

## Article 1: Definitions.

In these General Terms and Conditions for pool bicycles the terms below are to be understood as follows:

- Customer:** Any natural or legal person other than a consumer with whom Swapfiets enters into an Agreement on business to business terms;
- End Date:** The date on which the Agreement ends; this may be a date agreed upon between Swapfiets and the Customer or the date following the termination of the Agreement with due observance of the notice period, as set out in Article 6.1 of these General Terms and Conditions;
- Bicycle:** One or more bicycle(s) supplied by Swapfiets to the Customer to the Customer for use by the Customer or User in accordance with these Conditions;
- User:** Any natural or legal person who makes use of the Bicycle(s) made available by Swapfiets to the Customer;
- Unjustified Swap:** Has the meaning ascribed to in Article 4.3 of these General Terms and Conditions;
- Agreement:** Any agreement between Swapfiets and the Customer regarding subscription for rental of one or more Bicycles including these Conditions, and any amendment or addition thereto;
- Swapfiets:** Swapfiets BV, established in Amsterdam at Molukkenstraat 200 (1098 TW) and registered with the Chamber of Commerce under number 65958713;

Swapping: The resolution by Swapfiets of a problem relating to the Bicycle, by repairing it or exchanging it for another Bicycle, as further described in Article 4.1 of these General Terms and Conditions;

Conditions: These General Terms and Conditions B2B.

## Article 2 Applicability.

2.1 These General Terms and Conditions B2B apply to every Agreement between Swapfiets and the Customer.

2.2 If Swapfiets has made several Bicycles available to the Customer, where "Bicycle" is stated, all "Bicycles" are meant.

2.3 The amounts specified by Swapfiets in these General Terms and Conditions include VAT.

2.4 Agreements between Swapfiets and the Customer in deviation from, or in addition to these General Terms and Conditions are only valid if expressly confirmed in writing or by email by the Swapfiets B2B manager.

2.5 The applicability of any general (and/or other) terms and conditions pertaining to the Customer is hereby excluded.

2.6 If one or more of the provisions of these General Terms and Conditions are deemed void or become void in whole or in part, at any time, this shall in no way affect the remaining provisions of these General Terms and Conditions. Swapfiets and the Customer will, in such case, consult each other in order to agree on new provisions to replace the void or nullified original provisions taking into account as far as possible the purpose and scope of the original provisions.

2.7 If there is a lack of clarity about the interpretation of one or more provisions of these General Terms and Conditions, the interpretation must take place according to the spirit of these provisions.

2.8 If a situation arises between the parties that is not regulated in these General Terms and Conditions, this situation must be assessed in the spirit of these General Terms and Conditions.

2.9 If Swapfiets does not always demand strict compliance with these conditions, this does not mean that the provisions do not apply, or that Swapfiets would in any way lose the right to demand strict compliance with these General Terms and Conditions in other cases.

## **Article 3: Use of the bicycle.**

3.1 The Customer will use and take care of the Bicycle in a normal way as if it were its own. The Customer guarantees that the User will also observe this maintenance duty.

3.2 The Bicycle is exclusively intended for personal use by the User.

3.3 The Bicycle will remain the property of Swapfiets at all times. The Customer and/or User are/is not permitted to establish or grant any (security) rights to the Bicycle for the benefit of a third party.

3.4 All bicycles are supplied with a ring and push-in chain lock with one key.

3.5 To prevent incidents, such as loss, theft and damage, the Bicycle must always be locked with the ring and chain lock provided. Where possible, the Bicycle must be attached to an immovable object with the chain lock.

3.6 Swapfiets always keeps a spare key for the Bicycle. In the case of a lost or damaged key, a new key must be requested from Swapfiets. The cost for this is EUR 15 per key. The Customer will be liable for this cost.

3.7 Partly due to the risk of theft, the Buyer and/or User are not permitted to have copies of the key made or to have more than one key in their possession. Keys that were previously reported lost but are subsequently retrieved must immediately be returned to Swapfiets.

3.8 The Customer and/or User are not entitled to make any changes to the Bicycle that cannot be removed without causing damage to the Bicycle or to manipulate in any way the electronics and/or software of the e-bike.

3.9 The Bicycle may be supplied with an advertisement. If the advertisement is damaged, or an advertisement is completely removed from the Bicycle, the Customer must contact Swapfiets immediately.

