

General Terms and Conditions („TOS“)

General

Introduction

cloudscale.ch Ltd. (“we”) offers virtual servers and related IT infrastructure services (“services”). Therefor necessary IT infrastructure is operated exclusively in Swiss data centers.

The customer relationship (“framework agreement”) is created by the customer (“you”) setting up a free customer account on our website. On the basis of this framework agreement you may then choose to make use of payable services as you wish (“self service”), i.e. you may book services yourself at any time (“booking”) and subsequently terminate them. These TOS establish the most important points of this framework agreement – independently of the use of any services.

Deviations

Any provisions which deviate from these TOS must be agreed in writing. Such agreements shall take precedence over these TOS.

Transfer

You may only transfer the framework agreement or services used in the context of the framework agreement to third parties with our written consent.

Our services

Type and scope of the services

We provide the services under the conditions stated on our website at the time of booking.

Modifications of the services offered

We are entitled to offer new services, to withdraw existing services (“termination”) or to modify the specifications and prices of existing services (“modification”) at any time. If the modification or termination affects a service that you are using at that time, we will inform you via e-mail that said service will be automatically modified and/or

no longer available after a period of 30 days.

Modification of booked services

You may book additional services within the context of the services which we offer, the availability of the necessary resources and an individual limit (“quota”) established by us, as well as terminate the use of any services at any time. You may also, where applicable, adjust the service specifications by selecting different options (“scaling”).

Due care

We take all appropriate physical and electronic precautions to ensure the security and availability of our infrastructure and the service offered thereupon, in particular to protect against unauthorized access to data, data loss, failures and misuse.

Support

We offer technical support via e-mail for matters directly related to the use of our services. We do not offer support for issues related to more far-reaching topics such as server management, applications or databases and their configuration.

Limited influence

Be advised that the scope of our influence is limited. For example, the actual accessibility of a service is also dependent on the connection to and between various Internet Service Providers (“ISPs”). Portions of our services, i.e. software components, may also be beyond our influence and be subject to their own contractual conditions. You accept that in such cases we reject any responsibility.

Service level

We guarantee 99.99% availability of our infrastructure per quarter. During previously announced maintenance work and in cases of force majeure the infrastructure shall be considered fully available for the aforementioned calculation.

General Terms and Conditions („TOS“)

If the guaranteed level of availability is not achieved due to failures, you may demand a pro-rata credit note for the duration of said failures for the services you use that have been affected. Such a credit note must be requested in writing within 10 days of the end of the quarter, may only be used to book services in the future and will in no case be paid as a cash equivalent. No further guarantees are provided.

Inclusion of third parties

We may include third parties in the provision of our services, which may in turn require you to accept additional conditions (i.e. for payment processing).

Your obligations

Contact information

At our request you will provide your truthful contact information and keep it updated at all times. You must also ensure that you actually receive messages, in particular e-mails, intended for you.

Use

You will ensure that the use of your services by yourself or third parties complies with all applicable legislation and these TOS at all times. You are expressly forbidden from sending undesired e-mails (“spam”).

Fair use

The “fair use” principle applies to the use of our services. We optimize our infrastructure in such a way that sufficient capacity is available to you even during short-term increased demand (“peaks”). You are nonetheless required to adhere to reasonable use of our resources in order to avoid negatively affecting the services for other customers.

Security

You will take appropriate measures to prevent any misuse of the services you booked. These include, for example, securing the software used and the prompt installation of security updates as well as using suitably secure passwords.

Disaster recovery

You are solely responsible for taking the appropriate organizational and technical precautions – and specifically ones independent of our infrastructure – for the event of service failures or data losses, for example by regularly making backups on third-party infrastructure.

Reporting obligations

You will immediately report any knowledge of a misuse of your booked services.

Cooperation

If the maintenance of service quality requires your cooperation, for example to remedy errors in the services you use, you will provide said cooperation promptly and free of charge.

Third party obligations

You will ensure that your vicarious agents, customers and third parties fulfill these obligations as well.

