

Supplemental Terms & Conditions Hosting

Aqua Platform



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1 Introduction

These Supplemental Terms & Conditions Hosting apply to services in the field of Hosting as offered by Aqua Platform BV in Jonkersvaart, The Netherlands (hereinafter to be called 'Supplier'). In all cases the General Terms & Conditions apply first. The Supplemental Terms & Conditions Hosting can contain provisions concerning an addition to or a modification of what is determined in the General Terms & Conditions. In such cases, these Supplemental Terms & Conditions Hosting take precedence over the General Terms & Conditions.

2 Definitions

In addition to the definitions stated in the General Terms & Conditions, in these Supplemental Terms & Conditions Hosting the definitions below also apply.

Relative to the General Terms & Conditions, Hosting is considered to be a Service.

Hosting is understood to mean the provisioning of electronic and digital facilities for the benefit of websites, computer systems, computer software, storage of data, and other applications. Among other things, hosting can consist of making available computer processing capacity, storage space for programs and data, connections between the computer equipment being used and the internet, data transfer, power supply including emergency power, monitoring of availability and stability of the systems used, etc. Hosting is also understood to mean the implementation of activities in order to support the primary service, including maintenance on hardware, software and other systems, arranging for back-ups and monitoring continuity, as well as providing answers to questions with regard to the use of the Hosting services.

A Hosting Account consists of all technical facilities and corresponding supportive activities as made available to a Client by Supplier for the benefit of Hosting.

If these Supplemental Terms & Conditions Hosting refer to 'Client' this is understood as the same concept as used in the General Terms & Conditions.

If these Supplemental Terms & Conditions Hosting refer to 'Supplier' this is understood as the same concept as 'Supplier' as used in the General Terms & Conditions.

3 Applicability of these Supplemental Terms & Conditions Hosting

These Supplemental Terms & Conditions Hosting apply to each offer and agreement with regard to Hosting, in as far as both parties have not explicitly agreed on deviating conditions in the Agreement in writing.

These Supplemental Terms & Conditions Hosting take effect on February 15, 2018. Previous versions will lapse as per this date.

4 Mutual obligations

4.1 Obligations of Supplier

Supplier shall always act as a diligent service provider in order to make the agreed Hosting Account available and see to the correct and continuous availability thereof.

Supplier can however not guarantee unlimited permanent availability, since besides the systems and connections of Supplier, systems and connections of Client and of third parties will also be used.

Supplier is obliged to regularly check the use, the availability, the reliability, and the processing speed of the Hosting Account, and to take action in case there is any deviation from the established service levels as agreed with the Client.

4.2 Obligations of Client

Client shall inform Supplier as soon as possible on modifications of relevant data, such as business data and contact details.

When using the Hosting Account, Client shall behave in accordance with what may reasonably be expected from a responsible and prudential internet user.

Client shall refrain from hindering other clients of Supplier, or internet users in general, or to cause them damage by making use of the Hosting Account. Client is prohibited from activating processes or programs of which Client knows or could reasonably have known that Supplier, other clients, or internet users in general will experience hindrance or damage from such actions. If such an occasion arises, Supplier is entitled to (temporarily) block access to the Hosting Account in order to prevent such situations.

Client shall not use the Hosting Account for actions and/or behaviour that are in violation of the applicable legal provisions, the Agreement, or these Supplemental Terms & Conditions Hosting. Among other things these include, but are not limited to, the following actions and behaviour: (1) spamming: sending large amounts of unsolicited e-mails with the same contents; (2) infringing works of others protected by copyright or otherwise acting in violation of intellectual property rights of third parties; (3) publishing or distributing (child) pornography; (4) sexual intimidation or in any way harassing, hindering or threatening persons; (5) hacking: obtaining access to other computer or computer system on or via the internet without permission.

Client shall not transfer his or her Hosting Account or any other rights pertaining to the agreement to third parties and/or make them available to third parties, unless Supplier has given his express written permission to do so.

Client himself will see to provisioning the required hard- and software, auxiliary equipment and connections in order to enable access to and the use of the Hosting Account.

5 Management and maintenance

In case of planned maintenance and control activities, Supplier is obliged to inform the Client in due time on the nature, date, time, and duration thereof. Supplier shall thereby make an effort to have the maintenance activities take place at such a time that the Client will experience as little hindrance thereof as possible.

