

# Terms of Use

We advise you to read these Terms of Use carefully so you are aware of your rights and responsibilities when you use ContentKing.

## Article 1. Definitions

1.1 The capitalized terms listed below have the following meaning in the Terms of Use

**Account:**

the main (billing) account for the use of the Service which is created by You when you register for the Service, which will include at least one User-account;

**API Services:**

any of the public API services offered by ContentKing, including, but not limited to, the CMS API, the reporting API and the data enrichment API;

**Client Website:**

a website being monitored by You, by using the Service;

**Content Information:**

the information about the content of a Client Website and its performance, such as metrics concerning its ability to be findable, shareable and optimized for conversions.

**ContentKing:**

If You are based in the USA, ContentKing (“ContentKing”, “we”, “us” or “our”) refers to ContentKing, Inc., having its address at 228 East 45th Street, Suite 9E, 10017 New York, NY, USA.

If You are based outside of the USA, ContentKing (“ContentKing”, “we”, “us” or “our”) refers to ContentKing B.V., having its address at Donauweg 10, 1043 AJ in Amsterdam, The Netherlands, registered with the Chamber of Commerce under registration number 63333996.

**Fair Use Policy:**

has the meaning set forth in Section 5.4 of these Terms of Use;

**Intellectual Property Rights:**

all intellectual property rights and related rights such as copyright, trademark rights, patent rights, trade secrets, design rights, trade name rights, database rights and neighbouring rights, as well as rights to know-how;

**Login Details:**

the email address and password which You provide when creating Your Account and with which You gain access to the Service and Your Account;

**Privacy Policy:**

the privacy policy of ContentKing, available via [Privacy Policy](#);

**Service:**

the service of ContentKing, which is used to assess the Content Information of a Client Website, as further specified in article 3, as well as the API Services;

**Subscription:**

the subscription between ContentKing and You concerning the access to and use of the Service, which is governed by these terms of use;

**Terms of Use:**

these terms of use of ContentKing;

**User:**

a natural person who is authorized by You to use the Service on your behalf, by creating for that person a User-account;

**User-account:**

a separate account under Your Account, with separate Login Details, for the creation and use of which You are responsible;

**Website:**

ContentKing's websites containing and describing the Service;

**You (Your):**

you, the (legal) person that is using the Service and that has created an Account for the use of the Service.

## Article 2. Applicability

2.1 These Terms of Use apply to the Subscription and to every use made by You of the Service. Your terms of use (if any) are excluded.

2.2 ContentKing may at any time change the Terms of Use upon thirty days written notice. The most up-to-date Terms of Use can always be found on the Website. If You continue to use the Service after these Terms of Use have been changed, You accept the changed Terms of Use. If You do not agree to the amended or supplemented Terms of Use, Your only option is to stop using the Service.

## Article 3. The Service

3.1 The Service is a subscription for an online platform, on which You can monitor the Content Information, based on the metrics of the Service. The Service can identify issues and suggest actions to improve the performance of your content at ContentKing's sole discretion.

3.2 You accept that the Service contains only the functionalities and information that You find at the moment of use ("as is" basis). Except where ContentKing states otherwise in these Terms of Use, ContentKing makes no warranties of any kind, whether express, implied, statutory or otherwise, including but not limited to any warranty of merchantability or fitness for a particular purpose, quality, safety, integrity or accuracy of the Service.

3.3 If you contact ContentKing for consultancy services and advice, ContentKing will render best efforts in providing these consultancy services and will advise You to the best of its abilities. ContentKing does not make any warranties or guarantees with regard to the accuracy or fitness for a particular purpose of the information provided in the consultancy services or advice. ContentKing is never obligated to provide consultancy services or advice.

3.4 ContentKing may access Your Account, if this is strictly necessary for support purposes, and for analysis and improvement of the Service. The access to Your Account is strictly regulated within ContentKing.

## Article 4. Login Details

4.1 You are required to register for the Service. You and the Users must provide accurate and complete registration information and keep this information up to date. It is not allowed to use a false name or an e-mail address owned or controlled by another person or company. You accept that You are at all times responsible and liable for the use of the Service by third parties via Your Account.

