

# General Terms and Conditions

## CBWS

These General Terms and Conditions apply to all offers and quotes from CBWS with respect to Services and are an integral part of every Agreement between CBWS and Customer. Provisions or conditions imposed by the Customer that derogate from, or are not present in, these General Terms and Conditions, are only binding for CBWS if CBWS expressly accepts these in Writing.

Capitalised terms must be understood as defined in Article 1 of these terms and conditions.

### Article 1. Definition of used terminology

In these General Terms and Conditions, the following terms should be understood as defined herewith.

- 1.1. **CBWS:** CBWS B.V., established in Eindhoven, the Netherlands, registered at the Chamber of Commerce of the Netherlands under 87442280.
- 1.2. **Website of CBWS:** the website of CBWS, available in <https://cbws.nl/>.
- 1.3. **Subscription:** the Agreement where one or more parties bind themselves for a certain period to provide services continuously (such as a hosting agreement for 12 months).
- 1.4. **Account:** the right to access to a user interface that Customer can use to manage and configure (certain aspects of) the Services, as well as the information stored by Customer.
- 1.5. **General Terms and Conditions:** the provisions in the present document.
- 1.6. **Customer:** the natural or legal person whom CBWS concludes the Agreement with, including parties negotiating with CBWS to that end, as well as their (authorised) representatives or agents, assignees and heirs.
- 1.7. **Services:** the products and/or services that CBWS shall deliver to Customer pursuant to the Agreement.
- 1.8. **Materials:** all works, such as websites and (web) applications, software, house styles, logos, flyers, brochures, leaflets, lettering, advertisements, marketing and/or communication plans, concepts, images, texts, sketches, documentation, advices, reports and other products of the mind, including

preparatory materials thereof and (whether or not coded) files or data carriers on which the Materials are stored.

- 1.9. **Agreement:** every agreement between CBWS and Customer on the basis of which CBWS delivers Services to Customer.
- 1.10. **Writing:** paper writings, e-mail, communication by fax, to the extent the identity of sender and the integrity of the message can be sufficiently established.
- 1.11. **High Risk Applications:** applications where errors in the Services may lead to death or severe injuries, severe environmental damage or the loss of (personal) data with very high consequential damage. Examples of High Risk Applications are: transport systems where a mistake can result in trains to derail or planes to crash; medical systems where a mistake can result in a patient to receive no treatment or the wrong treatment; systems on which a substantial part of the population relies for the provision of crucial government services, such as DigiD (in the Netherlands); systems in which (a lot of) medical data or other special categories of data within the meaning of the General Data Protection Regulation, or otherwise highly sensitive data, are stored.

## **Article 2. Conclusion of agreements**

- 2.1. Customer can request the Services through the Website of CBWS. The Agreement is regarded as concluded if an email, containing the confirmation and acceptance of the request, is sent - automatically generated or otherwise - to Customer.
- 2.2. Customer can also request Services by filling out the request form available on the Website of CBWS, signing it and sending it to CBWS. Such request is binding for Customer. The Agreement is regarded as concluded if CBWS has sent a message containing the confirmation and acceptance of the request.
- 2.3. Customer can also request a non-binding offer. The Agreement is regarded as concluded after receipt of acceptance of this offer, provided that it is accepted before the expiration date stated in the offer.
- 2.4. If Customer is a consumer, Customer may terminate the agreement free of charge within a period of fourteen days from the moment the order is made.

## **Article 3. Execution of the agreement**

- 3.1. After the Agreement is concluded, CBWS shall make best efforts and apply sufficient care and craftsmanship to fulfil the agreement.
- 3.2. CBWS shall make efforts to effect qualitatively good and uninterrupted availability of the Services and their associated systems and networks, and to provide the Customer with access to data stored therein. However, CBWS

does not make any warranties on the quality or availability, unless agreed otherwise in the quotation referring to a Service Level Agreement (SLA).

