

# Terms of Service



Version 1.0

Updated 30-04-2018

Clients and users of the internet facilities provided by Hybula Security are expected to have taken notion of the 'Acceptable Use Policy' as well as the 'Abuse Policy', which can be found at [www.hybula.com/legal](http://www.hybula.com/legal).

## 1. General

1.1 All our offers, agreements and their implementation are governed solely by the terms and conditions in hand. Deviations must be explicitly agreed upon with us in writing.

1.2 In these terms 'the other party' is understood to be: each natural (or legal) person who has closed an agreement with our company, or wishes to close one, as well as their representative(s), delegate(s), assignee(s) and heirs.

1.3 The terms and conditions as formulated by the other party will remain unchanged to the extent that they are not in conflict with the terms and conditions in hand. In case of any conflict, our conditions will take precedence under any circumstance, even if priority has been stipulated otherwise.

1.4 The Acceptable Use Policy and Abuse Policy are valid on all our agreements and their implementation, as applicable at the time of the conduct that contravenes the Acceptable Use Policy.

## 2. Realisation Agreement

2.1 All our offers and propositions, in whatever form, are noncommittal, unless we explicitly stated otherwise.

2.2 If an offer is accompanied with demos, drawings, estimates, plans, catalogues or other documents or digital information on products, these remain our property at all times and must be returned to us at request. They may not be reproduced, copied, cached or shown to third parties without our permission.

2.3 Transmission of offers and/or (other) documentation does not put us under the obligation to accept an order. Non-acceptance will be notified to the other party as soon as possible, but within 14 days in any case. Therefore the agreement is concluded only 14 days after acceptance or as soon as we confirm the agreement in writing or (start to) execute it.

## 3. Delivery

3.1 We reserve the right to reject assignments or orders without foundation, or to exclusively deliver against cash payment or cash on delivery.

3.2 Our reported delivery times are an indication and are not to be regarded as deadlines. Delivery time statements are always and approximation, unless specified otherwise in writing.

3.3 Delivery shall be ex works or ex warehouse, unless otherwise agreed.



3.4 We reserve the right to demand cash on delivery or prepayment from the other party.

## 4. Cancellation

4.1 If the other party wishes to cancel after an agreement has been concluded, a 15% cancellation fee (based on the order price including VAT) will be charged, provided we agree to the dissolution, without it affecting our right to full compensation including lost profits.

## 5. Prices

5.1 Unless stated otherwise, our prices are:

- for services based on monthly rates,
- for goods based on delivery ex works or warehouse,
- excluding VAT, import duties, other taxes, levies and duties,
- excluding the costs of packaging, loading and unloading, transport and insurance,
- excluding installation and instruction costs stated in Euro's,

5.2 In the event of an increase of one or more of the cost factors, we are entitled to increase the order price accordingly; all this with due regard to any relevant existing regulations, on the understanding that any foreseeable future price increases must be recorded in the order confirmation.

## 6. Force Majeure

6.1 "Force majeure" is understood to mean: every circumstance independent of either party's intention or any unforeseeable circumstance making the fulfillment of the agreement to no longer be reasonable expected from the other party.

6.2 In this context, force majeure in the contractual relationships with our other parties is understood to mean a failure or obstruction of the telecommunication facilities of third parties, which prevents normal transmissions of telecommunication for short or longer periods of time.

6.3 If, in our opinion, the force majeure is of a temporary nature, we have the right to postpone the implementation of the agreement until the circumstance causing the force majeure has been resolved.

6.4 If we are affected by a situation of force majeure and suspend our service(s) for thirty (30) days or more, the other party has the right to terminate the contract for this/ these service(s) for the remaining duration of the contract. In this case - given the nature of the performance - there will be no reversal for the past and the other party is not entitled to any form of compensation for premature termination of the contract.

6.5 If we expect the force majeure to persist, we can terminate the contract for this/these service(s) for the future. In this case - given the nature of the performance - there will be no reversal for the past and the other party is not entitled to any form of compensation for premature termination of the contract.

6.6 We will be entitled to demand payment for the performance in the implementation of the agreement prior to the occurrence of the force majeure-causing circumstance.

6.7 The party which is (going to) enter into a force majeure situation, must inform the other party of this immediately.



## 7. Intellectual Property

7.1 All software, infrastructure, drawings, designs, diagrams, requirements package and such, produced by or on behalf of us during the execution of the contract, will remain our property, as well as the right to use them.

7.2 The other party warrants us at all times that the use of data or other things supplied by the other party shall not put us in contravention of statutory regulations or protected rights of third parties.

7.3 The other party indemnifies us in full for all direct and indirect consequences of claims third parties are allowed to lodge under breach of the warranty set out in paragraph 7.2.

7.4 At all times, we reserve the copyright on all software developed by us, whether at request or not.

## 8. Liability

8.1 Except in the case of gross negligence or deliberate intent of its board and/or other managers of Hybula Security, we cannot be held liable to compensate any damage of whatever nature or extent, directly or indirectly, including loss of profit, to movable or immovable property or to persons, both with the other party or third parties, arising from the execution of the agreement.

8.2 We are in any case not liable for damages arising from or caused by the use of the service supplied or by the unsuitability of the service for the goal for which the other party purchased it.

8.3 Even if the other party or a third party makes changes in the software we developed or the hardware we provided, we exclude any liability in regard to the operation and (consequential) damages.

