

# Terms and Conditions of Delivery

These terms and conditions of delivery apply to any offer or quotation of Service Provider concerning Services, and are an integral part of any Agreement between Service Provider and Client. Client regulations or conditions that contradict or do not appear in these Terms and Conditions are binding for Service Provider only and to the extent in which they have been accepted explicitly in Writ by Service Provider.

Terms written with a capital letter are defined solely as stated in the article below.

## Definitions of terms used

These terms and conditions use the following terms:

**Service Provider:** the Green Mini host B.V. company, located in Amsterdam and registered with the Chamber of Commerce with file number 61482005. Operating under trade names Green Mini host, Phonq, MacUser.

**Website:** the website of Service Provider, available via the domain names of www.greenmini.nl, www.greenminihost.com and others.

**Subscription:** the Agreement in which one or more parties oblige themselves to continually achieve performances for the duration of a certain period of time (e.g. a 12-month hosting contract).

**Account:** the right of access to a user interface with which Client can manage and monitor (certain aspects of) the Services, as well as the configurations and the files stored for Client itself.

**Terms and Conditions:** the regulations of this document.

**Client:** the natural or legal person with whom Service Provider achieved an Agreement. This term also includes the person who negotiates with Service Provider on that, as well as his/her representatives, delegates, legal recipients and heirs.

**Services:** the products and/or services provided by Service Provider to Client on the basis of an Agreement.

**Materials:** all works, like websites and (web) applications, software, house styles, logos, folders, brochures, leaflets, lettering, advertisements, marketing- and/or communication plans, concepts, images, texts, drafts, documentation, advice, reports and other products of the mind, as well as any preparatory material involved and data (coded or not), servers or data carriers that carry the Materials.

**Agreement:** any agreement between Service Provider and Client, on the basis of which Service Provider delivers Services to Client.

**In Writ:** in addition to paper, also email and fax communication, provided that the identity of the sender and the integrity of the message are sufficiently warranted.

**Applications with Increased Risk:** applications

in which an error in Services can lead to death or severe injury, severe environmental damage or loss of (personal) details resulting in extensive damage or harm. Examples include transportation systems in which an error may lead to derailed trains or aeroplane crashes; medical systems in which an error may lead to patients not receiving treatment or receiving the wrong treatment; systems in which a substantial part of society is dependent on receiving proper governmental services (like DigID in the Netherlands); systems which store (much) medical data or other special data concerning laws on the protection of personal data, or other highly sensitive data.

## Article 1. Signing the contract

1.1 Client can request the Services directly from the Website. The Agreement comes into existence as soon as the (manually or automatically generated) email of Service Provider has been sent, including the confirmation and acceptance of the request. Client can also request a free quotation. The Agreement comes into existence as soon as the agreement of the quotation has been received, but only if this takes place before the end date mentioned in the quotation.

1.2 Accepted Agreements are final. If Client is a customer, the delivery of Services shall start immediately after ordering, but only if Client explicitly agrees.

## Article 2. Execution of the Agreement

2.1 After creation of the Agreement, Service Provider shall perform the activities mentioned as well as it is able and while applying sufficient care and expertise.

2.2 Service Provider shall make efforts to realise high-quality and uninterrupted availability of Services and the systems and networks that requires, and to realise Client access to the data stored. However, Service Provider does not offer any guarantees concerning quality or availability, unless stated otherwise in the quotation through an explicitly mentioned Service Level Agreement (SLA).

2.3 Terms of delivery provided by Service Provider are exclusively indicative, except when the applicable SLA mentions terms that cannot be interpreted in any other way than to be binding of results.

2.4 If and for as far as a good execution of the Agreement demands so, Service Provider has the right to have certain activities performed by third parties. Any unexpected extra costs shall be paid by Client, unless otherwise agreed. These Terms and Conditions also apply to activities that third parties perform in the light of the Agreement.

2.5 If this has been agreed, Service Provider shall grant Client access to an Account. The Account shall be accessible by entering a password and a user name. Every action that occurs through Client's Account or through an Account created by Client shall be expected to be the responsibility of Client and to have been created by Client. If Client expects or can reasonably be expected to expect or know that the Account is being or has been misused,

Client shall make Service Provider aware of this as soon as possible, so that Service Provider can take measures.

2.6 Service Provider shall be available for a reasonable level of remote client support by email, during regular office hours, in as far as the applicable SLA does not determine otherwise.

2.7 All changes to the Agreement, either at the request of Client or as a result of the fact that, regardless of the cause, a different execution is required, are regarded as extra work when they include extra costs and as less work when they include fewer costs. These shall be invoiced to Client accordingly.

