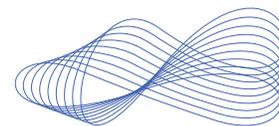


ToS Terms of Service for Cloud Services of Netcloud AG



NETCLOUD

1 Scope

- 1.1 The following Terms of Service (hereinafter called «ToS») contain the framework conditions for all cloud services (hereinafter called «services») that Netcloud AG (hereinafter called «Netcloud») provides for its customers (hereinafter called «Customer») (together called the «Parties»).
- 1.2 The subject matter of the contract and the scope of the services will depend on the offer and the acknowledgement of the order. These documents form integral parts of the entire agreement between Netcloud and the Customer.
- 1.3 The present ToS only apply to the cloud services. All other services, supplies of materials etc. shall be dealt with in separate ToS, General Terms and Conditions of Business or respective individual agreements. This shall also be the case if these services are provided in connection with the delivery of cloud services.

2 Offer and conclusion of the contract

- 2.1 Agreements between the Customer and Netcloud shall be concluded by the return of the signed offer, through an order with reference to the offer, including orders placed online, or through the acknowledgement of an order by Netcloud.
- 2.2 Return with reference to the offer and the acknowledgement of an order by Netcloud may be by letter, fax or email.
- 2.3 The payment of the invoice means that the offer has been accepted.

3 Confidentiality and data protection

- 3.1 Both Parties must treat as confidential data and information that is marked as such and shall comply with the statutory data protection provisions.
- 3.2 The duty of secrecy shall also be incumbent on all of the Parties' employees. The Parties shall impose corresponding duties of secrecy on the persons affected.
- 3.3 This obligation shall continue as long as there is a legitimate interest in such confidentiality, even after the contractual relationship has come to an end.

4 Technical preconditions

- 4.1 The Customer undertakes to establish the technical preconditions for the cloud services. These particularly include the adjustment of the firewall, sufficient internet bandwidth with the appropriate transmission quality as well as any additional system settings.
- 4.2 The cloud services may only be operated with systems and software versions that are compatible with the cloud services. A current list of compatible systems and software versions may be requested from Netcloud at any time.

5 Use of the software

- 5.1 The Customer can be provided with software for cloud services depending on the circumstances. The Customer undertakes to use this software only for the intended purpose.
- 5.2 The Customer is responsible for ensuring that the technical preconditions for the installation and functioning of the software exist.

6 The Customer's obligation to furnish information

- 6.1 The Customer shall promptly draw Netcloud's attention to any special technical preconditions and to the statutory requirements and official regulations and to other rules at the place of destination to the extent that they are of importance for the costs, the execution or the use of the service.
- 6.2 The Customer shall monitor the services and immediately report any problems and any changing circumstances that could affect the services to Netcloud.
- 6.3 The Customer undertakes to provide correct information for the registration of the cloud services.

7 The Customer's obligation to cooperate

- 7.1 The services provided by Netcloud also require the Customer's cooperation. The Customer must make all the necessary preparations and cooperate in all ways necessary. The Customer must especially provide Netcloud with the complete access possibilities, information and details necessary for the proper performance of the contract and do so in good time.
- 7.2 If the Customer does not comply with its obligations to furnish information and cooperate in good time or in the proper way, the Customer shall be responsible for all the ensuing consequences.

8 Netcloud's obligation to furnish information

- 8.1 Netcloud shall draw the Customer's attention to possible risks at an early stage, especially technical preconditions for the provision of the services.
- 8.2 Netcloud shall monitor the services and immediately notify the Customer of any problems and any changing circumstances that could affect the services.
- 8.3 Netcloud shall inform the Customer at an early stage of any planned downtimes, such as for maintenance or emergency drills.

9 Use of the cloud services

- 9.1 Netcloud undertakes with regard to the Customer that the services shall be provided with due care.
- 9.2 The cloud services shall be provided over the public internet and Netcloud can therefore not guarantee that the services will continually function free of interruptions and faults, nor can Netcloud guarantee absolute protection of its network against unauthorised access or unauthorised interception.
- 9.3 The Customer shall have sole responsibility for the content. The Customer undertakes to use this content only for the intended purpose and, in particular, only for its own business segment.
- 9.4 If the cloud services are not used lawfully, or if the Customer provides incorrect information on registration, Netcloud reserves the right to delete the Customer's cloud services or parts thereof.

