

General Terms and Conditions

Eurofiber Cloud Infra

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GENERAL TERMS AND CONDITIONS

Eurofiber Cloud Infra

Article 1. Definitions

In these General Terms and Conditions, the following terms have the following meanings:

General Terms and Conditions:	These general terms and conditions.
EFCI:	The party referred to in the customer contract, namely Eurofiber Cloud Infra B.V.
Customer:	A Party that has concluded an agreement with EFCI pursuant to which it purchases one or more Services.
Agreement:	The agreement between EFCI and the Customer, consisting of a customer contract, the (relevant) service description and SLA and the General Terms and Conditions.
Delivery Date:	The date from which the respective Service is to be delivered to the Customer.
Service:	the service described in the service description and/or Agreement.
EFCI Network:	the transmission equipment and, where applicable, the routing equipment and other technical means that enable the transmission of signals between connection points by cables, by radio waves, by optical means or by other electromagnetic means and insofar as such cables, radio waves and other means are under the control of EFCI.
Parties:	EFCI and the Customer jointly.
Proprietary Information:	All information which relates to the business affairs, prices, product developments, network information, trade secrets, know-how and personnel or other data of either Party as well as any information which may reasonably be regarded as proprietary information of either Party, and all information (in whatever form) designated as confidential or proprietary by the Parties.

Article 2. Interpretation, applicability and order of priority

1. In the event of conflict between the annexes to the Agreement, the following order of priority will apply:
 - a. The customer contract (quotation) (highest);
 - b. The service description;
 - c. The SLA;
 - d. The General Terms and Conditions (lowest).

Article 4. Delivery and provision of the Service

1. Upon the conclusion of the Agreement, EFCI will deliver and provide the Service in accordance with the Agreement.
2. The Customer will provide EFCI with all the documents, data, information carriers and all other necessary materials for execution which are necessary to enable delivery and provision of the Service, in full as well as in a proper and timely manner. Any change of Customer data (such as billing details and/or business address and/or correspondence address and other administrative data) should be notified to EFCI in writing (using the portal, if available) as soon as possible, and in any event no less than two (2) weeks before the actual change takes effect. EFCI will make an online portal available for notification of any change in these data.
3. The Customer will follow all reasonable instructions issued by EFCI concerning the delivery and provision of the Service.
4. EFCI provides no guarantee whatsoever that the Service delivered by it is suitable for any purpose other than that set out in the Agreement.

Article 5. Use of identification data

1. EFCI will provide identification data, address data and/or codes to the Customer solely for the purpose of using the Service. The Customer will exercise due care when handling such identification data, address data and/or codes. The Customer will notify EFCI of any loss, theft and/or other forms of unlawful and/or improper use, so as to enable the Parties to take appropriate measures.
2. If there are reasonable grounds to believe that third parties may have misused the Customer's identification data, address data and/or codes, EFCI may issue the Customer with instructions which should be followed without delay. If the Customer fails to follow these instructions without delay, the Customer will be responsible toward EFCI for the resulting loss and/or damage, regardless of when such loss and/or damage arises.
3. In the event that it is established that the Customer has misused the identification data, address data and/or codes, the Customer will be responsible toward EFCI for the resulting loss and/or damage, regardless of when such loss and/or damage arises.

Article 6. Use of the Service

1. The Customer may not transfer the rights and obligations under the Agreement to any third party without prior consent in writing from EFCI.
2. The Customer shall ensure that it uses the Service and any ancillary peripheral equipment with due care. The Customer will observe any reasonable instructions issued by EFCI for the use of the Service and any ancillary peripheral equipment.
3. The Customer may not use equipment or software or perform any actions which may result in or cause damage to the Service, EFCI or third parties, or which may result in or cause any Service failure.
4. The Customer acknowledges that it is familiar with the statutory recognised measures lists (such as, but not confined to, the Recognised Energy Efficiency Measures List (EML) (Erkende Maatregelenlijsten Energiebesparing (EML) and the Recognised List of Measures (EML) for Commercial Datacenters

(Erkende maatregelenlijsten commerciële datacenters)) and the Customer will comply with the resulting obligation to set up/configure the power management function on the servers in the most efficient manner.

