

Terms and conditions of sale

KIXELL — 17 rue des sources 34990 Juvignac FRANCE — SIRET: 81831256300021

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TERMS AND CONDITIONS OF SALE

BETWEEN: The company KIXELL, sarl with a capital of 10,000 euros, registered with the RCS of Montpellier under the number 81831256300021, domiciled at 17 RUE DES SOURCES 34990 JUVIGNAC, represented by its legal representative, hereinafter referred to as the "SUPPLIER", on the one hand,

AND: The company and/or the person holding the account to which this license is granted, hereinafter referred to as the "CLIENT", on the other hand,

DEFINITIONS:

PLUGIN: The plugin is the product developed by the SUPPLIER and delivered to the CLIENT. It comes in the form of downloadable software.

STORE: The store represents a technical solution accessible by one or more domain names. A store is a solution developed by the CLIENT or based on a market solution. A store accessible by multiple domain names can be considered a multi-store. In the case of a multi-store solution, the PLUGIN will be installed only once for all the domain names of the store. The PLUGIN features will need to be activated based on the number of DOMAIN NAMES ordered by the CLIENT.

DOMAIN NAME: The domain name corresponds to a given URL of a website.

This contract is subject to French law. ANY DISPUTE RELATING TO THE VALIDITY, INTERPRETATION OR EXECUTION OF THE ORDER FORM AND THIS CONTRACT WILL BE SUBJECT TO THE COMMERCIAL COURT OF MONTPELLIER LOCATED IN FRANCE.

ARTICLE 1 - PURPOSE

The purpose of this contract is to define the conditions under which the SUPPLIER grants the CLIENT a right to use the PLUGIN and ensures its update.

ARTICLE 2 - PLUGIN

The PLUGIN is a system that allows the deployment of trackers via Google Tag Manager and/or Google Tag Manager Server Side as well as a consent banner that the subscriber downloads and saves on their own servers.

It is intended for professional CLIENTS for use based on the number of domain names indicated in the order form.

The PLUGIN allows the deployment of trackers such as Google Analytics, Google Ads, Facebook/Meta, Pinterest, and others via Google Tag Manager. The PLUGIN facilitates the configuration of trackers and feeds a javascript object called dataLayer exploited by Google Tag Manager to meet the technical specifications of the trackers. The PLUGIN also allows the implementation of a consent banner, which stores the IP address and user-agent of the visitor to retain the choice or non-choice on the CLIENT's site. This data is hosted on the CLIENT's server and allows for keeping a record of the consent or non-consent of visitors. The PLUGIN's features are detailed in an online documentation whose URL is communicated upon delivery of the plugin.

ARTICLE 3 - RIGHT TO USE

The SUPPLIER grants the CLIENT a personal and non-exclusive right to use the PLUGIN for its own needs. For the execution of this agreement, the SUPPLIER grants the CLIENT the right to reproduce and use the said PLUGIN and its documentation within the limit of the number of domain names provided in the order form.

THE CLIENT guarantees compliance with this agreement by its staff and subcontractors.

ARTICLE 4 - PRICE AND PAYMENT TERMS

In return for the license to use the PLUGIN, the CLIENT agrees to pay the price indicated in the order form. Payment will be made by bank transfer or credit card.

THE CLIENT only has a right to use the PLUGIN and will not own the PLUGIN.

ARTICLE 5 - UPDATE SERVICE

Payment of the annual fee entitles the CLIENT to 3 free months of plugin updates.

After the 3 months, if the CLIENT wishes to benefit from plugin updates for a period of one (1) year, they must subscribe to these updates via a URL provided in the order form.

The update service will be renewed annually by tacit agreement unless terminated with acknowledgment of receipt by either PARTY one (1) month before the annual due date.

In case of price modification of the service, the CLIENT will be informed at least two (2) months before the annual due date of their CONTRACT.

If they do not want the updated service price to be applied at the contract anniversary date, the CLIENT must send the supplier a termination notice with acknowledgment of receipt one (1) month before the annual due date of their contract.