- 9.5 The Customer may neither resell the cloud services nor lease them to others.

10 Beginning of the service period and its duration

- 10.1 The service period shall commence on the date of installation and of notice from Netcloud to the Customer that the system is ready for operation.
- 10.2 The cloud services shall be provided for an indefinite period.

11 Prices

- 11.1 The prices for the agreed services will be quoted in the offers, including the prices quoted online, and in the corresponding acknowledgements of orders – if such acknowledgements are given.
- 11.2 The monthly fee shall first be due at the beginning of the month in which the service commences.
- 11.3 Unless otherwise indicated, all prices are quoted in Swiss francs, exclusive of value-added tax.

12 Payment terms

- 12.1 Invoices shall be issued monthly.
- 12.2 The time allowed for payment is 10 days strictly net after the issue of an invoice.
- 12.3 Without the need for a separate reminder, late payment shall incur default interest of two per cent above the applicable discount rate of the Swiss National Bank, starting from the due date. Expenses incurred for the reminder and debt collection procedure will be charged for.
- 12.4 It is expressly stated that no counterclaims may be set off against claims.

13 Service and price adjustments

- 13.1 Netcloud reserves the right to make technical modifications to cloud services at any time without first informing the Customer.
- 13.2 Netcloud reserves the right to interrupt the services under certain circumstances in order to carry out the technical modifications.
- 13.3 Netcloud may adjust the cloud service prices at any time from the beginning of a month. They shall be notified to the Customer in writing at least 45 days in advance. The new prices shall apply automatically unless the Customer terminates the contractual relationship in due time.

14 Termination and period of notice

- 14.1 The cloud services or any parts thereof may be terminated by either Party at any time with 30 days' notice to the end of a calendar month. It is not necessary to give reasons for the termination.
- 14.2 Notice of termination must be given in writing; an email meets the requirement for the written form.
- 14.3 Notice of termination that does not comply with the aforesaid requirements shall be null and void.

15 Ownership

- 15.1 Customers are informed that they do not become the owners of any of the systems needed in order to provide the cloud services.

16 Liability

- 16.1 Customers shall be responsible for any damage caused through breaches of obligation on their part, especially due to failure to fulfil, or to properly or punctually fulfil, their obligations to cooperate and/or supply information. Netcloud disclaims all liability in this respect.
- 16.2 Netcloud shall be liable for a sum equivalent to the value of the contract, up to a maximum limit of one million Swiss francs, for direct damage that the Customer suffers in connection with the performance of a contractually agreed service, provided that the Customer proves that Netcloud is at fault. Any further liability, especially for slight negligence, for indirect damage or consequential damage such as lost profits, additional expenses or personnel costs of the Customer, unrealised savings, third-party claims or loss of data as well as liability for agents and damage due to late performance, is expressly excluded to the extent that this is permitted by law.

17 Place of jurisdiction and applicable law

- 17.1 The place of jurisdiction shall be where Netcloud has its principal place of business.
- 17.2 The legal relationship shall be exclusively governed by Swiss law, excluding the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention).

18 Final provisions

- 18.1 These ToS shall apply in all points that have not been mutually agreed in a different way. Special provisions of the Customer which conflict with these ToS shall only apply if Netcloud has agreed to them in writing.
- 18.2 Netcloud reserves the right to adapt the ToS in future contracts in order to take account of changed circumstances.
- 18.3 The ToS may be unilaterally amended by Netcloud. Netcloud shall inform the Customer accordingly. The new ToS shall be deemed approved unless the Customer objects to them in writing within one month. An objection shall be understood as notice to terminate the contract. The latest version of Netcloud's ToS can be viewed at any time at www.netcloud.ch.

Netcloud AG, September 2015

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