

# GENERAL TERMS AND CONDITIONS



## 1. APPLICABILITY

1.1. These are the general terms and conditions of Spryng B.V. (Spryng), which has its registered office in (1053 RT) Amsterdam, the Netherlands at Hannie Dankbaarpassage 20-B and its regional office in (10707) Berlin, Germany at Kurfürstendamm 195, registered in the Commercial Register of the Chamber of Commerce of Amsterdam under file reference number 62962825 and with VAT number NL8550.30.884 B01.

1.2. These general terms and conditions are applicable to all legal acts by or on behalf of Spryng. These general terms are also applicable on all present and future services which Spryng offers and all additions and amendments thereto (the Services). The applicability of general terms used by any party contracting with Spryng (Customer) is explicitly rejected.

1.3. By placing an order for one or more Services, by using the Services of Spryng and/or by making payments for Services, Customer acknowledges its acceptance of the applicability of these general terms to the Services and any current and future legal relationship between Customer and Spryng.

## 2. DELIVERY OF SERVICES

2.1. The content and specifications of the Services are determined by what is stated about the Services from time to time on the website of Spryng ([www.spryng.de](http://www.spryng.de)) or any other website designated by Spryng for the relevant Service from time to time (the Website). Where reasonably possible Spryng will notify Customer in advance and in writing (by email or via the Website) of material changes to the Services.

2.2. Spryng will use its reasonable efforts to safeguard the timely availability and quality of the Services. Spryng however does not warrant the timely, continuous, error-free availability and quality of the Services.

2.3. A part of the Services is in fact provided by the relevant third party providers of fixed and mobile telecommunication services. Spryng does not accept any responsibility or liability for shortcomings in its Services caused by these third parties. In particular Spryng cannot accept responsibility for the timely and correct handling of sent electronic messages.

2.4. Spryng is entitled to suspend the services temporarily when this is necessary to implement a change to the Services or to conduct preventive or corrective maintenance activities with respect to the Services. Spryng will inform Customer in advance where reasonably possible in case of activities planned by Spryng and of activities planned by third party providers of which Spryng is aware, which have a foreseeable material impact on the Services.

### 3. OBLIGATIONS OF CUSTOMER

3.1. Customer must provide Spryng at the start of and during the use of the Services on request and on its own initiative with all information and all data relevant to enable the provision of the Services. Customer vouches for the completeness and correctness of all supplied information.

3.2. In particular Customer will keep Spryng up to date of all foreseeable peaks or massive increases in its use of the Services to help prevent overloading the Services and/or the networks and systems of the suppliers of Spryng.

3.3. Spryng has no obligation to check completeness and correctness of the information provided by Customer. If Spryng provides any advice on this, then this is done voluntarily and with the explicit exclusion of any liability for such advice.

3.4. For using the Services Customer will receive one or more sets of username/password combinations (the Log-in Data). With respect to the Log-in Data the following specific conditions apply:

- a. Customer is fully responsible for any use and any misuse made with the Log-in Data;
- b. Legal acts performed using the Log-in Data bind Customer;
- c. The Log-in Data must be treated by Customer as strictly confidential information and will only be made available by Customer to persons if and when necessary to use the Services.
- d. If Customer suspects that the confidentiality of the Log-in Data is violated or misuse is being made with the Log-in Data, then Customer will report this immediately to Spryng. Spryng will subsequently deactivate the Log-in Data as soon as reasonably possible.

3.5. Customer must report malfunctions in the Services immediately to Spryng. Customer must provide all required co-operation to a possible investigation into a malfunction of the Services. In case a reported malfunction in the Services is not discovered or is caused by Customer, Spryng is entitled to charge Customer for the reasonable investigation costs.

### 4. PRICES AND PAYMENT FOR THE SERVICES

4.1. The prices applicable from time to time to the Services are set out on the Website and are (unless explicitly otherwise noted or agreed in writing) valid until publication of a change of the prices on the Website. Price increases are announced at least one month in advance, unless it concerns passing on the price increases of a third party supplier of Spryng which were notified to Spryng less than a month in advance.

4.2. All prices are excluding applicable VAT and other applicable taxes and government charges and are in Euros, unless explicitly set out otherwise.

4.3. Spryng is not bound by prices on the Website or any other publication of Spryng if Customer could reasonably have understood that the relevant prices or pricing structure contained an apparent error or misprint.

4.4. Unless otherwise set out on the Website, all payments to Spryng must be made within 14 days after invoice date in the manner indicated by Spryng in the currency indicated on the invoice.

4.5. Objections of Customer against the amount of the invoice do not create the right to suspend payment of the invoice. Customer is not allowed to set off or deduct any alleged counterclaims on Spryng from sent invoices.

