

Terms and Conditions of Openprovider

1. Object of Agreement

a. Openprovider – hereafter called Openprovider - is an official registrar for domains. In this capacity Openprovider offers the use of her automated registration system at the RSPs' (Registrar Service Provider) disposal, in order to make it possible for the RSP to register and to manage domains. Openprovider registers domains on a "first come, first served" basis.

b. Openprovider renders her services only on the basis of these Terms and Conditions, and of the information provided on her website.

c. The Terms and Conditions of the customer, hereafter called the RSP (Registrar Service Provider), are only accepted if Openprovider has provided their consent in written form.

d. Openprovider can modify her Terms and Conditions, as well as her price-list at any point in time. The RSP can object to these modifications within 14 days. Should the RSP object, then Openprovider has the right to terminate the agreement within 14 days. If the RSP does not object, then the new Terms and Conditions will apply after the above mentioned 14 days.

e. The RSP is considered to read these Terms and Conditions, as well as the appendices relevant to the RSP.

f. By giving an order through Openprovider and/or by electronic actions the RSP hereby declares, to be authorized to place orders directly herself or as the power of attorney of a organization and that the RSP agrees to the registration agreement in all parts.

2. Contract

a. A contract can either be closed through written or electronical confirmation by Openprovider when the purchase is fulfilled.

b. If the purchase should only partially be deliverable, then the RSP will also accept a part-delivery.

c. The RSP is obliged to check the order confirmation from Openprovider and must contact Openprovider immediately, should any mistakes be verifiable.

3. Domain registration and renewal of registration

a. Openprovider registers domains as an official registrar. In providing or administering domains, however, Openprovider only acts as a mediator between the RSP and the registry or another institution or company in charge of the administration of the central data base. Openprovider has no influence on the distribution process of domain names. As there might be rights of a third party involved, Openprovider has no obligation to guarantee the continuity of the existence of a registered domain.

b. The RSP assures that the domain name and the use of the domain does not interfere with or infringe the rights of a third party and that there are no other obstacles to register the domain name.

c. The different domains are administered by various, usually national, organizations. Each of these organizations has different Terms and Conditions relating to the registration of the respective domains and the respective sub-level-domains, as well as different proceedings in domain name dispute matters. As far as domains are the subject of the contract, the additional terms and conditions of each gTLD (General Top Level Domain) and ccTLD (Country Top Level Domain) apply.

d. When registering or transferring a domain the RSP provides Openprovider with the power of attorney to submit all updates done through Openprovider (e.g. DNS Updates, WHOIS-Updates, as well as other domain configuration) on his behalf directly to the respective registry where possible in real-time.

4. Domain Name Dispute Policy and Exemptions

a. The RSP agrees to clarify and settle any disputes according to the Dispute Resolution Policies of the respective responsible Organizations. These Policies can be viewed on the Openprovider Website.

b. The RSP accepts that Openprovider acts as an accredited registrar. The RSP might be bound, according to UDRP-regulations, to lock a domain, to cancel it, or to transfer it to a third party, If the RSP does not provide evidence, that she has commenced a lawsuit against the complainant in a Mutual Jurisdiction, regarding the right to use the disputed domain name, within ten days after an Administrative Panel's decision.

c. During a pending administrative procedure or during a period of fifteen (15) days after such a procedure is concluded or during a pending court procedure or arbitration commenced regarding the domain name, the RSP may not transfer the domain name registration to a third party unless the third party agrees, in writing, to be bound by the decision of the court or arbitrator.

5. Limitation of Liability and circumstances beyond control

a. As a condition of the RSP's access and use of the registration service and other services the RSP agrees to defend, indemnify, save and hold harmless Openprovider, agents, partners, the central registry as well as all persons involved in the registration process in respect to all claims, demands, liabilities, costs and/or expenses resulting from an illegal use of a domain name registered by the RSP. In the event of a claim, the RSP has the right to prove Openprovider that claims in the context of the exemption are not appropriate in the demanded extent or not at all, and / or that the RSP is not responsible.

b. Openprovider, agents, partners, the central registry nor any person involved in the registration will be liable to the RSP or to any third party for any direct or indirect loss of profits, earnings or business opportunities, nor for damages, expenses, or costs resulting directly or indirectly from any failure to perform any obligation or to provide service hereunder, because of any force or condition beyond Openproviders' reasonable control, as governmental acts or directives, strikes, riots or civil commotions, war, any natural disaster, equipment or facilities shortages which are being experienced by providers of telecommunication services generally.