Article 7. Use of EFCI Network

1. The Customer may make all reasonable use of the EFCI Network.
2. The Customer will not cause any disruption to or in the functioning of the EFCI Network, any network of any third party and/or the link between such networks.
3. The Customer indemnifies EFCI against any and all damage or loss, claim, complaint or action as a result of non-compliance with the provisions in paragraph 2 above and will hold EFCI fully harmless as and where appropriate.
4. If, in the reasonable opinion of EFCI, the operation of the EFCI Network and/or the service provision to EFCI's customers is at risk, as a result of, although not confined to, Spam e-mail, open relay, port scan or hacking conducted by and/or on behalf of the Customer, EFCI may issue reasonable instructions to the Customer which should be followed within the specified term.
6. The Customer will immediately be in default without notice of default being required in the event of non-compliance with the instruction referred to in the preceding paragraph and/or in the event that the data traffic, or the contents of the data traffic, or the Customer's acts and/or omissions are found to cause immediate disruption to the operation of the EFCI Network, any network of any third party or the link between such networks. The Customer shall be obliged to compensate any and all loss or damage consequently sustained by EFCI.

Article 8. Data traffic of the Customer

1. The Customer will not process any information that is contrary to the law or accepted principles of public decency, morality or public order. If it is plausible that the Customer is nonetheless doing so, EFCI will be entitled to remove the information concerned from the system with immediate effect. EFCI will furthermore be entitled in that case, and, where justified by the seriousness of the infringement, to give notice to terminate the Agreement with immediate effect. EFCI will under no circumstances be liable for damage or loss of whatever nature sustained by the Customer or its Customers as a result of the termination of the service or as a result of the removal of the information.
2. The Customer indemnifies EFCI against any and all damage or loss, claim, complaint or action as a result of non-compliance with the provisions in paragraph 1 above and will hold EFCI fully harmless as and where appropriate.
3. EFCI has a 'fair use policy', pursuant to which the Customer is not permitted, whether or not on an occasional basis, to use more bandwidth than is reasonably necessary for the Service and has been agreed with the Customer, a process referred to as 'bursting'. If the Customer exceeds this reasonably necessary bandwidth, which is specified in the agreement, by more than 25% then EFCI may charge the Customer separately for the resulting additional costs.
4. Abuse reports concerning suspected spam activities from the IP addresses used by the Customer will be forwarded to the Customer. The Customer is obliged to demonstrate, within two (2) working days, that the abuse reports are not a result of spam activities. Failure to respond in a timely manner to abuse

reports or to respond without plausible explanation may result in termination of the Agreement, without any right to compensation against EFCI arising for the Customer.

Article 9. Privacy

1. EFCI will comply with all its obligations under privacy laws and regulations.

Article 10. Confidentiality

1. Each Party agrees to maintain in strict confidence all Proprietary Information of the other Party which is disclosed in connection with the Agreement. Neither Party will disclose to any third party Proprietary Information without the express prior written consent of the other Party, with the exception of companies affiliated with EFCI, as referred to in Article 9.2 of this Agreement.
2. All Proprietary Information shall remain the property of the disclosing Party and will only be used by the receiving Party for the execution of the Agreement, and such Proprietary Information, including all copies thereof, shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon first request by the disclosing Party.
3. The provisions of Article 10.1 and Article 10.2 do not apply to any Proprietary Information which:
 - a. becomes publicly available other than through a breach of this article by the receiving Party;
 - b. is required to be disclosed by a governmental or judicial law, order, ruling or regulation;
 - c. has been demonstrably independently developed by the receiving Party; or
 - d. becomes available to the receiving Party without any restriction imposed by a third party.

Article 11. Fees

1. The fees for the Service are payable from the moment EFCI notifies the Customer that the Service has been delivered.
2. Amounts shown in the Agreement and as referred to in this Article are stated in Euros and are exclusive of VAT, unless otherwise indicated.
3. Insofar as the agreed fees relate to a particular period and are not due for an entire period, EFCI will charge an amount pro rata per calendar day.
4. EFCI reserves the right to increase its prices and/or rates each calendar year in line with the Consumer Price Index for all Households published by Statistics Netherlands (CBS), subject to a minimum of three (3) per cent. EFCI will give notification of the aforementioned change by no later than 31 March for the calendar year in question.
5. EFCI may raise or lower the rate it charges for electricity usage monthly if the cost to EFCI of purchasing energy or other related costs with regard to the supply of energy (also including taxes, additional charges, PUE or otherwise) are increased or fall. EFCI will notify the planned adjustment in writing not less than fourteen (14) days before the start of the respective month in which a rate increase will be implemented.

