# ONLINE RESELLER TERMS (päämiehen vakioehdot)

Sopimuspohja tehty päämiehen näkökulmasta tilanteeseen, jossa päämiesyritys antaa jälleenmyyjälle maailmanlaajuisen oikeuden myydä tuotteitaan ja palveluitaan verkossa näiden vakioehtojen mukaisesti. Jälleenmyyjä saa vapaasti määrittää omat jälleenmyyjähintansa, mutta muutoin myyntiä on tehtävä päämiehen verraten tarkkojen ohjeistusten mukaisesti. Tässä sopimusjärjestelyssä jälleenmyyjä tekee aika ajoin erillisiä tilauksia ja sopijapuolet allekirjoittavat vain ko. tilausdokumentin.

Sopimuspohjan kaikki kohdat tulee tarkistaa ja muuttaa vastaamaan käytännön tilannetta; on myös huomioitava, että yhden sopimuskohdan muuttaminen yleensä vaikuttaa myös sopimuksen muihin lausekkeisiin ja lisämuutokset ovat tällöin tarpeen.

**HUOM.! Tämä sopimuspohja ei sovellu käytettäväksi käytännön tilanteisiin ilman sopimusjuridisen asiantunti­jan tarkistusta ja korjauksia.**

*Draft 0.1 – January 2, 20\_\_*

# ONLINE RESELLER TERMS

These Online Reseller Terms (“**Terms**”), any applicable mutually-executed order(s) entered into from time-to-time (each an “**Order**”), and the Documentation (together, the “**Agreement**”), are entered into by and between Yhtiö Oy, a Finnish corporation, having its principal place of business at Pääkatu 1, FI-00100 Helsinki, Finland (“**Yhtiö**”) and Reseller Company Oy (as defined and set forth in the Order) (“**Reseller**”).

These Terms are effective from January 1, 20\_\_ and will become binding once both parties sign an Order that references or incorporates these Terms. By signing an Order, Reseller assents to these Terms and represents that Reseller

(1) has read, understands, and agrees to be bound, and

(2) has the authority to enter into these Terms on behalf of the company or other organization that is named as Reseller in the Order and to bind that entity to these Terms.

Yhtiö reserves the right to amend these Terms from time-to-time, in whole or in part, in which case the updated Terms will supersede the prior version. Any changes to the Terms will be effective immediately for new resellers and, for all other resellers, any changes will be effective ten (10) business days after the date of such changes.

In consideration of the mutual agreements contained herein and intending to be legally bound hereby, the parties agree as follows:

1. **Non-Exclusivity**

This Agreement does not grant any exclusivity to Reseller.

2. **Ownership and License Grant**

As between Yhtiö and Reseller, Yhtiö retains all right, title and interest (including all intellectual property rights and other rights) in and to the Yhtiö products or services set forth in the applicable Order, subject only to the limited subscription grant expressly set forth herein (the “**Yhtiö Service**”).

Yhtiö hereby grants Reseller a non-exclusive, limited, nontransferable, non-sublicensable, worldwide license to market, demonstrate, distribute, promote, offer for sale, sell and renew the Yhtiö Service to the customer as set forth in an applicable Order (“**Customer**”), with Customer’s use of the Yhtiö Service governed under the Yhtiö Terms of Service located at [**https://yhtiö.fi/terms**](https://yhtiö.fi/terms)  (“**Terms of Service**”) and the technical guides and documentation made available from the dedicated documentation page of the Yhtiö website (the “**Documentation**”) for the commitment term set forth in the applicable Order (the “**License**”). These Terms do not provide Reseller with the right to access or use the Yhtiö Service for its own use or benefit.

3. **Pass Through Terms**

Reseller will only resell the Yhtiö Service to a Customer if: (i) Reseller and the Customer enter into a legally binding agreement (the “**Customer Services Agreement**”) that expressly references the Terms of Service; and (ii) Reseller and Yhtiö enter into an Order detailing the Yhtiö Service, the Usage Plan, or the pricing, payment terms and fee structure applicable to such Customer.

