



## **General Terms and Conditions of xQmail**

### **AND LICENSE TERMS**

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#### **ARTICLE 1. DEFINITIONS**

- 1.1 xQmail: is registered with the Dutch Chamber of Commerce under file number 30202800.
- 1.2 Licensee: A natural or legal person who enters in an (electronic) Agreement with xQmail.
- 1.3 Under 'License Terms' is understood: All the provisions as recorded hereafter.
- 1.4 Under "Agreement" is understood: The Agreement concluded between xQmail and Licensee towards the Software.
- 1.5 Software: Software chosen by the Licensee.
- 1.6 Website: [www.xQmail.eu](http://www.xQmail.eu)

#### **ARTICLE 2. GRANTING OF LICENSE AND RESTRICTIONS**

- 2.1 All intellectual property rights on the Software remain solely with xQmail or its licensors. The Software is not sold, but licensed against payment to Licensee.
- 2.2 xQmail grants Licensee a right of usage which is not exclusive and is not transferable.
- 2.3 The scope of the license depends on the chosen Software.
  - xQmail Dedicated: Up to 2 server installations. If Licensee wants to use the Software for more than 5,000 domain names, the number of servers shall be installed which reasonably should be used for such a number of domain names. A maximum of up to and including ten server installations is coupled to that, unless otherwise agreed upon in writing.
  - xQmail Desktop: Maximal 1 installation on a personal computer and 1 copy for backup purposes.
  - Hosted xQmail: In this Software product the Software is in management of xQmail and only a right of usage shall be granted.
- 2.4 Licensee may not subject the Software to reverse-engineering, decompiling or disassembling and adaptations. In particular, Licensee is not allowed to remove or modify any indication regarding copyrights, trademarks, trade names or other intellectual property rights from the application program of the Software.
- 2.5 xQmail is allowed to take technical measures to protect the Software. If xQmail has secured the application program of the Software by means of technical protection, Licensee is not allowed to remove or to evade this security.
- 2.6 Licensee is not allowed to use the Software for "safety critical" applications, such as medical systems, transportation systems and power facilities etc.

#### **ARTICLE 3. RIGHTS/OBLIGATIONS XQMAIL**

- 3.1 xQmail has the right to adapt the Software from time to time in order to improve the functionality and to fix errors. Because the Software is delivered to multiple licensees, it is not possible to abandon certain adjustments only for Licensee. xQmail is not liable for any compensation of damage at the adaptation of the Software.
- 3.2 xQmail is authorized to use the name and logo of Licensee in promotional activities and communications of xQmail.



- 3.3 xQmail has the right to save the e-mail messages classified (or reported) as spam, to adapt, to see, to use, and to share with third parties or to transfer to third parties.
- 3.4 xQmail shall engage itself to take measures in order not to save or to see e-mail messages, which are not identified as spam, for example to improve the Software, xQmail has the right to see or use the e-mail messages. The content shall be treated confidentially.

## **ARTICLE 4. RIGHTS / OBLIGATIONS LICENSEE**

- 4.1 Licensee is bound to strictly follow the instructions in the documentation.
- 4.2 Licensee shall not engage in illicit use of the Software and shall pose and behave in what xQmail may expect of a careful manager of the Software.
- 4.3 Licensee shall fully comply with the process of the Software (including the filter) of xQmail.

## **ARTICLE 5. WARRANTY AND EXCLUSION THEREOF**

- 5.1 If Licensee is not satisfied with the operation of the Software, Licensee has the right to terminate this Agreement in writing, within 30 days after acceptance of this Agreement.
- 5.2 The fee already paid for the Software shall be refunded within 14 days after the termination as stated in the previous paragraph, to Licensee.
- 5.3 To the full extent permitted by the applicable law, xQmail manages or supplies (depending on the chosen Software) the Software in the current state and with all the errors, and decline, besides the said guarantees and license terms, all guarantees and conditions, either explicitly or implicitly or legally defined, including but not limited to any (if any) implied warranties, obligations or conditions of merchantability, of fitness for a particular purpose, non-presence of viruses, of speed on the handling of e-mail, privacy, of results, of absence of negligence and lack of professional effort. The Software gives no guarantee of proper operation with outdated or not recommended Software configurations.