- 3.3. Any terms stated or provided by CBWS for the delivery of Service shall be merely indicative, except for the terms stated in the SLA that can only be regarded as obligations of result.
- 3.4. CBWS is entitled to hire third parties to carry out certain work, if that is necessary for the proper execution of the Agreement. Any unexpected additional costs associated herewith shall be borne by Customer, unless agreed otherwise. These General Terms and Conditions also apply to work carried out by third parties in the context of the Agreement.
- 3.5. If such is agreed, CBWS shall provide Customer access to an Account. The Account shall be accessible by entering a username and password. Every action through Customer's account or through an Account made by Customer shall fall under the responsibility of Customers and shall be at Customer's own risk. If the Customer suspects or should reasonably suspect or know that an Account is being abused, the Customer must report this to CBWS as soon as possible so that the latter can take measures.
- 3.6. CBWS shall be available to provide a reasonable level of customer support remotely by e-mail, during normal office hours, unless the applicable SLA states otherwise.
- 3.7. All changes in the Agreement, either at the request of Customer or as a result of the fact that by whatever circumstances another execution is necessary, are considered as additional work if extra costs are involved and if less costs are involved as less work. If this results in less work, this will be deducted from the costs. This will be invoiced to Customer accordingly.

#### **Article 4. Obligations of Customer**

- 4.1. Customer shall make best efforts to do whatever it reasonably takes to allow for a timely and correct execution of the Agreement. More specifically, Customer shall make sure to provide all data to CBWS of which CBWS has indicated that they are necessary for the delivery of the Services or of which Customer should reasonably know that they are necessary for that purpose. The term in which CBWS should execute the agreement shall start only after CBWS has received all requested and necessary data.
- 4.2. If Customer knows or expects that CBWS should take certain (extra) measures to be able to fulfil its obligations, Customer shall notify CBWS without delay. For example, this obligation applies where Customer knows or should know that an extraordinary peak in the workload of the systems of CBWS will occur, that are likely to cause the unavailability of the Services. This applies especially where Customer knows that Services are also delivered to other parties through the same systems as CBWS uses to deliver Services to Customer. After such warning, CBWS shall make all efforts to prevent the

unavailability of Services. All reasonable additional costs made in this context shall be borne by Customer, unless agreed otherwise in Writing.

- 4.3. Customer may not use the Services for High Risk Applications, unless the Service is explicitly marked as suitable for such applications. If no Services are marked as suitable, Customer may send a request to CBWS for a customised agreement
- 4.4. If Customer needs any permit or other permission from a government agency or third party for the intended use of the Services, it is Customer's responsibility to obtain such permits or authorisation. Customer guarantees CBWS that it has all permits and permissions required for the intended use of the Services by Customer.

#### **Article 5. Rules of conduct and Notice and Takedown**

- 5.1. Customer is prohibited to use the Services to violate Dutch or other regulation that Customer or CBWS is subject to, or to violate rights of others.
- 5.2. CBWS prohibits that the Services are used to publish or disseminate Materials (whether they are lawful or not) that:
  - are clearly intended primarily to assist in the infringement of the rights of third parties, such as websites offering hacking tools (exclusively or primarily) or explanations of computer crime which are clearly intended to enable the reader to commit the criminal behaviour described and not to enable the reader to defend himself or herself against such behaviour;
  - are evidently libelous, slanderous, abusive, racist, discriminatory or inciting hatred;
  - contain child pornography or bestiality pornography or are evidently intended to help other find such materials;
  - constitute a violation of the privacy of third parties, which also includes the dissemination of personal data of third parties without any permission or necessity and the approaching of third parties with unsolicited communication;
  - contain hyperlinks, torrents or references to (places containing) materials that evidently infringe copyrights, neighbouring rights or portrait rights;
  - contain unsolicited commercial, charitable or idealistic communication;
  - contain malware such as viruses or spyware.
- 5.3. The dissemination of pornographic Materials using the Services is allowed to the extent this does not constitute a violation of these General Terms and Conditions.
- 5.4. Customer shall refrain from hindering other customers and internet users or harming the systems or networks of CBWS or other customers. Customer is prohibited to execute processes or programs, whether or not through the systems of CBWS, of which Customer knows or should reasonably know that

these may cause damage or hindrance to CBWS, its customers or internet users.

