

Customer Additional Terms & Conditions





Additional Terms and Conditions MachCloud

1. AGREEMENT OF TERMS

1.1. The Services that MachCloud B.V. and its affiliated companies ("MachCloud") provide to Client are subject to Generic Terms and Conditions (NLDigital Terms) and these Additional Terms and Conditions ("Terms"). Please read the Terms carefully before accepting these Terms by: (a) placing an order through MachCloud.com and/or (b) use the MachCloud.com website ("Website") in any other manner. If you do not agree to all of these terms, please do not use this Website. If you are using this Website on behalf of your employer, you guarantee you are authorized to accept these Terms on your employer's behalf. MachCloud provides you access to different resources including the MachCloud website, online store, customer portal, download area, blog, knowledge base, products information, technical support, professional services all be collectively called as services ("Services"), software product itself and related products developed and offered by MachCloud be collectively called as products ("Products"). These Terms will govern Client's use of MachCloud Services and Products. In addition to the Terms and unless otherwise noted, the MachCloud Product License governs use of Products that Client purchases through the Website, unless Client has currently in effect a separate written purchase or license agreement with MachCloud for that Product, in which case that separate agreement governs. If there is a conflict between: (a) these Terms, and (b) either the MachCloud Product License or other applicable purchase or license agreement, the latest persists.

1.2 By accepting these Terms, Client agrees to the following:

"I hereby state that these Terms and Conditions are in English, that I understand the content and have sufficient command of the language of the Terms and Conditions and agree to these Terms and Conditions".

NETHERLANDS Ik verklaar hierbij dat deze voorwaarden in het Engels zijn opgesteld, dat ik de inhoud begrijp en de taal van de voorwaarden voldoende beheers en dat ik akkoord ga met deze voorwaarden

GERMANY Hiermit erkläre ich, dass diese Allgemeinen Geschäftsbedingungen in englischer Sprache verfasst sind, dass ich den Inhalt verstehe und die Sprache der Allgemeinen Geschäftsbedingungen ausreichend beherrsche und diesen Allgemeinen Geschäftsbedingungen zustimme

FRANCE Je déclare par la présente que les présentes conditions générales sont en anglais, que je comprends le contenu et que je maîtrise suffisamment la langue des conditions générales et que j'accepte les présentes conditions générales.

ITALY Con la presente dichiaro che questi Termini e Condizioni sono in inglese, che comprendo il contenuto e ho una padronanza sufficiente della lingua dei Termini e Condizioni e accetto questi Termini e Condizioni



SPAIN Por la presente declaro que estos Términos y condiciones están en inglés, que entiendo el contenido y tengo suficiente dominio del idioma de los Términos y condiciones y estoy de acuerdo con estos Términos y condiciones

PORTUGAL Declaro que estes Termos e Condições estão em inglês, que entendo o conteúdo e tenho domínio suficiente do idioma dos Termos e Condições e concordo com estes Termos e Condições

SWEDEN Jag uppger härmed att dessa villkor är på engelska, att jag förstår innehållet och har tillräckligt behörighet över språket i villkoren och samtycker till dessa villkor

NORWAY Jeg oppgir herved at disse vilkårene er på engelsk, at jeg forstår innholdet og har tilstrekkelig beherskelse av språket i vilkårene og samtykker i disse vilkårene og betingelsene

DENMARK AJeg erklærer herved, at disse vilkår og betingelser er på engelsk, at jeg forstår indholdet og har tilstrækkelig beherskelse af sproget i betingelserne og accepterer disse vilkår og betingelser

FINLAND Vakuutan täten, että nämä ehdot ovat englanniksi, että ymmärrän sisällön ja minulla on riittävä kielitaito ja että hyväksyn nämä ehdot ja ehdot

POLAND Oświadczam, że niniejsze Warunki są w języku angielskim, że rozumiem treść i posiadam wystarczającą znajomość języka Warunków i akceptuję niniejsze Warunki

HUNGARY Kijelentem, hogy a jelen Általános Szerződési Feltételek angol nyelven készülnek, hogy megértem a tartalmat, és elég jól ismerem a Felhasználási feltételeket, és egyetértek ezekkel a feltételekkel.

GREECE Δηλώνω ότι αυτοί οι Όροι και Προϋποθέσεις είναι στα Αγγλικά, ότι κατανοώ το περιεχόμενο και έχουν επαρκή γνώση της γλώσσας των Όρων και Προϋποθέσεων και συμφωνώ με αυτούς τους Όρους και Προϋποθέσεις.