c. Openprovider cannot be held liable for delays of services and server downtimes due to higher force, fault of third parties or due to events, which Openprovider has no influence on, despite any

agreed upon deadlines and dates. You hereby permit Openprovider to postpone the service-supply and/or achievement by the duration of the respective disruption plus an appropriate starting time. Furthermore Openprovider can limit the service, if the stability and security of the operation, the maintenance of the net integrity, in particular the avoidance of serious disturbances of the network, the software or stored data requires it.

d. Concerning registration of multilingual domain names Openprovider does not have any control of these registrations and it might be possible that the service will be modified, interrupted or even terminated by the registry without prior notice. Openprovider has no obligation to guarantee the continuity of the existence or availability of multilingual domain names and registration is on the RSPs own risk. The RSP acknowledges that the functionality of multilingual domains is not the same as regular domains. Furthermore the RSP acknowledges that a multilingual domain, due to the introduction of constantly new technical features, may not function at all.

e. For all services of Openprovider liability will be limited to intention and gross negligence.

f. In case of paid services adhesion is limited by Openprovider with negligence and rough negligence to the amount of the payment which can be paid in each case from the RSP for the respective achievement and/or achievement period. Openprovider is not responsible for any consequence damage.

6. Duration of Contract and Termination

a. The duration of contracts concerning registrations of domain names or the administration of domain names transferred to Openprovider from another registrar can be depending on the respective domain (starting from the date of transfer) one (1) to ten (10) years. Renewals can also be processed for time periods between one (1) to ten (10) years, depending on the respective domain.

b. The RSP is fully responsible for domain renewals. In addition the RSP must monitor the balance in the Openproviders' deposit. Openprovider is not liable for the consequences caused by not raising the balance in time. If the domain is not renewed in time, or can not be renewed in time because of insufficient balance, the registration will be terminated.

c) both parties have the right to terminate the contract for an important reason. An important reason on behalf of Openprovider can be if:

- chargeable payments are withdrawn before Openprovider has received them
- the RSP violates against the rights and obligations of these Terms and Conditions;
- if obvious violations of the law are present;
- acts contrary to the Terms and Conditions of the Registration and the Requirements.
In these cases the RSP loses all rights on the registration.

d. The RSP will be informed by e-mail no later than (28) days before the end of the registration period asking payment for renewal. In the case of non payment at least three (3) days prior to the expiration date, then the RSP will lose all rights on his domain

e. In case Openprovider can not maintain the registration of a sub-level-domain according to the Terms and Conditions of the respective Registry, then Openprovider can terminate this contract by giving notice, in writing, not later than 14 days before the end of a month.

f. In case of termination of the Domains either through the RSP himself or a Domain disputes decision, the RSP has no claim for a substitute domain or a refund. Should the Domain be

terminated prematurely, then no refunding will take place, if the termination was not caused deliberately or grossly negligently through Openprovider. This applies likewise to other performances or additionally booked options.

g. In case of a termination of the accreditation of Openprovider as registrar, Openprovider can terminate a contract by giving notice, in writing, not later than 14 days before the end of a month.

h. Cancellations and notice explanations are required in writing, which applies by fax as protected.

7. Data and Protection of Data

a. The RSP is committed to supply Openprovider with the following information and data. The RSP assures that all submitted data and information to Openprovider is correct and complete. By changing the data in the RSP-online-interface, the RSP furthermore assures that these modifications are correct, complete and truthful. The RSP acknowledges that the indication of incorrect data can lead to the immediate deletion of the respective domain without refund. This concerns in particular:

- his full name, postal address, e-mail address, voice telephone number, and fax number if available - if the registrant is an organization, association, or corporation - additional information on name and address of an authorized person for contact purposes;
- if the RSP intends to use an own Domain Name Server (DNS): the IP-addresses of the first and secondary server;
- the names of these servers;
- the full name, postal address, e-mail address, voice telephone number, and fax number if available of the administrative contact;
- the full name, postal address, e-mail address, voice telephone number, and fax number if available of the technical contact;
- the full name, postal address, e-mail address, voice telephone number, and fax number if available of the billing contact.

