuring that login details are treated confidentially. Accounts are personal and may not be used by multiple people.
- 4.2. PackControl will provide login details for an administrator account to the Customer, which the Customer can use to create Accounts for its End Users. Unless otherwise agreed, the Customer itself is responsible for managing and – where required – withdrawing Accounts. The Customer itself must monitor whether the authorisations and access rights granted to End Users are still up to date.
- 4.3. All actions that are carried out via an Account will be at the Customer's expense and risk. PackControl is entitled to assume that these actions have been carried out by the Customer itself or with the Customer's consent.
- 4.4. If the Customer suspects or concludes that an Account is being misused, it must immediately take any measures that may be necessary to prevent (further) misuse, for instance by changing the password. If it is not possible for the Customer to take appropriate measures itself, the Customer must immediately inform PackControl, in order to enable PackControl to take the necessary measures.

Article 5. Rules of use

- 5.1. The Customer is forbidden from using the Services for any purpose that violates applicable laws and regulations, or in a way that is otherwise unlawful. Furthermore, it is explicitly forbidden to use the Software:
 - a. to willfully distribute malware or any other harmful software;
 - b. to store or disseminate materials that infringe any intellectual property rights or other third party rights;
 - c. to store or disseminate materials that are threatening, libelous, defamatory, obscene, pornographic or offensive;
 - d. in any manner that may cause hindrance for other users of the Application, or that may damage the systems and networks of PackControl or third parties.
- 5.2. All End User activities are at the Customer's expense and risk. The Customer warrants that any End Users that make use of the Software are bound to the terms of use for the Software. When creating an Account, all End Users are required to accept the aforementioned terms of use.
- 5.3. If PackControl finds that the Customer has violated the terms and conditions, or receives a complaint about this, it will give the Customer a warning. If this does not lead to a satisfactory solution, PackControl may intervene itself. In urgent or serious cases, PackControl may intervene without warning.
- 5.4. PackControl is entitled to hand over the name, address and other identifying details of the Customer and/or End Users to a third party who complains that the Customer and/or the End User is infringing its rights, provided that the applicable legal and/or judicial requirements for this have been met.
- 5.5. The Application may contain hyperlinks to third party websites. PackControl is not responsible for the contents of such websites. Use of any information or materials from third party websites shall be at your own risk.
- 5.6. PackControl is not responsible for any third party services that can be used via the Application. Use of these services shall be at your own responsibility and risk.
- 5.7. PackControl shall not be liable for Customer Data stored using the Software or for the use made of the Software by Customer and/or its End Users. Customer indemnifies PackControl from claims of third parties, including Customer's End Users, based on the

assertion that the use of the Software by Customer and/or its End Users or Customer Data stored using the Software infringes its rights or is otherwise unlawful.

Article 6. Availability

- 6.1. Unless the Parties expressly agree otherwise in a service level agreement, the availability and the maintenance of the Services will always be on the basis of best efforts and with due observance of the provisions of this article.
- 6.2. PackControl will endeavour to keep the Services available as much as possible, but cannot guarantee uninterrupted availability. PackControl will be entitled to take the Services temporarily out of operation for the purpose of maintenance activities.
- 6.3. If any obstruction, loss or other threat arises or may arise for the operation of PackControl's computer systems or network or third-party computer systems or networks, for instance due to excessive sending, uploading or downloading of data, network attacks, poorly protected systems, or activities of viruses or other harmful Software, PackControl will be entitled to take all measures that it deems reasonably necessary to avert or prevent this threat. PackControl will inform the Customer of this as soon as possible.

Article 7. Maintenance

- 7.1. PackControl actively maintains the Software. Maintenance causing impact to the availability of the Software will be announced in advance and will, where possible, be carried out when use of the Software is averagely low. Emergency maintenance however can be carried out at any moment and without prior notice.
- 7.2. PackControl may from time to time add or change functionalities of the Software. Suggestions and feedback of the Customer are welcome, but ultimately PackControl decide which functionality will be added or changed.
- 7.3. PackControl shall announce changes to the Software at least 14 days in advance. Minor changes that, in the opinion of PackControl, do not affect the functionality of the Platform in a meaningful way, will be made without prior notice.