3.10 The Customer is aware that the Bicycle may be owned by a leasing company. If the Bicycle is owned by a leasing company and Swapfiets informs the Customer in writing, the Customer is bound to return the Bicycle to the leasing company at the first request of the leasing company or to pay the lease fee to the future leasing company.

3.11 The Customer is responsible for the promptly notifying Swapfiets of changes to the information known to Swapfiets, such as a new address.

## Article 4 Swapping.

4.1 The subscription for the rental of the Bicycles includes entitlement to free Swapping in the event of a defect, loss or theft of the Bicycle. Swapping means for Swapfiets to solve problems relating to the Bicycle for free by repairing it onsite or exchanging it with a replacement bicycle. Swapfiets provides free Swapping in case of defects on the Bicycle caused by wear and tear and normal use of the Bicycle. Examples of such defects include flat tires, broken (chain) boxes, torn saddles, and broken lighting. Swapping is only authorized within the city limits of the places where Swapfiets operates, please see [www.swapfiets.nl](http://www.swapfiets.nl) for details.

4.2 Swapfiets endeavors to swap all Bicycles within 48 hours after the User of the bicycle has contacted Swapfiets by telephone, email or Whatsapp. Swapping is done by appointment with the User of the Bicycle. The User and/or Customer will not be entitled to claim compensation or refunds if this target time is not met.

4.3 If the User wrongfully requests a Swap (a 'Unjustified Swap'), Swapfiets will be entitled to charge EUR 20 call-out charges to the Customer. If the User does not appear at a Swapping appointment, this will also be deemed a Wrongful Swap.

4.4 When Swapfiets exchanges a Bicycle, the User or the Customer will transfer the Bicycle, including the key, to Swapfiets.

## Article 5: Payment.

5.1 Unless otherwise agreed, the Customer will be bound to pay the due amounts within 14 days after the invoice date to the account number specified by Swapfiets. The invoicing takes place at the beginning of each month.

5.2 In the event of additional costs, such as the policy excess and surcharges, Swapfiets will be entitled to demand payment of the same by the Customer before delivering a new Bicycle to the User. If the Customer indicates that it is able to pay the outstanding amount and this does not transpire to be the case, this will be deemed a Wrongful Swap and may be subject to additional charges.

5.3 Swapfiets is entitled to execute a credit check in advance. In the case of a negative decision, Swapfiets will be entitled to require payment in advance from the Buyer, failing which Swapfiets will refuse delivery of the Bicycles.

5.4 If the payment term is exceeded, Swapfiets will be entitled to charge a default interest of 1% per month on the outstanding amount, unless the statutory interest is higher, in which case the statutory interest will be due. The interest on the claimable amount will be calculated from the point from which the Customer came into default up to the point of full payment of the due amount.

5.5 If the Customer is in default or omission in the (timely) fulfillment of its obligations, then Swapfiets will be entitled to immediately retrieve the bicycles supplied to the Customer and to charge the Customer for all reasonable costs arising therefrom. Swapfiets is furthermore entitled, where applicable, to charge the Customer for reasonable costs incurred in obtaining payment out of court.

5.6 The Customer will under no circumstances be entitled to offset any debt payable to Swapfiets.

5.7 Objections against the amount of the invoice will under no circumstances suspend the obligation to pay.

5.8 The Customer is bound to immediately report inaccuracies in the payment details provided or stated to Swapfiets.

## **Article 6: Cancellation and termination of the contract.**

6.1 If Swapfiets and the Customer have not included an end date in the Agreement prior to the conclusion of the Agreement, the Customer may terminate the Agreement in writing with due observance of a notice period of one month. The agreement will continue for one month from the date on which Swapfiets received the written cancellation of the agreement by email from the Customer; i.e. the agreement will end one month after the day on which Swapfiets received the cancellation.

6.2 After termination, as intended above, the Customer will be entitled to use the Bicycle until the End Date and will thereby also be bound to pay all costs pertaining to the use of the Bicycle.

6.3 The Customer is bound to return the Bicycle and the key to Swapfiets by no later than the End Date.

6.4 If the Customer returns the Bicycle before the End Date, all the Customer's rights on the grounds of this agreement will be terminated without prejudice to the Customer's obligation to pay all costs pertaining to the use of the Bicycle until the End Date.