4.2 You may use the Service to create User-accounts for, for instance, Your employees. By creating a User-account, You acknowledge that You are at all times responsible and liable for the use of the Service via that User-account and for the User.

4.3 ContentKing may at all times (i) make functional, procedural or technical changes or improvements to the Service and (ii) (temporarily or permanently) take out of service, restrict the use of or terminate one or more Subscriptions to and/or Accounts of the Service.

4.4 You are solely responsible for the proper operation of the technical infrastructure necessary to use the Service. ContentKing is never liable for damage or costs on account of transmission errors, malfunctions or non-availability of computers, data or telecom facilities, including the internet.

4.5 If You think Your Login Details have been used or are being used by a third party without your authorization, You must notify ContentKing immediately via [support@contentkingapp.com](mailto:support@contentkingapp.com).

## Article 5. Permitted use of the Service

5.1 You are not permitted to:

1. harm the interests and reputation of ContentKing;
2. engage third parties to perform any of the abovementioned acts.

5.2 You shall not, nor will knowingly enable and/or allow third parties to: (i) copy, modify, translate, or reverse engineer any part of, or any feature used by means of, the Service; (ii) remove any copyright, trademark or other proprietary rights notices; (iii) use any robot, spider, other automated device, or manual process to monitor or copy any part of, or any feature used by means of, the Service; (iv) collect any information about other Users (including user names and/or e-mail addresses); (v) reformat or frame any portion of the web pages that are part of the Services; (vi) create user accounts by automated means or under false or fraudulent pretenses; (vii) create or transmit unwanted electronic communications such as spam to other Users, or otherwise interfere with other Users enjoyment of the Service; (viii) transmit any viruses, worms, defects, Trojan horses or other items of a destructive nature; (ix) use the Services to violate the security of any computer network, crack passwords or security encryption codes; (x) copy or store any content offered on or via the Service, for other than its own use; (xi) use any device, software or routine that interferes with the proper working of any part of, or any feature used by means of, the Service, or otherwise attempt to interfere with the proper working of any part of, or any feature used by means of the Service ; (xii) take any action that imposes, or may impose in ContentKing's sole discretion, an unreasonable or disproportionately large load on ContentKing's IT infrastructure; or (xiii) use any part of, or any feature used by means of, the Service, intentionally or unintentionally, to violate any applicable local, state, national or international law.

5.3 ContentKing reserves the right to modify or stop monitoring a Client Website, or to restrict the use of or terminate Your Subscription or Account if You use the Service contrary to the Terms of Use. If ContentKing decides to do that, ContentKing will notify You of that beforehand.

5.4 Access to our Services is subject to our fair use policy as set forth in this section. ContentKing's fair usage policy (the "Fair Use Policy") is that customers should be able to use our Service in an appropriate manner to meet their needs. A very small number of customers use an excessive amount of resource at peak times, to the extent that it can impair the service of others. ContentKing's fair usage policy is designed so that we are able provide the most effective service to all our customers. Our Fair Use Policy will identify the very small number of very heavy users. We will communicate with these users to try and establish what is driving their specific high usage and how individual usage patterns and habits can be modified to the benefit of all. In extreme cases, ContentKing may be required to apply management techniques to reduce the impact the heavy users have of the service delivery of others. Our Fair Use Policy will adversely impact less than 0.5% of our customers. If You are affected, we will contact You by telephone or by email to inform you that your usage is excessive and is affecting other customers. We will try finding a solution that is mutually acceptable. if Your usage remains excessively high, we will contact you a second time to advise you that we might have to limit use of our service if the usage is not reduced to reasonable levels within a reasonable period of time.

## Article 6. Use of the API Services

6.1 Notwithstanding any other provisions in these Terms of Use, You are not permitted to use the API Services to:

1. white-label the ContentKing platform or the extracted data (e.g. changing the labels of metrics returned by the API Service);
2. replicate or compete with ContentKing's core products and services.

6.2 Displaying the data extracted from the API Service to a third party requires you to give attribution by, at a minimum, displaying the ContentKing logo as closely as possible to the extracted data.