In this case, they will no longer benefit from the update service.

ARTICLE 6 - WARRANTY AND UPDATE

The warranty period extends for 3 months from the date of receipt.

During this period, the SUPPLIER guarantees the CLIENT against any occurrence of anomalies, incidents, errors, or malfunctions concerning the PLUGIN specifications. The CLIENT ensures that the PLUGIN is compatible with their store.

After the warranty period, it is agreed between the parties that the PLUGIN update will be chargeable for a period of one (1) year. This update will be renewed annually by tacit agreement unless terminated by either PARTY one (1) month before the annual due date.

The update service entails the payment of an annual fee at the rate in effect at the time of contract signing or contract renewal.

Any service or assistance not provided for in this agreement must be subject to an amendment.

ARTICLE 7 - TERMINATION

7.1 By the SUPPLIER

The SUPPLIER reserves the right to unilaterally and lawfully terminate the license and update services, without prejudice to any damages, particularly in the following cases:

- Non-payment by the CLIENT of the license fee or update fee at each contractual due date, after a formal notice sent to the CLIENT by registered letter with acknowledgment of receipt and remaining without effect within fifteen (15) days;
- Infringement of copyright.

7.2 By the CLIENT

THE CLIENT may terminate the PLUGIN license and update service with one (1) month's notice before the annual due date, by simple notification by registered letter with acknowledgment of

receipt sent to the SUPPLIER.

7.3 By the PARTIES

In the event of a breach by one of the PARTIES of one or more of its obligations under these terms, not remedied within twenty (20) calendar days from the sending of a registered letter with acknowledgment of receipt notifying the said breach, the other PARTY may lawfully terminate this contract, without prejudice to any compensation it may claim.

7.4 No Refund

Any sum paid by the CLIENT to the SUPPLIER remains acquired by the latter notwithstanding the fact that the termination would occur before its annual due date.

ARTICLE 8 - SUB-LICENSE

THE CLIENT may sublicense the PLUGIN to third parties within the limit of the number of domain names it has ordered.

Any sublicensing of the PLUGIN by the CLIENT to third parties is done at their own risk.

THE CLIENT remains solely responsible to the sub-licensees.

They guarantee any action of the sub-licensee against the SUPPLIER and any condemnation against the SUPPLIER.

ARTICLE 9 - PROPERTY

The PLUGIN and its documentation mentioned in Article 3, as well as any copy, remain the exclusive property of the SUPPLIER, who retains the status of author in accordance with the provisions of the Intellectual Property Code.

The PLUGIN cannot be assigned, contributed, or transferred without the SUPPLIER's consent. The SUPPLIER guarantees the CLIENT against any infringement proceedings that may be brought against them, provided they are notified in writing and promptly by the CLIENT and that the PLUGIN has not been modified by the CLIENT.

The license granted by the SUPPLIER gives the CLIENT the right to use the PLUGIN owned by the SUPPLIER, which implies that:

- THE CLIENT is prohibited from providing the PLUGIN in any form or making it available to anyone except its employees or sub-licensees;

- THE CLIENT agrees not to develop the PLUGIN subject of the order form or products likely to compete with it;
- THE CLIENT cannot modify the PLUGIN or adapt it without the prior written consent of the SUPPLIER;
- THE CLIENT cannot correct errors affecting the PLUGIN, the PARTIES expressly agreeing to reserve this correction to the SUPPLIER.

ARTICLE 10 - STORE

The right to use the PLUGIN is granted to the CLIENT within the limit of the number of domain names listed in the order form.

THE CLIENT is responsible for the proper functioning of their store and for the compliance of its environment with the SUPPLIER's specifications.

ARTICLE 11 - DELIVERY AND INSTALLATION OF THE PLUGIN

The SUPPLIER will deliver the PLUGIN to the CLIENT composed of programs delivered in a language directly assimilable by the computer provided in the configuration, and its documentation. It is the CLIENT's responsibility to install the PLUGIN and ensure its proper functioning. The SUPPLIER cannot be held responsible for malfunctions or delays caused by the CLIENT, their supports, or staff.