## **ARTICLE 6. LIABILITY**

- 6.1 xQmail is never liable for any indirect damage of Licensee, including consequential damages (including, but not limited to, damage due to loss of profits, loss of confidential or other information, interruption of the business operation, personal injury, loss of privacy and blocking of e-mails that are not spam).
- 6.2 The liability of xQmail to Licensee, in any case whatsoever, is per event (whereby a coherent chain of events shall count as one event) restricted to in the past year by Licensee to xQmail effectively paid fees, to a maximum of 5,000 Euros (excluding VAT).
- 6.3 The liability of xQmail because of a shortcoming accountable to the fulfilment of the Agreement only occurs if Licensee, immediately and in proper writing, seeks to hold xQmail liable, allowing a reasonable period for remedying the failure and xQmail continues to remain deficient in the fulfilment of its stated obligations, after that period. The formal notice shall contain a detailed description of the failure, so that xQmail will be able to respond adequately.
- 6.4 Licensee shall indemnify xQmail for all claims of third parties, including customers of Licensee who use the Software, in any way whatsoever, regarding compensation for damages, costs or interest, related to the Agreement and/or Software. Additionally, Licensee shall indemnify xQmail for all claims by third parties to Licensee for non-arriving/ failure to receive e-mail messages and unlawful processing of personal data.
- 6.5 The previous paragraphs of this Article shall not apply if and insofar as the damage was caused by intent or deliberate recklessness of xQmail.



- 6.6 Precondition for any right to compensation is always that Licensee, within 2 (two) weeks after the occurrence of the damage, reports the damage in writing to xQmail.

## **ARTICLE 7. FORCE MAJEURE**

- 7.1 In case of force majeure, under which is meant in any case failure or failure of the Internet, the telecommunications infrastructure of any operator or Internet service or access provider, the full occupation of dialup lines or insufficient bandwidth of an access provider, domestic unrest, mobilization, war, obstruction in transportation, strikes, lock-outs, business failures, stagnation in supply, fire, flood, import and export barriers and in the event that xQmail' own suppliers, regardless of the reason for that, are not able to supply by which fulfilment of the Agreement cannot be fulfilled reasonably by xQmail, the implementation of the Agreement shall be suspended, without any obligation for compensation.

## **ARTICLE 8. PAYMENT CONDITIONS**

- 8.1 Licensee must pay the invoice, written out by xQmail, in advance through transfer via a payment method indicated on the Website.
- 8.2 Payments should occur maximal 14 days after the invoice was written out, unless otherwise agreed upon in writing. After the expiration of 30 days after the invoice date, Licensee who is not paying on time is by law in default, without a letter or formal notice being required.
- 8.3 At overdue payment Licensee is, in addition to the amount and the published rate, held to a full payment of both judicial and extrajudicial collection charges, including the costs for lawyers, bailiffs and debt collection agencies.
- 8.4 The claim for payment is immediately collectable in case Licensee is declared in a state of bankruptcy, suspension of payments or total seizure of assets of Licensee, Licensee dies and furthermore, if it comes to liquidation or dissolution.
- 8.5 In the aforementioned cases, furthermore xQmail has the right to terminate or suspend, without letter or formal notice or judicial intervention, the implementation of the Agreement or any part thereof not yet carried out, without the right to compensation of damage to Licensee which thereof may occur.

## **ARTICLE 9. DURATION AND TERMINATION**

- 9.1 The Agreement for the use of the Software shall be concluded after a period of 12 months, and includes updates provided updates are performed. The Agreement shall be automatically and mutely renewed for the same period.
- 9.2 The Agreement for the use of the Software can only be cancelled by Parties in writing, with observance of a notice period of 2 (two) months.
- 9.3 Upon rescission or interim dissolution of the Agreement, the Licensee shall erase or destruct all the Software and Software related manuals.
- 9.4 In the event of a cancellation, as provided in paragraph 2 of this article, the following obligations after the end of the Agreement shall continue:
- Outstanding payments;
  - Intellectual property rights;
  - Liability.
- These shall continue to exist for as long as xQmail reasonably can claim the continued existence of these.



## **ARTICLE 10. AMENDMENTS LICENSE TERMS**

- 10.1 xQmail reserves the right to amend or supplement these License Terms.
- 10.2 Amendments also apply in respect of agreements already concluded with observance of a period of 30 days after publication of the amendment on the Website or by electronic messages. Amendments of minor importance can be made at any time.
- 10.3 If Licensee does not want to accept an amendment in this license, he can terminate the Agreement until the new License Terms come into force.

## **ARTICLE 11. FINAL PROVISIONS**

- 11.1 On the Agreement Dutch law applies.
- 11.2 Change in management or legal form shall not have effect on the Agreement.
- 11.3 Unless specified otherwise by the rules of mandatory law, all disputes that might arise from the Agreement shall be subjected to the competent Dutch court in Utrecht.
- 11.4 These Terms are drawn up in the Dutch language. For any difference in content or scope in a possible translation, the Dutch version shall be mandatory.

### **For more information, please contact:**

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