6.3 ContentKing may decide to introduce API call limits and / or a credit system at any time in the future and you will then become bound by the set limits. If you do not accept the set limits your only other option is to stop using the API Services.

6.4 ContentKing reserves the right to request details about your implementation of the API Service, including a description on how you use the data and (anonymized) interface screenshots showing how the data is presented. When you receive such request from ContentKing you have 30 days to comply and send the requested information. A failure to comply may result in suspension or termination of your access to the API Services.

6.5 ContentKing reserves the right to modify or suspend your access to the API Service, or to restrict the use of or terminate Your Subscription or Account if You use the API Service contrary to the Terms of Use. If ContentKing decides to do that, ContentKing will notify You, but you are not entitled to a refund of any kind.

## Article 7. Intellectual Property Rights

7.1 The Intellectual Property Rights in relation to the Service, including the Intellectual Property Rights with respect to the Content Information, are held by ContentKing and/or its licensors.

7.2 Under the conditions set out in these Terms of Use, ContentKing will grant to You a limited, personal, revocable, non-exclusive, non-sublicensable and non-transferable right to access and use the Service. You may share the Content Information with affiliated parties under common ownership or common control and with professional consultants and advisers, hired by You in connection to the Client Website.

7.3 Nothing in these Terms of Use is intended to transfer any Intellectual Property Rights to You. You shall refrain from any act that infringes the Intellectual Property Rights of ContentKing, including – but not limited to – the registration of domain names, trademarks or marketing campaigns that are identical or similar to any object to which ContentKing holds Intellectual Property Rights, as well as the reproduction, modification, reverse engineering or publishing of the Service, including the Performance, for other purposes than those listed in the Terms of Use.

## Article 8. Privacy

8.1 By registration, providing Login Details and by using the Service, You will provide personal data to ContentKing. This personal data will be processed in accordance with the Privacy Policy of ContentKing and the applicable laws and regulations.

8.2 If and in so far as the Client Website you subject to the Service contains personal data, you guarantee that you are authorized to have ContentKing process this personal data on your behalf for the sole purpose of providing the Service.

8.3 It may be necessary to transfer your personal data to data centers located outside of the EER and/or the USA.. You hereby give your permission to do that, if and in so far this is necessary to provide the Service.

## ARTICLE 9. INDEMNITIES AND WARRANTIES

9.1 YOU ARE LIABLE FOR AND WILL DEFEND, INDEMNIFY, AND HOLD CONTENTKING HARMLESS IN CONNECTION TO DAMAGES AND COSTS WHICH CONTENTKING SUFFERS OR MAKES AS A RESULT OF (I) AN ATTRIBUTABLE BREACH OF THE TERMS OF USE BY YOU, (II) AN (ALLEGED) INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS BY YOU, (III) ANY USE YOU MAKE OF THE SERVICE OR (IV) AN UNLAWFUL AND/OR ILLEGAL ACT BY YOU. YOU WILL REIMBURSE ALL COSTS AND DAMAGES THAT IN ANY WAY RELATE TO SUCH A CLAIM, INCLUDING REASONABLE ATTORNEY FEES.

9.2 YOU GUARANTEE THAT YOU ARE SOLELY AND FULLY ENTITLED TO SUBJECT A CLIENT WEBSITE TO THE SERVICE.

9.3 YOU GUARANTEE THAT YOU ARE ENTITLED TO USE THE SERVICE AND THAT YOU WILL ACT IN ACCORDANCE WITH THE TERMS OF USE.

## ARTICLE 10. LIABILITY

10.1 CONTENTKING IS NOT LIABLE FOR DAMAGES THAT RESULT FROM:

1. THE USE OF THE SERVICE,
2. THE SERVICE BEING UNAVAILABLE OR THE SERVICE NOT FUNCTIONING CORRECTLY,
3. PERFORMANCE BEING INACCURATE,
4. LOSS OF DATA,
5. OR ANY OTHER CAUSE, TO THE EXTENT THAT IS PERMITTED UNDER MANDATORY LAW.