If additional work is requested by the CLIENT, it must be subject to a separate agreement.

The installation will be considered completed upon the physical installation of the PLUGIN on the CLIENT's store and the activation of the license.

ARTICLE 12 - BACKUP COPY

The SUPPLIER does not make backup copies of the data related to the use of the PLUGIN which remain hosted on the CLIENT's site.

THE CLIENT can only make backup copies necessary for their operation, as a security measure. The source code of these copies remains the property of the SUPPLIER.

ARTICLE 13 - DISCLOSURE

The PLUGIN is part of the SUPPLIER's trade secrets and know-how and must be considered by the CLIENT as confidential information, whether or not it can be protected by intellectual property rights, patents, copyrights, or otherwise.

As such, the CLIENT is prohibited from communicating the PLUGIN in its source or executable versions, as well as the programs and other elements (documentation, etc.) constituting all or part of the PLUGIN. THE CLIENT also agrees to take all necessary measures to ensure that the PLUGIN and its documentation are not made available to third parties and ensures that its employees or staff respect these obligations and the SUPPLIER's copyright. THE CLIENT agrees to take all necessary precautions to avoid disclosure, reproduction, or illegal use by their staff and/or service providers, particularly by having them sign a personal confidentiality agreement. THE CLIENT is prohibited from using the PLUGIN specifications to create or allow the creation of a program with the same destination. They agree not to compete with the SUPPLIER by creating and exploiting a competing PLUGIN.

By express agreement, the SUPPLIER is authorized to verify at any time the compliance with these obligations. If the CLIENT does not comply with the obligations mentioned in this article, the SUPPLIER reserves the right to claim compensation from the CLIENT.

ARTICLE 14 - MODIFICATIONS

THE CLIENT agrees not to make any modifications to the elements provided by the SUPPLIER without prior written consent. Non-compliance with this clause deprives the CLIENT of the warranty benefit without the CLIENT being able to claim any compensation for this.

ARTICLE 15 - LIABILITY

The SUPPLIER is subject to an obligation of means, to the exclusion of any other. It guarantees the conformity of the PLUGIN to the specifications described in its documentation. THE CLIENT assumes all responsibilities other than the conformity of the PLUGIN to the specifications, particularly those related to the operation of the PLUGIN, the qualification, and competence of its staff.

THE CLIENT is solely responsible for the installation and operation of the PLUGIN. They undertake to use it in compliance with personal data rights, particularly GDPR (Regulation (EU) 2016/679 of the European Parliament and Council of April 27, 2016) and the ePrivacy Directive (or "privacy and electronic communications").

THE CLIENT is responsible for the protection of personal data and the compliance of the PLUGIN's use with legislation.

They guarantee the supplier against any action or condemnation resulting from this operation.

The SUPPLIER disclaims any responsibility if the CLIENT does not order the update services. The use of the PLUGIN by the CLIENT without performing updates is done at their own risk.

It is the CLIENT's responsibility to develop operating procedures and implement appropriate control points and security mechanisms for data backup and restoration in case of anomalies in program execution.

It is the CLIENT's responsibility to ensure the security of the PLUGIN by regularly using the aforementioned update service from the SUPPLIER and making backup copies.

THE CLIENT assumes sole responsibility for any malfunctions and damages due to a modification of the PLUGIN, even minor, made with or without the SUPPLIER's authorization. THE CLIENT expressly acknowledges having received from the SUPPLIER all necessary information to assess the adequacy of the PLUGIN to their needs and to take all necessary precautions for its implementation and operation. THE SUPPLIER WILL IN NO EVENT BE REQUIRED TO REPAIR ANY DIRECT OR INDIRECT DAMAGE RELATED TO THE PLUGIN, EVEN IF INFORMED OF SUCH DAMAGE. THE CLIENT WILL BE SOLELY RESPONSIBLE FOR THE USE OF THE PLUGIN.