If necessary the information has to be modified.

b. According to the privacy right Openprovider informs the RSPs that in the process of the registration of domains personal data are stored and processed and that personal data are transferred to third parties involved in the registration process. The registration also includes storage of personal data in so-called "whois" data base.

c. Openprovider is authorized to use the data for improvement of its services and to even better adapt its services to the needs of the RSPs.

d. The RSP has the right to be informed free of charge on the storage of his personal data.

8. Pricing

a. The prices for domain registration and other services of Openprovider are published on its website; these prices can be changed at any point in time.

b. Prices for renewals of domains are only valid for pending renewals; for renewals in the future the actual price on the day of the renewal will be effective.

9. Payment

- a. Payment can be made by credit card (VISA, Mastercard, AMEX, Dinersclub,) or by a one-off authorization or other specific payment methods. For online payment methods there is always a signed authorization form required in order to process the payments.
- b. The registration of services can only proceed after receipt of payment. The registration process will get processed after the funds have been received on the bank account of Openprovider. All transaction costs are to be covered by the RSP.
- c. The RSP agrees that he will lose all rights on the selected domain name in case of a charge back by their bank or credit card company, credit card fraud or any other reversed payment. Openprovider will in such cases decide at its own sole discretion whether to hold the name in its own portfolio or to cancel the domain name.
- d. Should the RSP wish to receive an invoice by regular mail then Openprovider has the right to charge three (3) Euro for each mail-package.
- e. The payment for a domain registration and other fees are not refundable in case of a premature termination of contract.
- f. Prepayments for domains which could not be registered will be deposited into the RSPs' account and can be refunded at any point in time.
- g. Against claims of Openprovider the RSP can only offset his own claims if these claims are accepted by Openprovider, in writing.
- h. Refunds of the RSP account balance will take place after termination of the contract and after deducting 25 euro administration costs..

10. Contents

- a. The RSP agrees to defend, indemnify, save and hold Openprovider harmless in respect to all claims, demands, liabilities, costs and/or expenses resulting from a violation of the obligations.
- b. All servers of Openprovider are normally active 24x7. Openprovider however cannot guarantee to supply services without any interruption. Openprovider cannot be held liable for loss of data, interrupted data transmission and other problems which may occur due to technical breakdowns.
- c. The RSP agrees to be fully responsible for all damages that might occur from the procedure mentioned in 10.b. The RSP is obliged to inform the customer of this procedure. In addition the RSP has to support the customer.

11. The RSPs responsibilities

- a. The RSP is responsible for passwords given to him by Openprovider. If there is an unauthorized insight then the RSP is committed to inform Openprovider immediately. Should third parties receive access to the passwords, due to fault of the RSP, then the RSP is liable towards Openprovider for all damages including users fees and compensation.

b. The RSP is committed not to dispatch any advertisement or have advertisement dispatched, without the explicit agreement of the respective receiver. This applies especially if the respective emails have the same content and are sent to a broad mass (so-called "Spamming"). Should the RSP violate this responsibility, then Openprovider has the right to delete all services and hold the RSP liable for all damages resulting from this.

c. The RSP is obliged to check his emails on a regular basis of max. two (2) weeks. Openprovider is allowed to send messages back to the sender, should the capacity of the respective email-box be full.

12. Final Clauses

a. Modifications to the terms and conditions or the contract, as well as cancellations will only be accepted in writing, including e-mail transmission.

b. For commercial RSPs and legal entities in The Netherlands, as well as for all the RSPs without permanent residence in The Netherlands, The Netherlands will be the exclusive place of jurisdiction.

c. For the contract between Openprovider and its RSPs the Dutch law is the only effective law.

d. If any provision of these terms and conditions shall be unenforceable and/or invalid, such unenforceability and/or invalidity shall not render these terms and conditions unenforceable or invalid as a whole. Any provision determined to be unenforceable or invalid shall nonetheless be enforced to the fullest extent permitted by applicable law. Such provision might also be replaced by Openprovider with one which is valid and enforceable and contents, to the extent possible, of the original objectives and intents, as reflected in the original provision.

e. Both, the English and Dutch version of these "terms and conditions" are valid. In case of doubt, however, the Dutch Terms and Conditions will be decisive.

f. All comments are to be submitted by means of e-mail. The RSP is fully responsible to keep the email address active.