

GENERAL TERMS AND CONDITIONS OF SERVICES

Version Date 22 June 2009

1. Interpretation

In these General Conditions, and in any Special Conditions applicable to the Contract:

1.1 The following terms shall have the following meanings unless the context otherwise requires:

Conditions: these General Conditions and the Special Conditions which are applicable to the Contract between the Customer and the Supplier.

Customer: the person, firm or company who purchases Services from the Supplier.

Hardware: the equipment, cabling and systems provided by the Supplier in connection with the Services.

Keywords: those words notified to the Customer by the Supplier which control the Customer's access to some of the Services, including, without limitation a password and username.

Order: a request made by the Customer to the Supplier for Services to be supplied under the Conditions.

Server: the computer server equipment operated by the Supplier in connection with the provision of the Services.

Services: the internet-related services described in the Order which are provided or to be provided by the Supplier under these Conditions (and any applicable Special Conditions).

Software: the computer software provided by the Supplier in connection with the Services.

Supplier: OVH Hosting Limited, a private company incorporated and registered in the Republic of Ireland under No 468585, whose registered office is at 5 Fitzwilliam Place, Dublin 2, VAT No 9520632R

VAT: value added tax chargeable under Irish law for the time being and any similar additional tax;

Working Day: means a day other than a Saturday, Sunday or a bank or public holiday in the Republic of Ireland.

1.2 Headings do not affect the interpretation.

1.3 The singular shall include the plural, the masculine shall include the feminine, and vice versa.

1.4 In the event of any conflict between these General Terms and Conditions, and any Special Conditions applicable to the Contract, the Special Conditions shall prevail.

2. Application of conditions

- 2.1 The Conditions shall apply to any Contract between the Supplier and the Customer for the provision of Services; and shall prevail over any terms or conditions or other contractual documents submitted by the Customer or implied by law, trade custom, practice or course of dealing.
- 2.2 The Supplier shall be entitled to amend the Conditions at any time by giving notice to the Customer at least 30 days before the changes take effect, such notice to be given by email or by notification on the Supplier's website. Upon receipt of such notice, the Customer shall be entitled to terminate the Contract with effect from the date of the notice, such termination to be notified to the Supplier no later than 30 days from the date of the notice (time being of the essence). The Customer shall not be entitled to any refund of the fees and shall remain liable for any fees previously due. Failure to give such notice of termination shall be deemed acceptance of the new Conditions. Any renewal of the Services shall be subject to the Supplier's Conditions current at the date of renewal.
- 2.3 The Order constitutes an unconditional offer by the Customer to purchase the Services specified in it on the Conditions. A contract for the supply and purchase of those Services on the Conditions shall be created when the Supplier accepts the Order pursuant to condition 2.4 (b) or commences/executes work pursuant to the Order.
- 2.4 Upon receipt of a validly completed order, the Supplier shall send the following emails to the Customer at the Customer's email address specified in the Order:
- (a) a first email acknowledging receipt of the Order ;
 - (b) a second email confirming that the payment of the fees by the Customer has been received by the Supplier;
 - (c) a third email containing any Keywords necessary to enable the Customer to gain access to the Services;
 - (d) a fourth email containing an invoice for the Services.

For the avoidance of doubt, the second email referred to at condition 2.4(b) shall constitute acceptance of the Order placed by the Customer.

3. Supplier's obligations

- 3.1 The Supplier shall perform the Services with reasonable care and skill and in accordance with best industry practice but shall not be liable for downtime caused by routine or emergency maintenance by the Supplier or occasioned by third parties.
- 3.2 The Supplier reserves the right at any time and from time to time to amend, improve or correct the Services, Software and/or Hardware (or any part thereof) provided that such modification does not materially affect the Services, Software

and/or Hardware (and any part thereof). This includes the right to substitute Hardware (or any part thereof) with hardware of similar specification, where necessary. The Supplier shall give reasonable notice of such modification by email.

- 3.3 The Supplier shall process the Customer's personal data in compliance with the Data Protection Acts 1988-2003 and the Supplier's privacy and Security Policy. The Customer hereby consents to such processing of such personal data for the purpose of the provision of the Services.

4. Supplier's liability

- 4.1 The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors ("Force Majeure Event"), provided that it:

- (a) promptly notifies the Customer of the nature and extent of the Force Majeure Event causing its failure or delay in performance and keeps the Customer regularly informed by email or otherwise of the likely duration of the Force Majeure Event; and
- (b) has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under the Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

- 4.2 The corresponding obligations of the Customer will be suspended to the same extent as those of the Supplier affected by the Force Majeure Event.

- 4.3 If the Force Majeure Event prevails for a continuous period of more than 30 days, any party may terminate the Contract by giving written notice to the other party. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such termination.

