

General Terms and Conditions SMSHosting – june 2014

CM Online B.V. is amobile service provider and provides facilities and services such as SMS services, mobile payment services, software development and design for the business market. CM Online B.V. offers these services under different labels (trade names), each with their own speciality, including SMSHosting.

The following terms are an integral part of the Agreement between the Client and CM Online B.V. and / or one of her trade names or brands.

1. Definitions

The terms contained in the Agreement and these General Conditions beginning with a capital letter are defined and have the meaning as set out in this Article:

Agreement: when the request is submitted by a Client and accepted by SMSHosting.

Application Programming Interface: a set of definitions that software programs can communicate with.

Client: every natural person or legal entity with whom CM Online and / or one of her trade names or brands concludes an Agreement, negotiates on its formation, or towards whom CM Online performs any legal act in relation to the Service.

CM Online: the private limited liability company CM Online B.V. (Chamber of Commerce: 53384911).

Codes of Conduct: (i) all applicable laws and regulations, government advice and codes of conduct laid down by competent authorities or industry in the country where the Service and/or the End User Service is delivered; and also (ii) all regulations, guidelines, conditions, policy rules or other requirements that are used by Operators in the country where the Service and/or the End User Service is delivered.

Connection: the connection between SMSHostings Gateway and the Operator and/or the connection between SMSHostings Gateway and the Client.

End User: a natural person who is in possession of or makes use of a mobile telephone and consequently uses the Client's End User Services.

End User Service: (paid) mobile SMS services provided by Client, via the Gateway of SMSHosting, and charged through (Premium) SMS to End Users. The End User Service contains, among others, the content of the messages and the promotion of the End User Service.

Gateway: the system of SMSHosting that creates the connection between a GSM network and the system of the Client.

Keyword: unique combination of letters before the first space in a telephone message, by which the Gateway recognizes the End User Service as such.

Message Traffic: message traffic from and to a mobile telephone.

Premium SMS services: an SMS service where a Short code and / or alias and / or Keyword is used to offer paid mobile SMS services.

Service: the services SMSHosting is to provide to the Client under the Agreement.

Short code: a shortened number intended to offer mobile telephone services other than for spoken communication.

Working Day: Monday to Friday from 8.30 a.m. to 5.00 p.m., excluding generally recognized public holidays in the Netherlands.

2. Scope

2.1 The General Terms and Conditions apply to all requests, quotations and Agreements between SMSHosting and the Client, unless the Parties have expressly agreed otherwise.

2.2 The applicable Codes of Conduct also apply to the End User Service, and supersede the provisions of the Agreement or these General Conditions in case of conflict. The Client accepts the aforementioned Codes of Conduct. Upon request SMSHosting shall inform the Client concerning the contents of said Codes of Conduct. If and insofar for any reason whatsoever the provisions of the Codes of Conduct shall be deemed not to apply to the relations between SMSHosting and the Client, or be declared inapplicable, the provisions of the Agreement and these General Terms and Conditions shall apply.

3. Offers

3.1. All offers made by SMSHosting are without obligation unless the offer expressly states otherwise in writing. Insofar as not stated otherwise, an agreement with SMSHosting shall not be concluded until SMSHosting has expressly accepted or confirmed an order to that effect

a) agreement; SMSHosting accepts the agreement by signing by a legal representative.

b) offer; SMSHosting accepts the request by not making any objection within ten (10) Working Days after signing, if the validity of the offer has not expired.

c) online application; SMSHosting accepts the application by not making any objection within ten (10) Working Days after the request. SMSHosting expressly reserves the right to amend its prices with regard to price lists, brochures, information on websites and other information provided in the context of offers.

4. Prices and payments; taxes

4.1. All prices are in Euros and are exclusive of turnover tax (VAT) and any other levies imposed by the authorities

4.2. Unless a fixed price has been expressly agreed, SMSHosting is entitled to change agreed prices and rates periodically by means of written

notification to the Client. Changes shall apply with due observance of a period of at least 1 (one) month following the written notification.

4.3. SMSHosting is in every instance entitled to pass on price increases arising from an obligation pursuant to legislation and regulations, from an increase in the purchase price of messages or from rates changes effected by operators. SMSHosting shall inform the Client in advance of such price increases as much as possible.

4.4. SMSHosting is entitled to suspend the payment of the revenue generated for the benefit of Client until it receives the corresponding amounts from the operator.

4.5. The Client shall pay all invoices within 14 (fourteen) days of the invoice date, unless the invoice contains express different payment terms, in which case the payment term stated on the invoice will apply.

4.6. In the event that the Client fails to pay SMSHosting the amounts due within the agreed period, statutory commercial interest shall be due by Client on the outstanding amount without any notice of default being required.

