

General Terms & Conditions

General

1. Definitions

For the purpose of these General Conditions and the Agreements of Filtermail the following definitions shall apply:

Filtermail

The company trading under the name of Filtermail, which is registered with the Chamber of Commerce in Amsterdam, registration number 59123885, as well as any natural person or legal entity to be designated by it.

Account

Access to the Services provided to the Licensee by Filtermail, which Services may be accessed by means of a user name and password.

Services

The services offered by Filtermail by means of its Software and other activities;

User

A unique mailbox designated by the Licensee for which the Services are provided;

User name

A code assigned to the Licensee by Filtermail or given by the Licensee himself/itself, with which access to the Services may be acquired in combination with a Password;

Hosted Software

The Software installed on the servers of Filtermail;

Installed Software

The Software installed on the servers of the Licensee;

License

Licensee 's right to use the Services for the number of domains and/or Users agreed upon.;

Licensee

The natural person or legal entity that enters into an Agreement for the purchase of the Services of Filtermail;

Agreement

Any commitment for the provision of Services, also including the agreement for services;

Software

The entirety of the software code with which the Applications of Filtermail have been equipped;

Conditions

The terms and conditions as set out in this document, as well as all the adjustments and modifications thereto;

Password

A combination of figures, letters and symbols assigned to the Licensee by Filtermail or provided by the User himself, with which access to the Services may be obtained in combination with the User name;

Website

The Internet pages of Filtermail, which can be found under the domain of: Filtermail.nl

2. Applicability

2.1 The Conditions shall be applicable to all the quotations, offers, assignments and Agreements between the Licensee and Filtermail, as well as to any quotation, offer, assignment or Agreement that may be designated as a continuation, supplementation or modification of an Agreement concluded earlier between the parties.

2.2 The Conditions together with the confirmation form a legally valid and binding agreement between the Licensee and Filtermail as far as the use of the Services is concerned. By accepting these Conditions and the confirmation these documents and everything provided therein shall replace all previous arrangements between the Licensee and Filtermail in full.

2.3 Unless otherwise agreed in writing these Conditions shall always be applicable to the Agreement with Filtermail.

2.4 In the Conditions words written in plural form should be attributed the same meaning as words written in singular form and vice versa.

2.5 Any deviation from the provisions in the Conditions shall only apply if and in so far as explicitly agreed between the Licensee and Filtermail and laid down in writing between the parties.

2.6 The Licensee shall be obliged to declare the Conditions applicable in full to any Agreements that he/it enters into with third parties, if and in so far as the Licensee instructs Filtermail to provide Services to the relevant third party during the Agreement. The Licensee shall indemnify Filtermail

for claims of third parties which arise as a result of Licensee's failure to comply with this provision.

2.7 In so far as not otherwise provided in the written acceptance of the assignment, general conditions of the Licensee or third parties, regardless of their nature or tenor, shall not be accepted and shall be explicitly rejected by Filtermail.

2.8 When reference is made to written communication in these Conditions, communication by electronic means shall also be included. The version of any communication received or stored by Filtermail shall be considered authentic, subject to proof to the contrary to be provided by the Licensee.

2.9 If one or more of the provisions from the Conditions are void or should be voided, the other provisions shall remain in full force. In that case Filtermail and the Licensee shall enter into consultation to agree on new provisions in replacement of the void or voided provisions, whereby the purpose and the tenor of the original provision shall be observed if and in so far as possible.

AGREEMENT

3. Conclusion of an Agreement

3.1 Offers of Filtermail are always without obligation and valid for a period of 14 (fourteen) days at most. Filtermail shall only be bound to a quotation or offer if its acceptance by the Licensee is confirmed in writing by the Licensee within 14 days, unless stated otherwise.

3.2 Until the time of written acceptance of the Agreement by the Licensee Filtermail shall never be obliged to provide Services.

3.3 Unless otherwise agreed supplements and/or modifications in the Agreement shall only bind the Parties if they have been agreed in writing, in accordance with everything that has been stipulated in the Conditions.

3.4 In order to be able to use the Services the Licensee must explicitly accept the Conditions. Without assent the Licensee shall not be allowed to use the Services.

3.5 Acceptance of the Conditions shall be effected in writing by means of a statement of agreement.

4. Duration, notice and early termination

4.1 The Agreement shall be entered into for a minimum period of 1 (one) month and shall subsequently be extended automatically by the same period, unless notice to terminate the Agreement will be given before the end of the contract period.

4.2 The Agreement for the use of the Services may be terminated before the end of the term in accordance with a notice period of 28 (twenty-eight) days.