- 4.4 The Supplier shall have no liability to the Customer under the Contract if the Supplier's performance of its obligations under the Contract is prevented or delayed by any act, omission, fault or negligence of the Customer or the Customer's agents, sub-contractors or employees, and in particular due to:

- (a) Damage to the Customer's equipment, software or telecommunications links;

- (b) Wrongful use of the Software, including by the Customer or the Customer's clients, or non-compliance with any operating instructions given by the Supplier;
 - (c) Disclosure, unlawful or fraudulent use of the Keywords;
 - (d) Fault, negligence or omission by a third party not connected to the Supplier;
 - (e) Issue by a competent authority of an order which is binding on the Supplier and which affects the Services;
 - (f) Total or partial loss of the material and/or data uploaded due to an error by the Customer; or
 - (g) Incompatibility of the Software with any of the Customer's equipment, software or telecommunications links.
- 4.5 The following clauses 4.6, 4.7, 4.8 and 4.9 set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of any:
- (a) breach of the Contract;
 - (b) use made by the Customer of the Services; and
 - (c) representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 4.6 Subject to Condition 4.7, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 4.7 Nothing in the Conditions excludes the liability of the Supplier for:
- (a) death or personal injury caused by the Supplier's negligence; or
 - (b) fraud or fraudulent misrepresentation.
- 4.8 Subject to Conditions 4.6 and 4.7:
- (a) the Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits; loss of business; depletion of goodwill or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss or corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for that part of the Services to which the liability relates.

4.9 The Customer acknowledges that there is a risk that any material or data generated, stored, transmitted or used via or in connection with the Services may be irretrievably damaged or lost if there is a failure or on suspension or termination of the Services and that the Supplier shall be under no obligation to back-up all such material or data. The Customer shall take any precautionary measures for preserving such material or data in the event of loss, or damage, however caused. (The Supplier recommends customers to back up their material at least once a month).

5. Customer's obligations

5.1 The Customer warrants that:

- (a) it has the power and authority and all requisite or desirable legal consents and authorisations legally to enter into and perform its obligations under the Contract.
- (b) it has received all relevant information and advice from the Supplier before placing the Order and that it has satisfied itself that the Services shall be suitable for its particular needs.
- (c) its use of the Services will not infringe any third party intellectual property or other rights.

5.2 The Customer shall:

- (a) not knowingly use the Services, Software, and/or Hardware or allow them to be used for any unlawful purpose or to send SPAM or for the publication, linking to, issue or display of any unlawful material (which shall include without limit any pirated software or any material which is obscene, pornographic, threatening, malicious, harmful, abusive, defamatory or which breaches the rights (including without limit intellectual property rights) of any third party or which is or encourages criminal acts or contains any virus, worm, trojan horse or other harmful code) whether under Irish law or regulations, the laws or regulations of the Customer's country or any other place where the results of such purpose or such material can be accessed;
- (b) not knowingly use the Services, Software and/or Hardware or allow them to be used for the publication, linking to, issue or display of any material which in the absolute discretion of the Supplier may harm the Supplier or any of its clients or bring the Supplier into disrepute or may call into question any action taken by the Supplier on the Customer's behalf;
- (c) not provide any technical or other information obtained from the Supplier and/or relating to the Services, this Agreement or the Contract to any person, company, firm or government which the Customer knows or ought reasonably to be aware may directly or indirectly lead to a breach of any Irish law or regulation;

- (d) not knowingly use the Services, Software and/or Hardware or allow them to be used in breach of the Supplier's Acceptable Use Policy, which can be found at www.ovh.ie, and shall bring it to the attention of the Customer's authorised users;
- (e) provide the Supplier with accurate contact details, bank details and email address, and shall promptly notify the Supplier of any changes by email;
- (f) comply with the Supplier's reasonable instructions and requests concerning the Services;
- (g) immediately notify the Supplier by email if it becomes aware of any unauthorised use of all or any of the Services, Software and/or Hardware;
- (h) ensure that all Keywords are at all times kept confidential, used properly and not disclosed to unauthorised people and if the Customer has any reason to believe that any Keyword has become known to someone not authorised to use it or if any Keyword is being or is likely to be used in an unauthorised way or the Customer is aware of any other breach of security then the Client shall inform the Supplier immediately. For the avoidance of doubt, the Customer shall be solely responsible for any unauthorised and/or fraudulent use of the Keywords whether such unauthorised and/or fraudulent use is due to its own default or that of its agents, sub-contractors or employees, omission or negligence. Any change of Keywords, at the Customer's request, will be charged to the Customer on a time-and-material basis.
- (i) inform the Supplier promptly in the event of any actual or suspected security breaches in connection with the Services;
- (j) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects;
- (k) ensure that it has all necessary consents, permissions and licences to make use of the Services including without limit registration under the Data Protection Act 1998;
- (l) use the Services in a manner consistent with any and all applicable laws and regulations including but not limited to the Data Protection Acts 1988-2003;
- (m) maintain appropriate insurance cover in respect of its liability arising out of or connected with this Contract with a reputable insurance company.