4.6. Subscription, license, connection or similar fixed, usage independent charges for the Services are, unless explicitly noted or agreed otherwise, due in advance. For periodic charges of this nature these are due per usage period (month/quarter/year) in advance unless explicitly otherwise indicated on the Website.

4.7. Customer must buy credits for the use of the Services in advance. If Customer does not have a positive credit balance, it is not entitled to use the Services. Procured credits remain valid for one year. In accordance with Spryng, credits can also be invoiced retrospectively based on subsequent calculation.

4.8. Usage dependant charges are due monthly in arrears on the basis of registered use.

4.9. For determining the amounts due and the used and procured credits the data registered in the systems of Spryng and of the telecommunication providers which actually provided the relevant Services are deciding.

4.10. Spryng will in case Customer objects against to the usage dependant charges or debited credits conduct an investigation into this in a reasonable and transparent manner and report the results to Customer. Customer explicitly does not have the right to suspend payment of any invoice on the basis of any such objection.

4.11 If Customer is in default of payment with respect to any amount due to Spryng, then interest will accrue on the outstanding amount against the legal interest rate for business transactions. If Customer remains in default of payment after it has been sent a formal notice, then Spryng can engage a third party to collect the payment, in which case Customer will also be due to pay the related collection costs and legal costs.

4.12 If Spryng incurs additional costs or has to spent additional time to provide the Services due to a shortcoming of Customer or due to a violation of any legal or contractual obligation by Customer, then Spryng can invoice these additional costs and the additionally spent time at its then current rates, without prejudice to the right of Spryng to claim compensation for suffered damage.

4.13 Spryng is entitled to demand advance payment of charges for the Services on the basis of a good faith assessment by Spryng of the amounts, which will be due for the Services in the next 3 months. Spryng is further at all times entitled to demand a bond or a bank guarantee as assurance for Customers current and future payment obligations for the delivery of the Services. If a request for advance payment or financial assurances is not promptly complied with, Spryng has the right to suspend the Services forthwith and without prior notice until this request has been complied with.

## 5. USAGE LIMITATIONS FOR THE SERVICES

5.1. Customer will not use the Services in a manner, which in any way hinders the Services of Spryng and/or the networks and systems used to deliver the Services used by Spryng or its third party suppliers. Customer shall immediately follow any directions of Spryng intended to prevent or stop such hinder and Spryng is entitled to temporarily suspend the Services to prevent such hinder if action of Customer to prevent it is delayed or if such action of Customer cannot reasonably be waited on.

5.2. When using the Services and when conducting those parts of its business which use the Services or which are connected to the Services, Customer shall not violate: any applicable laws and regulations, the “netiquette”, including the guidelines of the German advertising authority, the usage limitations for the relevant Service published from time to time on the Website and/or these general terms and conditions. Further the following acts and behaviours are explicitly forbidden when using the Services and conducting business in the context of the Services:

- a. Spamming: the unsolicited sending of large quantities of electronic messages with largely the same content;
- b. Violating the (intellectual property) rights of third parties;
- c. Deceiving or misleading third parties including customers of Customer;
- d. Using texts, logos, trademarks or other works or intellectual property rights of Spryng or its suppliers when conducting its business without express prior written approval for such use;
- e. Offering products or services, which are prohibited under the law of the relevant country in which these are offered;
- f. Sensing of messages with an offensive, discriminatory or otherwise illegal content;
- g. Using the Services under a false name and/or by circumventing security measures imposed for the Services.

5.3. Customer shall ensure that no SMS messages are sent to blocked fixed or mobile numbers as indicated by Spryng. If Customer sends SMS messages to one or more blocked

numbers, the costs charged for this by the relevant third party telecommunication services provider are charged to Customer.

5.4. Customer shall when using the Services and when exploiting its own services which use or are connected to the Services comply fully with the generally recognized codes of conduct in the German telecommunication market including the “Code of conduct for providers of SMS (subscription) services” and the “Code of Conduct for SMS-services” as published on the website of the German advertising authority.

5.5. Customer is only entitled to use the Services for its own internal business purposes and is, without the express and written permission of Spryng and under its terms, not entitled to resell the Services neither stand-alone nor in combination with services of itself or to offer them or use them for the benefit of a third party.

## 6. TERM AND TERMINATION OF THE SERVICES

6.1. Unless explicitly otherwise set out in the description of the relevant Service on the moment it is ordered, Customer procures each Service for an unlimited period of time and either party can terminate it at will by giving at least thirty calendar days’ notice.

6.2. Spryng is entitled to terminate the agreement to deliver the Services out of court, in part or in whole, and without limiting Spryng’s other rights:

- a. If Customer is declared bankrupt, is granted a moratorium of payment or if bankruptcy or a moratorium of payment for Customer is requested;
- b. If Customer is dissolved or liquidated or its business activities are stopped in whole or for a substantial part;
- c. If Customer breaches its obligations under the agreement for the delivery of the Services to which these general terms are applicable.

