



END USER LICENSE AGREEMENT Fructifi

Preamble

Fructifi, a simplified joint stock company with a capital of €1,332 whose registered office is located at 20 avenue de Wagram, 75008 Paris, France, registered under number 828 147 025 RCS Paris, ("Fructifi") specializes in the provision of technological services for optimizing customer value.

Fructifi, a specialist in customer relationship optimization, has developed an algorithm, a technology and associated solutions that make it possible to propose or send personalized commercial recommendations to the user (the "**Customer**") to optimize the management of its customers and contacts (the "**Final Customers**").

Fructifi collects information about its Customer's business activity using various methods, including importing .csv files or connecting to the Company's CRM software or any other method that allows access to the Final Customers' order flow, in agreement with the Customer. The service offered by Fructifi is provided in SaaS mode (software as a service), the solution is hosted on Fructifi's servers and made available to its Customers online.

The Customer and Fructifi hereafter alone or collectively are referred to as the "Party" or the "Parties".

The Customer acknowledges having received from Fructifi all the information necessary to assess the suitability of the Services for the Customer's needs and to enable the Customer to take all necessary precautions for their use.

This end user license agreement (the "**End User License Agreement**"), together with any order form signed by the Customer (the "**Order Form**"), govern the contractual relationship between Fructifi and the Customer and take precedence over any other document such as any end user license agreement of purchase of the Customer, advertising or marketing material and together form the "**Contract**".

1. Definitions

Capitalized terms herein shall have the meaning given to them directly in the text or as defined below:

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| Fructifi API | Means the programming interface allowing the Customer to access the Data directly on Fructifi's servers. |
| Console | Means the user interface allowing access to Fructifi data, performance indicators, tools and recommendations. |
| Data | Means all Customer data and databases stored on Fructifi's servers, transmitted to and analyzed by Fructifi's algorithm and solutions or collected via Scrapers, and for which the Customer has collected all necessary consents from Final Customers. |
| Business Day | Means any day of the week from 9:00 a.m. to 7:00 p.m. except a Saturday, Sunday and holiday. It is specified that if any of the obligations of the parties must be performed on a day that is not a |

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| | Business Day in metropolitan France and cannot, therefore, be performed on that day, it must be performed on the next Business Day. |
| Recommendations | Means any segmentation of Final Customers, any list of Final Customers, any score assigned to Final Customers, as well as any recommendation for commercial action towards Final Customers, established by Fructifi based on marketing and commercial analysis criteria. |
| Service(s) | Means the service accessible in SaaS mode allowing the Customer to access the Console and, optionally, the Fructifi API. |
| Scraper(s) | Refers to the software component that automatically or semi-automatically uploads information about Final Customers to the Fructifi servers. |
| User | Means the person placed under the responsibility of the Customer (employee, agent, representative, etc.) who has access to the Services. |

2. Object – Service Description

The purpose of the Contract is to specify the terms and conditions under which the Customer consents to Fructifi's access to its data, and according to which Fructifi provides the Customer with the Service and grants the Customer a right of access to its servers, a right to use the Services, provides Data hosting, technical assistance and corrective and evolutionary maintenance of the Console and the Recommendations.

The signature of the Order Form or, if applicable, the use of the Console and the Fructifi API, implies full and complete acceptance of this End User License Agreement.

3. Service Description

The Service consists of:

- providing the Customer with access to the Recommendations available on the Console, hosted on Fructifi's servers and accessible via the Internet.
- providing the Customer with access to the Recommendations available via the Fructifi API, if this option has been selected in the Order Form.

The Data shall be updated automatically by the collection of information via the scrapers and by Fructifi. Fructifi ensures the hosting, maintenance and security of the Data.

4. Service Access

Users access the Console from their computers, tablets or smartphones using the login and password provided by Fructifi to the Customer for the Users. These identifiers and passwords are assigned to each User and are personal and confidential.

The Client shall entirely be responsible for the use of the identifiers and passwords. The Customer shall ensure that no person not authorized by Fructifi has access to the Service. In general, the Customer assumes responsibility for the security of their information system and in particular their computers, tablets and smartphones. In case of loss, forgetting or theft of one of the identifiers or passwords, the password reset procedure may be accessible on the Console connection screen or by contacting Fructifi.

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If necessary, it shall be the Customer's responsibility to notify Fructifi of the need to terminate the access of Users who are no longer authorized to access the Service.

5. Service Implementation

From the date of signature of the Order Form, the Customer shall provide, as soon as possible and within a maximum of thirty (30) days, the Data and all the information necessary for Fructifi to carry out the Services correctly (the "**Customer Data**"). Once the Customer Data are in Fructifi's possession, the Recommendations shall be made available within twenty-one (21) Working Days.

The Customer shall be responsible for the provided Customer Data, which must in particular comply with the format specified by Fructifi. If the Customer Data do not comply after three (3) requests for compliance from Fructifi, if Fructifi has to intervene on these non-compliant Customer Data or if Fructifi has to take over all or part of its services because of non-compliant Customer Data, Fructifi reserves the right to invoice the Customer on the basis of its man-day rate indicated in the Order Form.