5.3 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any act of negligence, default, or wilful misconduct by the Customer, failure by the Customer to comply with its obligations under this Contract or any use made by the Customer of the Services.

6. Technical support

6.1 The Supplier shall provide technical support to the Customer:

- (a) via its website at www.ovh.ie;
- (b) by telephone on 01 6390014 Monday to Friday from 9am to 6pm,
- (c) by email at : support@ovh.ie: and/or
- (d) by granting access to a forum.

6.2 Depending on the option selected by the Customer, the Supplier's technical support shall be as follows:

- (a) Level 1 - Assistance: OVH agrees to inform the Customer of the progress of its order. OVH undertakes to monitor the various operating features of the Service and ensure they are operating smoothly. OVH undertakes to remedy any malfunctions which are its sole responsibility.
- (b) Level 2 - Advice: OVH will put resource material relevant to the Services at the Customer's disposal. Subject to availability, OVH undertakes to provide the Customer with the resource material that is most relevant to the Customer's needs. OVH will endeavour to update its documentary resources regularly.
- (c) Level 3 - Management: OVH offers the use of tailor-made resource material upon request from the Customer. A quotation for this will be provided to the Customer for approval. OVH reserves the right to refuse a request for services for legitimate or justified reasons.

6.3 The Supplier shall not, in any event, be obliged to provide support:

- (a) in respect of faults or problems directly or indirectly arising from
- (b) incorrect use of the Services;
- (c) products or services not supplied by the Supplier;
- (d) any cause external to the Services;
- (e) where the Customer is using anything other than the most recent version of the Software;
- (f) where the Customer or any third party not authorised by the Supplier has modified the Software or attempted to resolve the problem;
- (g) if any fees due to the Supplier are unpaid.

7. Fees and payment

7.1 The fees for the Services shall be set out in accordance with the Supplier's price list as amended from time to time, such price list being available online at www.ovh.ie. The total fees for the services shall be confirmed by the Supplier, shall be inclusive of VAT, and shall be payable in Euro.

- 7.2 The Supplier shall be entitled to vary its price list at any time by giving notice to the Customer at least 30 days before the new price list is to come into effect, such notice to be given by email or by notification on the Supplier's website. Upon receipt of such notice, the Customer shall be entitled to terminate the Contract with effect from the date of the notice, such termination to be notified to the Supplier no later than 30 days from the date of the notice (time being of the essence). Failure to give such notice of termination shall be deemed acceptance of the Supplier's new price list.
- 7.3 The Customer shall pay the fees upon placing the Order, and at the interval(s) specified therein and upon renewal of the Services by credit or debit card, by bank transfer, or by cheque addressed to 5 Fitzwilliam Place, Dublin 2. All fees shall be non-refundable unless otherwise stated.
- 7.4 The Supplier shall provide the Services upon receipt of the fees in full and clear funds by the Customer. The Supplier shall acknowledge receipt of the payment and inform the Customer of the commencement date of the Services. Such commencement date shall be an estimate only and the Supplier shall not be liable to the Customer for any delay.
- 7.5 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:
- (a) charge interest on such sum from the due date for payment at the statutory rate for the time being applicable under the European Communities (Late Payment in Commercial Transactions) Regulations 2002, or, where the Customer enters into the Contract as a consumer, at the rate that would be applicable thereunder were the Customer not a consumer, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment;
 - (b) suspend all Services until payment has been made in full;
 - (c) declare that all sums due by the Customer under any contract with the Supplier are immediately payable; and
 - (d) refuse to enter into any further contract with the Customer for the provision of any services by the Supplier.
- 7.6 Time for payment shall be of the essence of the Contract.
- 7.7 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.8 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

7.9 The Customer may not dispute any fees and/or Services unless the Customer notifies such dispute to the Supplier by email at: support@ovh.ie within 30 days from the Order.

8. Limitation of services

8.1 The Supplier acknowledges that given the nature of the Internet and the fluctuation of the bandwidth, the Services provided by the Supplier may be subject to variation.

8.2 The Supplier shall be entitled to restrict or suspend the Services if:

- (a) the Customer uses the Services for an activity which contravenes the principles contained in the Acceptable Use Policy;
- (b) the Customer commits any serious or persistent breach of any of its obligations under Condition 5;
- (c) an order which is binding on the Supplier is issued by a competent authority;
- (d) the Supplier wishes to carry out routine or emergency maintenance, repair or upgrade to the Services; or
- (e) this is permitted under any Special Conditions applicable to the Services.