6.5 The Customer must return the Bicycle to Swapfiets by no later than the End Date, failing which the Customer will be liable to pay Swapfiets a penalty of EUR 5 per day (per bicycle) until the Bicycle has been returned to Swapfiets, with a maximum of seven days.

6.6 If the Bicycle has not been returned to Swapfiets within seven days after the End Date, Swapfiets will report this as theft on the part of the Customer. In that case, the Customer will also be bound to compensate Swapfiets for damages incurred by Swapfiets, which said damages will be determined per type of Bicycle as specified in Table 1, without prejudice to the right of Swapfiets to demand full compensation for the damages suffered by it, insofar as the said damages surpass the amount of compensation determined for the type of Bicycle concerned.

Type of Bicycle	Established Compensation
Original	EUR 350,-
Deluxe	EUR 450,-
Power 1	EUR 1.500,-
Power 7	EUR 2.000,-

*Table 1: Amount of compensation per type of Bicycle.*

## **Article 7: Theft or loss.**

7.1 In the event of loss or theft of the Bicycle and/or the battery, the User will be bound to report this to Swapfiets within 24 hours, hand over the Bicycle key to Swapfiets, and file a statement with a Swapfiets employee. In that case, the Customer will be bound to pay a policy excess amount, which differs per type of Bicycle. The applicable policy excess amount per type of Bicycle is specified in Table 2. The User will receive a replacement Bicycle from Swapfiets after the completion of the statement.

<i>Type of Bicycle</i>	<i>Established Deductible</i>
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<i>Original</i>	<i>EUR 40,-</i>
<i>Deluxe</i>	<i>EUR 60,-</i>
<i>Power 1 and Power 7 (without battery)</i>	<i>EUR 220,-</i>
<i>Power 1 and Power 7 battery</i>	<i>EUR 500,-</i>

*Table 2: Amount of policy excess per type of bicycle.*

7.2 If the User fails to report the loss or theft of the Bicycle, or fails to do so in good time, or the User is unable to hand the bicycle key over to Swapfiets, the Customer will be bound to pay compensation to Swapfiets as specified in Table 1.

7.3 If the bicycle is not doubly locked/attached and an incident occurs, including a case of vandalism, loss or theft, the Customer will be liable to pay a negligence surcharge. This amount will be added to the policy excess, as specified in Table 3, and will depend on the type of Bicycle.

<i>Type of Bicycle</i>	<i>Established Negligence Surcharge</i>
<i>Original</i>	<i>EUR 60,-</i>
<i>Deluxe</i>	<i>EUR 90,-</i>
<i>Power 1 and 7</i>	<i>EUR 300,-</i>

*Table 3: Amount of negligence surcharge per type of bicycle.*

7.4 If a missing or stolen bicycle is found, the Customer will be credited with the paid policy excess. Swapfiets determines the applicable amount based on the state of the bicycle and relevant additional costs.



7.5 If it transpires that the User and/or the Customer have/has provided incorrect information to the disadvantage of Swapfiets, Swapfiets will be entitled to charge a 'dishonesty' surcharge of EUR 100.00 to the Customer's account. This amount will be a surcharge over and above the policy excess and negligence surcharge.

7.6 If parts of the Bicycle are missing or stolen, Swapfiets will be entitled to charge this to the Customer up to the amount of the policy excess. A price list of parts per type of Bicycle can be requested from Swapfiets.

7.7 If the Bicycle has been removed by the municipality, the User will have at least three days to personally retrieve it from the municipal (bicycle) depot. All release or other costs will be at the expense of the User or the Customer. The removal of the Bicycle by the municipality will be deemed a Wrongful Swap. After the Bicycle has been available at the depot for at least three days, Swapfiets will collect the Bicycle and contact the Customer in order to deliver a new Bicycle. Swapfiets will be entitled to charge the related costs, including release costs and the cost of a Wrongful Swap to the Customer.

## **Article 8: Damage.**

8.1 The User is bound to report damage due to vandalism to the Bicycle to Swapfiets within 24 hours.

8.2 Swapfiets reserves the right, at its sole discretion, to recover the costs from the Customer in the case of damage to wear and tear of the Bicycle other than such that may expected due to normal use.

8.3 Swapfiets reserves the right to check the condition of the Bicycle. Customer shall cooperate with any necessary servicing or maintenance, on demand by Swapfiets.