## 7. LIMITATION OF LIABILITY

7.1. The liability of Spryng in the context of the delivery of the Services and in the context of any agreement to which these general terms are applicable, on any legal ground, shall be limited as set out in this clause.

7.2. In case of intent or reckless acts of Spryng with respect to the damage caused, no limitation of liability will be applicable.

7.3. Spryng can only be in default with respect to an obligation after being put on formal notice by means of a letter sent by registered mail and after having been granted a reasonable

period of time to cure the issue. All delivery terms and dates for Services of Spryng are non-binding estimates.

7.4. In case of an attributable shortcoming of Spryng with respect to the Services, liability for Spryng can only arise if and in so far as Spryng, after being put on formal notice allowing a reasonable cure period, has not cured the shortcoming by repairing the relevant Service or re-performing the relevant Service.

7.5. Spryng's total liability for direct damage due to death or physical injury or due to damage to property shall under no circumstances exceed EUR 100,000 per claim and EUR 2,500,000 per year, whereby a series of connected claims counts as one claim.

7.6. Spryng is not liable for other forms of damage than those covered by Article 7.5., which expressly excludes Spryng's liability for consequential damage, including lost profits, loss or damage to data, missed savings, reputational damage, claims of third parties, government charges, failed transactions and damage due to business interruptions.

7.7. Customer indemnifies and holds Spryng harmless from all claims of third parties, which are in any way connected with the use by Customer of the Services, and the services provided by Customer to its customers using the Services, and shall compensate Spryng for all related costs including the costs for legal assistance.

7.8. Customer shall report to Spryng all damage it suffers or will foreseeably suffer which is attributable to Spryng as soon as possible and at the latest 30 days after the end of the month in which Customer is or should have been aware thereof and such report shall be in writing and supplemented with proper motivation, failing which the right to claim these damages is considered lapsed.

## 8. PRIVACY AND CONFIDENTIALITY

8.1. Both parties are obliged to keep confidential all confidential information which they get access to in the context of delivering the Services. Information is considered confidential this is so indicated by the other party or if this follows from the nature of the information.

8.2. Spryng and Customer both commit to strictly comply with applicable privacy legislation when providing and using the Services.

8.3. Spryng shall treat the personal and other data which Customer enters on the Website or in any other way supplies to Spryng in the context of using the Services as strictly confidential and will endeavour to protect it against misuse and unauthorised access.

8.4. Spryng shall use personal data, which it receives from Customer in the context of supplying the Services (the Data) only for the delivery of the Services, observing the following usage limitations:

a. Spryng shall only make such Data available to third parties if and to the extent this is strictly necessary for the delivery of the Services or on instruction of a competent government authority.

b. Spryng is entitled to analyse the Data to enable the enhancement of the quality, reliability and effectiveness of the Services. Such analysis shall be conducted in an anonymous way by which no data traceable to specific persons is gathered.

8.5. Customer is responsible to ensure that when using the Services only personal data is entered or processed if and in so far as Customer is legally allowed to do this and has obtained the relevant permissions for this from the relevant persons.

## **9. INTELLECTUAL PROPERTY RIGHTS**

9.1. All intellectual property rights related to all systems, documents and other works to which Customer gets access to in the context of the delivery of the Services, are the exclusive property of Spryng and its licensors. Customer is only granted a temporary, personal, on exclusive and non-transferable license to use to the extent such use is necessary for the use of the Services. This license ends immediately after the termination of the delivery of the Services to Customer by Spryng.

9.2. Access numbers, keywords and other codes, numbers and words (the Codes) which in the context of delivering the Services are made available to Customer by Spryng are only licensed for the duration of the delivery of the Services to Customer. After termination of the delivery of the Services to Customer for which Codes were made available to Customer, Customer has no right anymore with respect to such Codes and Spryng is free to re-use these for itself or for another customer of Spryng.

## **10. APPLICABLE LAW**

10.1. These general terms and all legal relations between Spryng and Customer shall be governed by the laws of the Netherlands.

10.2. Any dispute between Spryng and Customer with respect to the Services, these general terms and any agreement to which these general terms are applicable shall exclusively be submitted to the courts of Amsterdam, the Netherlands.

## **11. MISCELLANEOUS**

11.1. Spryng is at all times entitled to change or supplement these general terms. The changes will become effective after Customer has been informed of the change in writing via email or publication on the Website. Where reasonably possible each change will be announced to Customer at least one month in advance.



11.2. Spryng is entitled to transfer its rights and obligations under each agreement to which these general terms are applicable to a third party which is taking over the relevant part of the business of Spryng, by giving written notice of such transfer to Customer.