4.3 Each party shall be authorized to dissolve this agreement in whole or in part with immediate effect, without further notice of default and without prior judicial intervention, by means of a registered letter to the other party if:

- the other party applies for suspension of payments or is granted suspension of payments;
- the other party applies for bankruptcy or is declared bankrupt;
- the goods made available to the other party within the framework of this agreement are attached and this attachment is not lifted within a reasonable period;

- the other party, also after written demand giving reasonable notice, remains in default to meet his/its obligations from this agreement.
- during a period of more than 90 (ninety) days as a result of force majeure, not including the inability to comply with payment obligations, the other party cannot fulfil his/its obligations or fails to meet his/its obligations pursuant to this agreement or as soon as it has been established that this will take more than 90 (ninety) days.

4.4 By invoking the suspension or dissolution of the Agreement Filtermail can never be obliged to pay any compensation whatsoever, without prejudice to the right of Filtermail to claim payment of all outstanding invoices for services provided to the Licensee, which payments shall become fully due and payable at that point in time.

INVOICING AND PAYMENTS

5. Prices

5.1 The prices for the Services shall depend on the number of Licenses and the License type.

5.2 Filtermail shall invoice periodically for the number of Licenses provided.

5.3 Filtermail shall use in quotations and other offers rates in Euros exclusive of 21 % turnover tax and other levies imposed by the authorities.

5.4 Filtermail shall reserve the right to adjust prices and rates during the Agreement if modifications are imposed on it by the authorities. In that case the modification shall be passed on with effect from the date on which the modification imposed by the authorities takes effect.

6. Invoice and payment conditions

6.1 Only payment of the invoice by transfer in the indicated manner in exchange for adequate proof of payment shall result in discharge of the Licensee. Payment of the invoice must be effected at the latest within 30 days after its date.

6.2 If the invoice is not paid within the period of the previous paragraph, the Licensee shall owe the statutory interest after the expiry of the payment period and after receiving proper notice of default. The interest on the amount due and payable shall be calculated from the time that the Licensee is in default until the time of payment of the full amount.

6.3 If the Licensee cannot agree with the amount invoiced by Filtermail, the Licensee shall be obliged to notify Filtermail in writing immediately, but no later than 14 days after the date of the invoice, stating the reasons. Failure to do so will render the invoice irrevocable.

6.4 The Licensee shall on no account be entitled to settle the invoice with any claim that the Licensee has on Filtermail, by virtue of any reason whatsoever.

6.5 If the Licensee fails to pay the invoice sent by Filtermail in time, Filtermail shall be entitled to suspend or discontinue the obligations that ensue for it from the Agreement or to dissolve the Agreement by means of an extrajudicial statement. If the relevant situation occurs the remedies mentioned shall be at the discretion of Filtermail and the remedy chosen shall be without prejudice to the right of Filtermail to demand performance or compensation of the damage suffered as a result of the suspension or dissolution.

6.6 In the event that the Licensee is at risk to get into a state of liquidation, bankruptcy or suspension of payments, Licensee's obligations shall be immediately and fully due and payable.

6.7 If the Licensee is in default in respect of the fulfilment of his/its obligations, Filtermail shall be entitled to pass on all the costs that it has to incur to collect its claim on the Licensee including the costs of assistance in and out of court. Without prejudice to the right of Filtermail to claim the actually incurred extrajudicial costs the compensation shall amount to 15 % of the principal sum. Filtermail shall not owe any proof vis-à-vis the Licensee in this respect.

6.8 Regardless of the purpose that the Licensee will give to it, each payment by Licensee to Filtermail shall serve first of all to reduce the costs as described in the previous paragraph, subsequently to reduce the arrear interest and finally to pay the principal sum and the accrued interest.

LICENSE CONDITIONS

7. Licensee

7.1 As far as the performance of the Agreement is concerned the Licensee shall be obliged to render assistance to Filtermail.

7.2 If the data required for the performance of the Agreement have not been provided to Filtermail in due time or if the Licensee does not meet the obligations that rest on him/it by virtue of the Agreement in another manner, Filtermail shall be entitled to suspend the obligations arising from the Agreement for a similar period.

7.3 If the Licensee is not able to render the assistance referred to in the first paragraph of this article, he/it shall be obliged to notify Filtermail immediately stating the reasons.

7.4 Without prior written permission of Filtermail the Licensee shall not be authorized to transfer the rights or obligations ensuing from the Agreement in full or in part to third parties.