8.4 We can never be held responsible for the contents of any file the other party or a third party placed on the internet. We can also not be held responsible for the consequences that might arise from the viewing or executing by the other party. We expressly reserve the right to remove offensive, discriminatory or injurious texts from the internet and notify this to the relevant government authorities. In case of repeated offence, we reserve the right to remove the other party's internet access.

8.5 We are not liable for pure financial losses such as lost profits, business interruption loss, reputational damage, etcetera.

8.6 If, despite the exclusion of liability as stated under 8.1 up to and including 8.5, our liability is assumed in the law, the extent of our liability will never exceed the total cost of the contract or partial delivery or, if this limitation is considered unacceptable in the given circumstances, will be limited to the amount that our business liability insurer disburses in the given circumstances.

## 9. Complaints

9.1 Any complaints can only be considered if such complaints are received by us directly in writing within 3 workdays of delivery of the performance in question, accompanied by a detailed account of the nature and basis of the complaints.

9.2 Complaints about invoices must be submitted in writing within 14 workdays after the invoice date.



9.3 After the above-mentioned terms have lapsed, the other party will be deemed to have approved the goods delivered or the invoice, in which case Hybula Security will no longer handle any complaints.

9.4 If the complaint is considered by us to be valid, we will be obliged to only deliver the agreed performance as yet.

9.5 If the complaint is considered to be valid, the liability of the other party will be suspended until such time as the complaint is settled, but with the proviso that this only includes the part of the invoice to which the complaint is considered applicable.

9.6 Return of the delivered goods can only take place after our prior written consent, on the conditions to be determined by us.

## 10. Reservation of Ownership

10.1 All goods and software delivered continue to be our property until such time as the other party has paid for all our deliveries and work performed and/or deliveries and work still to be performed under the agreement, including interest and costs.

10.2 In case of suspension of payments, bankruptcy, moratorium, liquidation of the other party, or death when the other party is a natural person, we are entitled to the order without notice or judicial intervention, wholly or partially cancel and the unpaid portion of the delivered recovery.

10.3 Dissolution and recovery of the goods do not diminish our right to compensation for loss or damage. In these cases any claim against the other party will be due immediately and in full.

## 11. Payment

11.1 Access, hosting, cloud subscriptions and agreements for related internet services, including service contracts, are invoiced monthly.

11.2 Domain names are invoiced per calendar year, in advance.

11.3 Payment is due within 14 days after the invoice date, without any discount, deduction or suspension, by one of our support payment methods. The currency date on our bank statements shall be decisive and be taken as the day of payment.

11.4 All payments made by the other party are first used to defray any interest and collection charges incurred by us and after that, to settle the oldest outstanding invoices.

11.5 In the event the other party:

- is declared bankrupt, requesting a moratorium, or if its capital is seized in whole or in part,
- is placed under guardianship or dies,
- fails to meet any of the obligations under the agreement and/or these terms and conditions,
- neglects a due invoice amount or part of it within the deadline, we have the right, by the mere occurrence of one of the aforementioned circumstances, to declare the contract dissolved, and to suspend the provision of our services, and to claim any amount owed by the other party on the grounds of work carried out and/or deliveries made by us in full immediately and without any warning or notice of default being necessary, and to reclaim the delivered goods which have not (yet) been paid as our property, all without prejudice to our right to compensation of cost, loss and interest.



11.6 If the payment is not made within the time specified in 11.3, the other party is legally in default as of the invoice date and is due a statutory interest over the outstanding amount.

11.7 All judicial and extrajudicial costs to be incurred for collecting overdue payments, shall be charged to the other party. The extrajudicial costs will be calculated in accordance with the Dutch Extrajudicial Collection Costs Decree.

## 12. Termination

12.1 Access, hosting, cloud subscriptions and agreements for related internet services, including service contracts, concluded for a definite period, can only be terminated by the end of the period for which they have entered, by written notice and according to the minimum term of notice of a month. Without a timely notice, these contracts are deemed to have been tacitly renewed for the same period of time as earlier conclusions, according to the conditions employed by Hybula for comparable contracts at the time of the tacit renewal.

12.2 Access, hosting, cloud subscriptions and agreement for related internet services, including service contracts, concluded for an indefinite amount of time can only be terminated by the end of every month, by written notice and according to the minimum term of notice of a month.

12.3 Agreements regarding registration and exploitation of internet domain names can be terminated by written notice by the end of every calendar year, in accordance with a term of notice of a month.

12.4 Hybula has the rights to terminate any concluded agreements with the other party after the end of the contract billing cycle, without any reason provided.

12.5 Notwithstanding that which has been provided in the previous articles, Hybula can terminate any concluded agreements with the other party at by written notice at all times, given that the other party acted in conflict with the concluded agreements or the Acceptable Use Policy and/or Abuse Policy adopted by Hybula, or otherwise harms the interests of Hybula in such a manner that continuation of the relationship cannot be reasonably expected from Hybula.

## 13. Applicable Law and Disputes

13.1 All our offers, agreements and their implementation are subject to the Dutch law only.

13.2 Any dispute, including any disagreement which only one party considers to be a dispute, resulting from or related to the agreement to which these terms and conditions apply or the related terms and conditions themselves and their interpretation or implementation, both in factual and legal terms, will be settled by the competent court in Arnhem, unless such competence is vested in the cantonal courts.

