

## Terms & Conditions

Welcome to Nocto!

These are the Terms and Conditions (the "Terms") for the use of our (mobile and web) software and platform application known under the name 'Nocto' (the "Platform"), as offered by Nocto International B.V., based out of The Hague, The Netherlands, and registered with the Dutch Chamber of Commerce under number 67722148, and in these Terms hereafter referred to as "Nocto".

These Terms can also be viewed and downloaded from the website at <<https://www.noctoapp.com/terms-and-conditions>> or may be sent to you (the "User") upon request.

### 1. DEFINITIONS

In these Terms, words written with capitals and not defined elsewhere will have the following meaning:

1.1 Affiliate(s): means an entity that (directly or indirectly) controls, is controlled by, or is under common control with the relevant entity, such as but not limited to executive officers, directors, large stockholders, subsidiaries, parent entities and/or sister companies;

1.2 Account: means the personalized account of a User (with at minimum a username and password) which enables access to the Platform.

1.3 Business Day: means any weekday (Monday to Friday), other than a bank holiday or public holiday in the Netherlands;

1.4 Business Hours: means the hours of 09:00 to 17:00 CET on a Business Day;

1.5 Force Majeure: means an event, or a series of related events, that is outside the reasonable control of Nocto, including but not limited to: i) war, disasters, explosions, fires, floods, riots, and terrorist attacks; ii) governmental measures or boycotts; iii) failures of the Internet or any public telecommunications network, failures of cloud providers, electricity failures; iv) hacker attacks, denial of service attacks, virus or other malicious software attacks or infections; v) failures of third party service providers; vi) strike actions; vii) pandemics.

1.6 GDPR: means the General Data Protection Regulation (Regulation (EU) 2016/679).

1.7 Intellectual Property: means any and all intellectual property rights, whether registered or unregistered, such as but not limited to patent rights, copyrights (including rights in source code and object code), database rights, rights in designs, utility models, trademarks, trade and business names and all associated goodwill, rights in or in connection with know-how and trade secrets.

1.8 Nocs: means digital tokens that can be earned and used by the User within the Platform.

1.9 Partner: means a legal person or natural person acting in the course of (the event and hospitality) business/trade (e.g. bar, club, restaurant, hotel, event organizer, artist, festival etc.), that wishes to promote their venue or event to Users of the Platform.

1.10 Platform: the (mobile and web) software and platform application known under the name 'Nocto' as offered by Nocto in accordance with these Terms.

1.11 Services: means any functions or services provided by Nocto or a Partner in connection with the Platform.

1.12 Support: means support in relation to the use of, and the identification and resolution of errors in the Platform.

1.13 User: means either (i) a natural person, at minimum at the age of 18 years old, that has downloaded the app or accessed Nocto's business platform website and registered an Account and thereby accepted these Terms in order to access and make use of the Platform and related Services, or (ii) a Partner.

1.14 User Content: means all profile information, (real-time) data, comments, feedback, reviews, photos, videos or text content, or other materials uploaded, posted, published or transmitted via the Platform by the User, excluding analytics data relating to the use of the Platform and server log files.

Unless the context shows otherwise, the defined concepts in the singular include also the plural and vice versa.

## 2. GENERAL

2.1 These Terms apply to the provision, use and availability of the Platform to the User. By registration of an Account, the User agrees with and accepts the applicability of these Terms. These Terms constitute the entire agreement between Nocto and the User with regard to the use of and access to the Platform.

2.2 Additions to or deviations from these Terms shall only apply if and where agreed in writing between Nocto and the User.

2.3 If any provision of these Terms is held invalid or otherwise unenforceable, the enforceability of the remaining provisions of these Terms will not be impaired thereby. In such an event, Nocto will replace the invalid provision with a provision that is valid and enforceable thereby taking into account the intention of the original provision.

2.4 If there are differences between language versions inside of Nocto, or the Terms, the English version has precedence.

2.5 Nocto is entitled to unilaterally amend the Terms from time to time. In case of material changes, the updated Terms will be communicated either via email or the Platform. In the event the User does not wish to accept the amended version of the Terms, the User should immediately refrain from further using the Platform.

2.6 These Terms have also been drawn up for the benefit of: (a) all companies which Nocto is Affiliated with in a group, has or has had a management or cooperation agreement with including their directors and

shareholders; (b) all directors, (former) employees and third parties (as well as their heirs) who work/have worked in any way for or were affiliated with or employed by Nocto; and (c) all third parties (such as but not limited to Partners), Nocto may engage in connection with the provision of the Platform or Services. The Terms apply as a third-party clause as referred to in Book 6, Section 253 of the Dutch Civil Code for the benefit of all persons and legal entities referred to in this clause. As a result the aforementioned persons are entitled to invoke the respective provisions in these Terms as the occasion arises.