Any request from the Customer that does not comply with Fructifi's requirements may be refused by Fructifi or subject to additional billing. The same applies to any modification or adaptation of the Service's parameters or of the services provided as part of the implementation of the Service or if Fructifi's manual intervention is necessary due to a change in the Data flow or a specific request from the Customer.

Fructifi cannot be held responsible for delays caused by an action, inaction or omission of the Customer or a third party, in particular to provide the required Customer Data. The deadlines communicated by Fructifi are applicable only on the date of complete and compliant receipt of all the Customer Data.

6. Service Quality; Availability

The Customer is aware of the technical hazards inherent to the Internet and the access interruptions that may result. Consequently, Fructifi will not be held responsible for any resulting unavailability or slowdown of the Service. Fructifi cannot guarantee that the Service will be accessible and available at all times, performed remotely via the Internet, which the Customer acknowledges.

Furthermore, the Customer shall be responsible for respecting the volume thresholds indicated in the Order Form and for notifying Fructifi if the volume of Data increases by more than 20%.

Fructifi undertakes to put in place controls to do its utmost to ensure that the Customer can access and use the Service.

The Service may be suspended from time to time due to the need to update the Service and to perform maintenance on the servers on which the Data shall be hosted.

Fructifi cannot be held responsible for the possible impact of any unavailability on the Customer's activities.

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7. Maintenance

A telephone & chat support service shall be available on Working Days to handle anomalies or issues. Anomaly reports shall be confirmed by email to support@fructifi.com as soon as possible.

- In the event of an anomaly that makes access or use of the Service impossible (blocking anomaly), Fructifi will endeavor to correct the anomaly as soon as possible and, if possible, propose a workaround to restore access or use of the Service.
- For any other anomaly, Fructifi will endeavor to correct the anomaly within 4 Working Days.

Fructifi shall not be responsible for maintenance in the following cases: (i) failure of the Customer to cooperate in resolving the anomalies and in particular in answering questions and requests for information, (ii) use of the Service not in accordance with its intended purpose, (iii) unauthorized modification or attempted modification of the Service by the Customer or a third party, (iv) failure of the Customer to comply with its obligations under the Contract, (v) use of any software packages, software or operating system not compatible with the Service, (vi) communication networks failure.

Maintenance work carried out directly by Fructifi shall in principle be carried out outside working days/hours, except in the case of a blocking anomaly.

8. Technical Assistance

Fructifi's technical support service, which consists of answering Users' questions about the Service, shall be available by email at the following address: support@fructifi.com. This assistance shall be available on Working Days, with a maximum of 10 requests per month.

9. Personal Data

For the purposes of this article, the terms "**Personal Data**", "**process**", "**controller**" and "**processing**" shall have the meaning given to them by regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "**GDPR**").

Each of the Parties shall comply with the GDPR regarding the security and protection of personal data. The Customer acts as the Data Controller and Fructifi as a subcontractor acting solely on the instructions of the Customer.

The Customer:

- acknowledges that it shall be its responsibility to have the legal and administrative authorizations necessary for the use of the Personal Data of the Users and of the Final Customers processed as part of the use of the Services and of which the Customer is the owner, in particular with regard to the transfer of Personal Data outside the European Union
- guarantees the accuracy of such Personal Data
- is the person/entity responsible for this processing of Personal Data, within the meaning of the GDPR.

In this respect, it shall be the Customer's responsibility to ensure compliance with the obligations imposed by the GDPR and in particular to inform the persons whose Personal Data shall be collected of the implementation of this processing and to declare the said processing to the relevant authorities. The Customer shall be responsible for the compliance of its employees with the obligations imposed by the GDPR.

The Customer guarantees Fructifi against any recourse, complaint or claim from an individual whose personal data is reproduced and hosted within the framework of the Service.

Fructifi shall expressly be authorized to generate anonymous statistics from the Personal Data in order to provide the Recommendations and to feed its statistical database and to use them for any purpose and under any conditions in the context of its activities.

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10. Confidentiality

Each Party agrees to (i) hold and maintain in confidence all confidential information including Data it receives from the other Party, including (ii) not to disclose the other Party's confidential information to any third party, other than employees or contractors with a need to know; and (iii) use the other Party's confidential information only for the purpose of exercising its rights and fulfilling its obligations under the Agreement.

Notwithstanding the foregoing, neither Party shall have any obligation with respect to information that (i) has fallen or would fall into the public domain through no fault of the receiving Party, (ii) is independently developed by the receiving Party, (iii) is known to the receiving Party prior to disclosure by the other Party (iv) legitimately received from a third party not subject to a confidentiality obligation, or (v) required to be disclosed by law or court order (in which case it shall be disclosed only to the extent required and upon written notice to the providing Party).

The obligations of the Parties with respect to confidential information shall remain in effect for the duration of the Contract and for as long after its termination as the information concerned remains confidential to the disclosing Party and, in any event, for a period of 5 years after termination of the Contract.

The Parties also undertake to ensure compliance with these provisions by their personnel and by any employee or third party who may intervene in any capacity whatsoever within the framework of the Contract.

