

# MUTAGEN TERMS OF SERVICE

## 1. General information

These terms of service (hereinafter “**Terms**”) are entered into between you as the user (hereinafter “**User**” or “**you**”) and Top Signals OÜ (a company incorporated under Estonian law, whose registered office is located at Peetri tn 12, Tallinn 10415, Estonia, registry code 16244613) as the service provider (hereinafter “**Mutagen**”, “**us**” or “**we**”), and govern your access and use of the Mutagen’s website (available via [www.mutagen.xyz](http://www.mutagen.xyz)), smart contracts and software, including the purchase, sale, burning, exploitation and/or any other use of Mutagen’s non-fungible tokens (hereinafter “**NFTs**”) by you (hereinafter “**Services**”).

By accessing or using any part of Mutagen’s website, smart contracts or software, including for purchasing, selling, burning, exploiting or using in any other ways Mutagen’s NFTs, you confirm that: (i) you have reached the age of 18 years or you have the permission of your parent or legal guardian to use Mutagen’s Services; (ii) you have the power to enter into a binding contract with Mutagen and are in no way prohibited from doing so under any applicable laws, and (iii) you are bound by and will use Mutagen’s Services in accordance with these Terms and all applicable legal and/or regulatory provisions.

Mutagen reserves the right to unilaterally modify and update these Terms at any time, provided that the modifications and updates are required based on justified reasons (e.g. change in applicable laws, reasonable business interests of Mutagen, improving the existing features, etc.), it being specified that any change relating to the said Terms will be published on this page.

## 2. Mutagen’s NFTs

Mutagen uses smart contracts stored on the Ethereum network to enable you to purchase certain unique NFTs that we call Genesis NFTs (hereinafter “**Genesis NFT**”) and Mutagen NFTs (hereinafter “**Mutagen NFT**”). Each Genesis NFT and Mutagen NFT is linked to a unique, digital, visual work of art (hereinafter “**Artwork**”) created by various artists we collaborate with (please see more under section “Artists” at the Mutagen’s website).

We differentiate Genesis NFTs as source Artworks and Mutagen NFTs as layer Artworks whereas Mutagen NFTs enable to trigger changes, i.e. mutations, in the Genesis NFTs. Mutagen has issued altogether 40 Genesis NFTs and 4,096 Mutagen NFTs. Each Genesis NFT has 256 variations it can mutate into. Each Mutagen NFT triggers mutation of a Genesis NFT to a specific variation. To mutate a Genesis NFT, i.e. to trigger changes to it, the owner of a Genesis NFT needs to burn a Mutagen NFT, i.e. initiate an irreversible transaction which permanently destroys the Mutagen NFT in question. This makes Mutagen NFTs a deflationary collection.

Considering the nature of Genesis NFTs which can mutate into a number of variations, and the nature of Mutagen NFTs which trigger mutations only by burning them and are, thus, of deflationary collection, there is no predetermined value of Genesis NFTs or Mutagens NFTs. Similarly to what is common to artworks in general, the value of each Genesis NFT or Mutagen NFT is subjective and volatile. This means that a specific Genesis NFT or a specific Mutagen NFT may prove to be more valuable than other Genesis NFTs or Mutagen NFTs whereas as a Genesis NFT may prove to be more valuable than a Mutagen NFT and vice versa. However, both during the process of minting (i.e. while specific Artwork is allocated to specific NFT) and first level purchase (i.e. while specific NFT is transferred to specific first owner), the value of Genesis NFTs and Mutagen NFTs, or any randomised packages thereof (please see Section 3 below), are equal with each other.

### **3. Purchasing NFTs**

For the purpose of enabling you to purchase Genesis NFTs and Mutagen NFTs, Mutagen has created a mixed pool of NFTs.

Mutagen's website enables you to submit a request for the purchase of a randomised package of NFTs from the mixed pool. The randomised package may include: (i) a single Genesis NFT; (ii) multiple Genesis NFTs; (iii) a single Mutagen NFT; (iv) multiple Mutagen NFTs; or (v) a combination of one or more Genesis NFTs and/or one or more Mutagen NFTs. Content of the package to which you submit a purchase request is randomised and Mutagen has no control over it. You are not able to choose whether you receive one or more Genesis NFTs, Mutagen NFTs or any combination thereof. However, considering the nature of NFTs and the fact that their future value is subjective and volatile, the randomised packages which you can purchase are deemed

to be of equal value upon purchase. You can see the price applicable to your purchase of a randomised package of NFTs during the process of submitting your request.