- 5.5. If according to CBWS hindrance, damage or other dangers arise to the functioning of the systems or networks of CBWS or third parties and/or service delivery through the internet, CBWS shall be entitled to take all measures that it reasonably deems necessary to ward off or prevent such danger. More specifically, such danger may exist of excessive transmission of e-mails or other data, denial-of-service attacks, poorly secured systems or activities of viruses, Trojans or similar software. CBWS may recoup the costs reasonably associated with these measures from Customer.
- 5.6. If CBWS receives a complaint on violation of this Article by Customer, or if CBWS establishes that there is such violation, CBWS shall notify Customer of such complaint or violation as soon as possible. Customer shall respond as soon as possible, after which CBWS shall decide how to deal with it.
- 5.7. If CBWS establishes that there is a violation, it shall block access to the Material(s) concerned, without removing the Material(s) definitely (if this proves technically impossible, CBWS shall create a backup). CBWS shall make efforts to not affect other Materials in that process. CBWS shall notify Customer on the taken measures as soon as possible.
- 5.8. At all times, CBWS shall be entitled to report any detected illegal activities.
- 5.9. Although CBWS aspires to act in the most reasonable, careful and adequate way after complaints about Customer, CBWS shall never be obliged to compensate any damages resulting from the measures taken in the context of this Article.
- 5.10. Customer is allowed to resell the Services, but only bundled with or as part its own products or services without disclosing the name of CBWS as supplier or subcontractor. Customer shall indemnify CBWS from any claims from Customer's customers. CBWS is also entitled to take measures in the context of this Article for violations of these General Terms and Conditions by Customer's own customers.

#### **Article 6. Domain name applications**

- 6.1. CBWS does not provide services regarding registration of domain names. Customer is responsible for applications of domain names and linking domain names to the Services it purchases from CBWS.

#### **Article 7. Storage and data limits**

- 7.1. CBWS is entitled to set a maximum to the storage capacity or monthly data traffic that Customer may or can use in the context of the Services.

- 7.2. If Customer exceeds the applicable limits, CBWS may charge Customer afterwards for the additional use in accordance with the tariffs in the pricelist without warning.
- 7.3. CBWS shall not be liable for any consequences of the inability to send, receive, store or change data in case the applicable limit for storage capacity or data traffic is exceeded by Customer.
- 7.4. If excessive use of data traffic is the effect of an external cause (such as in the case of a denial-of-service attack), CBWS shall be entitled to charge Customer with the reasonable costs for such use.

**Article 8. Intellectual property rights**

- 8.1. All intellectual property rights developed or made available by CBWS in the context of the Agreement shall be vested exclusively in CBWS or its licensors.
- 8.2. Customer only has the user rights or other rights that are granted under these General Terms and Conditions or the Agreement, or those that are otherwise explicitly granted in Writing. In other cases, Customer shall not reproduce the Materials or make the Materials available to the public. The foregoing does not apply where it is evident that CBWS has mistakenly refrained from granting Customer such rights explicitly. However, access to or sharing of source codes of Materials shall always be subject to an explicit license.
- 8.3. Unless agreed otherwise in Writing, Customer is not allowed to remove or modify any notice of copyrights, trademarks, trade names or other intellectual property rights in these Materials, including indications of the confidential nature and secrecy of the Materials.
- 8.4. CBWS is allowed to take technical measures to protect its Materials. If CBWS has protected its Materials through such technical measures, Customer is prohibited to remove or circumvent such measures, except where mandatory law provides otherwise.

**Article 9. Prices**

- 9.1. Unless specified otherwise, all prices stated by CBWS exclude VAT and other levies imposed by the government.
- 9.2. If a price is based on data provided by Customer and these appear to be incorrect, CBWS is entitled to adjust the prices accordingly, even after the Agreement is concluded.
- 9.3. If the Agreement is a Subscription, CBWS is entitled to modify the prices once per year in accordance with the inflation, as determined by the relevant price index of Statistics Netherlands.

9.4. Price changes are subject to the same conditions and procedures as changes in the Services and in these General Terms and Conditions.

## **Article 10. Payments**

10.1. CBWS shall invoice the payable amounts to Customer. CBWS may issue electronic invoices. CBWS is entitled to invoice amounts that are due periodically prior to the delivery of Services.

10.2. The payment term for an invoice is fourteen days after the invoice date, unless agreed otherwise in Writing.

10.3. If Customer has not paid the invoice within fourteen days after the payment term has lapsed, Customer is automatically in default.

10.4. If Customer is in default, this shall have the following consequences:

- A statutory interest is due on the outstanding invoice;
- On top of the payable amount and interest, Customer is obliged to full compensation for extrajudicial costs and judicial collection costs, including costs for attorneys, lawyers, bailiffs and collection agencies;
- Websites and other Materials hosted by Customer may, without further warning, be made inaccessible until the outstanding amounts, interest and other payable amounts are paid.