## Article 3. Obligations of Client

3.1 Client shall do and not do everything that is reasonably necessary and desirable in order to achieve a timely execution of the Agreement. In particular, Client shall provide Service Provider with all data of which Service Provider indicates that it requires them or of which Client should reasonably know that these are required to perform the Services. The term within which Service Provider should execute the Agreement shall not start before all required data has been received by Service Provider.

3.2 If Client knows or can expect that Service Provider shall have to take certain (extra) measures in order to meet its requirements, Client shall inform Service Provider immediately. This obligation shall apply, for example, if Client knows or should expect that an abnormal peak in system load of Service Provider may occur, that may result in inaccessibility of the Services. This is even more important if Client knows that Services are delivered to others through the same system. Upon receiving the warning, Service Provider shall do everything in its power to prevent inaccessibility of Services. Unless agreed otherwise explicitly in Writ, all reasonable extra costs this includes can be invoiced to Client.

3.3 Client shall not use the Services for Applications with Increased Risk, unless the Services have been made available explicitly for those applications. If none of the Services are available for those applications, Client can request a custom work agreement with Service Provider.

3.4 If Client requires any permit or other legal or governmental consent for the intended use of the Services, Client shall arrange for those him/herself. Client guarantees Service Provider that all permits and/or consents required for the use of the Services are in the possession of Client.

## Article 4. Code of conducts and notice/takedown

4.1 Client shall not violate Dutch or other law or regulations applicable to Client and/or Service Provider or violate others' rights when using the Services.

4.2 When using the Services, Service Provider shall not offer or distribute Materials (regardless of whether it is legal or not) that:  
- are unmistakably primarily intended to help

others harm the rights of third parties, like websites with (exclusively or mainly) hack tools or information on computer crime that seems to be intended to allow the reader to execute the criminal behaviour described, rather than defend him/herself against it;

- are unmistakably offensive, harmful, insulting, racist, discriminating or cause hatred;
- contain child pornography or bestiality pornography, or seem to be aimed at helping others find such material;
- constitute a violation of the personal living environment of third parties, including at least but not exclusively distributing private data of third parties without need or permission, or repeatedly harassing third parties with unwanted communication;
- contain hyperlinks, torrents or references to (locations of) material that unmistakably violates copyrights, related rights or image rights;
- contain unwanted commercial, charitable or ideological communication;
- contain malicious content like viruses or spy-ware.

4.3 Distributing pornographic Materials through the Services is allowed, but only as long as this does not constitute any troubles or violation of these Terms and Conditions.

4.4 Client refrains from hindering other internet users or damage any systems or networks of Service Provider or other clients. Client shall not start up processes or programs, either through systems of Service Provider or not, of which Client knows or is reasonably expected to know that it hinders or damages Service Provider, its clients, or other internet users.

4.5 If Service Provider judges that hindrance, damage, or any other danger has arisen for the operation of computer systems, or the network of Service Provider or third parties and/or of the provision of services via internet, in particular by sending excessive emails or other data, denial-of-service attacks, ill-protected systems or activities of viruses, Trojans and comparable software, Service Provider has the right to take any measures that it reasonably deems necessary to avert or prevent this danger. Service Provider can hold Client responsible for the costs necessarily resulting from these measures, but only if Client can be reasonably held responsible for the cause.

4.6 If Service Provider receives a complaint concerning violation of this article by Client, or establishes that this seems to be the case, Service Provider shall inform Client of this as soon as possible. Client shall respond as soon as possible. Then Service Provider shall determine how to act.

4.7 If Service Provider judges that a violation has taken place or is taking place, he/she shall block access to the Material concerning, but without permanently removing the Material (unless this proves technically impossible, in which case Service Provider shall make a backup). In this process, Service Provider shall make efforts to not affect any other Material. Service Provider shall notify Client of the measures taken as soon as possible.

4.8 Service Provider shall always have the

right to report illegal or criminal activities. Service Provider has the right to provide the name, address and other identifying information of Client to a third party who has complained that Client violates his/her rights or these Terms and Conditions, but only of the accuracy of that complaint is reasonably sufficient and the third party clearly benefits from the provision of details.

4.9 Even though Service Provider strives to act as reasonably, carefully and adequately as possible upon complaints about Client, Service Provider is never liable for compensation of damage resulting from measures intended in this article.