Yhtiö refers to the Yhtiö Service pricing, invoicing related information, and product-specific terms (e.g. concurrent user account sessions) within the Documentation as the “**Usage Plan**". Reseller will:

(a) notify, within the Customer Services Agreement, the Customer that the Yhtiö Service is subject to the Terms of Service, and that by placing an order with Reseller, the Customer agrees to the Terms of Service,

(b) include a link to the Terms of Service in each quotation and order form Reseller issues to the Customer, and

(c) obtain written confirmation from the Customer, within the Customer Services Agreement, of the Customer’s acceptance of the Terms of Service prior to or concurrently with the acceptance of the order by Reseller. Reseller acknowledges and agrees, and will ensure that each Customer acknowledges and agrees in its Customer Services Agreement, that the Yhtiö Service and the pricing for the Yhtiö Service (whether now existing or hereinafter developed) may change at any time.

Upon execution of the Customer Services Agreement and this Agreement, the Customer shall become a customer of Yhtiö. For clarity, Yhtiö has no obligations to Customer except as set forth in the Terms of Service. Upon Yhtiö’s request, Reseller shall provide Yhtiö with a copy of the Customer Services Agreement.

4. **Pricing and Payment**

4.1 **Fees; Taxes; Interest**  Reseller is solely responsible for providing complete and accurate billing and contact information to Yhtiö. Reseller will determine, in its sole discretion, the retail price that Reseller will charge to Customer(s) for purchases of the Yhtiö Service.

Yhtiö will invoice Reseller in advance for the commitment term. Unless the Order or Usage Plan provides otherwise, all Yhtiö invoiced charges are payable in Euros within 30 days of the invoice date.

Reseller payment obligations are non-cancelable and fees paid are non-refundable. Reseller will be solely responsible for payment of fees to Yhtiö and will pay any fees invoiced regardless of whether Reseller collects fees from the applicable Customer. If Reseller fails to make payments when due, then in addition to its other rights and remedies, Yhtiö will have the right to terminate this Agreement, an applicable Order, and terminate the applicable Customer’s account without notice, and recover its reasonable costs and expenses expended during collection. The Yhtiö Service is deemed accepted upon the signing of this Agreement.

Tax will be added where applicable. Unless the Usage Plan provides otherwise, Yhtiö must receive written notice of any disputed charges from Reseller within fifteen (15) days after the invoice date or Reseller will be deemed to have waived the right to dispute fees.

Upon expiration of a Customer’s applicable subscription term, unless otherwise stated on the applicable Order, the ordered Yhtiö Service will automatically renew for successive periods of equal duration to the previous subscription term, unless and until either party (Reseller or Yhtiö, as applicable) gives the other notice of non-renewal at least 30 days prior to the end of the then-current subscription term. The per-unit pricing during any such renewal term will be the same as that during the prior term unless Yhtiö provides Reseller notice of a pricing increase, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed more than a ten percent (10%) increase from the pricing level for the relevant Yhtiö Service in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order as discount, promotional or one-time pricing.

Reseller will pay Yhtiö interest on all amounts not paid when due at a rate of the greater of one percent (1.0%) per month or the highest rate allowed by law, compounded.

4.2 **Reseller Pricing** Reseller is prohibited from any promotion or advertising of the pricing as between Yhtiö and Reseller pursuant to these Terms or an applicable Order. This Agreement and the License may be terminated immediately if: (a) Reseller presents or promotes the pricing, as set forth in an applicable Order, on any public facing materials or websites, or (b) Yhtiö determines that Reseller is selling the Yhtiö Service to an entity other than a Customer set forth on an Order.