Article 8. Support

- 8.1. The Customer is requested to consult the online documentation regarding the Software via the Website before submitting a support request by e-mail or phone.
- 8.2. If the online documentation does not facilitate a solution, the Customer may contact the PackControl helpdesk by e-mail or by phone. Availability and up-to-date contact details are available on the Website. PackControl endeavours to respond to helpdesk requests as soon as possible.

Article 9. User limits

- 9.1. PackControl may impose a limit on the capacity the Customer may or can use within the framework of the Services on a monthly basis. Examples include a maximum number of Accounts or a maximum quantity of data storage or network traffic.
- 9.2. If the usage limits are exceeded, PackControl may charge additional costs, or (after providing a written warning) limit the use of the Services to the permitted capacity.
- 9.3. Any credit awarded to the Customer cannot be transferred to a subsequent month, another agreement or another PackControl customer.
- 9.4. If no limit has been set for the capacity, a fair use policy will apply to the Services concerned. This must be understood to mean that the Customer may use a maximum of twice the capacity used by other PackControl customers under similar circumstances.
- 9.5. PackControl is not liable for the consequences of the Services not functioning properly if the Customer exceeds the applicable usage limit, whether or not based on fair use.

Article 10. Intellectual Property Rights

- 10.1. Unless otherwise agreed in writing, all Intellectual Property Rights pertaining to the Software and other Materials developed or provided by PackControl under the Agreement shall remain with PackControl or its suppliers.
- 10.2. The Customer only acquires a non-exclusive, non-transferable and non-sublicensable right to use the Software and other Materials for the term of the Agreement, and only for its own use.
- 10.3. The Customer is forbidden from modifying the Software and other Materials or modifying or removing any indications of Intellectual Property Rights from these.
- 10.4. The Customer is expressly not entitled to access the source code or the source files of the Software and other Materials, except in those circumstances in which this is permitted pursuant to mandatory law.
- 10.5. The Customer is forbidden from reverse engineering the Software and other Materials (for instance through decompilation), except in those circumstances in which this is permitted pursuant to mandatory law.
- 10.6. PackControl can take technical and other measures to protect the Software or Materials. Where such security measures have been implemented, the Customer may not remove or circumvent these.

Article 11. Customer Data and privacy

- 11.1. PackControl will make every effort to secure the Services against misuse and unauthorised access to the Customer Data.
- 11.2. All rights to the Customer Data shall remain with the Customer. PackControl will only use the Customer Data to the extent necessary for the provision of the Services.
- 11.3. If and in so far as the Customer Data consists of personal data within the meaning of the General Data Protection Regulation ('GDPR'), the parties shall enter into a data processing agreement before the Services are provided to the Customer.
- 11.4. If the Agreement is terminated, regardless of the reason for such termination, PackControl will destroy or delete the Customer Data as soon as possible, with due observance however of the provisions of article 12.

Article 12. Exit scheme

- 12.1. If the Agreement is terminated, PackControl can, at the Customer's request, provide a copy of the Customer Data in a common file format and in a usual manner. PackControl may charge the Customer the costs incurred in this separately.
- 12.2. The Customer must submit the request referred to above to PackControl in writing before the date on which the Agreement ends. PackControl will only be obliged to cooperate in the request if all amounts owed by the Customer and any other obligations under the Agreement have been paid or complied with in full.
- 12.3. PackControl has the right to remove all Customer Data and associated environments after the copy as described above has been provided to the Customer and the Customer has confirmed receipt thereof. If the Customer does not submit a request as referred to in paragraph 1 of this article, PackControl will be authorised to remove the Customer Data and its environments on the date on which the Agreement ends.