Supplier is entitled to (temporarily) shut down the Hosting Account or to limit the use thereof without prior notification in as far as this is necessary for emergency maintenance and/or urgent adaptations or improvements of the Hosting Account to be carried out by Supplier, without this resulting in a right for compensation of damages from the Client towards Supplier. Supplier shall make his best efforts to limit such situations to an absolute minimum.

Supplier is authorised to apply modifications to the Hosting Account if the Supplier judges that this is necessary because of the quality and/or availability of the Hosting Account for the Client, or for the quality and/or availability of the provision of services to other clients of Suppliers and/or to third parties.

Supplier shall in all such cases inform the Client as soon as possible on any (emergency and/or urgent) maintenance activities and/or modifications.

6 Complaints, Liability, and Force Majeure

6.1 Complaints

If the Client is of the opinion that the Supplier does not comply with the services or technical facilities as established in the Agreement then the Client should inform the Supplier thereof as soon as possible. The Client shall thereto make use of a communication channel as made available by the Supplier.

Supplier shall make his best efforts to handle complaints as quickly and adequately as possible.

Filing a complaint leaves the other obligations of the Client unimpeded.

Supplier is entitled to make use of an automated system and/or third parties for receiving, registering, processing, and handling complaints.

If Client did not firstly made it known by means of a complaint to Supplier that in the opinion of Client non-compliance with obligations by Supplier is concerned, Client cannot make any further claims.

6.2 Liability

Supplier shall make his best efforts to take care of the Hosting Account to his best insights and capacities in accordance with the requirements of sound craftsmanship, such in accordance with all that may be expected within the framework of the task assigned to Supplier.

The liability of Supplier as a result of attributable shortcoming in the compliance with an Agreement only occurs if Client immediately and thoroughly places the Supplier in default, thereby stating a reasonable term in order to clear the shortcoming and the Supplier after that term still attributable remains in default of complying with his obligations. The proof of default should contain a description of the shortcoming which is as detailed as possible, so that Supplier is capable to respond adequately.

Condition for the occurrence of any right for damages shall always be that client has reported the damage to Supplier in writing or via any other means previously agreed on, as soon as possible after the occurrence thereof. Client should also demonstrate that he has provided Supplier with sufficient opportunity to prevent or limit the damage.

The total liability of Supplier as a result of attributable shortcoming with regard to the compliance of the Agreement is limited to at most the amount of the price agreed upon in the Agreement (excluding VAT).

If the Agreement is primarily a long term agreement with a term of more than 6 months, the agreed price is set at the total of remunerations (excluding VAT) applicable for a period of at most 6 months.

The liability of Supplier for indirect damage, including consequential damage, lost profit, missed savings, and damage because of business stagnation, is exempted.

The Client who acts in violation of his or her obligations pertaining to the Agreement or these Conditions is liable for all damage resulting thereof for Supplier.

The Client indemnifies Supplier against all claims of third parties with regard to damage or otherwise, which occurred in any way by the use by the Client of the Hosting Account, and/or by the non-compliance by the Client with his or her obligations pertaining to the Agreement or these Supplemental Terms & Conditions Hosting.

Supplier is entitled to immediately take the connection provided to the Hosting Account out of use without further notification of the Client if and as long as the Client acts in violation of what is stated in these Supplemental Terms & Conditions Hosting or in the General Terms & Conditions. In that case Supplier is furthermore entitled, if the severity of the violation justifies this, to annul the Agreement as of immediately, without any right for damages for the Client towards the Supplier occurring.

The Client vouches for the correctness and completeness of the data made available to the Supplier. Supplier is not liable for damage caused by the incompleteness or incorrectness of the information provided by or on behalf of the Client.

6.3 Force Majeure

Force Majeure is understood to mean all external causes which could reasonably not have been foreseen, and as a result of which Supplier is not capable to comply with his obligations towards the Client. Among other things, this includes, but is not limited to, disruptions in the connection with the internet, disruptions of the telecommunication infrastructure, disruptions of networks, and disruptions of the power supply, both at the side of the Supplier and at the side of the Client.

Supplier is entitled to appeal to force majeure if the circumstance that precludes the (further) compliance occurs after Supplier should have had complied with his obligation.

During a period of Force Majeure the delivery and other obligations of Supplier are postponed. If the period during which the Force Majeure due to which the compliance with the obligations by Supplier is not possible lasts longer than two (2) days, each of the parties is authorised to annul the Agreement without judicial intervention, without the right for damages occurring for the other party.