Your request to purchase a randomised package of NFTs is considered to be an offer to conclude a contract between you and Mutagen. Mutagen's acceptance of the offer, i.e. a decision to provide you with the randomised package of NFTs, is considered to be an acceptance to conclude a contract. A contract between you and Mutagen is considered to be concluded from the moment Mutagen accepts your offer and provides you with the randomised package.

For the purpose of you being able to purchase NFTs, you must assure that you (i) have all necessary accounts or registrations (if any, e.g. Ethereum wallet) and other equipment or skills necessary to accept the purchased NFTs; and (ii) possess all means and skills for accessing and using Ethereum network to the extent required for exercising the rights and features arising from NFTs. You also hereby (i) agree with the understanding that NFTs are such digital content which are not delivered on a tangible medium; (ii) expressly consent to the delivery of NFTs on an intangible medium; and (iii) acknowledge that you do not have the right to withdraw from the purchase of NFTs.

#### **4. Rights to the NFTs**

By purchasing NFTs from Mutagen, you get an ownership to a specific NFT. As the owner of a NFT, you have the right to, at any time, sell, trade or transfer the NFT to any third parties.

As the owner of a Mutagen NFT, you have the additional right to, at any time, burn it, i.e. initiate an unreversible transaction which permanently destroys the Mutagen NFT in question. If you simultaneously own a Genesis NFT, burning of the Mutagen NFT may trigger mutations in the Genesis NFT.

As long as you retain ownership to a specific NFT, you will hold a limited, non-assignable, non-sublicensable, worldwide and royalty-free license to the unique Artwork linked to the NFT. The license granted to you establishes your right to display the Artwork linked to the NFT, but you do not have any legal ownership, right or title to any copyrights, trademarks or others intellectual property rights included in or related to the Artwork linked to the NFT.

**You are permitted to display the Artwork linked to your NFT both privately and publicly (i) to promote and share information about your collection, taste and interest in the Artwork and the NFT; (ii) to discuss and comment on the Artwork and the NFT; (iii) to offer the NFT for sale, trade or transfer on any third party marketplaces, exchanges, platforms or applications; (iv) to exhibit the Artwork within any virtual worlds, virtual galleries, virtual museums or other navigable and perceivable virtual environments. You are also permitted to create derivative works from the Artwork and feature the Artwork in images, movies, videos, video games and other forms of media provided that (i) you do not thereby harm the honour or reputation of the artist (i.e. author of the Artwork) or Mutagen, and (ii) such use of the Artwork by you does not serve a commercial purpose.**

If not established otherwise in these Terms or expressly agreed in writing by artist and Mutagen, you are prohibited to (i) modify, distort, mutilate, or perform any other modification to the Artwork linked to the NFT; (ii) use the Artwork linked to the NFT to advertise, market, or sell any third party product or service; (iii) use the Artwork linked to the NFT in connection with images, videos, or other forms of media that depict hatred, intolerance, violence, cruelty, or anything else that could reasonably be found to constitute hate speech or otherwise infringe upon the rights of others; (iv) sell, distribute or display for commercial gain, or otherwise commercialize merchandise that includes, contains, or consists of the Artwork linked to the NFT; (v) attempt to trademark, copyright, or otherwise acquire additional intellectual property rights in or to the Artwork linked to the NFT; (vi) attempt to mint, tokenize, or create an additional cryptographic token representing the same Artwork linked to the NFT (although we encourage you to issue further tokens on the basis of our NFTs, i.e. divide our NFTs to further non-fungible tokens, you are required to reach out to the artist of the Artwork linked to the original NFT in question to get the artist's express permission thereto); (vii) falsify, misrepresent, or conceal the authorship of the Artwork linked to the NFT; or (viii) otherwise utilize the Artwork linked to the NFT for your own or any third party's commercial benefit or prejudicial to the honour or reputation of the artist (i.e. author of the Artwork) or Mutagen.