6. In the case of IaaS/Private Cloud Services, EFCI may raise or lower the rate it charges monthly if the cost to EFCI of purchasing licences, hardware, connectivity and racks as well as other related costs are increased or fall. EFCI will notify the planned adjustment in writing not less than one (1) calendar month before the start of the respective month in which a rate increase will be implemented.

Article 12. Payment

1. EFCI will bill the Customer for the Service in accordance with the Agreement. Unless otherwise agreed, payment should be made within thirty (30) days after the date of the invoice. The time of payment is the moment the amount due is received by EFCI on its designated bank account. Any costs connected with the payment are for the Customer's account.
2. If the Customer believes that the invoiced amount is incorrect, the Customer should make its objections known in writing to EFCI before the due date of the invoice. Upon receiving the objection, EFCI will launch an investigation into the accuracy of the invoice amount. The part of the invoice amount against which no objection is raised remains due and payable. Payment of that part may therefore not be suspended.
3. All payment terms always qualify as strict deadlines. In the event that the Customer fails to pay any amount payable by it in due time, it will be in default without a separate notice of default in that regard being required and the Customer will be liable to pay the statutory commercial interest due on the outstanding amount from the invoice date.
4. If the Customer fails to fulfil its obligations toward EFCI, insofar as necessary after being given notice of default, all judicial and extrajudicial costs related to the collection of the amount or amounts which are owed shall always be for the Customer's account. The extrajudicial costs are equal to 15% of the principal owed, subject to a minimum of €250.00.
5. Payments will be allocated first to meet any interest due, then judicial and extrajudicial costs and next to settle the longest outstanding amount or amounts due.
6. All amounts due to EFCI shall always be paid by the Customer without the Customer being able or entitled to invoke any set-off, suspension or deduction on any account whatsoever.

Article 13. Financial security provision

1. If, based on facts and circumstances, reasonable doubt might arise as to whether the Customer can meet its payment obligations and/or if the service provision to the Customer results in EFCI having to make substantial investments, EFCI may require the Customer to provide financial security, such as by the Customer arranging for the provision of a bank guarantee, the pledging of amounts owed by third parties to the Customer to EFCI by the Customer, or any other form of financial security.
2. The amount of the financial security referred to in paragraph 1 above will not exceed the amount that EFCI believes the Customer will reasonably owe over a period of twelve (12) months.
3. Once, based on facts and circumstances, the necessity to provide security is no longer present or evident, EFCI will make it known that the financial security provision need no longer be required.

Article 14. Intellectual Property

1. Ownership of all intellectual property rights of EFCI or licensors shall remain with EFCI or licensors at all times.

Article 15. Force majeure and/or exceptional circumstances

1. EFCI is not obliged to fulfil any obligation toward the Customer if it is prevented from doing so due to a circumstance which cannot be attributed to it and for which it cannot be blamed nor held accountable by law, a legal act or according to generally accepted standards (force majeure).
2. Circumstances which among other things, although not exclusively, are not for EFCI's account include transport delays, strike, extreme weather conditions, riots, dike closure, not receiving permits or licences on time, contaminated soil, failure by suppliers to provide their service and/or product and/or failure any longer to do so in good time, and/or disruptions to or in a service and/or product of a supplier.
3. If the force majeure situation persists for more than sixty (60) days, the Parties may agree to terminate the Agreement and agree further arrangements regarding the consequences associated with the termination.

Article 16. Liability

1. EFCI 's liability under an Agreement is limited to direct loss and/or damage only and will not exceed the total value of the Agreement, nonetheless with a maximum of EUR 10,000 per occurrence or related series of occurrences and EUR 50,000 per period of twelve months. Direct loss and/or damage will only consist of the following:
 - a. the reasonable costs the Customer has incurred in order to ensure that EFCI 's performance conforms to the Agreement; Such costs will not be compensated or reimbursed, however, if the Customer has cancelled (*ontbonden*) or terminated (*beëindigd*) the Agreement;
 - b. the reasonable costs the Customer has incurred in order to determine the cause and the scale of the loss and/or damage, insofar as the determination relates to direct loss or damage;
 - c. the reasonable costs the Customer has incurred in order to prevent or restrict any loss or damage, insofar as the Customer demonstrates that such costs have resulted in restriction of the direct loss or damage; and
 - d. the reasonable loss or damage due to damage to tangible property of the Customer which loss or damage is the direct result of activities of or on behalf of EFCI directly connected with the execution of the Agreement.
2. EFCI 's liability for loss or damage resulting from death or personal injury is limited to the amount claimable under the liability or indemnity insurance taken out by EFCI.
3. EFCI is not liable for any indirect loss and/or damage, including but not limited to loss or damage due to loss of operating time, loss of goodwill, loss of data, loss of profits, lost savings, damage through business interruptions and any claims of clients of the Customer. It is solely the responsibility of the

Customer to protect and store its information in an efficient manner. The Customer is responsible for making the necessary back-ups of such information.

