

Terms of Service ("ToS")

General

Introduction

cloudscale.ch Ltd. ("we", "us") offers virtual servers and related IT infrastructure services ("services"). The IT infrastructure required therefor, including our website, our cloud control panel, and our APIs ("online platform"), is operated exclusively in data centers in Switzerland.

Natural or legal persons may create a free customer account ("account") on our online platform and may also enter into additional contractual relationships for the contractual demarcation of services ("organizations"). Within the respective scope, such persons may autonomously use free and paid services, i.e. book services at any time in a self-service fashion ("booking") and subsequently terminate them. The contractual relationship ("framework agreement") is established when our contractual partner ("customer") or an authorized representative of the customer agrees to these Terms of Service ("ToS") upon creation of an account or an organization.

The framework agreement applies to all matters relating to the use of our "offer" (interaction with our online platform, use of services, etc.) provided that this use does not occur within the scope of another, separate contractual relationship (e.g. use of an account within the scope of an organization).

Deviations

Provisions in deviation of these ToS must be agreed in writing or "electronically" (by email or via our online platform). Such agreements shall take precedence over these ToS.

Transfer

The customer may only transfer the framework agreement to third parties with our written or electronically given consent.

Our services

Type and scope of services

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

Change of services offered

We are entitled to offer new services, to modify the specifications and prices of existing services ("modification"), and to withdraw existing services ("discontinuation") at any time. If the modification or discontinuation affects a service that the customer is using at that time, we will inform the customer by email that this service will automatically be modified or no longer be available after a period of 30 days.

No notification is required for reductions in price.

Change of services used

Within the scope of the services we offer, the availability of the necessary resources, and an individual limit (quota) established by us, the customer may book additional services and terminate the use of services at any time. The customer may also, where applicable, adjust service specifications by selecting different options (e.g. by scaling virtual servers).

Due care

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

Support

We offer technical support via email for matters directly related to the use of our services. The customer is not entitled to support for issues related to more extensive topics such as server management, applications, and their configuration.

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Limited scope of influence

We would like to point out that the scope of our influence is limited. For example, the actual accessibility of a service also depends on the connection to and between various Internet service providers (ISPs). Portions of our services (e.g. server images provided by us) may also be beyond our influence and be subject to their own contractual conditions. The customer acknowledges that we assume no liability in such cases.

Service level

We guarantee 99.99% availability of our infrastructure per quarter. During maintenance windows, previously announced maintenance work, and in cases of force majeure, the infrastructure shall be considered fully available for the calculation. If the guaranteed level of availability is not achieved due to failures, the customer may request a pro-rata credit note for the duration of these failures for any affected services used. Such a credit note must be requested in writing within ten days of the end of the quarter, may only be used for future use of services, and will not be paid as a cash equivalent. No further guarantees are provided.

Maintenance work

If it is likely that maintenance work will have a significant impact on services used by the customer, we will either perform it within the regular maintenance windows or inform the customer two weeks in advance or, in urgent cases, as soon as possible. The information will be provided by email or in a publicly accessible publication (e.g. on our status page).

Force majeure

The customer acknowledges that we may be partially or entirely unable to provide our services during and/or as a result of events reasonably beyond our influence. This includes events such as natural disasters, war, terrorism, sabotage, attacks on our infrastructure (e.g. DoS / DDoS attacks), failure of electrical or data connections, and unexpected official requirements. We are not

obliged to provide any compensation or substitute in such cases.

Inclusion of third parties

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

Obligations of the customer

Contact details

At our request, the customer shall provide valid contact details and keep these updated at all times. The customer shall also ensure that messages, in particular emails, sent to the contact details provided are actually received.

Use

The customer may directly or, if applicable, indirectly via external organizations authorize other accounts to carry out certain actions within the scope of the customer's account or organization. Actions may also be carried out via APIs of our online platform. The customer shall be responsible for all such actions that take place within the scope of the customer's account or organization. The customer shall ensure that the use of our offer complies with all applicable legislation and these ToS at all times. Sending unwanted emails ("spam") is expressly prohibited.

Fair use

Where not stated otherwise, the "fair use" principle applies to the use of our services. We size our infrastructure with the aim of making sufficient performance available to the customer even during short-term increased demand ("peaks"). The customer is nonetheless required to adhere to reasonable use of resources in order to avoid negatively affecting the services for other customers.