11. Duration

Unless otherwise provided in the Order Form, the Contract shall take effect upon signature. Subscription to the Service shall begin on the date of the first invoice for the Service and for the duration defined in the Order Form.

In the absence of a specific provision in the Order Form, the Contract shall then be renewed by tacit agreement for successive periods of twelve (12) months or one (1) month, as stipulated in the Order Form, unless terminated in advance by either Party by registered letter with acknowledgement of receipt with a notice period of one (1) month.

12. Annual fee, price and payment terms

The price of the Service shall be set out in the Order Form, as consideration for the provision of the Service.

Unless otherwise provided for in the Order Form, the first payment for the installation services and the first month's subscription shall be due upon signature of the Order Form and the following amounts due for the subscription shall be payable upon receipt of invoices provided by Fructifi.

If the Service is invoiced separately to separate entities belonging to the Customer's group, the Customer shall guarantee Fructifi that these entities will pay the amounts due under the Contract.

Fructifi shall issue an invoice for the first instalment upon signature of the Order Form and then an invoice for each instalment. Except for the invoice for the first due date which shall be payable without delay, all Fructifi invoices shall be payable within thirty (30) days of the invoice date.

The sums due shall be paid by credit card, by bank transfer (the bank references appear on the invoice) or by direct debit.

All amounts paid shall remain the property of Fructifi.

13. Consequence of a delay or default in payment

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In case of late payment, Fructifi may suspend the Service and demand payment of late payment penalties at the ECB rate plus 7 percentage points. This penalty shall be calculated on the amount of the unpaid amounts excluding taxes and runs from the due date of the invoice without prior notice.

Without prejudice to any action for damages, if within fifteen (15) days of a reminder being sent, the Customer has not paid the amounts due, Fructifi may suspend the Service or terminate the Contract by operation of law without further formality.

In case of early termination of the Contract, all amounts due by the Customer will be invoiced and will be immediately payable.

14. Responsibility

Fructifi's obligations under this Agreement are an obligation of means.

Fructifi shall not be liable for any loss or damage to the Data provided, except where such loss or damage is exclusively and directly attributable to the Service.

Fructifi cannot be held liable for the fault or negligence of the Customer or a third party. Fructifi's liability shall be limited to proven fault or negligence and shall be limited to the direct damage suffered by the Customer, excluding any indirect damage of any kind, such as loss of opportunity, loss of profit or loss of business.

The total amount of compensation due by Fructifi shall not, in any event, exceed the total amount paid by the Customer during the last twelve (12) months.

The Customer shall solely be responsible for the quality, lawfulness and relevance of the Data and other content that it provides to Fructifi under this Agreement. The Customer also guarantees that it holds all the necessary rights and authorizations to use the Data and content. Consequently, it releases Fructifi from any liability in the event that the Data and/or content do not comply with the laws and regulations.

15. Contract Termination

In the event of a breach by either Party of its contractual obligations, the Contract may be terminated by operation of law by the other Party thirty (30) days after a formal notice sent by registered mail with acknowledgement of receipt has remained without effect.

In the event of termination, the Customer shall cease to use the Service.

The fact that the Customer no longer uses the Service does not result in the suspension of the Contract or the current subscription, the obligations to pay the sums due under the Contract remaining in force.

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16. Occurrence of an event of force majeure

Neither party shall be liable for any delay or failure to perform any of its obligations under the Contract due to a cause or situation of force majeure as defined by the Courts.

If the performance of the Contract is substantially prevented for a continuous period of one month due to an event qualified as force majeure, either Party may terminate the Contract immediately upon written notice to the other.

17. Applicable law et competent jurisdiction

By express agreement between the parties, the Contract shall be governed by and subject to French law.

Disputes of any kind that may arise between the parties shall be brought before the Commercial Court of Paris.

18. General provisions

Fructifi reserves the right to modify and update this End User License Agreement without prior notice. The Customer will be notified by email. Any use of the Service after the notification will be subject to the End User License Agreement in effect at the time of use and the Customer will be presumed to have consulted and accepted the new End User License Agreement. The Order Form can only be modified by means of an amendment signed by the parties.

Fructifi shall be authorized to use the name or trademarks of the Customer and to mention the existence of the contractual relationship with the Customer to promote its activities.

Failure by either party to notify the other party of a breach of any of the provisions of the Agreement does not constitute a waiver of the right to rely on such breach should it persist. Failure by either party to enforce any of its rights under the Agreement shall not constitute a waiver of such right.

In the event of non-performance by the Customer of any of its obligations, Fructifi may validly refuse to perform its services without incurring liability.

The nullity or unenforceability of any of the clauses of the Contract does not entail the nullity of the other clauses which retain their full force and scope. However, the parties may agree, by mutual consent, to replace the invalidated clause(s).

Fructifi reserves the right to entrust all or part of the Services to one or more subcontractors of its choice and duly selected by it or to transfer the Contract or the rights and obligations arising therefrom to a third party at its discretion, including during the implementation phase of the Service. In this case, these third parties will be bound by a confidentiality agreement similar to the one made by Fructifi under this Agreement.

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