Notwithstanding the License set forth herein, Yhtiö reserves the right to renew the Yhtiö Service with a Customer directly if Reseller: (i) does not renew the Customer’s subscription for the Yhtiö Service within thirty (30) days of the Renewal Date specified in the applicable Order, or (ii) does not respond to Yhtiö inquiries regarding renewal of such Customer’s subscription to the Yhtiö Service within sixty (60) days of the Renewal Date specified in the applicable Order.

5. **License Restrictions**

Reseller will not, and will not permit others to:

(i) make any agreements, promises, covenants, representations, warranties, or guarantees that concern: (a) Yhtiö, or (b) the Yhtiö products or services, that are inconsistent with, in addition to, or more onerous than the terms of the Terms of Service;

(ii) register, or attempt to register, any competing intellectual property rights to the Yhtiö Service or delete or tamper with any proprietary notices on or in the Yhtiö Service;

(iii) conduct any benchmark tests or other evaluation of the Yhtiö Service without Yhtiö’s express prior written consent;

(iv) use the Yhtiö Service for any purposes other than those expressly set forth herein;

(v) modify, decompile, reverse-engineer, disassemble, or otherwise attempt, directly or indirectly, to obtain or create source code for the Yhtiö Service;

(vi) use, distribute, copy, duplicate, or otherwise reproduce all or any part of the Yhtiö Service other than as permitted herein; or

(vii) use any Yhtiö Confidential Information (as further defined) or intellectual property without the prior written consent of Yhtiö: (1) to create, distribute, sell, license, market, or promote any Reseller or third party technology or service; or (2) in conjunction with any third party technology. Further, no distribution by Reseller of the Yhtiö Service, other than as provided herein, will be permitted without the express prior written consent of Yhtiö.

6. **Confidential Information**

6.1 “**Confidential Information**” means all confidential information in oral, written, graphic, visual, electronic, or other form furnished to Reseller, or to which Reseller gains access to in connection with this Agreement, that: (i) is designated as “**Confidential**,” “**Proprietary,**” or some similar designation; or (ii) reasonably appears to be confidential or proprietary because of legends or other markings, the circumstances of disclosure, or the nature of the information itself that a reasonable person would consider confidential. Confidential Information may also include the confidential or proprietary information of a third party disclosed by Yhtiö to Reseller.

6.2 Unless falling into one of the exceptions below, the Yhtiö Service and any underlying software is Yhtiö Confidential Information. Confidential Information does not include data or information which:

(a) was in the public domain at the time it was disclosed or falls within the public domain, except through the fault of Reseller;

(b) was known to Reseller at the time of disclosure without an obligation of confidentiality, as demonstrated by competent evidence;

(c) is disclosed after the written consent of Yhtiö;

(d) becomes rightfully known to Reseller from a source other than Yhtiö without an obligation of confidentiality; or

(e) is developed by Reseller independently of Yhtiö’s Confidential Information as demonstrated by competent evidence.

6.3 Reseller will not:

(a) disclose the Confidential Information to a third party or

(b) use the Confidential Information for any purpose other than as permitted herein without Yhtiö’s prior written consent.

Reseller agrees to notify Yhtiö promptly of any unauthorized disclosure of Confidential Information and to use commercially reasonable measures to assist Yhtiö in remedying any such unauthorized disclosure. Except as set forth herein, Reseller will protect Yhtiö’s Confidential Information with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which Reseller uses to protect its own information of similar character.

All Confidential Information will remain Yhtiö’s sole property and Reseller will have no interest in or rights with respect thereto, except as expressly set forth in this Agreement. The obligation of confidentiality will survive termination of this Agreement.

6.4 Notwithstanding the foregoing, Reseller may disclose Yhtiö’s Confidential Information to the extent required:

(a) to any consultant, contractor, advisor, or counsel who has a bona fide need to know in connection with this Agreement and has executed a non-disclosure agreement, at least as protective as the confidentiality provisions specified herein, with the Reseller (or has a duty of confidentiality to the Reseller) or

(b) by operation of law, or by a court or governmental agency, securities exchange listing requirement or if necessary in any proceeding to establish rights or obligations under this Agreement; provided, that Reseller will, unless legally prohibited, provide Yhtiö with reasonable prior written notice sufficient to permit Yhtiö an opportunity to contest such disclosure.