Security

The customer shall take appropriate measures to prevent any misuse of services used. These

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measures include, for example, securing the software used and the prompt installation of security updates as well as using suitably secure passwords or keys.

Disaster recovery

The customer is 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 making regular backups on third-party infrastructure.

Obligation to report

The customer shall immediately report to us any knowledge of misuse of services used.

Cooperation

If the maintenance of service quality requires the customer's cooperation, for example to remedy errors in the services used, the customer shall provide said cooperation promptly and free of charge.

Financial matters

Credit and payment

Sufficient credit or a separately agreed credit limit on the account or organization is required for the use of services. The costs for the services used by the customer will be periodically debited from this balance.

The customer may purchase credit using any of the means of payment that we support. When doing so the customer shall choose the level of payment, and thereby of credit, within our established minimum and maximum limits and according to any further payment provisions established on our online platform. The credit may solely be employed for the use of services.

Period of payment

If payment upon invoice is agreed, the payment deadline shall be 10 days.

Offsetting

Offsetting against a counterclaim is excluded.

Collection

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

Termination

Termination by the customer

The customer may terminate the framework agreement at any time by ceasing to use services and closing the customer account or organization on our online platform.

Termination by us

We may terminate the framework agreement at any time by email message with a notice period of 90 days. At the end of this period, any use of the services will cease, the account or organization will be closed, and the framework agreement will be terminated.

No refunds

In general, credit will not be refunded. Refunds of purchased credit are, however, possible if we terminate the framework agreement (except in the cases listed under "Termination of services") or if the customer terminates the framework agreement within the transition period due to rejection of a unilateral amendment we make to an agreement. Refunds will only be made to the original means of payment used.

Termination of services

We are entitled to suspend and terminate services used by the customer without notice if

- the customer's credit has been used up by using services and/or any applicable credit limit has been reached;
- the customer is in default in the payment of open invoices and/or prompt payment seems unlikely (e.g. in the event of insolvency proceedings);

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- the customer's services were used illegally or in breach of contract, or if there is reasonable suspicion of such use (e.g. 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 the customer's services being subject to attacks by third parties (e.g. DoS / DDoS attacks);
- the customer is unable to fulfil legal or contractual obligations;
- we consider the suspension or termination of services to be necessary for the protection of ourselves, our infrastructure or other customers.

We also reserve the right to suspend the account or the organization and to immediately terminate the framework agreement in such cases.

Deletion of data

In the event of the termination of the framework agreement, we reserve the right to irrevocably delete all the customer's data.

Data protection

Use of customer data

We use and process the data collected about the customer ("customer data") exclusively

- in the context of this customer relationship, e.g. to provide and further develop services and to communicate with the customer,
- in accordance with an official directive or if required by law, and
- in the context of negotiations about a transaction that concerns us.

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 transmit the required data.

If the customer authorizes other accounts to carry out actions within the scope of the customer's own account or own organization, or if the customer accepts such authorization for other accounts or organizations, data that may identify the customer may also be or become visible to other involved parties (e.g. in logs of performed actions).

Data location: Switzerland

The customer's data (e.g. the hard drive content of virtual servers) is exclusively stored in Switzerland. The customer acknowledges that data transmission via the Internet may also involve transmission across borders and shall take any desired measures (i.e. transport encryption).

Liability

Our liability

We and/or third parties that we involve are only liable for demonstrable damage caused intentionally or by gross negligence. Our liability per damage event is limited to the value of the services used during the previous contractual year. Any liability in other cases and for consequential damages or lost profits is hereby excluded insofar as legally permissible.

Liability of the customer

The customer is liable for all damages and costs arising from the illegal or non-contractual use of services used. We in particular reserve the right to invoice the customer for any additional effort incurred by us in this context.

Final provisions

Applicable law

The framework agreement is subject to Swiss law.

Place of jurisdiction

The exclusive place of jurisdiction is Zurich, Switzerland.

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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 shall be replaced by a valid provision as similar as possible to the invalid provision.

Date of effect

These ToS take effect on 2021-03-26.

Amendments

We are entitled to unilaterally amend these ToS at any time. The current version is published on our online platform. We will inform the customer of any amendments via email. These amendments shall apply from when the new ToS take effect, but at the earliest from 30 days after the customer has been informed. In the event that the customer does not agree to the amendments, the customer may terminate the framework agreement in accordance with its provisions within this transition period.

Translation

The English translation of the ToS is provided for the convenience of our non-German-speaking customers. Only the German version is legally binding.