## **5. Prints of Genesis NFTs**

A certain number of extracts in the form of digital prints (hereinafter “**Print**”) can be created from each Genesis NFT. To the extent that the limit of Prints available for the specific Genesis NFT has not been exceeded, anyone has the possibility to create and purchase a Print. Similarly to the purchase of NFTs, Mutagen uses smart contracts stored on the Ethereum network to enable you to purchase Prints. You can see the price applicable to your purchase of a Print during the conclusion of purchase transaction.

For avoidance of any doubt, your request to create and purchase a Print is considered to be an offer to conclude a contract between you and Mutagen. Mutagen’s acceptance of the offer, i.e. a decision to provide you with the Print, is considered to be an acceptance to conclude a contract. A contract between you and Mutagen is considered to be concluded from the moment Mutagen accepts your offer and provides you with the Print.

For the purpose of being able to purchase Prints, you must assure that you have all necessary means to accept Prints. You also hereby (i) agree with the understanding that Prints are such digital content which are not delivered on a tangible medium; (ii) expressly consent to the delivery of Prints on an intangible medium; and (iii) acknowledge that you do not have the right to withdraw from the purchase of Prints.

By purchasing a Print, you get an ownership to that Print. As the owner of a Print, you have the right to, at any time, sell, trade or transfer your Print. You also have the additional right to, at any time, burn the Print, i.e. initiate an unreversible transaction which permanently destroys the Print in question.

Burning of a Print results in you being returned 90% of the current price in the bonding curve (hereinafter “**Bonding Curve**”). A unique Bonding Curve is associated with each Genesis NFT from which Prints can be made. The more Prints have been made from a specific Genesis NFT, the higher the purchase price for additional Prints will be. The bonding curve retains the funds received from the purchase of Prints in an aggregated pool (hereinafter “**Burn Reserve**”). Once you burn a Print, you will receive a portion, i.e. 90% of the current Bonding Curve price, of the funds held in the Burn Reserve of a specific Genesis NFT. You hereby acknowledge that Mutagen makes no representations or warranties in relation to Bonding Curve and Burn Reserve of Genesis NFTs and that burning of a Print may result in you receiving less than the initial purchase price you paid for the Print.

As long as you retain a Print, you will hold a limited, non-assignable, non-sublicensable, worldwide and royalty-free license to use the unique Artwork contained in the Print. The license granted to you establishes your right to display the Artwork contained in the Print, but you do not have any legal ownership, right or title to any copyrights, trademarks or others intellectual property rights included in or related to the Artwork contained in the Print.

**You are permitted to display the Artwork contained in your Print both privately and publicly (i) to promote and share information about your collection, taste and interest in the Artwork contained in the Print; (ii) to discuss and comment on the Artwork contained in the Print; (iii) to offer the Print for sale, trade or transfer on any third party marketplaces, exchanges, platforms or applications; (iv) to exhibit the Artwork within any virtual worlds, virtual galleries, virtual museums or other navigable and perceivable virtual environments. You are also permitted to create derivate works from the Artwork and feature the Artwork in images, movies, videos, video games and other forms of media provided that (i) you do not thereby harm the honour or reputation of the artist (i.e. author of the Artwork) or Mutagen, and (ii) such use of the Artwork by you does not serve a commercial purpose.**

If not established otherwise in these Terms or expressly agreed in writing by artist and Mutagen, you are prohibited to (i) modify, distort, mutilate, or perform any other modification to the Artwork contained in the Print; (ii) use the Artwork contained in the Print to advertise, market, or sell any third party product or service; (iii) use the Artwork in connection with images, videos, or other forms of media that depict hatred, intolerance, violence, cruelty, or anything else that could reasonably be found to constitute hate speech or otherwise infringe upon the rights of others; (iv) sell, distribute or display for commercial gain, or otherwise commercialize merchandise that includes, contains, or consists of the Artwork contained in the Print; (v) attempt to trademark, copyright, or otherwise acquire additional intellectual property rights in or to the Artwork contained in the Print; (vi) attempt to mint, tokenize, or create an additional cryptographic token representing the same Artwork contained in the Print; (vii) falsify, misrepresent, or conceal the authorship of the Artwork contained in the Print; or (viii) otherwise utilize the Artwork contained in the Print for your own or any third party's

commercial benefit or prejudicial to the honour or reputation of the artist (i.e. author of the Artwork) or Mutagen.