4.10 Client can resell Services, but only in combination with or as a part of the own products or services of Client, and without making available the name of Service Provider as a supplier or subcontractor. Client shall protect Service Provider against any claims made by clients of Client. Service Provider is allowed to act in full also in the case of violation of these Terms and Conditions by those clients of Client.

4.11 Client is responsible for the insurance of his/her equipment placed by Service Provider concerning theft, damage, and liability concerning third parties.

4.12 Client shall be extremely careful in working in the data centre, in order not to damage the equipment and infrastructure of third parties. Client shall always adhere to the instructions of data centre personnel and (personnel of) Service Provider, as well as to the house rules.

4.13 Unless agreed upon otherwise explicitly, Client is responsible for making and monitoring reliable backups.

## Article 5. Application for domain names

5.1 Applications, assignment and any use of a domain name depend on and are subject to the rules and procedures of the registering organisations concerned, like SIDN for .nl domain names. The organisation concerned determines whether a domain name should be granted. Service Provider shall only fulfil a mediating role with the application and does not guarantee that the application will be successful.

5.2 Client can only deduce that registration has been successful from the confirmation of Service Provider, which states that the requested domain name has been registered. An invoice for registration costs is not a confirmation of registration.

5.3 Client protects and indemnifies Service Provider from all damage connected to (the use of) a domain name in the name of or by Client. Service Provider is not liable for Client losing his/her rights of a domain name or for the fact that a domain name is applied for by and/or provided to a third party in the interim period, except in the case of intent or conscious recklessness of Client.

5.4 Client shall conform to the rules of registration organisations concerning the application, assignment and/or use of a domain name.

5.5 Service Provider has the right to make the domain name inaccessible or unusable, and to transfer it to its own name if Client is proven to be lacking in fulfilment of the Agreement, but only for as long as Client is lacking and only after a reasonable term of fulfilment as stated in a serving notice in Writ has passed.

5.6 In case of dissolution of the Agreement due to defaults of Client, Service Provider has the right to cancel a domain name of Client, observing a serving notice of two months.

## Article 6. Storage and data limits

6.1 Service Provider can set a data and/or storage limit per month that Client can actually use within the scope of the Services.

6.2 Should Client exceed the limits, Service Provider can charge an extra amount per data unit (e.g. MB or GB) to the extent of the excess, according to the price list applicable.

6.3 There is no liability for the consequences of not being able to send, receive, store or change data in case of exceeding of an arranged storage or data limit.

6.4 In the case of an excessive amount of data traffic being caused by an external factor (e.g. a denial of service attack), Service Provider has the right to invoice any costs involved to Client according to reason.

## Article 7. Rights of intellectual property

7.1 All rights of intellectual property on all Materials developed or provided by Service Provider within the scope of the Agreement lie exclusively with Service Provider and his/her license providers.

7.2 Client shall only obtain the user rights and authorities mentioned in this Agreement or which have been agreed otherwise explicitly in Writ. In all other cases, Client shall not make public or copy these Materials, except in the case of accidental omission of such an explicit agreement. Delivery of the source code of Materials, however, is only obligatory as long as it has been explicitly agreed upon.

7.3 Unless and in as far as agreed differently in Writ, Client is not permitted to remove or change any indication of copyrights, brands, trade names or other rights of intellectual property, including indications concerning the confidential nature and secrecy of the Materials.

7.4 Service Provider is permitted to take technical measures to protect his/her Materials. If Service Provider has applied technical measures to protect his/her Materials, Client is not permitted to remove or sidestep this protection, except and in as far as the law forcibly dictates otherwise.

## Article 8. Prices

8.1 Unless explicitly stated otherwise with an amount, all amounts stated by Service Provider exclude VAT and other legal or governmental taxes.

8.2 If the price is based on data provided by Client and these data turn out to be incor-

rect, Service Provider shall have the right to adapt his/her prices to this, even after the Agreement has already been signed.

8.3 If the Agreement concerns a Subscription, Service Provider has the right to alter the prices once per year for inflation according to the relevant price index of the CBS, plus 1 percentage point.

8.4 The same conditions and procedures apply to price changes as to changes of the Services and of these Terms and Conditions.

## Article 9. Payment conditions

9.1 Service Provider shall invoice the amounts owed by Client to Client. Service Provider can use electronic invoices for that. Service Provider has the right to invoice periodic amounts owed in advance of the delivery of the Services.

9.2 The payment term of an invoice is 14 days after the invoice date, unless agreed differently in Writ.

9.3 If Client has not paid an invoice (in part or in whole) after 14 days of the invoice date, he/she is automatically in default without the requirement of a notice of default.