8. Guarantee

8.1 The Licensee shall be entitled to terminate the Agreement in writing within 30 days after the commencement date of the Agreement if he/it is not satisfied about the Services.

8.2 If termination takes place pursuant to the previous paragraph, the Licensee shall receive back the fee already paid for the Services within 14 days after the termination mentioned in the previous paragraph.

8.3 Filtermail shall manage or provide the Services in the present condition and with all existing errors. Unless explicitly agreed otherwise Filtermail rejects all other guarantees and efforts, especially but not limited to any (possible) implicit guarantees, obligations or conditions of marketability, of suitability for a specific purpose, of the absence of viruses, of the speed of handling e-mail, privacy, of results, of absence of negligence and lack of professional efforts.

8.4 Filtermail guarantees that the Software functions on the recommended configurations. Filtermail will not provide guarantees as far as the functioning of the Software on other configurations than those recommended by it is concerned.

9. Use of License and Services

9.1 The Licensee shall refrain from infringing the rights of third parties by means of the License and/or the Services.

9.2 The Licensee shall refrain from accessing the Software in any other way than by means of the interface that Filtermail makes available as a standard and shall in no way remove or evade the security features of the Software.

9.3 The Licensee shall not undertake any activities that disturb or interrupt the Services (also including the servers and networks for the benefit of the Services).

9.4 Without explicit, prior written confirmation, the Licensee shall refrain from multiplying, (re)selling or trading the services or any derived form thereof.

10. Fair use

10.1 A fair use policy shall apply to the use of the Services.

10.2 Filtermail reserves the right to attach maximum limits to the Services if and in so far as the use is not proportionate to the agreed consideration.

11. Responsibility for safety critical applications

The Licensee shall be allowed to use the Services at its own risk and responsibility for safety critical applications, such as medical systems. Filtermail shall never be responsible or liable for any damage (of whatever nature) if the Services for the said applications are used by the Licensee .

12. E-mail traffic of Licensee or third parties

12.1 Filtermail shall be entitled to store, modify, inspect, use the e-mail messages classified as spam (or reported as (non-)spam) and to share them with or transfer them to third parties. For this purpose the Licensee shall grant Filtermail a license and guarantees Filtermail that the license can be granted. The Licensee shall indemnify Filtermail from any claims of third parties in respect of the said license.

12.2 Filtermail shall make efforts to take measures in order not to store or inspect the e-mail messages that are not designated as spam. If necessary for technical reasons or for the improvement of the software and/or the Services Filtermail shall be entitled to inspect the e-mail messages or to use them. The contents shall be treated confidentially.

12.3 The Licensee declares that Filtermail shall not be liable for any loss or any damage that the Licensee may suffer as a result of the non-availability, incorrectness or incompleteness of the Software and/or Services.

13. Account

13.1 Access to the Services shall be provided in a manner to be determined by Filtermail.

13.2 For access to the Services an Account is required.

13.3 The Licensee must provide the requested identification or contact details in order to receive an Account. The Licensee shall ensure that all registration information provided by it to Filtermail is complete, correct and up-to-date.

13.4 The Licensee shall be fully responsible for the correct use of the user names and Passwords. Filtermail cannot be held liable for abuse and any damage ensuing from it.

14. Right of use

14.1 Filtermail shall grant Licensee a personal, non-transferable and non-exclusive License to use the Services. The License shall only be provided to the Licensee to enable him/it to use the Services in the manner as determined in these Conditions.

14.2 The Licensee shall not be permitted to copy, modify, redevelop, analyze, subject to reverse engineering, decompile the Software – or any part of it - or to retrieve its source code or to make derived works from it or give third parties the possibility to do so.

14.3 Unless Filtermail has granted Licensee explicit permission, the Licensee shall not be allowed to transfer rights related to the Services, to grant a sublicense for it, to provide security, to transfer the user rights on the Services in full or in part or to give them in use to third parties.

14.4 The Licensee shall not be permitted to transfer any right from an Agreement concluded with Filtermail to third parties, otherwise than by transfer of his/its entire enterprise.

15. Browser compatibility

If the Licensee uses an internet browser that is not or insufficiently compatible with the Services, the Licensee shall use the internet browser recommended by Filtermail.

16. Service provisions

16.1 The Services shall be provided „as is“. Filtermail will endeavour to achieve the results envisaged by the Licensee.

16.2 Filtermail will aim at sufficient physical security of the hardware used by Filtermail in accordance with state-of-the art technology.