The SUPPLIER's liability for any direct damages, including any loss of operation, suffered by THE CLIENT under this contract is CAPPED AT ONE (1) TIMES THE AMOUNT OF THE LAST ORDER FORM ISSUED, regardless of the number of claims.

ARTICLE 16: PROTECTION OF PERSONAL DATA

The supplier implements personal data processing concerning its clients. These treatments have the following characteristics:

Purpose	Legal basis	Categories of data	Categories of people	Duration
Prospecting and animation	Legitimate interest	Identity/Civil status Contact details	Clients Prospects	3 years
Managing the relationship with its clients and prospects		Identity/Civil status Contact details Personal/Professional life	Clients Prospects	Longest duration between: duration of the contractual relationship and firm duration of 3 years.

Organization, registration, and invitation to the SUPPLIER's events.	Identity/Civil status Contact details Personal/Professional life	Clients Prospects Guests	3 years	
Production, management, and follow-up of client files		Identity/Civil status Personal and/or professional life Economic and financial information	Clients	Duration of the contractual relationship plus the prescription periods.
Billing	Execution of pre-contractual measures or the contract	Identity/Civil status Economic and financial information	Clients	10 years from the closing date of the financial year in which the invoice was issued.
Debt collection		Identity/Civil status Economic and financial information	Clients	Until full payment of fees.
Prevention of money laundering and terrorist financing and anti-corruption	Compliance with legal and regulatory obligations	Identity/Civil status, Personal and/or professional life Economic and financial information	Clients	5 years after the end of contractual relations with the supplier.

Accounting	Identity/Civil status, Economic and financial information	Clients	10 years from the closing date of the financial year.
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Depending on the purposes set out above, the categories of data retained may differ slightly, being mainly related to the nature of the processing.

This information is necessary to pursue the purposes identified above.

If the service object of this agreement requires it, sensitive data within the meaning of the applicable regulation may be processed, especially when necessary:

- for the establishment, exercise, or defense of legal claims;
- or for the purposes of fulfilling obligations and exercising rights specific to the data controller or the data subject in the field of employment law, social security, and social protection.

The processed data is intended for the authorized persons of the supplier, as well as its service providers.

Under the conditions defined by the Data Protection Act and the European Data Protection Regulation, individuals have the right to access, rectify, restrict, port, and erase data concerning them.

Individuals subject to the processing implemented also have the right to object at any time, for reasons relating to their particular situation, to the processing of personal data based on the legitimate interest of the supplier, as well as the right to object to commercial prospecting.

They also have the right to define general and specific directives defining how they intend the rights mentioned above to be exercised after their death by email to the following address: nicolas.jardillier@kixell.fr or by postal mail to the supplier's address, accompanied by a copy of a signed identity document.

Individuals have the right to file a complaint with the CNIL.

ARTICLE 17 - INTEGRALITY - PARTIAL INVALIDITY

The order form(s) and this contract express the entirety of the PARTIES' obligations. No document can create obligations unless it is the subject of an amendment to this contract signed by the PARTIES. If one or more provisions of an order form or this contract are held invalid by law or regulation or declared so by a final decision of a competent court, they will be deemed unwritten, and the other provisions of the order form and/or this contract will retain their full force and effect.

ARTICLE 18 - ELECTION OF DOMICILE

The PARTIES elect domicile, unless expressly agreed otherwise, at the addresses of their respective headquarters.

ARTICLE 19 - DISPUTES

This contract is subject to French law. ANY DISPUTE RELATING TO THE VALIDITY, INTERPRETATION OR EXECUTION OF THE ORDER FORM AND THIS CONTRACT WILL BE SUBJECT TO THE COMMERCIAL COURT OF MONTPELLIER LOCATED IN FRANCE.

KIXELL - 818 312 563 RCS Montpellier B 818 312 563 - APE: 6202A - EURL with a capital of 10,000 €
- VAT No.: FR09818312563 - <https://kixell.fr>