9.4 Client being in default has the following consequences:

- Legal interest is owed on the amount owed;
- In addition to the amount owed and the interest, Client shall pay a reimbursement for any extrajudicial and judicial recovery costs, including the costs of lawyers, jurists, bailiffs and recovery agencies;
- The websites hosted for Client and other Materials that have been made inaccessible until any owed amounts, interest and so forth have been paid.

9.5 Unless Client is a customer, Client is not allowed claims of postponement, settlement or deduction.

9.6 In the case of Client not meeting any obligation of the Agreement, Service Provider has the right to call back any goods delivered without notice of default, in addition to suspension of the Services, not affecting the right of Service Provider of reimbursement of damage, loss of profit and interest.

9.7 Service Provider is never obligated to credit any costs incurred for products that have a running time exceeding the term of notice (e.g. domain names).

## Article 10. Liability

10.1 Within the scope of the creation or execution of the Agreement, Service Provider is not liable for those cases stated below, and at most for the limits mentioned.

10.2 The complete liability of Service Provider for damage suffered by Client as a result of shortcomings of fulfilment of his/her obligations stated in the Agreement imputable to Service Provider, also explicitly including any shortcomings of fulfilment of a guarantee obligation reached with Client, or through wrongful conduct of Service Provider, his/her employees or third parties hired by him/her, shall be limited

to an amount per incident or chain of incidents equal to the entirety of reimbursements (excluding VAT) that Client owes according to the Agreement, or, in the case of the Agreement having a duration longer than three (3) months, an amount equal to the reimbursements that Client has paid during the past three (3) months. The total amount of reimbursement for direct damage shall never exceed ten thousand Euro (excluding VAT).

10.3 Service Provider is explicitly not liable for indirect damage, consequential damage, loss of profit, loss of conservation, damage as a result of data loss or damage as a result of business stagnation.

10.4 The liability of Service Provider due to imputable shortcomings of fulfilment of the Agreement only exists if Client gives Service Provider immediate and sound notice of default in Writ, in doing so applying a reasonable term to solve the default, and if Service Provider remains in default after that term. The notice of default shall give a description as detailed as possible of the default, so that Service Provider shall be able to respond adequately. The notice of default shall be received by Service Provider within 30 days of discovery of the damage.

10.5 The exclusions and limitations intended in this article shall be cancelled if and in as far as the damage is the result of malicious intent or conscious recklessness of the company management of Service Provider.

10.6 Client is liable to Service Provider for damage resulting from an imputable error or shortcoming. Client protects Service Provider from claims concerning non-adherence to the code of conduct intended in article 3 with the use of the Services by or with the permission of Client. This protection also applies to persons who are not employees of Client, but who use the Services with the permission of Client or for whom Client is responsible.

## Article 11. Force majeure

11.1 None of the parties can be held liable for fulfilling any duties in the case of an occurrence outside of the influence of either party, and that could not have been (reasonably) foreseen upon signing the Agreement, annulling any possibility of fulfilment.

11.2 Force majeure includes (but is not limited to) failures of public infrastructure normally available to Service Provider and on which the delivery of the Services depends, but for which Service Provider does not have any power or contractual fulfilment agreement, like the operation of the registers of IANA, RIPE or SIDN, and all networks in the internet with which Service Provider does not have a contract; failures of infrastructure and/or Services of Service Provider caused by computer crime, like (D)DOS attacks or attempts (either successful or not) to sidestep network security or system security; shortcomings of suppliers that Service Provider could not have foreseen and for which Service Provider cannot be held responsible, for example due to force majeure on the part of the supplier; limitations of issues, equipment, software or other source material of which Client has prescribed the use; unavailability of

staff (because of illness or otherwise); governmental intervention; general transportation problems; strikes; wars; terrorist attacks or national disturbances.

11.3 If a situation of force majeure exceeds three months in duration, both parties have the right to dissolve the Agreement in Writ. Whatever has already been fulfilled within the scope of the Agreement, shall be invoiced comparatively, without either party owing anything to the other.

## Article 12. Secrecy

12.1 Parties shall treat information that they provide to each other before, during or after the execution of the Agreement confidentially if this information is marked as confidential or if the receiving party knows or can reasonably be expected to know that the information is intended to be confidential. Parties shall also oblige their employees and any third parties they hired to do the same.

12.2 Service Provider shall not take notice of details that Client stores and/or distributes via the systems of Service Provider, unless this is necessary for a proper execution of the Agreement or if Service Provider is obliged to do so by a legal regulation or judicial order. In that case, Service Provider shall make efforts to limit taking notice as much as possible, for as far as this is within his/her ability.