4. The limitation of liability referred to in this article does not apply insofar as the loss or damage is due to wilful misconduct or gross negligence committed by managers or supervisors of EFCI.
5. Notwithstanding the provisions in this article, EFCI is not liable for any claim for compensation, irrespective of the grounds on which a claim may be based.
6. As a condition for the creation of any right to compensation the Customer will report the occurrence of such loss or damage as soon as possible in writing to EFCI. Claims for compensation shall lapse by the mere expiry of 12 months after the claim has arisen.

Article 17. Suspension

1. EFCI may suspend (*opschorten*) its obligations pursuant to the Agreement:
 - a. upon the occurrence of an Event of Default attributable to the Customer, which is defined as a structural breach of any material provision or obligation under the Agreement, including the failure to make payment, timely or otherwise, due under the Agreement.
 - b. if the Customer has filed a petition for its own bankruptcy or has requested a moratorium on payments, if the Customer has been declared bankrupt or granted a moratorium on payments, if an administrator (*bewindvoerder*) or trustee (*curator*) has been appointed for the Customer's business, or if the Customer is otherwise no longer able to fulfil its payment obligations towards its creditors.

Article 18. Term and termination

1. The agreement can be terminated by written notice (using the portal, if possible) with effect from the end of the term, subject to the notice period referred to in the Customer Contract (quotation), with the date of receipt of such notice by EFCI being the guiding factor. If the Customer Contract does not contain a notice period, then the Customer Contract can be terminated by either Party at the end of the term with one month's notice. If the agreement is not terminated, it will be tacitly renewed in accordance with the Customer Contract (quotation).
2. A Party is only entitled to give notice to terminate the Agreement in writing prematurely by registered letter in case:
 - a. of an Event of Default by the other Party and said Party is in breach (*in verzuim*) in that regard;
 - b. of a Force Majeure Event that continues for at least sixty (60) days as a result of which a Party is not able to perform its material or other obligations pursuant to the Agreement;
 - c. the other Party files a voluntary petition for bankruptcy or requests a moratorium on payments;
 - d. the other Party becomes bankrupt or is granted a moratorium on payments;
 - e. an administrator (*bewindvoerder*) or trustee (*curator*) is appointed for the other Party;
 - f. the other Party has liquidated its business (*liquidatie*) and/or its legal entity (*vereffening van de rechtspersoon*).

3. Upon the termination of an Agreement, all rights and obligations of the Parties thereunder shall terminate, without the Customer having any right to reimbursement of the fee paid to EFCI in advance by the Customer.
4. In the event the Agreement is terminated, for whatever reason:
 - EFCI will revoke the identification data, address data and/or codes provided by it immediately following the termination of the Agreement;
 - EFCI may bill the Customer for reasonable termination charges.

Article 19. Relocation

1. In urgent circumstances, EFCI may move the Customer Equipment to another location. Where reasonably possible, EFCI will notify the Customer in advance regarding the aforementioned move to an alternative location.
2. The costs connected with any replacement or relocation as described in this article, including the costs of moving Customer Equipment to an alternative location, are for EFCI's account.

Article 20. EFCI employees

1. The Customer will not take on any employees of EFCI involved in the rendering or execution of the Service or approach them with a view to offering them direct or indirect employment, temporary or otherwise, with the Customer or asking them to perform work directly or indirectly for the Customer, in salaried employment or otherwise, during the term of the Agreement or any extension thereof and during a period of twelve (12) months thereafter. In the event of non-compliance with this provision, the Party in breach will forfeit to the other Party an immediately due and payable penalty (by law) of EUR 50,000 (in words: fifty thousand euros) per occurrence, without prejudice to all other rights which are vested in the aggrieved Party.

Article 21. Software and hardware of suppliers

1. If the provision of the service or services by EFCI involves the implementation of hardware and/or software which is provided by a supplier of EFCI and such supplier only grants the right to use the hardware and/or software provided by it in accordance with its general terms and conditions relating to the hardware and/or software, the provisions of such agreements shall apply to the Customer instead of the provisions in these terms and conditions as regards that hardware and/or software. The Customer accepts the aforementioned provisions in the agreements of suppliers, and the Supplier will inform the Customer about their contents on request.