10.5. Customer is not allowed to invoke suspension, set-off or deduction, unless Customer is a consumer.

10.6. If Customer fails to comply with any of the obligations in the Agreement, CBWS is, without sending Customer a notice of default, entitled to take back delivered goods in addition to the delivered Services, without prejudice to the right of CBWS to compensation for damage, lost profits and interest.

## **Article 11. Liability**

11.1. In the context of the conclusion and execution of the Agreement, CBWS is not liable except for the cases stated below, and limited to the maxima stated therewith. However, in case where the SLA's compensation scheme, which constitutes a penalty clause, applies, the payment thereof shall replace the compensation for the actual damage that arises from violation of the norms in the SLA.

11.2. The total liability of CBWS for Customer's damages arising from attributable shortcomings of CBWS in complying with its obligations of the Agreement is limited, per event or series of coherent events, to an amount equal to the total payable amounts (excluding VAT) that Customer has paid under the Agreement until the moment the damage has occurred or, if the Agreement is concluded for a term longer than six months, to an amount equal to the payments that Customer has made in the last six months. The

aforementioned shortcomings also include each shortcoming in complying with the warranty agreed with Customer, or any wrongful action by CBWS, its employees or hired third parties. In no case shall the total compensation for direct damages amount to more than €10,000 (TEN THOUSAND EUROS) (excluding VAT).

- 11.3. CBWS is not liable for indirect damages, consequential damages, lost profits, lost savings or damages arising from business interruptions.
- 11.4. The liability of CBWS for attributable shortcomings in complying with the Agreement only arises if Customer puts CBWS in default without delay and in Writing, giving a reasonable term to redress the shortcomings, and if the attributable shortcomings of CBWS remain after this term. The notice of default must contain as detailed as possible a description of the shortcoming, so that CBWS is able to respond adequately. CBWS shall receive the notice of default within 30 days after the damage has been discovered.
- 11.5. The exclusions and limitations referred to in this article shall cease to apply if and insofar as the damage is the result of intent or deliberate recklessness on the part of the management of CBWS.
- 11.6. Customer is liable to CBWS for damages arising from attributable errors or shortcomings by Customer. Customer indemnifies CBWS against claims concerning the use of the Services by Customer or with its permission in a manner not complying with the rules of conduct in these General Terms and Conditions. This indemnification also applies to persons who are not employees of Customer, but who nevertheless use the Services under the responsibility of or with permission of Customer.

## **Article 12. Force majeure**

- 12.1. Parties cannot be bound to any obligation in the Agreement in case of force majeure reasonably renders the compliance with an obligation reasonably impossible, if such circumstance was not or should not have been foreseeable at the time the Agreement was concluded.
- 12.2. Force majeure must be understood to include (but shall not be limited to): interruptions of public infrastructure normally available to CBWS on which the delivery of Services depend, but which are beyond the factual or contractual control of CBWS, such as the functioning of IANA, RIPE or SIDN, and all networks in the internet that CBWS has not a contractual relation with; interruptions in the infrastructure and/or Services of CBWS caused by cybercrimes, such as (D)DOS attacks or (un)successful attempts to circumvent the protection of networks or systems; shortcoming of suppliers of CBWS, that CBWS could not foresee and where CBWS cannot hold the supplier liable, for example because there was a case of force majeure; defects in things, equipment, programs or other source materials which the Customer has prescribed to use; unavailability of personnel (because of illness or other



causes); measures taken by the government; general problems in traffic/transport; strikes; war; terrorist attacks and domestic disturbances.

- 12.3. If a case of force majeure continues for more than three months, each party is entitled to terminate the Agreement in Writing. In such case, any performance already made on the basis of the Agreement shall be paid in proportion to the performance, without the parties being obliged to pay any other amount.

**Article 13. Secrecy**

- 13.1. The parties shall treat confidentially any information that they provide to each other before, during or after performance of the agreement if said information is marked as confidential or if the receiving party knows or should reasonably suspect that the information was intended to be confidential. The parties shall also impose this obligation on their employees and on any third party they engage with for performance of the agreement.
- 13.2. CBWS shall make efforts to prevent that it takes notice of data that Customer stores or disseminates through its hardware or software in relation to the Services, unless this is necessary for a proper performance of the agreement or CBWS is required to pursuant to a statutory provision or court order. In such case, CBWS shall make efforts to restrict the notice of such data as much as possible, to the extent this is within its power.
- 13.3. The obligations of this article will continue to exist after the agreement has ended for any reason whatsoever and for as long as the providing party can reasonably claim the confidentiality of the information.