2. GENERIC SERVICE PROVISIONS

- 2.1. Client is obliged to take all measures to prevent improper use or abuse of the services.
- 2.2. In the event that a (higher) use of a Service is the result of abuse by a third party (for example as a result of hacking), Client is obliged to fully comply with the agreed fee for the use of Service. MachCloud, is in no way liable for (higher) costs as a result of improper use or abuse by a third party.
- 2.3. Client will refrain from any form of abuse and use the Services provided for normal communicative use. In particular with an "unlimited" Service, Client is bound by the Fair Use Policy applied by MachCloud with regard to the Service in question.
- 2.4. MachCloud is never obliged to restore mutilated / damaged or lost data or data and MachCloud is never liable for damage to Client as a result of loss or mutilation / damage of data or data, or as a result of disclosure of data or data with a confidential nature.



3. PRICE AND PAYMENT

- 3.1. Prices and rates for Services and Products will be billed monthly, unless otherwise specified, at the beginning of the Service period. In case the billing period is not a full calendar month, client will be billed a proportional, or pro-rata, amount for that period up to the next full month and the rates for the following the full month Service period will be added to this first invoice. Subsequent invoices shall cover full months.
- 3.2. In the event client should be under periodic payment obligation, MachCloud may adjust the applicable prices and rates, on a yearly basis, in writing and in accordance with the Dutch Consumer Price index (as published in Consumentenprijsindex by CBS), at the start of each calendar year.
- 3.3. The first business day of each Calendar month, MachCloud invoices the fee for Products and Services agreed upon with the Client. Any sums due are paid by client in accordance with the payment terms of 14 days or as stated on the invoice. If there is a conflict these terms the latest persists.
- 3.4. Preferred payment method is Business SEPA Direct Debit within EU region. Other payment option is BankWire. A 5% handling fee is charged for Credit Card payments.
- 3.5. Client and MachCloud can agree in writing on other payment methods, payment term and / or processing costs.
- 3.6. If the Client has not paid an invoice on time, an administration fee of EUR 25.00 will be charged on the next invoice.

4. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 4.1. These Terms also cover use of our Blog and Knowledge Base (KB) that come under Services and confidential documents including Manuals, Licenses and Agreements to be collectively called Information ("Information") that Client may find sensitive, confidential and technical resources that all prevail copyright and provision of these Terms held by MachCloud. However, user generated or publicly provided material on Blog or KB that may include text, images, audio, video collectively called Content ("Content") may be inaccurate, inconsistent or inappropriate and may cause any loss, damage which may not be a concern or responsibility of MachCloud. With this, Client may not claim any legal right or held MachCloud accountable for misuse of Information if available of Blog, KB or Website.
- 4.2. Client may not submit any sort of the Web Content on Website, Blog, KB that violates or infringes anyone's copyright, intellectual property rights or that is not appropriate and requires any age limit and restriction to access, read, view or use and it must not be obscene (and obscene as to minors), pornographic, racist, harassing, defamatory or objectionable in anyway.



- 4.3. Client may not also involve in any sort of the activity that cause SPAM on Blog, KB and Website. However, whatever Web Content Client provides or shares with MachCloud in any form should be on the basis nonproprietary and non-confidential unless where specified. Any sort of Content that Client submits to MachCloud in any form, gives full rights to MachCloud to publish, edit, delete, modify, use or reuse in any form for any purpose otherwise explicitly specified. Client also agrees not to use any Information, Services or Products in any unlawful way or activity or share with anyone until and unless Client has written permission from MachCloud.
- 4.4. Client acknowledges to obtain direct access via the Website, knowledge base, Blog and Download Area to certain MachCloud confidential information. Client must hold Information in strict confidence and may provide Information to employees in Client's organization only on a need-to-know basis or as authorized or Client to be accountable upon breach of Terms of Use. Client may use the Information from the Website solely for the purpose of purchasing, maintaining and supporting MachCloud products and Client agrees, either as an individual or on behalf of your employer, to be abide by these Terms and honor all rights on MachCloud Services, Products and Intellectual properties.
- 4.5. Here with provision of Terms, Client does not acquire any rights in Information, except the limited right to use Information as described above including associated intellectual property rights under copyright, trade secret, patent, or trademark laws. Client does not gain any right of ownership of MachCloud Services and Products, but only a limited right of use as per license that is revocable in accordance with the Terms and/or solely specified agreement. Any breach of the Terms will result in termination of Services and/or Products where applicable.
- 4.6. Client's license is solely meant for Client's own usage and the license keys must strictly be kept confidential and may include an expiration date that can result in the termination of the license to use MachCloud Products upon expiration. Once terminated, Client must cease use of Information and return or destroy all Information including Services and Products in Client's access and if Client hold any information other than MachCloud Services and Products, Client must keep them confidential as per provision of this clause.
- 4.7. Client must not share any Information, Services and Product with any of MachCloud account holder, client or customer ("Customer"). Provision of this clause restricts Client to disclose purchasing value of any Products or Services and communicating in any form to discuss Information, Services and Products.