## Article 9: Liability.

9.1 If the Customer takes a Bicycle into commission, or if the Customer makes the Bicycle available to the User, then this will be taken as proof that the Bicycle is operating properly and has no defects.

9.2 Direct contact should be made with Swapfiets in case of doubt on the part of the Customer and/or the User with respect to the safety of the Bicycle.

9.3 The Customer is liable for all risks pertaining to the use of the Bicycle by the Customer itself or by the User.

9.4 Swapfiets is not liable for any damages suffered by the Customer and/or User as a result of the use of the Bicycle, except in the case of intent or gross negligence on the part of Swapfiets.

9.5 The Customer indemnifies Swapfiets against all third-party claims with regard to any damages incurred or having been incurred by such third party(ies) as a result of the use of the Bicycle with due observance of all that has been determined in this article.

9.6 The Customer and/or User are/is responsible for the timely notification to Swapfiets of any defects and/or damage to the Bicycle.

9.7 Swapfiets will at all times be entitled to transfer its claims against the Customer to third parties for whatever reason.

9.8 The Customer hereby declares to be aware of the fact that no insurance has been taken out with regard to the Bicycle, accompanying documents and additional items. All additional or more comprehensive insurance policies must be taken out by the Customer for its own account.

## Article 10: Non-compliance with obligations.

10.1 Swapfiets is entitled to terminate or partially terminate the Agreement with immediate effect by means of a written notice to the Customer, if:

- The Customer is in default with respect to the fulfillment of its obligations under this agreement;  
The Customer applies for a (provisional) suspension of payment or is granted a (provisional) suspension of payment;
- The bankruptcy of the Customer is requested, or it is declared bankrupt;
- The Bicycle or any other goods pertaining to the Customer is/are seized and this affects the fulfillment of its obligations under this Agreement;
- In the sole discretion of Swapfiets, the Customer or User is deemed to have abused the service offered by Swapfiets.
- The Customer or User intentionally provided incorrect information to Swapfiets;  
or
- The Customer can no longer be deemed capable of fulfilling the obligations arising from this agreement in any other way.

10.2 The Customer will be entitled to immediately terminate this agreement if Swapfiets has repeatedly and/or to a serious extent failed to fulfil its obligations, as intended in this agreement.

## Article 11: Force Majeure.

11.1 Swapfiets will not be bound to fulfill any obligation with respect to the Customer and/or the User should it be prevented from doing so due to a circumstance not attributable to any wrongful act on its part.

11.2 In these General Terms and Conditions, force majeure, in addition to the explanations in existing (case) law, is understood to mean all external causes, whether or not anticipated, beyond the control of Swapfiets, as a result of which Swapfiets is unable to fulfill its obligations. Swapfiets will also be entitled to invoke force majeure if the circumstance which prevents (further) performance of the Agreement occurs after

Swapfiets should have fulfilled its obligations.

11.3 Swapfiets will be entitled to suspend its obligations under the Agreement for the duration of the instance of force majeure. If this period lasts longer than two months, each of the parties will be entitled to dissolve the agreement without being liable to the other party for compensation.

11.4 In as far as Swapfiets has fulfilled some of its obligations under the agreement at the time of the occurrence of the force majeure or will be able to fulfill these, and an independent value is to be attached to the part that has or is to be fulfilled, Swapfiets will be entitled to invoice the Customer separately for the part already fulfilled or to be fulfilled.

## **Article 12: Amendments.**

12.1 Swapfiets reserves the right to change the costs for the use of the Bicycle. The Customer will be notified of all changes by email at least two months before the effective date.

## **Article 13 Privacy.**

13.1 Swapfiets considers it important to protect personal data properly. Swapfiets' method for doing so is described in the Privacy Statement. Please consult our Privacy Statement at <https://swapfiets.nl/en-NL/privacy>. If you have any further questions or comments about this, please do not hesitate to contact us via [privacy@swapfiets.nl](mailto:privacy@swapfiets.nl).

## **Article 14: Applicable law & Disputes.**

14.1 This agreement is exclusively governed by Dutch law, regardless of whether an obligation is fully or partially implemented abroad. The United Nations Convention on

Contracts for the International Sale of Goods does not apply.

14.2 Any dispute arising from this Agreement will be submitted initially and exclusively to the competent court in Amsterdam.

14.3 The Parties will only appeal to the court after they have made every effort to settle a dispute in mutual consultation.