Further, Reseller may retain one copy of any Confidential Information, to the extent required to comply with any applicable law, regulation, or regulatory authority to which the Reseller is subject; provided, that Reseller will continue to be bound by the confidentiality provisions herein with respect to any such Confidential Information retained.

7. **Marketing**

Reseller will not describe the Yhtiö Service or its functionality to any party other than Customer, nor will Reseller imply or state that the Yhtiö Service is owned or has been developed by Reseller. Reseller will credit Yhtiö when referring to the Yhtiö Service in any context to a Customer.

Notwithstanding anything to the contrary, all use, distribution, publication of the “**Yhtiö**” name must be pre-approved in writing by Yhtiö. Further, Reseller will not engage in any deceptive, misleading, illegal, or unethical practices that may be detrimental to Yhtiö or the Yhtiö Service, nor will Reseller take any action intended, or would reasonably be expected, to harm Yhtiö or its reputation, or which would reasonably be expected to lead to unwanted or unfavorable publicity of Yhtiö. Reseller will at all times conduct itself according to the highest standard of business ethics.

8.**Warranties**

Reseller represents, warrants, and covenants that:

(i) it has the right to enter into this Agreement and perform its obligations in the manner contemplated herein;

(ii) this Agreement does not and will not conflict with any other agreement entered into by it;

(iii) it is duly organized, validly existing and in good standing in the jurisdiction of its formation;

(iv) it is qualified and licensed to do business and in good standing in every jurisdiction where qualification and licensing is required for purposes of this Agreement;

(v) the execution of this Agreement by Reseller’s representative has been duly authorized by all necessary action of Reseller;

(vi) when executed and delivered by Reseller, this Agreement will constitute the legal, valid and binding obligation of Reseller, enforceable against Reseller in accordance with its terms;

(vii) it will not breach Section 5.1(i);

(viii) it will not use Yhtiö’s trademarks for purposes beyond the scope of this Agreement;

(ix) the Customer Services Agreement that it enters into with each Customer will contain a reference to the URL of the Terms of Service and that Reseller will notify each Customer of any limitations and disclaimers of warranties and liabilities of the Yhtiö Service;

9. **Disclaimer**

The Yhtiö Service and all related software, documentation and other information and materials are provided as-is and as-available and Yhtiö disclaims and makes no additional warranties, either express or implied, including any implied warranties of merchantability, fitness for a particular purpose, title or non-infringement and whether or not arising through a course of dealing. The Yhtiö Service is not guaranteed to be error-free or uninterrupted. Except as specifically provided in this Agreement, Yhtiö makes no warranties or representations concerning the compatibility of software or equipment or any results to be achieved therefrom.

10. **Indemnification**

10.1 **Reseller Indemnification** Reseller will indemnify and (at Yhtiö’s option) defend Yhtiö, its parents, subsidiaries, affiliates, officers, agents, employees, resellers or other resellers and licensors from and against any claim, loss, cost, liability or damage, including reasonable attorneys’ fees, for which Yhtiö becomes liable arising from or relating to:

(a) any claim of infringement or misappropriation of any intellectual property to the extent any such claim is caused by or related to actions taken or allowed by Reseller,

(b) Reseller’s unauthorized marketing, sales, or use of the Yhtiö Service or any portion thereof, including any breach of Section 5.1(i),

(c) any breach by Reseller of this Agreement,

(d) Reseller’s violation or alleged violation of any applicable laws, or (e) to the conduct of Reseller’s business (each, an “**Yhtiö Claim**”).

10.2  **Yhtiö Indemnification** Yhtiö will indemnify and defend Reseller from and against any claim, loss, cost, liability or damage, including reasonable attorneys’ fees, for which Reseller becomes liable arising from or relating to any valid third party claim, suit or proceeding brought against Reseller to the extent that it is based on a valid claim that the Yhtiö Service, when used in accordance with the Documentation, infringes a valid, enforceable patent or copyright (a “**Reseller Claim**”).

