

Terms of Service - MageHost BV

Please read these Terms of Service carefully as they contain important information about your legal rights, remedies and obligations. By using the services of MageHost, you agree to comply with and be bound by these Terms of Service.

1. General Conditions

- 1.1. When these Terms mention 'Contractor' it refers to MageHost B.V., registered under Dutch law, Schrijnwerkersplein 12, 5555 CP Valkenswaard, registered under Dutch law at the Chamber of Commerce under the number 68538537 (hereafter: the Contractor). When these Terms mention 'Client' it refers to the natural person who or legal entity which enters into an Agreement with the Contractor.
- 1.2. These Terms apply to all offers from the Contractor and to all agreements between the Client and the Contractor and to all associated services deriving from these agreements.
- 1.3. These Terms constitute the entire Agreement between the Contractor and the Client. This means that the applicability of the Client's general terms and conditions is herewith explicitly rejected.

2. Offers and Entering into the Agreement

- 2.1. All offers from the Contractor are entirely free of obligation unless expressly stated otherwise.
- 2.2. Should the Client provide data, drawings, files etc. to the Contractor, the Contractor may assume that these are accurate and shall base his offer thereon. It should be noted that if the Client adjusts the provided data without the Contractor's written consent, this shall ipso facto render all previous offers, based on the old data, to be invalid. See article 8 for further information on this matter.
- 2.3. The Agreement is concluded with a written confirmation by the Contractor of the Client's order. However, an Agreement shall only come into effect after the Contractor received the payment agreed on. The Contractor can confirm the offer by means of post, as well as digital.

3. Costs

- 3.1. The Contractor may review the amount of the compensation when unforeseen circumstances occur after the conclusion of the Agreement or after sending the offer and these circumstances lead to increased costs. 'Unforeseen' as referred to in this paragraph should be explained as circumstances that occur after the draft of the Agreement and that could reasonably not be foreseen. Increasing costs due to unexpected taxes or VAT can be regarded as unforeseen circumstances.
- 3.2. Neither the travel and subsistence expenses nor the advances paid or other expenses, are included in the total amount of costs if these expenses are not explicitly listed in the offer.

4. Recommendations

The Client cannot derive any rights from advice obtained from the Contractor if they do not relate directly to the order, nor can the Contractor be held liable for any damages directly or indirectly resulting from it.

5. Intellectual Property

- 5.1. The Contractor shall reserve all rights to the plans, documents, images, drawings, programs, and the intellectual products he uses or has used within the framework of the execution, unless explicitly stated otherwise.
- 5.2. The Client is expressly forbidden to reproduce or share the information listed under 5.1. without a written consent of the Contractor.
- 5.3. The Client indemnifies the Contractor against any claims concerning the infringement of the intellectual property of a third-party. The Contractor may assume that the performance of the contract does not by any means infringes the intellectual property or another third party right. The Client indemnifies the Contractor against all possible third party claims that are in any way connected to the performance of the contract.
- 5.4. MageHost has drawn up a Data Processing Agreement to meet its obligation under the General Data Protection Regulation. This Data Processing Agreement shall apply to the Agreement and its application.

6. Payment Conditions

- 6.1. Unless otherwise agreed all (partial or complete) invoices are payable 14 days after receipt thereof.
- 6.2. Regardless of the payment conditions agreed upon, the Contractor is at all times entitled to demand security for payment such as, but not limited to a bank guarantee. The Client shall be deemed in default if the Client cannot provide the under 6.2. demanded security. The Contractor shall in that case have the right to dissolve the Agreement and to recover the loss of damage from the Client.
- 6.3. The Client is never entitled to set off any claim which the Client has on the Contractor against claims that the Contractor has on the Client. The Client is solely entitled to set off claims on the Contractor in case the Contractor goes bankrupt. The invoice is immediately and fully due and payable when the Client:
 1. fails to comply with the payment conditions in a timely manner;
 2. is declared bankrupt;
 3. has filed a request for suspension of payment, or is granted (temporarily or definitely) a suspension of payment;
 4. goes into liquidation;
 5. has been dissolved, or a claim for the dissolution of the Client is made;

6. when this is a natural person, passes away;
 7. when this is a natural person, is placed under curatorship.
- 6.4. The Client is, automatically and without notice of default, obliged to pay the extrajudicial costs if the Client fails to comply with the payment obligations. This 'lump-sum refund' is set at 20% of the principal amount to be paid with a minimum of € 50,-.
- 6.5. Any complaint regarding an invoice has to be filed, in writing, within 8 days after receiving the invoice.
- 6.6. Late payment interests are set on 1,25% a month. This interest is calculated from the due date for payment and is automatically and without notice of default payable.
- 6.7. The Client is always obliged to pay the full extrajudicial costs in case these costs exceed the aforementioned lump-sum refund.
- 6.8. If in legal proceedings the court finds in favour of the Contractor, all costs related to the proceedings shall be for the Client.