16.3 Filtermail will aim at a sufficiently and logically secured environment for the use of the Services.

17. Helpdesk

The Licensee shall ensure the accessibility of the contact persons in accordance with the sequence in which they have been described when entering the Agreement. In the event of a calamity Filtermail may contact the relevant contact persons to inform them about the possible threats to the system.

Additional services

18. Complaints about additional activities

18.1 If Filtermail provides additional Services to the Licensee for the benefit of the Services, the Licensee shall be obliged to check these activities after the delivery at a time yet to be determined.

18.2 Complaints about the Services (unreachability or inaccessibility) or (additionally) performed activities must be notified by the Licensee to Filtermail immediately in writing or by e-mail , but at the latest within 3 working days after discovery of the imperfections, stating a detailed description of the shortcoming.

FINAL PROVISIONS

19. Force Majeure

19.1 If and in so far as Filtermail is unable to fulfil the obligations from this Agreement as a result of force majeure, Filtermail shall be entitled to abandon this Agreement in full or in part or to suspend its performance without being obliged to any compensation in respect of the Licensee.

19.2 Without prejudice to section 6:75 of the Dutch Civil Code force majeure shall mean any circumstance whose cause lies beyond the control or actions of Filtermail that result in the fact that performance of the Agreement by Filtermail cannot reasonably be desired. This includes disruptions or breakdowns of the Internet, the telecommunication infrastructure, of any operator or internet service or access provider, the full staffing of dial-up lines or insufficient bandwidth of an access provider, domestic disturbances, mobilization, war, congestion of transport facilities, strike, lock-out, business interruptions, delay in supplies, fire, flooding, import and export restrictions and in the event that Filtermail is unable to deliver on account of its own suppliers, regardless of the reasons, as a result of which performance of the Agreement cannot be reasonably required from Filtermail.

20. Intellectual property

20.1 The Services/Software and everything produced by Filtermail fall directly under the protection of the copyright and all possible other rights of intellectual or industrial property. The rights shall be solely due to Filtermail and/or its licensors.

20.2 The Licensee shall indemnify Filtermail unconditionally for the claims that third parties may have on Filtermail by virtue of Agreements between Licensee and Filtermail, as a result of a wrongful act of the Licensee in respect of those third parties.

20.3 The Licensee shall not remove, render illegible or change ownership marks that are attached to the Software and/or Services.

20.4 Any use, multiplication or publication of the materials that fall outside the tenor of the Agreement or the user rights granted shall be considered an infringement of the copyright. The Licensee shall pay to Filtermail an immediately payable penalty of 10,000 euros, not subject to judicial mitigation, for every act of infringement, without prejudice to the right of Filtermail to receive compensation for the damage suffered by it on account of the infringement or to be allowed to take other legal measures in order to terminate the infringement.

21. Confidentiality

21.1 During and after termination of an assignment or Agreement the Licensee and Filtermail shall (continue) to deal confidentially with everything that has come to the knowledge of the parties as confidential information and shall not provide these data to third parties, unless this is reasonably necessary for the performance of the Agreement or otherwise. Information shall be considered confidential as this has been notified by the other party or if this follows from the nature of the information.

21.2 If by virtue of a statutory provision or a judicial decision Filtermail shall be obliged to provide confidential information to third parties designated by the law or the competent court and it cannot rely on a right of non-disclosure, it shall be entitled to cooperate in such a request. In that case Filtermail cannot be obliged to pay the damage that results

from its cooperation and the Licensee shall neither be entitled to dissolve the Agreement.

22. Cooperation

The Parties shall be mutually entitled to mention the other Party as a reference and to use one another's logos.

23. About these conditions

23.1 These conditions have been filed with the Chamber of Commerce in Amsterdam (the Netherlands).

23.2 Filtermail shall be entitled to modify or supplement its General Conditions before the end of the term. Modifications shall come into effect thirty (30) days after the date of announcement or at a time yet to be specified. The Licensee shall be notified in writing about a modification within the meaning of this article. Subject to a notice to the contrary within 30 days after the date of announcement the Licensee shall be deemed to accept the changed Conditions automatically.

24. Applicable law

24.1 All the Agreements between the Licensee and Filtermail shall exclusively be governed by Dutch law and only the Dutch Court shall be competent to take cognizance.

24.2 If and in so far as the Licensee is not established in the Netherlands, he/it shall choose as address for service a lawyer in Amsterdam in the event that a dispute arises between the parties.

24.3 In so far as the law does not mandatorily prescribe otherwise all disputes arising from the Agreements concluded with Filtermail shall be submitted to the competent court in Amsterdam.