In the event that Yhtiö determines that an Yhtiö Service is at risk of being subject to a claim of infringement, Yhtiö may notify Reseller to cease reselling, marketing, advertising, or promoting the Yhtiö Service, or a portion thereof, in which case Reseller will immediately cease all resale, marketing, advertising, and promotion of such Yhtiö Service. In addition, at Yhtiö’s option and expense, Yhtiö may:

(a) replace or modify the Yhtiö Service with substantially equivalent services or replacement services so that such services are no longer infringing,

(b) obtain for the Customer(s) the right to continue using Yhtiö Service, or

(c) terminate this Agreement and/or the applicable Yhtiö Service and reimburse the Customer(s) for any prepaid, unused fees for such Yhtiö Service as of the date of such termination.

Additionally, Yhtiö’s indemnification obligations will not apply to the extent a claim is based on any: (i) infringement or other claim brought against or by a Customer relating to the use of the applicable Yhtiö Service; (ii) Yhtiö Claim; (iii) the Yhtiö Service being modified by Reseller, a Customer, or a third party; (iv) the use, operation, or combination of the Yhtiö Service with programs, data, equipment or materials not provided by Yhtiö, if the Reseller Claim would have been avoided by using it without such programs, data, equipment or materials; (v) compliance by Yhtiö with designs, plans or specifications furnished by Reseller or a Customer; or (vi) Reseller’s or a Customer’s continuation of the allegedly infringing activity after being notified of the alleged infringement claim. The indemnification obligations set forth in this Section are Yhtiö’s sole and exclusive obligations, and Reseller’s sole and exclusive remedies with respect to infringement or misappropriation of third party intellectual property rights of any kind.

10.3 **Conditions of Indemnification** Subject to the terms set forth in this Section, an indemnifying party will have the full responsibility for and control of the defense (including any settlement) of any suit or proceeding; provided, however, that: (a) such defense will be conducted at the indemnifying party’s sole cost and expense, (b) the parties will cooperate with and inform each other of the progress of such litigation and settlement, and (c) the indemnifying party will not have the right to settle any such claim without the prior written approval of an officer of the indemnified party if such settlement arises from or is part of any criminal action, suit or proceeding or contains a stipulation to, or admission or acknowledgment of, any wrongdoing (whether in tort or otherwise) on the part of the indemnified party.

11. **Limitation of Liability**

Yhtiö will not be liable for any indirect, incidental, special, consequential or exemplary damages, including but not limited to damages for loss of profits, goodwill, use, data or other intangible losses (even if Yhtiö has been advised of the possibility of such damages), including any such damages resulting from the use or the inability to use the Yhtiö Service; the cost of procurement of substitute goods and services resulting from any failure of the Yhtiö Service; unauthorized access to or alteration of transmissions or data; statements or conduct of any third party on the Yhtiö Service; termination or suspension of an account; termination of this Agreement; or any other matter relating to the Yhtiö Service or this Agreement.

The aggregate liability of Yhtiö for any damages arising from or relating to the Yhtiö Service or related documentation, information or materials or this agreement (for any cause whatsoever and regardless of the form of action) will at all times be limited to the greater of: EUR 50.000,- or the amounts paid by Reseller to Yhtiö in the twelve (12) months immediately preceding the incident creating liability. The foregoing aggregate liability limitation will not apply to claims made under Section 10.2, for which the aggregate liability for Reseller claims is capped at three times the fees paid in the twelve (12) months immediately preceding the incident creating liability. The cap on liability in this Section 11 will not apply to death or personal injury, for which the liability will be unlimited. The parties expressly acknowledge and agree that Yhtiö has entered into this Agreement in reliance upon the limitations of liability specified herein, which allocate the risk between Yhtiö and Reseller and form a basis of the bargain between the parties. The foregoing limitations apply even if the non-breaching party's remedies under this Agreement fail their essential purpose.