4.7. The Client is responsible for payment of the applicable turnover tax (VAT) on its End User Service. The Client shall indemnify SMSHosting for and against all claims by the tax authorities in this regard and shall hold SMSHosting harmless for all losses, penalties and costs arising there from.

4.8. If the Client has granted SMSHosting a mandate to invoice and collect amounts due from an End User via an operator, SMSHosting and the Client will make us of the possibility described in Article 4.4 of the Turnover Tax Act of 1968.

4.9. Any credit balance of SMS messages will not be refunded. If the account has been inactive for six (6) months or longer, the balance of the account will be placed on zero and settled without prior notice to the Client. In case SMSHosting has been informed about the inactivity six (6) months before, an additional agreement may be concluded voor the specified period of inactivity.

5. Obligations

5.1. The Client shall ensure that a sufficient working Connection is set up and maintained between the Client's platform and SMSHosting's platform.

5.2. The Client shall ensure that the correct end user rate for the Message Traffic is set up.

5.3. The Client is obliged to notify large quantities of messages (> 10,000 p/d) to SMSHosting at least 10 (ten) Working Days in advance.

5.4. The Client will ensure that the data which give access to SMSHosting's system are securely stored.

5.5. The Client shall only use the Service for purposes as agreed and described in the Agreement. Any change to the Service is to be requested in writing.

5.6. The Client is responsible for the content of messages sent by the Client and guarantees that these comply with the applicable Codes of Conduct.

5.7. The Client will send SMSHosting the full name of its company, its address, Chamber of Commerce number and VAT number, and the name of its director(s) who are authorized to represent it. Changes to these details must be passed on immediately to SMSHosting in writing.

6. Complaints by End Users and operators – Premium SMS

6.1. The Client is responsible for processing complaints from End Users in connection with the End User Service in the local language.

6.2. The Parties shall under all circumstances adhere to the deadlines and provisions set in the Codes of Conduct for processing complaints by End Users.

6.3. The Parties are jointly responsible for replying to questions from Operators in relation to the End User Service.

6.4. For the handling of complaints from End Users – regarding the End User Service – by SMSHosting, Client shall be charged for an administration fee of € 5,- per handled complaint. For each End User compensation by SMSHosting, Client shall be charged for an administration fee of € 35, for each End User compensation plus the actual amount compensated to the End User by SMSHosting.

6.5. For each End User compensation made by an operator – regarding the End User Service –, SMSHosting shall charge Client for an administration fee of € 35,- for each group of End User compensations – as mentioned on the invoice of the operator – plus the actual amount compensated to the End User.

6.6. Additional costs form complaint handling charged by the operator will be passed on to Client transparently..

7. Warranty and indemnification

7.1 The Client warrants that the content and the promotion of the End User Service under no circumstances infringe the (intellectual property) rights of third parties.

7.2 The Client will indemnify SMSHosting against all claims by authorities, organizations and institutions that supervise compliance with the Codes of Conduct applicable to the End User Service, and also all claims made by Operators in connection with compliance with the Codes of Conduct applicable to the End User Service, and will compensate SMSHosting for all losses, penalties and costs arising there from.

8. Suspension

- 8.1 If the Client acts contrary to an obligation under the Agreement, these General Conditions or the Codes of Conduct, SMSHosting is entitled to suspend provision of the Service.
- 8.2 If the Client does not pay the amounts due to SMSHosting within the agreed payment term, and insufficient revenue is generated for the Service in order to pay the costs incurred by SMSHosting for providing the Service, SMSHosting is entitled to suspend delivery of the Service.
- 8.3 The Client remains liable for payments for the period that the provision of the Service is suspended in accordance with the provisions of this Article.
- 8.4 As soon as the reason for suspension in accordance with the provisions of this Article is removed by the Client, SMSHosting shall resume delivery of the Service. If applicable, the activation costs which SMSHosting incurs in this respect will be charged to the Client.

9. Penalty

- 9.1 If the Client acts or has acted contrary to an essential obligation in the Codes of Conduct by the authority, organization or institution which monitors compliance with said Codes of Conduct, SMSHosting will be entitled to a suspension of Client's current and future outstanding payments for three (3) months in order to compensate possible End User compensations and to comply with (in any) penalties resulting from the breach of Client.
- 9.2 To avoid excessive abuse of the offered functionality (system and GSM network), operators have the possibility to charge unsuccessful transactions as a fine, provided that the number of unsuccessful transactions exceed 25% of the total of successful transactions. This penalty for unsuccessful transactions, charged by the operator (for example Vodafone Netherlands charges € 0.08 per unsuccessful transaction) will be passed on to Client transparently.