10.2 WHEN CONTENTKING IS LIABLE TO YOU AND/OR USERS FOR DAMAGES ARISING FROM ANY CAUSE WHATSOEVER, THIS LIABILITY IS AT ANY TIME LIMITED TO PAYING DIRECT DAMAGES UP TO THE AMOUNT PAID BY YOU AND/OR THE USER TO CONTENTKING IN THE PRECEDING 12 MONTHS, UP TO AN ABSOLUTE MAXIMUM OF USD 1,000.- PER EVENT IF YOU ARE BASED IN THE USA OR EUR 1,000.- PER EVENT IF YOU ARE BASED OUTSIDE OF THE USA (A SEQUENCE OF EVENTS WILL BE REGARDED AS ONE EVENT).

10.3 DIRECT DAMAGE IS UNDERSTOOD TO MEAN EXCLUSIVELY:

1. DAMAGE TO PROPERTY;

2. REASONABLE COSTS INCURRED TO PREVENT OR LIMIT DAMAGE TO PROPERTY THAT COULD BE EXPECTED FROM THE EVENT ON WHICH THE LIABILITY IS BASED;
3. REASONABLE COSTS INCURRED IN DETERMINING THE CAUSE OF THE DAMAGE TO PROPERTY.

10.4 ANY LIABILITY OF CONTENTKING FOR DAMAGE OTHER THAN DIRECT DAMAGE ("INDIRECT DAMAGES"), INCLUDING – BUT NOT LIMITED TO – CONSEQUENTIAL DAMAGES, LOSS AND/OR DAMAGE OF DATA, LOSS OF PROFITS AND LOST SALES, IS FULLY EXCLUDED.

10.5 THE LIMITATIONS AND EXCLUSIONS OF LIABILITY MENTIONED IN THE PRECEDING PARAGRAPHS OF THIS ARTICLE WILL LAPSE IF AND IN SO FAR AS THE DAMAGE IS THE RESULT OF INTENTIONAL OR WILLFUL MISCONDUCT ON THE PART OF CONTENTKING OR HER MANAGERS ("OWN ACTIONS").

10.6 THE CREATION OF ANY RIGHT TO COMPENSATION IS ALWAYS CONDITIONAL ON YOU REPORTING THE DAMAGE TO CONTENTKING IN WRITING AS SOON AS POSSIBLE AFTER IT HAS COME ABOUT. ANY CLAIM FOR COMPENSATION VIS-À-VIS CONTENTKING WILL BE CANCELLED SIMPLY BY THE EXPIRY OF TWELVE MONTHS AFTER THE DAMAGE FIRST AROSE.

## **Article 11. Force majeure**

11.1 Except for your Subscription payment obligations, neither ContentKing nor You are liable to perform any obligation, including any warranty obligation agreed between the parties, if prevented therefrom by a force majeure event.

11.2 A force majeure event is taken to mean inter alia: power failures, strikes, riots, government measures, pandemics, including Covid19, fire, natural disasters, floods, failure of suppliers of ContentKing, shortcomings by third parties which were engaged by ContentKing, disruption of the internet connection, hardware failures and failures in (telecommunications) networks.

## **Article 12. Payment**

12.1 You shall pay to ContentKing a fee for the use of the Service. The fees, payment terms and payment methods are communicated on the Website. Unless otherwise expressly provided, all the prices stated are exclusive of any taxes and other charges imposed by the authorities and administrative charges. You will pay invoices in accordance with the payment conditions recorded in the invoice. Absent a specific



arrangement, You will make payment within thirty (30) days of the invoice date. You will not be entitled to set off or suspend any payment.

12.2 The pricing and payment methods may change from time to time upon thirty days written notice. If You do not agree to the changes, Your only option is to terminate the Subscription.

12.3 In the event that payment of any invoice has not been received by ContentKing in full and/or on time, ContentKing may revoke, suspend or limit Your Account. The foregoing is notwithstanding any other right ContentKing might have, such as the right to partially or fully rescind the Subscription for default. All costs associated with collecting due payments, including reasonable attorney fees are for Your account.