**6. Transaction fees**

Like any other transaction on the Ethereum blockchain, you will need to pay a “gas fee” per each purchase, sale, trade or transfer transaction relating to Mutagen’s NFTs that goes to the Ethereum miners (hereinafter “**Transaction Fee**”). You hereby acknowledge that in case your transaction fails for any reasons, the Transaction Fee is not refundable. You will see the applicable Transaction Fee during conclusion of the transaction. If you purchase, sell, trade or transfer your NFTs or Prints on a third-party marketplace (e.g. OpenSea), you will be subject to the terms of respective marketplace which may include separate (and/or additional) payment of service fees and/or commissions.

**7. Distribution of proceeds**

Proceeds from the first level sale of NFTs go to its creators, i.e. Mutagen artists and developers (hereinafter “**Mutagen Team**”). Proceeds from secondary sales of NFTs go to you as the seller and the artists. Proceeds from the sale of any Prints go to owner of the respective Genesis NFT from which the Print is created, Mutagen Team and the Burn Reserve.

For more information, please see the below chart of distribution of proceeds:

	<b>First level sale of NFTs</b>	<b>Secondary sales of Genesis NFTs</b>	<b>Secondary sales of Mutagen NFTs</b>	<b>Sale of Prints</b>
Burn Reserve	-	-	-	90%
Owner of the NFT	-	97%	97%	5%

Mutagen Team (including artists)	100%	-	3%	5%
Artists only	-	3%	-	-

**8. Management of Mutagen’s website, smart contracts and software**

Mutagen’s website, smart contracts and software are accessible online, 7 days a week, 24 hours a day, except in cases of a force majeure event (hereinafter “**Force Majeure Event**”), scheduled or unscheduled interruptions that may result from a need for maintenance. For the purposes of these Terms, Force Majeure Event is defined as the occurrence of any unforeseen circumstance without any fault on party’s part or beyond party’s reasonable control, including, without limitation, Internet outages, communications outages, issues and problems relating to information technology, fire, flood or war.

Mutagen reserves the right at any time to suspend, interrupt or limit access to all or part of the Mutagen’s website and software, or to pause, amend or cancel the smart contracts that are related to the initial distribution of NFTs, for any reason whatsoever and in particular for maintenance or updating purposes or in the event of an attack on or abuse of the Mutagen’s activities.

The existence of a hypertext link to a third party webpage on or in the Mutagen’s website, smart contracts and/or software referring to another site (for example, the site of an artist) does not imply a validation of legality of this third party webpage or any of its content by Mutagen. Mutagen website, smart contracts and/or software may be also integrated with third party applications and/or devices. In this respect, the Mutagen’s website, smart contracts and software from one side, and the third party webpages, applications and devices from the other side, are strictly independent and you are responsible for complying with all relevant terms and conditions associated with any third party webpages and applications. You agree that Mutagen is not liable for the content, features or functionalities of any third party webpages and applications or devices.

## 9. Restriction on use of Mutagen's Services

The following restrictions apply to your use of Mutagen's Services. You are prohibited to (i) use bots or other automated software to purchase Mutagen's NFTs or Prints; (ii) upload or transmit any viruses, worms, Trojan horses, time bombs, cancel bots, spiders, malware or other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Mutagen's website, smart contracts and/or software; (iii) interfere with or circumvent any security features of Mutagen's website, smart contracts and/or software; (iv) generate non-fungible tokens based on or derived from Mutagen's NFTs or Prints; (v) copy, modify, or otherwise replicate any parts of Mutagen's website; (vi) infringe or violate our intellectual property rights or the intellectual property rights of others; (vii) incite violence, promote hate, harass, abuse, or otherwise discriminate towards others; (viii) violate of these Term or any applicable third party policies, and/or any applicable laws, rules, or regulations; (viii) abusing the rights of Mutagen or other users of Mutagen's Services.

## 10. Ownership of Mutagen properties

Mutagen's website, trademarks, logos and any other distinctive signs used or included on or in Mutagen's website and all content thereto (including, but not limited to, any texts, audio or video clips, editorial content, photographs or any other information in any format and of any nature whatsoever appearing on Mutagen's website) (hereinafter "**Properties**") are the exclusive property of Mutagen.

The Properties may be protected by copyright, trademark, patent or any other intellectual property rights. Information (including the Properties) published on or in Mutagen's website may under no circumstances be used for commercial or advertising purposes, or for any other purposes not expressly permitted under these Terms.