10. Setting-off

- 10.1 SMSHosting is entitled to set off the amounts the Client owes to it, including the penalties referred to in Articles 7.2 and 9.2, against the amounts SMSHosting owes to the Client, including the revenue generated by SMSHosting for the Client.
- 10.2 If SMSHosting and the Client have concluded several Agreements, the amounts reciprocally due on the basis of the various Agreements can be set off by SMSHosting, regardless of the Agreement from which the payment obligations in question derive.

11. Disputes regarding amounts payable

- 11.1 If the Client disputes the accuracy of an invoice sent by SMSHosting, the Client will make this known within 10 (ten) Working Days after the date of the invoice in question by registered post to SMSHosting
- 11.2 The Client will only be entitled to suspend payment of the disputed part of the total amount until the dispute has been resolved, if the amount disputed by the Client exceeds 5% of the total amount of the invoice in question (excluding VAT). If the dispute is not resolved within 20 (twenty) Working Days after the due payment date of the invoice in question, the Parties will be able to submit the dispute to an external expert. This external party will be appointed in mutual consultation. The Parties will also make agreements in this regard concerning the costs involved in engaging the external party.

12. Confidentiality and privacy

- 12.1 The Parties undertake reciprocally, not to communicate in any way the content of the Agreement or any information of which it knows or should know that it is confidential and which originates from the other Party or direct business relations of the other Party, to third parties without the prior written consent of the other Party. The provisions of this Article do not apply if disclosure is required by the authorities or by the Operator(s) concerned.
- 12.2 The Client solely receives the user rights and authorities expressly granted under the Agreement, these General Conditions or otherwise, and for the remainder shall not disclose, reproduce or make copies of any materials it receives on the basis of this Agreement from SMSHosting, nor shall the Client process or modify these materials, without prejudice to further arrangements between SMSHosting and the Client in this matter.
- 12.3 If so desired, the Client will have to arrange for message encryption itself.
- 12.4 The Parties shall use the information that is obtained when processing messages from and to End Users in accordance with the applicable legislation and regulations concerning privacy and protection of personal data. SMSHosting will process the aforementioned data solely as the processor under the orders and instructions of the Client, and shall implement suitable technical and organizational measures in order to protect said data against loss or against any form of unlawful processing. The Client may supervise compliance with this following prior consultation.
- 12.5 SMSHosting reserves the right to allow the competent authority, the operator or an End User to view the Message Traffic.

13. Intellectual property rights

- 13.1 The Parties accept and respect each other's intellectual and other property rights. All intellectual property rights to any materials, developed by SMSHosting for or made available to the Client on the basis of the Agreement, such as equipment, software, analyses, designs, documentation, reports and/or offers, and any preparatory material belonging thereto, shall solely be held by SMSHosting and/or its licensors.

14. Liability

- 14.1 The Client recognizes that access to the internet, the GSM network and other communication media is subject to risks in relation to authorizations, authenticity, data security, privacy, availability of services, reliability of transmission, etc. The Client recognizes that he/she is entirely and solely liable for such risks and their consequences.
- 14.2 SMSHosting is solely liable for direct loss attributable to it. By direct loss shall exclusively be understood:
 - a. the reasonable costs incurred to establish the cause and the extent of the loss;
 - b. any reasonable costs incurred to have SMSHosting's faulty performance meet the conditions of the Agreement, unless such faulty performance cannot be attributed to SMSHosting;
 - c. reasonable costs incurred to prevent or limit losses, insofar as the Client demonstrates that said costs have led to the limitation of direct losses as meant in this Agreement.SMSHosting's maximum liability is limited to the amount of the agreed price per month for the Agreement (excluding VAT). In no event, however, shall the total compensation for any direct loss exceed € 50,000.00 (fifty thousand Euros).
- 14.3 If SMSHosting suffers loss as a consequence of the Client acting contrary to an obligation under the Agreement, these General Conditions or the Codes of Conduct, the Client is obliged to compensate SMSHosting for the resulting loss.
- 14.4 The parties shall not be liable for indirect loss, consequential damage, loss of profits, lost savings, loss due to loss of data or data files, or loss due to business stagnation. In particular, SMSHosting is not liable for loss of income by the Client because the Client did not set up correct rates for the Message Traffic.
- 14.5 However, the limitations on liability specified in Articles 14.2 and 14.4 shall cease to apply if and insofar as the loss is due to the intent or willful recklessness of the liable party.
- 14.6 No right to compensation shall ever arise unless the party in question reports the loss to the other party in writing within 10 (ten) Working Days after it has arisen. The other party then has 10 (ten) Working Days to remedy the loss, if possible.