### 3. ACCOUNT AND NOCS

3.1 After completing the registration process, the User is granted with access to the Platform.

3.2 Any information provided by the User that is necessary for accessing and/or using the Platform or Services, shall be accurate, complete and up to date at all times. The User acknowledges and warrants that he, she or they is at least 18 years. Failure to do so constitutes a breach of the obligations under these Terms and may result in the immediate (temporary) suspension or termination of the Account.

3.3 The User agrees not to disclose the username and password for the Account to any third party and shall notify Nocto immediately upon becoming aware of any breach of security or unauthorized use of an Account. The User is fully responsible for maintaining the secrecy of its username and password and for any activities or actions that occur with the Account and/or with the use of that username and password. Nocto cannot and will not be held liable for any loss or damages resulting from

the User's failure to maintain the secrecy or security of the username and password.

3.4 Nocto withholds the right - to its sole discretion and judgement - to refuse a User, and/or to immediately remove the Account of a User that has provided incorrect information, in particular about age.

3.5 The User is able to earn Nocs, for example by proactively contributing to the community, by checking in, posting pictures and/or videos that help others (measured by received *likes*), and/or by inviting friends to join. The User may spend the Nocs to purchase deals as offered by Partners.

3.6 The Partner is able to collect Nocs by proactively contributing to the community, by offering deals, and receiving the Nocs that Users spend to purchase their offered deals. Partners may spend the Nocs to purchase premium features in the Platform or Services.

3.7 The User may at any time request Nocto to delete the Account, which request may also be generated within the Platform.

#### 4. TERMS OF USE

4.1 The User shall not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform. In case of damages to the Platform, Nocto can claim compensation.

4.2 The User furthermore agrees and warrants not to (and not to attempt to), either directly or indirectly:

- use the Platform (or part thereof) for any illegal, fraudulent or unauthorized purpose;
- copy, adapt, modify, prepare derivative works based upon, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast, attempt to discover any source code, reverse engineer, decompile, disassemble, or otherwise exploit the Platform, any Services (or part thereof);
- conduct any systematic or automated data scraping, data mining, robots, spiders, or other systematic or automated data gathering and extraction tools by means of or in relation to the Platform or Services;
- infringe upon or violate Nocto's Intellectual Property or the Intellectual Property of third parties;
- upload or transmit viruses or any other type of malicious or destructive code;
- remove or alter any proprietary notices or labels on or in the Platform;
- engage in any activity that causes, or may cause, damage to the Platform and/or any Services or impairment of the availability or accessibility of the Platform and/or any Services;
- interfere with or circumvent the security features of the Platform (or part thereof).

4.3 The User furthermore agrees and warrants not to post, upload, publish or transmit any User Content that:

- may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to the User, to any other person or party;

- may create a risk of any other loss or damage to any person or property;
- seeks to harm or exploit children by exposing them to inappropriate content, asking for personally identifiable details or otherwise;
- may constitute or contribute to a crime or tort;
- is or is deemed to be unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), threatening, profane, or otherwise objectionable;
- is illegal (including, without limitation, the unauthorized disclosure of confidential information, trade secrets or other party's Intellectual Property);
- is knowingly incorrect, inaccurate or incomplete;
- violates any school or other applicable policy, including those related to cheating or ethics;
- includes personal data or pictures, photos, videos or other publications or person(s) from whom the User has not received consent to post, upload or publish.

4.4 The User acknowledges and agrees that Nocto retains the right to monitor User Content and the User's use of the Platform to ascertain, in Nocto's sole judgement, if the usage of the Platform and/or specific User Content is outside the norm of "fair use" and/or the use of the Platform is in violation of these Terms, in particular the warranties and prohibited uses as stipulated under clauses 4.2 and 4.3.

4.5 Nocto has the right to take (temporary) measures to prevent or limit the effects of unfair use, and/or to (temporarily or indefinitely) suspend the User's Account or terminate the User's access to and use of the Platform in



the event of a (reasonably suspected) violation of these Terms, in particular the warranties and prohibited uses as stipulated under clauses 4.2 and 4.3.

4.6 Upon the termination or suspension of access to the Account and Platform, regardless of the reason thereof, the right of the User to use the Platform immediately ceases and the access to the Account may be revoked.