## Article 13. Term and Termination

13.1 The Subscription is entered into for an indefinite period of time. You may terminate the Subscription at any time by contacting ContentKing support either via email ([support@contentkingapp.com](mailto:support@contentkingapp.com)) or via chat. Unless stated otherwise in writing by ContentKing, ContentKing will not refund any amounts paid in case of termination of a Subscription.

13.2 ContentKing is entitled to terminate the Subscription and/or your Account in case of any breach of the Terms of Use by You.

13.3 In case of a termination for any reason whatsoever, no obligation to undo any performance already delivered will arise from the termination of the Subscription.

13.4 In case of termination of the Subscription, all outstanding invoices will become due immediately. Termination will not have retroactive effect.

13.5 If you terminate Your Subscription within the first 30 days of your first Subscription, you are entitled to a refund of all funds paid for the Service in relation to Your Account. This 30-day trial period is intended for trial and testing purposes, and as such, no refunds will be paid after this 30-day period. This refund period is only limited to your first Subscription with ContentKing, if you reactivate a previously terminated Subscription You are not eligible for any refund.

## Article 14. Confidentiality

14.1 Confidential Information means (i) the existence and terms of any agreement between you and ContentKing and (ii) any non-public, confidential or proprietary

information relating to a disclosing party, whether or not technical in nature, including any that is designated by the disclosing party as Confidential Information at the time of its disclosure, either by a written or visual confidentiality designation, or otherwise if such information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how which: (i) is in the public domain at the time of disclosure or becomes available thereafter to the public without restriction, and in either case not as a result of the act or omission of the receiving party; (ii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure; (iii) is lawfully in the possession of the receiving party at the time of disclosure by the disclosing party and not otherwise subject to restriction on disclosure; (iv) is approved for disclosure by prior written authorization of the disclosing party; or (v) is developed independently and separately by either party without use of the disclosing party's Confidential Information.

14.2 Each party agrees that it will safeguard the confidentiality of the Confidential Information supplied by the other party and that it will observe the same due care with respect to such information as it would observe with respect to its own Confidential Information. The other party shall not sell, copy and/or distribute in any way Confidential Information to third parties, without disclosing party's prior written consent, which consent may be granted or withheld in such party's sole and absolute discretion.

14.3 Each party agrees that it will restrict the circle of employees or third parties it retains who have access to the other party's Confidential Information as much as possible and provide such access only on a need to know basis and after binding such employees and third parties to the same level of confidentiality as set forth in these Terms of Use.

14.4 Immediately following the receipt of a written request to this effect by the disclosing party the receiving party will return any and all Confidential Information received from the disclosing party or destroy such Confidential Information, if the disclosing party so requests.

## **Article 15. Miscellaneous**

15.1 If You are based in the USA, the Service and these Terms of Use and any disputes arising in connection with it (including any non-contractual disputes or claims) will be governed by and construed in accordance with the laws of the State of New York. Except for invoice collection actions which may be brought by ContentKing with state or federal courts in each county in which you are located or have offices, all disputes shall be finally and bindingly resolved under the International Arbitration Rules of the American Arbitration Association in front of a sole arbitrator. The place of arbitration

shall be New York , New York. The language of the arbitration shall be English. Any cause of action, regardless whether in contract, tort, or otherwise, must commence within one year after the cause of action accrues, otherwise such cause of action is permanently barred.

If You are based outside of the USA, these Terms of Use and the use of the Service are subject to Dutch law and the courts in Amsterdam, the Netherlands, will have exclusive jurisdiction over all disputes between You and ContentKing.

15.2 ContentKing may transfer rights and obligations arising from these Terms of Use to third parties upon ten (10) days written notice.

15.3 If at any time any provision of these Terms of Use is or becomes illegal, void or invalid for any reason whatsoever, such invalidity shall not affect the validity of the remainder of the Terms of Use and such invalid provision shall be replaced by such other provision which, being valid in all respects, shall have effect as close as possible to that of such replaced one.

15.4 These Terms of Use constitute the entire agreement and set forth the entire understanding between You and ContentKing with respect to the subject matter hereof and supersede all prior agreements and discussions with respect thereto.