9. Intellectual property rights

9.1 The Customer acknowledges that the Supplier shall retain ownership of all intellectual property rights relating to the development or supply of the Services including all methodologies, know-how and processes used and in any information, software or other data created by the Supplier as part of the Services (the “Materials”).

9.2 The Supplier shall grant a non-exclusive revocable licence to use, store and view on the Customer’s own internal computer network the Materials made available to the Customer as part of the Services.

10. Consumer’s Right to cancel

10.1 This Condition 10 shall apply if the Customer is a “consumer” as defined in the European Communities (Protection of Consumers in Respect of Contracts made by Means of Distance Communication) Regulations, 2001 (“Regulations”). The Customer shall be entitled to cancel the Contract by giving written notice to the Supplier by post at 5 Fitzwilliam Place, Dublin 2 to arrive within 7 Working Days from whichever is the later of (i) the date the Contract is formed and (ii) the date that the Customer receives confirmation from the Supplier that the Contract is formed.

10.2 The Customer hereby consents to the Supplier commencing provision of the Services, and Condition 10.1 shall cease to apply once the Supplier has commenced such provision.

11. Term and Termination

11.1 The Contract shall commence on the date notified by the Supplier in accordance with Condition 7.4 above and shall terminate automatically on the expiry date specified in the Order (the “**Expiry Date**”). The Supplier shall notify the Customer of the Expiry Date by sending at least 3 reminders by email to last email address notified and updated by the Customer from time to time.

11.2 Unless:

- (a) the Supplier is entitled to terminate the Contract under Condition 11.4 or 11.5; or
- (b) the Supplier gives the Customer not less than 30 days notice by email that no right of renewal will apply if the Contract expires on the Expiry Date; or
- (c) the Special Conditions provide otherwise;

the Supplier shall give notice to the Customer (a “**Renewal Notice**”) by email offering the Customer the opportunity to renew the Contract for a further period as specified in the Renewal Notice, subject to the Supplier’s Conditions current at the date of renewal, upon payment of the renewal fee specified by the Supplier in the Renewal Notice. If the Supplier receives such payment in full and in clear funds no later than the Expiry Date, the Contract shall be renewed for the further period specified in the Renewal Notice. If the Customer fails to pay the renewal fee on or before the Expiry Date (time being of the essence), the Contract shall expire automatically on the Expiry Date.

11.3 The Customer shall be entitled to terminate the Contract at its convenience at any time by giving notice to the Supplier, such notice to be given pursuant to condition 18. For the avoidance of doubt, the Customer shall not be entitled to the reimbursement of the fees (or part thereof) by the Supplier in such circumstances.

11.4 The Supplier shall be entitled to terminate the Contract at any time and without incurring any liability if:

- (a) the provision of the Services to the Client affects or may affect the safety or stability of the Supplier’s equipment or software. The Supplier shall use reasonable endeavours to notify by email the Customer in advance of such termination; or
- (b) there is a change of control in the Customer.

11.5 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an examiner to the other party, or a petition is filed with a court of competent jurisdiction for the appointment of an examiner to the other party; or
- (d) a receiver is appointed over any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

11.6 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

12. Waiver

12.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

12.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

13. Severance

13.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

13.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

14. Status of pre-contractual statements

Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in the Contract.

15. Assignment

15.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

16. No partnership or agency

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

17. Third party rights

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

18. Notices

Unless otherwise provided, any notice under the Contract shall be in writing and shall be delivered by recorded delivery post or by commercial courier (requiring signature on delivery) to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes. A correctly addressed notice sent by recorded delivery post shall be deemed to have been received on the second Working Day after posting. A correctly addressed notice sent by commercial courier shall be deemed to have been received on the date and at the time of signature of the courier's delivery receipt.

19. Dispute Resolution

If any dispute arises in connection with the Services, the parties shall first attempt to resolve such dispute amicably between themselves. Should such attempts fail to lead to a solution satisfactory to both parties, the parties shall attempt to settle the dispute by

mediation in accordance with the Model Mediation Procedure of the Centre for Effective Dispute Resolution (CEDR). Unless otherwise agreed between the parties, the mediator will be nominated by CEDR and the mediation will take place in Dublin, Ireland. To initiate the mediation a party must give notice in writing ("ADR notice") to the other party to the dispute requesting mediation. A copy of the request should be sent to CEDR.

20. Governing law and jurisdiction

20.1 The Contract and any disputes or claims arising out of or in connection with its subject matter, including its existence and validity, are governed by and construed in accordance with the laws of Ireland.

20.2 The parties irrevocably agree that the courts of Ireland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.