**Article 14. Term and termination**

- 14.1. The term of the Agreement is equal to the time span necessary to deliver the Services. If the Agreement is a Subscription, it is concluded for a period of one year.
- 14.2. If parties agree on a fixed term for the Subscription, parties may not terminate the Agreement early, unless there are special grounds as defined in this Article.
- 14.3. In the absence of an early termination of a Subscription, it will be renewed for an indefinite period. The renewed Subscription will be subject to a notice period of one month.
- 14.4. CBWS may terminate or suspend the Agreement immediately if one of the following special grounds applies:
- (a) Customer is in default concerning a substantial obligation;
  - (b) Customer has filed for bankruptcy;

- (c) Customer has applied for a moratorium;
- (d) Activities of Customer are being terminated or liquidated.

- 14.5. If CBWS suspends the fulfilment of obligations, it retains the entitlements arising from the law and the Agreement, including the right of payment for the Services that are suspended.
- 14.6. If the Agreement is terminated, the claims of CBWS against Customer are immediately due and payable. In case of termination or dissolution of the Agreement, outstanding invoices remain due and payable, without any obligation to cancel or nullify such invoices. In case of termination or dissolution by Customer, Customer may only terminate that part of the Agreement that has not yet been executed by CBWS. If dissolution can be attributed to Customer, CBWS is entitled to claim damages arising directly or indirectly therefrom.
- 14.7. The entitlement of CBWS to suspension in aforementioned cases applies to all Agreements it has concluded with Customer at that time, even if Customer is only in default concerning one Agreement, and without prejudice to the right of CBWS to compensation for damages, lost profits and interest.

**Article 15. Procedure after termination**

- 15.1. After the Agreement has ended as a consequence of termination or dissolution, CBWS shall be entitled to immediately remove or make inaccessible all data of Customer and terminate all Accounts of Customer.
- 15.2. CBWS shall remove data it has stored for Customer by means of 'data shredding' software that renders removal of such data irreversible.

**Article 16. Precedence and changes of conditions**

- 16.1. CBWS reserves the right to change or complement these General Terms and Conditions applying to its Services. Changes also apply to agreements already concluded, subject to a notice period of 30 days.
- 16.2. Changes shall be announced by e-mail to Customer, or by means of any other channel for which CBWS can prove that the announcement has reached Customer. Non-substantive changes of minor importance may be made without any announcement.
- 16.3. If Customer refuses to accept a change, Customer shall inform CBWS thereof in Writing accompanied by its reasons within two weeks after the announcement of the changes. CBWS may then reconsider the change(s) concerned. If CBWS does not revoke the change(s) concerned, Customer may terminate the Agreement from the date the new conditions will come into effect.

16.4. Provisions related to specific Services shall take precedence over general provisions related to all Services. Further arrangements between CBWS and Customer shall only take precedence over these General Terms and Conditions if agreed so explicitly in Writing, or if that is evidently the intent of both parties.

**Article 17. Other provisions**

17.1. The Agreement is subject to Dutch law.

17.2. All disputes arising from the Agreement between CBWS and Customer shall be submitted to the competent Dutch court for the district in which Customer is established, unless statutory provisions prescribe otherwise.

17.3. If a provision in the Agreement turns out to be void, this shall not affect the validity of the Agreement as a whole. In such cases, parties shall establish (a) new provision(s) as a replacement, which shall be drafted in away that meets as much as possible the intent of the original Agreement and these General Terms and Conditions.

17.4. Information and announcements, including price indications, on the Website of CBWS are subject to programming and typing errors. In case of any inconsistency between the Website and the Agreement, the Agreement prevails.

17.5. CBWS's log files and other records, electronic or otherwise, constitute full proof of CBWS's statements, and the version of any (electronic) communication received or stored by CBWS shall be deemed authentic, subject to evidence to the contrary to be furnished by the Customer.

17.6. Parties shall notify one another without delay in writing regarding any changes of name, postal address, e-mail address, telephone number or bank account number.

17.7. Parties are only entitled to transfer their rights and obligations under this Agreement to third parties with prior permission from the other party in Writing. Such permission is not required in the case such transfer is part of a company takeover or the acquisition of a majority of shares in the party concerned.