4.7 Nocto shall never be liable for damage, losses or claims of the User as a result of any such (temporary) suspension or termination. The termination or suspension of the User's use of the Account and Platform will never result in refunds of any fees or other charges paid, if any.

4.8 Users of the Nocto Business Platform agree to the following terms:

- Active Engagement: You will proactively utilize the Nocto Pro or Expert package to maximize the benefits offered.
- Branded Deal Offering: You will offer a branded deal from our partner brands through the Nocto platform when chosen to do so while keeping Stiva regulations in mind.
- Social Media Engagement: Share content related to your Nocto on social media at least once a month.
- Positive Promotion: Positively promote the Nocto brand name and refrain from actions that could harm its reputation.
- Compliance: Nocto reserves the right to terminate the agreement if there is a breach of terms or any incident that may adversely affect the partnership.
- Content Usage: Nocto may use your venue's logo and social media content to promote your location, royalty-free.

- Liability: Nocto cannot be held responsible for matters outside the agreed terms of this cooperation agreement.
- Intellectual Property: All Nocto intellectual property, data, users, customers, and partners are owned and will remain the property of Nocto.

## 5. PLATFORM AVAILABILITY AND USE

5.1 Although Nocto undertakes to provide and maintain the Platform to the best of its ability, the accuracy and completeness of the functionalities, Services and data within the Platform cannot be guaranteed. The Platform is provided 'AS IS' and 'AS AVAILABLE', with all visible and invisible errors and defects.

5.2 From time to time, there may be updates to the Platform and/or Services. Nocto reserves the sovereign right to amend, remove or vary the Platform and/or Services as Nocto deems fit.

5.3 Where appropriate for the proper performance of Support or Services, Nocto reserves the right to engage Affiliates, Partners or third parties to carry out (part of) the Support or other Services, such at the discretion of Nocto. In this respect, the applicability of articles 7:404, 7:407 paragraph 2, and 7:409 Dutch Civil Code is expressly excluded.

5.4 Nocto does not guarantee that the Platform shall at all times function without error or interruption, nor that it will be wholly free from defects, errors and bugs. Nocto specifically disclaims all warranties and conditions of any kind, whether expressed, implied or statutory, including but not limited to the implied warranties of merchantability, fitness for a particular

purpose and non-infringement of the Platform or User Content. Nocto disclaims any warranties regarding the security, reliability, timeliness, and performance of the Platform or Services. Nocto disclaims any warranties for services or goods received through or advertised through the Platform or Services, or received through any links provided through the Platform or Services.

5.5 Nocto will use commercially reasonable efforts to make the Platform available 24 hours a day, 7 days a week, except during planned or unplanned downtime. Nocto will use commercially reasonable efforts to inform the User of the downtime in advance, if and when possible. For the avoidance of doubt, downtime caused directly or indirectly by (i) Force Majeure, (ii) failure of the User's hardware or networks, (iii) any breach by the User of these Terms, shall not be considered a breach of this Agreement.

5.6 Nocto may at any time (temporarily) suspend or limit the use or availability of the Platform or part thereof, insofar this is necessary to execute maintenance or implement updates, upgrades or new releases of the Platform or functionalities. A (temporary) suspension or limitation of the Platform or part thereof shall not create any claim or right to compensation for losses or damage.

5.7 Nocto will handle properly substantiated requests for Support within a reasonable period of time depending on severity and impact. Nocto cannot guarantee the accuracy, completeness or timeliness of responses in connection with the Support provided. In principle, Support will only be provided on Business Days during Business Hours.

5.8 Nocto has no control over, and shall not be responsible or liable for: (a) the uploading, transmission and/or sharing of the User Content; (b) verification and validation of the User Content; (c) verification and validation of the (data) content, insights and other materials resulting from the use of the Platform. The User agrees to indemnify and hold Nocto harmless from and against any claim, demand, damages or costs, including reasonable attorneys' fees, arising out of (damage)claims or liabilities arising from the actions under (a), (b) or (c) of this clause.

5.9 The Platform is intended to benefit all Users and Partners through positive use. Nevertheless, the User may be(come) exposed to information or content that can be offensive, indecent or objectionable. In the event a User or third party wants to report a 'fair use' violation or Intellectual Property infringement notice it will adhere to the Notice and Takedown Procedure ("NTD") as described in Appendix A of these Terms. Unacceptable actions or behaviour include, but are not limited to the use restrictions and prohibitions described in clauses 4.2 and 4.3.

5.10 The User acknowledges and agrees that Nocto may disclose the User Content if required to do so by law, court order or in the good faith belief that such disclosure is reasonably necessary in connection with an investigation of fraud, intellectual property infringements, or other activity that is (deemed) illegal.