Financial

Credit and payment

Sufficient credit is required for the use of services. The costs for the services which you use will be periodically debited from your credit in advance. You may purchase credit via any of the means of payment which we support. When doing so you choose the amount of your payment, and thereby of your credit, within our established minimum and maximum limits and according to any further payment details established on our website. The credit may solely be used to book services. Any repayment of credit is excluded.

General Terms and Conditions („TOS“)

Payment procedure

If payment upon invoice is agreed, the payment deadline shall be 30 days after receipt of the invoice.

Offsetting

Offsetting against a counterclaim is prohibited.

Collection

In the event of default we reserve the right to transfer our claim to a collections agency. You will bear any resulting costs insofar as legally permissible.

Termination

Termination by you

You may terminate the framework agreement at any time by ceasing your use of the services and deleting your customer account on our website.

Termination by us

We may terminate the framework agreement at any time via e-mail message with a notice period of 90 days. Any use of the services will cease at the end of this period and the framework agreement will be terminated.

Automatic termination

If you have neither used services nor made payment for a period of 5 years, the framework agreement will be considered automatically terminated at the end of this period.

No reimbursement

Any remaining credit shall automatically expire upon termination of the framework agreement.

Termination of services

We are entitled to suspend and terminate services used by you if

- your credit has been used up by services and/or any applicable credit limit has been reached;
- you are in default in the payment of open invoices and/or prompt payment seems unlikely (i.e. in the event of insolvency proceedings);
- your services were used illegally or in breach of contract, or if there is reasonable suspicion of such use (i.e. in the event of complaints or abuse reports);
- other customers' services are being negatively affected in breach of the fair use provision, including in the event of your services being subject to attacks by third parties (i.e. DoS/DDoS attacks);
- we consider the suspension or termination of the services to be necessary for the protection of ourselves, our infrastructure or other customers.

We reserve the right to immediately terminate the framework agreement in such cases.

Deletion of data

In the event of the termination of the contract, we reserve the right to irrevocably delete all of your data.

General Terms and Conditions („TOS“)

Data protection

Use of customer data

We use the customer data collected about you solely in the context of this customer relationship, i.e. to provide the services and to communicate with you.

Transmission of customer data

Should the transmission of customer data to contractual partners either in this country or abroad become necessary in the context of fulfilling the contract, we are entitled to do so. Any transmission to third parties for marketing purposes, however, is prohibited.

Data location in Switzerland

Your data (i.e. the hard drive content of virtual servers) is exclusively stored in Switzerland. You accept that data transmission via the Internet may also involve transmission across borders and will take any desired measures (i.e. data encryption).

Liability

Our liability

We and/or third parties which we involve are only liable for demonstrably willful or grossly negligent damages. Our liability per damage event is limited to the value of the services used during the previous contractual year. Any liability in other cases, for consequential damages or lost profits is hereby excluded.

Your liability

You are liable for all damages and costs arising from the illegal or non-contractual use of the services which you have booked. We in particular reserve the right to invoice you for any additional costs incurred by us in this context.

Force majeure

You acknowledge that we may be partially or entirely unable to provide our services during

and/or as a result of events beyond our influence. These include events such as natural disasters, war, terrorism, sabotage, attacks on our infrastructure (i.e. DoS/DDoS attacks), failure of electrical or data connections and unexpected official requirements. We are not liable for any damages in such cases.

Final provision

Applicable law

The framework agreement is subject to Swiss law.

Place of jurisdiction

The exclusive place of jurisdiction is Zurich 1, Switzerland.

Severability clause

Should any provision of these TOS be or become invalid, this shall not affect the validity of the remaining TOS. The invalid provision will be replaced by a valid one which approximates the invalid one as much as possible.

Entry into force

These TOS shall enter into force as of 10/15/2015.

Amendments

We are entitled to unilaterally amend these TOS at any time. The current version is accessible via our website. We will inform you of any amendments via e-mail. These amendments shall be considered as accepted upon booking additional services or at the latest after 30 days. In the case of a rejection on your part we reserve the right to terminate the framework agreement.

Translation

These TOS also exist in German. In case of differences between the German and English versions or in other cases of doubt, the German version shall be valid exclusively.