15. Force majeure

- 15.1 SMSHosting is not bound to meet any obligation under the Agreement if it is prevented from doing so as a consequence of force majeure ('non-attributable shortcoming'). The term 'force majeure' is used in this context to mean: government interventions, strikes, interruption of operations, energy disruptions, interruptions in telecommunications facilities of third parties, failure or late compliance by ancillary suppliers of SMSHosting or other third parties engaged by SMSHosting, as well as every other circumstance that SMSHosting could not reasonably have avoided or prevented, which creates an obstacle to the normal performance of the Agreement.
- 15.2 If SMSHosting is prevented from complying with its obligations due to force majeure, it shall make this known to the Client within 10 (ten) Working Days following the day on which the situation of force majeure arose.

16. Duration and termination of the Agreement

- 16.1 The Agreement is entered into for the duration agreed between the Parties in the Agreement, failing which a period of 1 (one) year shall apply.
- 16.2 The Agreement shall every time be tacitly renewed for the duration of the original period unless either SMSHosting or the Client terminates the Agreement for convenience in writing by giving 2 (two) months' notice before the end of the period concerned.
- 16.3 The Client is never entitled to terminate the Agreement for convenience prematurely.
- 16.4 Either Party may terminate the Agreement for cause, wholly or partially, by registered letter if the other Party imputably fails to comply with its obligations under the Agreement, and – insofar as compliance is permanently impossible – if, after sending the most detailed possible written notice of default while allowing a term of 10 (ten) Working Days to remedy the failure, the other party continues to fail to comply.
- 16.5 Either Party may terminate the Agreement for cause, wholly or partially and with immediate effect, by registered letter without need for notice of default:
 - a. if the other Party – whether temporarily or not – is granted suspension of payments, or if a petition in the other Party's bankruptcy is filed, or if the other Party is declared bankrupt, or if a significant part of the other Party's assets are seized, or the other Party's business is liquidated or terminated other than for the purposes of restructuring or merging undertakings, or if the other Party transfers business activities relevant to the implementation of the Agreement to a third party;
 - b. if the situation of force majeure as referred to in Article 15 lasts longer than 20 (twenty) Working Days;
 - c. if such termination is required by the authorities or because of changes to the terms and conditions of Operator(s).
- 16.6 If at the time of such termination as is referred to in Article 16.4 and 16.5 the Client has already received any performance in the execution of the Agreement, such performance and any payment obligation connected therewith shall not be subject to any obligation to undo the Agreement unless the Client demonstrates that SMSHosting is in default with respect to such performance. Any amounts invoiced by SMSHosting before the termination in connection with matters already performed or provided by the same in execution of the Agreement shall

remain fully due subject as provided in the preceding sentence and shall become immediately payable upon termination

- 16.7 Provisions which by their nature are intended to survive termination of the Agreement shall continue to apply after the end of the Agreement. These provisions among other things form part of articles regarding complaint handling (6), warranties & indemnification (7), penalties (9), setting-of (10), confidentiality & privacy (12), intellectual property rights (13), liability (14), force majeure (15) and applicable law & disputes (18) of these General Terms and Conditions, as well as this and the previous paragraph in this Article.

17. Transfer of rights and obligations: subcontracting

- 17.1 The Client is not entitled to transfer rights and obligations under this Agreement wholly or partially to a third party without SMSHosting's prior permission, which shall not be withheld on unreasonable grounds. SMSHosting is entitled to attach conditions to the granting of such permission.
- 17.2 SMSHosting is entitled to transfer the rights and obligations deriving from the Agreement wholly or partially to a group company.
- 17.3 SMSHosting is entitled to engage third parties for the performance of the Agreement.

18. Applicable law and disputes

- 18.1 All offers from and Agreements with SMSHosting and their performance will be governed exclusively by Dutch law.
- 18.2 Any disputes, including those which are only considered as such by one Party, resulting from or connected with the Agreement to which these General Conditions apply or the General Conditions themselves, will – notwithstanding the possibility of appeal – be submitted to the competent court in Amsterdam.

19. Miscellaneous provisions

- 19.1 Notifications, including promises or (detailed) agreements from one to the other Party, that are important for performance of the Agreement, only bind the Parties if they are sent or confirmed by a person authorized thereto in writing.
- 19.2 Contact persons may only represent and bind Parties insofar as this concerns the performance of the Agreement. Contact persons are not authorized to amend the Agreement or these General Conditions.
- 19.3 Amendments or additions to the Agreement or these General Conditions only apply if they are agreed in writing and have been signed by the persons authorized for this purpose on behalf of both Parties. Any amendment or addition will only apply to the relevant Agreement.
- 19.4 Failure by one of the Parties to demand compliance by the other Party with any obligation will not affect the right still to demand compliance, unless the Party in question has expressly agreed to the non-compliance in writing.
- 19.5 In the event that one or more of the conditions in this Agreement or these General Conditions is or becomes null and void, or is set aside by a court, the remaining conditions will continue to apply in full. The Parties will consult as regards the invalid provisions in order to agree, if possible, on a similar provision that is permitted by law.