## 6. CHARGES AND PAYMENT

6.1 For Users the Platform is free to download and use, without gaining any rights or ownership of the Platform in any way.

6.2 For Partners the Platform is free to download and use. Nocto or the Partner may offer 'b2b'-services within a 'community membership', which services are subject to payment. In any such event the User shall be informed in advance.

6.3 In-app purchases, may be or become possible, but this will at all times be optional for the User. Some Services may also include the opportunity for a Partner to charge for a Service the Partner provides through the Platform or Nocto's Service. Any such payments should be made by the User in full and in advance through the specified payment method, subject to the Partner's payment terms and policies (if applicable). The User acknowledges and accepts that Nocto does not have any control over (i) the charges, (ii) the payment transaction and (iii) the Services provided by the Partner.

6.4 If the User believes any payment has been made in error, the User must first contact the Partner to seek resolution. Nocto cannot ensure that a Partner is legitimate and truthful, that the Partner will use payments as promised, or that you will be happy with the Service provided. Your correspondence or business dealings with other Partners including payment and related services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between the User and the Partner. Any Partner who receives compensation from another Partner acknowledges and agrees that such receipt is a third-party transaction that Nocto also has no responsibility for. Nocto is not acting as an agency in any way or form.

## 7. INTELLECTUAL PROPERTY

7.1 All Intellectual Property in and related to the Platform shall exclusively vest in Nocto or its licensors. The User only acquires those rights of use that are explicitly granted in and in accordance with these Terms.

7.2 The User is prohibited from removing or amending any indications or credits of Intellectual Property or confidentiality from the Platform including underlying code.

7.3 All Intellectual Property in the User Content shall vest in the User or its licensors.

7.4 By uploading or transmitting any User Content via the Platform or Services, the User accepts and agrees to grant Nocto with a worldwide, perpetual, royalty-free, transferable, non-exclusive, non-revocable right and license to: (re)use, copy, display, (re)publish, distribute, edit, translate, amend, modify and distribute the User Content, or part thereof and/or make derivative works of all such User Content and your name, voice, and/or likeness as contained in your User Content, in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with the Platform and Nocto's (or Affiliates') business, including without limitation for promoting and redistributing part or all of the Platform, Services (and derivative works thereof) in any media formats and through any media channels.

7.5 To the extent that a User uploads, publishes or transmits User Content that contains music or other audio and/or video, the User represents that the User is the owner of or has obtained sufficient rights in the copyright rights, including without limitation the performance, mechanical, and sound recordings rights, with respect to each and every musical

composition (including lyrics) and sound recording contained in such User Content and that User has the right or power to grant the license granted herein.

7.6 Nocto reserves the right, but is not obligated, to reject, modify and/or remove any User Content that Nocto believes, in its sole discretion, infringes any Intellectual Property.

7.7 In the event a User or third party wants to report an Intellectual Property infringement notice it will adhere to the Notice and Takedown Procedure ("NTD") as described in Appendix A of these Terms.

7.8 The Partner may link to Nocto's home page, provided Partner does so in a way that is fair and legal and does not damage Nocto's reputation or take advantage of it, nor must the link suggest any form of association, approval or endorsement on Nocto's part where none exists. Nocto reserves the right to withdraw any linking permission without notice.

## 8. PRIVACY

8.1 Via the Platform and Services, Nocto processes personal data about its Users. Nocto's Privacy Policy contains further details about (amongst others) the types of personal data that may be processed, their processing purposes, data breaches and security measures.

8.2 The Privacy Policy may be consulted on Nocto's website and in the app. In addition to accepting these Terms, the User also needs to agree with the content of Nocto's Privacy Policy in order to register for the Account.

## 9. LIMITATION OF LIABILITY

9.1 The total aggregate liability of Nocto due to an attributable failure or due to any other legal reason whatsoever, shall at all times be limited to an amount of EUR 250.

9.2 Nocto's liability for indirect loss or damage, consequential loss or damage, loss of profit, loss of revenues, missed savings, reduced goodwill, loss or damage due to business stagnation or interruption, loss or damage in connection with the use of the Platform or Services, is expressly excluded. Also Nocto's liability for the damage, destruction or loss of User Content, or for the (temporary) unavailability of the Account or Platform, is expressly excluded.

9.3 The exclusions and restrictions referred to in clause 9.1 to 9.2 will not apply if and in so far as the damage or loss are the result of an intentional act or gross recklessness by Nocto.

9.4 Nocto shall never be liable for any damages, losses or costs incurred by the User or any third party which are the result of Force Majeure.