Article 13. Confidentiality

- 13.1. The parties will treat Confidential Information of the other party as strictly confidential and use it only for the purpose for which it is provided.
- 13.2. The receiving party will ensure that the Confidential Information of the disclosing party is given the same level of protection as its own confidential information, but at least a reasonable level of protection.

- 13.3. The parties will also impose the obligation described above concerning Confidential Information on their employees and any third parties engaged.

Article 14. Terms of payment

- 14.1. In exchange for the Services, the Customer will be required to pay the prices stated in the Agreement. Unless expressly indicated otherwise, all prices are exclusive of value added tax (VAT) and other duties levied by the government.
- 14.2. PackControl will be entitled to invoice the Services in advance. The Customer hereby agrees to PackControl sending electronic invoices. All invoices sent by PackControl are subject to a 14-day payment term.
- 14.3. If the Customer disagrees with the contents of an invoice, the Customer will be entitled to suspend payment of the disputed (though not any other) part of the invoice. If an invoice is disputed, PackControl must be informed of this, in writing, within the payment term. After being informed of an invoice being disputed, PackControl will assess whether or not this is justified as soon as possible. If it proves to be unjustified, the Customer must pay the amount outstanding within 14 days.
- 14.4. If – except in the situation described in the preceding paragraph – the Customer fails to pay an invoice, or pay it in full, within the payment term, the Customer will be in default by operation of law. In such case, PackControl is entitled (i) to charge the Customer the statutory interest for commercial transactions on the outstanding amount, and (ii) to suspend provision of all or part of the Services until the Customer has paid the outstanding amount in full.
- 14.5. If the Customer continues to fail to pay an invoice following a demand for payment or a notice of default, PackControl will be entitled to refer the claim for collection. Any extrajudicial costs and legal expenses incurred by PackControl, including the costs of legal experts, lawyer's fees, bailiff costs and the costs of debt collection agencies, will in such a case be completely at the Customer's expense.
- 14.6. PackControl is authorised to adjust its rates on an annual basis on the basis of the CBS ("*Centraal Bureau voor de Statistiek*") consumer price index (all households), series 2015=100, for January relative to January of the preceding year. In such case, the Customer is not entitled to terminate the Agreement, unless the price increase amounts to more than 5 percent.
- 14.7. The Customer is not entitled to set off any of its payment obligations against any claims it has on PackControl, for whatever reason.

Article 15. Liability

- 15.1. Per calendar year, PackControl's liability for loss, damages or other claims based on an attributable breach (including breaches of warranties or indemnities), an unlawful act or any other ground is limited to the amount that the Customer owes PackControl under the Agreement (exclusive of VAT) over a period of 12 months prior to the loss, damages or claims arising, regardless of the number of events. One-off costs (such as implementation costs) are expressly not included in the calculation of the aforementioned maximum.
- 15.2. Without prejudice to the provisions above, PackControl will expressly not be liable for indirect loss or damage. Indirect loss or damage will be understood to include: lost profits, missed savings, reduced goodwill and damage or loss due to business interruption.
- 15.3. PackControl will only be liable in connection with an attributable failure in the performance of the Agreement if the Customer gives PackControl proper notice of default without delay and in writing, offering PackControl a reasonable period in which to remedy the failure, and PackControl continues to attributable fail to comply with its

obligations even after that period. The notice of default must contain as detailed a description of the failure as possible in order to enable PackControl to put forward an adequate response.

- 15.4. Any limitations or exclusions of PackControl's liability as stipulated in the Agreement will lapse if and insofar as the loss or damage is due to intent or willful recklessness on the part of PackControl's management, or death or physical injury.