5. PUBLICITY

5.1. MachCloud may use Licensee corporate logo on client lists in various forms (e.g., printed, online, etc.) and in other marketing and sales collateral, for the sole purpose of identifying Licensee as a customer of MachCloud. In any use of Licensee's logo, MachCloud will comply with any logo usage guidelines that Licensee may provide and MachCloud will promptly fix any defect that Licensee bring to MachCloud's attention. MachCloud may use Licensee's name, logo, website link, quote, and any other information that Licensee may provide to develop press releases and other marketing and sales collateral in any form (e.g., print, audio, video, and other formats) that pertain to Licensee's use of MachCloud Products or Services. MachCloud may publish and freely distribute all such information, quote(s), or input. MachCloud will never broadly publish any personally identifiable information without Licensee's prior written consent. MachCloud is not obligated to publish or otherwise use any information or logo that Licensee may provide. The rights that Licensee grant to MachCloud are without any fee or royalty.

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7. INDEMNIFICATION

7.1. Product licensee will, at licensee's own expense, indemnify and hold MachCloud, and its subsidiaries and affiliates, and all officers, directors, and employees thereof, harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs, and expenses, including reasonable attorneys' fees (collectively, "Claims"), arising out of any use of the Products by licensee, any party related to Licensee, or any party acting upon Client's authorization in a manner that is not expressly authorized by this Agreement.

8. DISCLAIMER

8.1. THE MachCloud PRODUCTS OR ANY PRODUCT AND INFORMATION ARE LICENSED "AS IS," AND MachCloud AND ITS LICENSORS, IF ANY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND AGAINST INFRINGEMENT, TO THE MAXIMUM EXTENT AUTHORIZED BY LAW. WITHOUT LIMITATION OF THE FOREGOING, MachCloud EXPRESSLY DOES NOT WARRANT THAT THE PRODUCT WILL MEET LICENSEE'S REQUIREMENTS (OR ITS RESELLER'S OR CLIENT'S) OR THAT OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE. LICENSEE ASSUME RESPONSIBILITY FOR SELECTING THE PRODUCT TO ACHIEVE INTENDED RESULTS, AND FOR THE RESULTS OBTAINED FROM CLIENT'S USE OF THE PRODUCT.

LICENSEE SHALL BEAR THE ENTIRE RISK AS TO THE QUALITY AND THE PERFORMANCE OF THE PRODUCT.

9. LIMITATION OF LIABILITY

9.1. IN NO EVENT SHALL MachCloud BE LIABLE TO LICENSEE OR ANY PARTY RELATED TO LICENSEE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OR LOST PROFITS, EVEN IF MachCloud HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ADDITIONALLY, NO LIABILITY REMAINS ON MachCloud FOR ANY OF THE INCURRED EXPENSES TO ACQUIRE PRODUCTS, ANY SOFTWARE OR HARDWARE OR ANY OTHER LOSS OR DAMAGES DUE TO DOWNLOAD OF PRODUCTS, INABILITY TO USE PRODUCTS, THEFT OF CONFIDENTIAL INFORMATION DUE TO UNAUTHORIZED ACCESS, MISUSE OF PRODUCTS OR INFORMATION IN ANYWAY. IT IS SOLELY CLIENT'S OWN RESPONSIBILITY TO BACKUP AND/OR SECURE CLIENT'S DATA AND INFORMATION. MachCloud WILL NOT BE HELD ACCOUNTABLE FOR DATA AND INFORMATION LOSS. AND CLIENT AGREES TO KEEP MachCloud NON-RESPONSIBLE AND CLIENT WILL NOT MAKE ANY LEGAL CLAIM AND WILL NOT SUE MachCloud.

10. Amendment

10.1. MachCloud reserves the right, in its sole discretion, to amend this Agreement from time to time. If there is a conflict between this Agreement and the most current version of this Agreement, posted at MachCloud.com, the most current version will prevail. If Licensee do not accept amendments made to this Agreement, then this license will be immediately terminated pursuant to Sections 7.