9.5 Except where performance by Nocto is permanently impossible, Nocto will only be in default for an attributable failure after it has been given written notice of the default thereby granting Nocto with a reasonable term of at least thirty (30) days to remedy the default. The notice of default must contain a comprehensive and detailed description of the breach, in order to ensure that Nocto has the opportunity to respond adequately.



9.6 A condition for the filing of any claim to damages is always that the User reports the damage to Nocto in writing as soon as possible and in any event not later than 10 (ten) days after the damage occurred. Claims for damages against Nocto shall in any event lapse by the mere expiry of six (6) months after the damage occurred.

9.7 The User shall release, defend, indemnify and hold harmless Nocto and its Affiliates from and against any and all claims, liabilities, damages, losses, expenses or costs (including legal /attorney costs) of Nocto, the User or third parties arising from or in any way related to:

- the User use of the Platform;
- the User's User Content;
  - a violation of these Terms by the User, including but not limited to non-compliance with clauses 4.2 and/or 4.3;
  - a violation of any law, regulations or third party rights by the User.

9.8 The Platform may contain links to third-party websites or resources. The User acknowledges and agrees that Nocto is not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. Links to such third-party websites or resources do not imply any endorsement by Nocto of such websites or resources or the content, products, or services available thereon.

9.9 Nocto does not accept any liability or responsibility alcohol consumption by the User. Each User is independently responsible for ensuring its compliance of the law and each Partner is also independently

responsible for its marketing communications directed towards User to comply with the law and relevant (STIVA) regulations.

## 10. APPLICABLE LAW

10.1 These Terms have been construed and shall be exclusively governed by the laws of The Netherlands.

10.2 To the extent legally permitted, any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be exclusively settled by the relevant court in the district The Hague, The Netherlands.

## APPENDIX - NOTICE AND TAKEDOWN PROCEDURE

It is Nocto's policy to (1) block access to or remove User Content that it believes in good faith to be copyrighted material that has been illegally copied and distributed by a User or a third party; to (2) block access to or remove User Content that it believes in good faith to be violating the use restrictions and prohibitions described in clauses 4.2 and 4.3 of the Terms, and to (3) terminate and discontinue the Account to repeat offenders.

If a person believes that User Content residing on or accessible through the Platform violates or infringes any personal right, copyright or Intellectual Property, please send a notice of the violation or infringement containing the following information to Nocto with the contact details listed below:

- identification of rights, works, or materials being infringed or violated;
- identification of the right, content, and material that is claimed to be violated or infringing including information regarding the location of the violating or infringing User Content that the owner/rightsholder / victim seeks to have removed, with sufficient detail so that Nocto is capable of finding and verifying its existence;
- contact information about the notifier including address, telephone number, and, if available, email address;
- a statement that the notifier has a good faith belief that the allegedly violating or infringing User Content is not authorized by the legitimate owner/rightsholder/victim or the law;
- a statement that the information provided is accurate and the notifying party is authorized to make the complaint, either by itself

or on behalf of the owner/rightsholder/victim. In case of the latter, please add a duly signed power of attorney.

When the notification has been found admissible by Nocto, Nocto will undertake the required efforts to:

1. remove or disable access to the User Content;
2. notify the (allegedly) violating or infringing User, that the User Content has been removed or access has been disabled; and
3. that Accounts of repeat offenders will be immediately revoked and that further access to the Platform will be immediately terminated.

If the (allegedly) violating or infringing User believes that the removed User Content is not infringing, not in violation with any right, or that the User was authorized to upload, publish, or otherwise use this User Content, the User may send a counter-response containing at least the following information to Nocto with the contact details listed below:

- identification of the User Content that has been removed or to which access has been disabled the location at which the User Content appeared before it was removed or disabled, and a signature of the User itself, or its authorized representative, in which case a duly signed power of attorney should be added;
- a statement that the User has a good faith belief that the User Content was removed or disabled as a result of a mistake;
- the User's name, address, telephone number, and, if available, email address.

When Nocto receives a counter-response, Nocto will forward a copy thereof to the complaining party informing the complaining party that Nocto may replace or reinstate the removed User Content within twenty (20) business days.

Unless the complaining party informs Nocto within twenty (20) business days that official court proceedings have been initiated against the User, Nocto may either remove or replace the User Content at its sole discretion.

Excluded from takedown. Copies of infringing or violating User Content on servers not controlled by Nocto are explicitly excluded from this NTD-procedure.

**NTD - contact details**

Nocto International B.V.  
The Hague, The Netherlands  
info@noctoapp.com