Article 16. Force majeure

- 16.1. PackControl will not be obliged to perform the Agreement if performance is prevented as a result of force majeure.
- 16.2. The parties will in any case consider the following to be force majeure, without limitation: fire, floods, strikes, power failures, telecommunications infrastructure failures, force majeure on the part of PackControl's own suppliers, network attacks, import and export impediments, war and terror. Any liquidity problems on the Customer's part do not qualify as force majeure.
- 16.3. To the extent that PackControl had already fulfilled part of the Agreement by the time the force majeure situation arose or will be able to fulfil part of the Agreement, and such partial fulfilment can be ascribed an independent value, PackControl is entitled to invoice for such fulfilment separately.
- 16.4. In the event of force majeure, PackControl can suspend the performance of the Agreement for as long as the situation continues. If the situation lasts longer than 3 months, both parties will be entitled to terminate the Agreement in writing, without any obligation to pay the other party compensation.

Article 17. Duration and termination

- 17.1. The Agreement is entered into for the period stated in the Agreement. If the duration of the Agreement is not specified in the Agreement, the Agreement is deemed to have been entered into for a period of one (1) year.
- 17.2. The Agreement can be terminated by both parties in writing with effect from the end of the term, with due observance of a period of notice of 3 months. In the absence of such written termination by the Customer, the Agreement shall be tacitly extended after the initial term for a period of one (1) year in each instance.
- 17.3. The Parties may not terminate the Agreement in the interim, save for those circumstances for which an exception is expressly made in these general terms and conditions or in other parts of the Agreement.
- 17.4. PackControl will be entitled to suspend the Agreement with immediate effect (in full or in part) or terminate or dissolve the Agreement with immediate effect (in full or in part) if:
- a. the Customer fails to comply with its obligations under the Agreement or fails to comply with these in time, and does not remedy the failures within a reasonable period after being given notice of default. Prior notice of default is however not required in those cases where default arises by operation of law;
 - b. the Customer applies for bankruptcy or is declared bankrupt, applies for a moratorium or is granted a moratorium, the Customer's company is liquidated or its business activities are discontinued;
 - c. circumstances arise due to which performance of the Agreement is rendered impossible, or due to which PackControl cannot reasonably be required to maintain it unchanged.

- 17.5. In the case of dissolution of the Agreement, there will not be any cancellation obligations (“*ongedaanmakingsverplichtingen*”) regarding the Services that the Supplier has already provided, and the corresponding payment obligations.
- 17.6. Following termination or dissolution of the Agreement, any remaining claims of PackControl on the Customer will be immediately due and payable, regardless of the reason for such termination.

Article 18. Changes

- 18.1. PackControl is authorised to modify these general terms and conditions and will announce any changes to the Customer at least 30 days in advance. Changes also apply to Agreements already entered into.
- 18.2. If the Customer does not wish to accept a change, the Customer can lodge a written objection within 14 days after the announcement. If PackControl decides to proceed with the change despite the Customer's objection, the Customer can terminate the Agreement, in writing, with effect from and no later than the date on which the change takes effect.
- 18.3. The procedure described above does not apply to changes of minor significance or changes that benefit the Customer. PackControl may implement such changes unilaterally and with immediate effect. The Customer will be informed of such changes as soon as possible.

Article 19. Miscellaneous

- 19.1. The parties can only transfer the rights and obligations arising from the Agreement to a third party with the written permission of the other party. PackControl will, however, be authorised to transfer the Agreement, without the Customer's prior permission or cooperation to a parent company, sister company or subsidiary, or to a third party in the event of a merger or acquisition. PackControl will inform the Customer as soon as possible, in writing, after such a transfer has taken place.
- 19.2. The Agreement is subject to Dutch law. To the extent that rules of mandatory law do not prescribe otherwise, any dispute between the parties in connection with the Agreement will be submitted to the competent court in the Netherlands in the district where PackControl has its registered office.
- 19.3. If any provision in the Agreement proves to be void, voidable or otherwise invalid, this will not affect the validity of the entire Agreement. In such a case, the parties will replace that provision with a new provision that will reflect the purpose of the original clause as much as is possible under the law.