12.3 The duty of secrecy remains in effect after termination of the Agreement for whatever reason, for as long as the providing party can reasonably be expected to lay claims on the confidential nature of the information.

## Article 13. Duration and termination

13.1 The duration of the Agreement is the time period that is required to deliver the Services. If the Agreement is a Subscription, the duration is a year, unless otherwise agreed.

13.2 If a fixed duration of the Subscription has been determined, no party shall terminate the Agreement unilaterally before the duration has expired, unless special grounds for termination apply, as described below.

13.3 In case of default of timely termination, a Subscription shall be continued indefinitely after the first contract term has passed. In this case, it can be terminated at any time with a one-month term of notice.

13.4 Service Provider has the right to suspend or terminate the Agreement without term of notice if at least one of the following special grounds apply:

- a) Client is in default concerning an actual obligation;
- b) The bankruptcy of Client has been requested;
- c) Client has requested moratorium of payment;
- d) The activities of Client are being terminated or liquidated.

13.5 If Service Provider suspends the fulfilment of obligations, he/she shall remain his/her rights from the law and the Agreement, including the right to claim payment for the

suspended Services.

13.6 If the Agreement is terminated or dissolved, the claims of Service Provider to Client are collectable instantly. In the case of dissolution of the Agreement, amounts already invoiced for services already performed shall remain owed, without any obligation of undoing. In the case of dissolution by Client, Client is allowed to dissolve only the part of the Agreement that has not yet been executed by Service Provider. If the dissolution can be imputed to Client, Service Provider shall have the right to be reimbursed for the direct and indirect damage resulting from that.

13.7 The right of suspension in the aforementioned cases applies to all Agreements reached with Client simultaneously, even if Client is in default with regard to only one Agreement, and not affecting the right of Service Provider for reimbursement of damage, loss of profit and interest.

#### **Article 14. Procedure upon termination**

14.1 Upon termination of the Agreement, as a result of either cancellation or dissolution, Service Provider can immediately dissolve Client's account and Service Provider shall erase any data of Client as soon as possible. In that case, Service Provider is not obliged to provide Client with a copy of these data.

14.2 Erasing of data stored for Client occurs without special care that ensures irreversibility of the erasure, but this can be requested and shall in that case occur for an extra fee with the aid of data shredder software.

#### **Article 15. Order and changes of conditions**

15.1 Service Provider has the right to change and add Services and these Terms and Conditions. Changes also apply to agreements already reached, but only when observing a term of notice of 30 days after announcement of the change.

15.2 Changes shall be made known to Client by email or another channel of which Service Provider can prove that the announcement has reached Client. Non-content-related changes of lesser importance can be implemented at any time and do not require any notice.

15.3 If Client does not wish to accept a change, Client shall announce this within two weeks after the announcement of the change in Writ, including a motivation, to Service Provider. Service Provider can then reconsider the change. If Service Provider does not revoke the change, Client can terminate the Agreement as from the date on which the change shall be effective, but only if the termination is announced before that date.

15.4 Regulations concerning specific Services shall override general regulations concerning all Services whenever they clash. Further agreements between Client and Service Provider shall prevail over these Terms and Conditions only if they are in Writ and if it has been stated explicitly, or if it was the unmistakable intention of both parties.

#### **Article 16. Miscellaneous regulations**

16.1 The Agreement is governed by Dutch law.

16.2 In as far as not prescribed otherwise by the rules of mandatory law, all disputes that might arise as a result of the Agreement shall be presented to the competent Dutch court of the arrondissement in which Service Provider is located.

16.3 Any clause of the Agreement that appears to be void does not affect the validity of the entire Agreement. Parties shall in that case reach new replacement regulations that come as close as legally possible to the intention of the original Agreement and the Terms and Conditions.

16.4 Information and notifications on the Website, including publishing of prices, are subject to the reservation of typographical errors and programming errors. In the case of inconsistency between the Website and the Agreement, the Agreement prevails.

16.5 The log files and other electronic or analogue administration of Service Provider form complete evidence of propositions of Service Provider and the received or stored version of some (electronic) communication by Service Provider counts as authentic, unless opposing evidence is provided by Client.

16.6 Parties shall always immediately notify each other in Writ of any changes of name, postal address, email address, telephone number, and, upon request, bank account number.

16.7 Every party only has the right to transfer its rights and duties of the Agreement to a third party with advance permission in Writ of the other party. This permission is not required in the case of company acquisition or acquisition of the larger part of the shares of the party concerned.

*version 3.01 13-11-2014*