12. **Termination**

Yhtiö may terminate this Agreement upon written notice to Reseller. Either party may terminate this Agreement upon written notice to the other party due to:

(i) a material breach of such other party, which has remained uncured for a period of thirty (30) days from the date of delivery of written notice thereof to the breaching party, or

(ii) if either party makes a general assignment for the benefit of creditors, is adjudicated as bankrupt or insolvent, commences a case under applicable bankruptcy laws, or files a petition seeking reorganization.

In the event of termination, all licenses granted herein to Reseller will immediately terminate, and Reseller will immediately return to Yhtiö all material belonging to Yhtiö or its licensors, including without limitation all copies of Yhtiö’s Confidential Information, and will promptly certify to Yhtiö in writing that Reseller has done so.

In the event Yhtiö terminates this Agreement without cause and provided that a Customer is in good standing with Yhtiö, a Customer may continue to use the Yhtiö Service through the expiration of the applicable subscription term set forth in the applicable order, and corresponding Customer Services Agreement, in effect at the time of termination.

In the event of any other termination of this Agreement, provided that a Customer is in good standing with Yhtiö, Yhtiö will use commercially reasonable efforts to determine an alternative method to provide for the Customer to continue to use the Yhtiö Service through the expiration of the applicable subscription term set forth in the applicable order, and corresponding Customer Services Agreement, in effect at the time of termination. In no event will Reseller market, solicit or promote the Yhtiö Service or execute any Customer Services Agreements after termination.

13. **Miscellaneous**

Each party is an independent contractor in relation to the other party. Nothing in this Agreement will be deemed or construed to create a joint venture, resellership, fiduciary or agency relationship between the parties for any purpose.

Neither party will have any right or authority to act on behalf of, or to obligate or bind the other. Neither party will represent to any third party that it has such right or authority. Except for payment obligations, neither party is liable for any delay or failure to perform its obligations in this Agreement due to any cause directly or indirectly beyond its reasonable control, provided that each party will take commercially reasonable steps to minimize any delays or failures.

No failure of either party to exercise or enforce any rights under this Agreement will act as a waiver of such rights.

Reseller may not assign any of its rights or delegate any of its obligations under this Agreement without Yhtiö’s prior written consent. Any purported assignment or delegation in violation of this Section is null and void.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions will remain in full force and the unenforceable provision will be interpreted so as to render it enforceable while approximating the parties’ intent as closely as possible.

All notices and consents required or permitted to be given in this Agreement will be in writing to the parties at the addresses designated in the applicable Order or to such other address as either party may designate to the other by written notice, and will be effective upon receipt. Written notice will be made in the form of a certified letter, confirmed facsimile transmission, or acknowledged receipt of electronic mail.

There are no third party beneficiaries to this Agreement.

The provisions of this Agreement, which by their nature survive termination or expiration, will survive termination or expiration of this Agreement.

Any disputes arising out of or related to this Agreement will be governed by and construed in accordance with the laws of Finland, without giving effect to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. With respect to all disputes arising out of or related to this Agreement, the parties consent to exclusive jurisdiction and venue in the court located in Helsinki, Finland.

Yhtiö may seek injunctive or other emergency relief in any competent court for breaches of Section 5, 6 or 7.

This Agreement is in the English language only, which language will be the governing language and controlling in all respects.

This Agreement may be executed in two or more counterparts and delivered by facsimile or electronic signature, each of which will be deemed an original but all of which together will constitute one and the same.

These Terms together with any Order(s), the Documentation, and any terms referenced hereto, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all prior or contemporaneous written or oral agreements existing between the parties hereto and related to the subject matter hereof are expressly canceled.

Any terms or conditions in Reseller’s purchase order or other payment related documentation are void. In the event of any conflict between these Terms and an Order, the Order will govern.

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