Your use of the Properties is limited to the permitted use of the Services as described in these Terms. Any other use of the Properties is strictly prohibited. For avoidance of any doubt, this includes the prohibition to extract, reuse, transfer, record, broadcast, market, distribute, modify, adapt, translate or reproduce all or part of the elements (including the Properties) of Mutagen's website or any content thereof without prior and express written authorisation from Mutagen. Failure to comply with this prohibition constitutes an infringement that may result in your civil and criminal liability.

## **11. Personal data**

We process your personal data only as permitted by applicable laws and regulations, including the EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR). We only process personal data which you have provided to us in connection with contracts concluded between Mutagen and you under these Terms. We process and store your personal data only to the extent and as long as necessary for the performance of such contracts. With regard to processing your personal data, Top Signals OÜ acts as a data processor. In case of any questions please contact us via [hello@mutagen.xyz](mailto:hello@mutagen.xyz). If you feel that your right to privacy has been violated, you can submit a complaint with the EU supervisory authority of your permanent place of residence. You can find the contact details of supervisory authorities at [https://edpb.europa.eu/about-edpb/board/members\\_en](https://edpb.europa.eu/about-edpb/board/members_en).

## **12. Warranty disclaimer**

Mutagen's website, smart contracts and software, as well as Mutagen's Services in general, are provided on "as is" and "as available" basis, without any express or implied warranty or representation of any kind. Mutagen hereby expressly states and you hereby expressly acknowledge that Mutagen's website, smart contracts and software are not audited. Mutagen makes no representations or warranties on satisfactory quality or fitness for a particular purpose of Mutagen's website, smart contracts and/or software, or Mutagen's Services in general, or non-infringement of third party rights. Mutagen will not assume responsibility for any third party content available through the use of Mutagen's website, smart contracts and/or software. Mutagen's Services are novel and experimental by nature. Mutagen only does its reasonable efforts, but does not assure expected operation or outcome of the technology or associated intellectual property.

## **13. Liability**

The use of Mutagen's website, smart contracts and/or software is at your own risk. Thus, Mutagen cannot be held responsible for any malicious program that may infect the your computer or mobile equipment or any other hardware or software, nor for any loss or alteration of data resulting from the use of Mutagen's website, smart contracts

and/or software. It is your responsibility to take all appropriate measures to protect your data, computer systems or software from contamination by possible viruses, trojan horses or, more generally, any computer programs that could compromise the security of the digital platform.

Subject to the applicable legal and/or regulatory provisions, Mutagen cannot be held responsible for any direct or indirect damage linked to the use or the impossibility of using the Mutagen's website, smart contracts and/or software, and more generally, for any event linked to Mutagen's website, smart contracts and/or software such as, in particular, technical failures, breakdowns, interruptions or modifications.

You are hereby kindly reminded that you remain solely responsible for the data you communicate to Mutagen. Under no circumstances can Mutagen be held liable in case of error, omission or imprecision of the information that you have communicated.

To the fullest extent permitted by the applicable law, the liability of Mutagen is limited to the aggregate amount of purchase prices and transactions fees paid by you to Mutagen (minus any purchase prices and transaction fees already returned to you) before the event giving rise to the liability of Mutagen took place.

Nothing in these terms limit or exclude the liability of Mutagen if such liability cannot be limited or excluded under applicable legal and/or regulatory provisions.

#### **14. Indemnification**

You agree to indemnify and hold Mutagen harmless from and against all damages, losses, and expenses of any kind (including reasonable attorney fees and costs) arising out of or related to your breach of these Terms, your violation of any applicable legal and/or regulatory provisions, or any rights of third parties.

#### **15. Miscellaneous**

Neither Mutagen nor you will be liable in any amount for failure to perform any obligation under these Terms as the result of a Force Majeure Event.

Our failure to exercise or enforce any provision or right of these Terms on one occasion does not mean that and will not prevent us from enforcing on subsequent occasions.

If any provision of these Terms is held to be invalid, void or unenforceable for any reason, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions or Terms.

The relevant courts of Estonia will have jurisdiction in relation to these Terms, although we retain the right to bring proceedings against you for breach of these conditions in your country of residence or any other relevant country. The relevant law of Estonia will apply to these Terms.

In case you have questions, please contact us via [hello@mutagen.xyz](mailto:hello@mutagen.xyz)

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