7. Force Majeure

- 7.1. The Contractor may suspend the performance of the Agreement without paying any form of compensation to the Client, if unforeseeable and exceptional circumstances make it impossible for the Contractor to comply with its obligations under this Agreement, and the Contractor cannot reasonably exercise any control over these circumstances.
- 7.2. Exceptional circumstances as referred to in the previous sentence include, but is not limited to: delivery failure by the suppliers, strikes and weather conditions, theft or other causes for loss of material, war and disturbances or riots political instability, and public unsafety.
- 7.3. If compliance with the Agreement is rendered permanently impossible as a result of unexceptional circumstances, the Agreement can be terminated for that part which remains outstanding. The Client will not be entitled to compensation under these circumstances.
- 7.4. Permanently impossible means, the inability to comply with the Agreement within 6 months after suspending the performance.

8. Adjusting the Agreement

- 8.1. The Contractor shall be entitled to separately invoice the additional work it has to carry out, when the Client changes the quantity of the contract after entering into the Agreement, regardless the Client's reasons for changing the Agreement.
- 8.2. The right to separately invoice additional work includes the right to invoice additional work in case it turns out that the Client (accidentally) submitted incorrect or incomplete information.

9. Termination

- 9.1. The Contractor reserves the right to (partly) dissolve the Agreement, without any judicial intervention being required, if the other party is declared bankrupt, applies for a suspension of payment, is placed under administration, files a bankruptcy petition or fails to properly comply with any of the obligations under the Agreement or fails to comply with its obligations in a timely manner. The contractor is under these circumstances entitled to suspend the performance of the Agreement and to demand the Client to return all of the materials, programmes, plans, files etc.
- 9.2. The foregoing is without prejudice to the other rights of the Contractor, such as the right to compensation for damage caused by the termination of contract.
- 9.3. The Contractor is never obliged to compensate for any damage in situations such as mentioned under 9.1.
- 9.4. The Contractor shall also have the right to dissolve the Agreement in case the Client continues in its failure to properly comply with any of the obligations under this Agreement and the Contractor already sent a formal notice of default to notify the Client of its failure.
- 9.5. The following circumstances shall at any case, though not exclusively, be considered to cause force majeure: strikes, lockouts, fire, water damage, natural disasters or other contingencies from outside, mobilisation, war, traffic stoppages, blockades, import and export restrictions or other government measures or regulations, delivery failure by suppliers or suppliers' failure to deliver in full and in a timely manner, traffic mobilisation, state of siege, disturbances or riots, as well as any circumstance over which the Contractor cannot reasonably exercise any control
- 9.6. The Contractor shall retain its right to compensation when both parties mutually agree to dissolve the Agreement.

10. Complaints

- 10.1. Complaints should be filed in writing at the adres of the Contractor, as soon as possible, at the latest within 14 days after delivery, or within 14 days after the shortcoming should have reasonably been identified the in case the shortcoming was not immediately observable at delivery.
- 10.2. All complaints about contractual liability for shortcomings become barred after 1 year after delivery.

11. Liability

- 11.1. The Contractor shall only be liable for damage and loss that is directly and entirely caused by the misconduct of the Contractor or damage that is reasonably attributable to him. However However, the only types of damage eligible for compensation are those for which the Contractor is insured, or in all reasonableness should have been insured based on the practice in the industry, and subject to the following additional restrictions.
1. The Contractor shall not be liable for company damage, loss of income or such like, regardless the cause.
 2. The Contractor shall not be liable for (any) damage arising out of the execution of the work or the installation or set up of delivered products to used materials or products or materials and products in close physical proximity of the place where the work is executed.

3. The contractor shall not be liable for damage caused intentionally or through gross negligence by subcontractors.
- 11.2. Compensation payable by the Contractor shall be reduced if the price payed by the Client for the services is small in relationship to its loss.
- 11.3. If in any given case the insurance does not offer coverage or no payment is made under the insurance, the liability will be limited to a maximum of twice the amount equal to the invoice amount in respect of the services delivered.

12. Applicable Law

Dutch Law shall apply to all offers, agreements, invoices and other documents established by the Contractor.

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