11. AUDIT

11.1. During the Term of this Agreement and for three years after its termination, Licensee will ensure that all books, records and other data (either in electronic form or as hard copies, as applicable) with respect to the Software and all of Licensee's activities relating to this Agreement are maintained in accordance with customary accounting principles. MachCloud has the right to inspect and audit such books, records and other data at MachCloud's expense during the Term of this Agreement and for three years thereafter. Such audit will take place at the locations where the applicable books, records and other data are maintained, upon not less than five business days prior notice, during normal business hours and in a manner that does not unreasonably interfere with Licensee's operations. If the audit reveals unauthorized use of the Software, then, in addition to all other rights and remedies of MachCloud, including but not limited to termination of this Agreement, Licensee must pay within five business days all required fees to cover the unauthorized use and, if the shortfall exceeds 5% of the amounts owed for the audited period, the costs incurred by MachCloud to conduct the verification and any applicable late fees.

12. SERVICE USE

12.1. Client is not permitted to use the connections, systems and the storage space / disk space, e-mail addresses, Domain names and IP addresses made available to Client for acts and / or conduct that are contrary to the law, morality, public order, Netiquette, the Agreement and General Terms and Conditions. This includes, but is not limited to, the following acts and behaviors: spamming, (willful widespread distribution of unsolicited e-mail), infringing copyrighted works or otherwise acting in violation of the intellectual property rights of third parties, dissemination child pornography, sexual harassment, discrimination, threats or other harassment of persons, the unauthorized entry of other computers on the internet (hacking) whereby Client breaches any security and / or Client gains access through a technical intervention using false signals and / or false keys or by assuming a false quality.

12.2. Client indemnifies MachCloud against claims from third parties for any damage caused by the conduct and / or actions of Client described in this article.

12.3. Client will under no circumstances use the Service for any purpose other than the purpose of using the Service as intended by MachCloud.

12.4. Client are responsible for exceeding the agreed amount of data traffic. For the assessment of the generated data traffic, the data as it appears from the systems / administration of MachCloud, provide compelling evidence provided by the Client.

12.5. A Client username is personal and its use is only permitted by Client. Client may not allow others to use the MachCloud Services under Client's username or give Username to third parties.



13. TELEPHONE NUMBERS, (ACCESS) CODES

- 13.1. MachCloud reserves one or more numbers and possibly associated passwords or access codes to Client. Client cannot assert any rights with regard to the use or retention of such numbers and any associated passwords and / or access codes, except for mandatory statutory regulations regarding number portability.
- 13.2. MachCloud cannot guarantee a specific number.
- 13.3. MachCloud may change or withdrawal a number or other Service element to be able to comply to changed laws or regulations or as a result of Client's relocation / relocation, or for other reasons change or revoke password / access code. In that case MachCloud informs Client as soon as possible.
- 13.4. In the event that Client claims porting / retention of a number on the basis of mandatory laws and regulations regarding number portability in a timely and correct manner, MachCloud is not obliged to cooperate with this request as long as Client hasn't fulfilled all due and payable obligations towards MachCloud. During the period in which the Client has not complied with the aforementioned obligations, MachCloud is not obliged to perform any action aimed at maintaining or retaining a number.
- 13.5. MachCloud is under no circumstances obliged to maintain a number after the end of an Agreement or after the end of the relevant telecom Service, if Client did not request timely or correctly porting or retention.
- 13.6. MachCloud is not liable for any damage Client suffers due to a change, withdrawal or loss of a number.
- 13.7. Client will refrain from conducting and using numbers in violation of applicable laws and regulations, morality, or the intended use of the Service.
- 13.8. MachCloud does not guarantee compliance with exchanging number information with other Service providers according the applicable laws and regulations, in case of omission by such Service providers.



14. DOMAIN NAMES AND IP ADDRESSES

- 14.1. If it has been agreed that MachCloud, will mediate for Client in obtaining a domain name and / or IP address, the following provisions apply.
- 14.2. The duration of an Agreement for a domain registration depends on the requested extension of that Domain Name.
- 14.3. As long as Client has not fulfilled obligations, the application for a Domain Name does not grant any right of Client, regardless of Client's rights of the Domain Name. Client is deemed to have waived those rights until Client has fully complied with the Service obligations. MachCloud, in this case, is not liable for any damage or loss of rights with respect to the Domain Name.
- 14.4. Application, allocation and possible use of a Domain Name and / or IP addresses are dependent on and subject to the applicable rules and procedures of the relevant registering authorities. The relevant authority decides on the allocation of a Domain name and / or IP addresses. MachCloud, only fulfills a mediating role in the application and does not guarantee that an application will be honored.
- 14.5. An invoice for registration costs is not a confirmation of registration.
- 14.6. Domain names are registered in Client's name and Client is fully responsible for the use of the domain and the Domain Name. Client indemnifies MachCloud against any claim from third parties in connection with the use of the Domain Name, even if no mediation has been provided in the acquisition of the Domain Name.
- 14.7. MachCloud reserves the right to change IP addresses.