Article 22. Final provisions

1. The articles which by their nature are intended to remain operative even after the termination of the Agreement shall remain in force even after the end of the Agreement.
2. If any provision, covenant or condition in the Agreement is deemed to be invalid or unenforceable by a court, EFCI may replace such provision with a similar provision which is enforceable at law, without this affecting the legal validity of the remaining provisions in the Agreement.

3. The Agreement replaces all prior agreements, arrangements and commitments between the Parties with regard to the Service concerned.
4. Any dispute relating to or concerning the Agreement shall be governed by and construed exclusively in accordance with the laws of The Netherlands.
5. In the event of a dispute and/or conflict arising from or relating to the Agreement, the Parties agree to submit to the exclusive jurisdiction of the District Court of Midden-Nederland, The Netherlands, subject to EFCI's right to select instead the court in the place where the Customer has its registered office.

Article 23. Only applicable to the service: Consultancy

1. Unless otherwise agreed, the order for the provision of consultancy services between EFCI and the Customer constitutes an 'obligation to use best endeavours' (*inspanningsverbintenis*) under which EFCI warrants that the employee or employees that it will deploy have the necessary knowledge and skills in relation to the order to be performed. EFCI will perform the order to the best of its knowledge and ability in accordance with high standards of good professional practice, and based on the latest scientific and technical knowledge available at that time. Unless explicitly agreed in writing between the Parties as part of the Agreement, the order only has the character of an 'obligation to use best endeavours' (*inspanningsverbintenis*) and not an 'obligation to achieve a specific result' (*resultaatsverbintenis*).
2. If the Customer cancels the order after it has been confirmed, the Customer shall be liable to pay EFCI 25% of the agreed price, without prejudice to EFCI's right to demand compensation insofar as the loss or damage exceeds 25% of the agreed price.
3. If the order has been agreed upon with a view to performance by a particular individual, EFCI will always be entitled to replace that individual with one or more individuals who have the same qualifications.
4. In the event that employees of EFCI perform work at the offices of the Customer, the Customer will ensure that the safe and secure facilities reasonably desired and required by those employees, such as, where applicable, a workspace with telephone, data communication facilities, etc., are provided at no expense.
5. The rates stated in the Customer Contract (quotation) are inclusive of regular commuting expenses for travel to and from the agreed location, with a maximum travel time of two hours per day and/or a maximum distance to be travelled of 100 kilometres per day.
6. Unless expressly agreed otherwise in writing, EFCI's services are provided on the basis of actual costs (*nacalculatie*).

Article 24. Only applicable in the event that connectivity is essential for the IaaS/Private Cloud Service

1. The Order contains the Average Delivery Time for the Service, unless the Parties agree a fixed Delivery Date. Once the Order has been signed, a Delivery Date will be notified to the Customer. The Customer may only cancel (*annuleren*) the Order in writing, without being required to pay any compensation to EFCI, within five (5) working days after EFCI has notified the Customer in writing of the Delivery Date and where the Delivery Date differs by more than fourteen (14) days from the Average Delivery Time.

2. If the Effective Delivery Date of the Service is after the Delivery Date, the Customer is entitled to liquidated damages in an amount equal to two times the daily Fee, calculated on a pro rata basis, for each full working day that the Effective Delivery Date exceeds the Delivery Date, with a maximum of thirty (30) days. EFCI is not liable toward the Customer for any other costs, loss and/or damage due to late delivery of the Service, unless in the event of wilful misconduct or gross negligence.
3. If EFCI materials and/or peripheral equipment are to be installed at a Location, the Customer will ensure or warrant, respectively, at its own expense that:
 - a. all necessary permits and authorisations to make alterations to buildings and to instal EFCI materials at the Location are obtained and maintained;
 - b. access is provided for EFCI and its subcontractors to the relevant Locations for the purpose of installing the EFCI materials;
 - c. a suitable and safe working environment, including cable ducts, routes, etc., in line with the relevant installation standards is provided;
 - d. electricity and telecommunications points as requested by EFCI are provided;
 - e. access to the entry/input points and ports at the Locations which are required in order to instal the EFCI materials is provided;
 - f. internal cabling between the EFCI materials and the Customer's equipment is provided;
 - g. floor and ceiling sections and/or plates are removed to permit the installation or maintenance work to be carried out, or to facilitate repair work aimed at restoring some or all aspects of the existing situation.
4. If the Customer fails to perform its obligations under this paragraph 3 in good time and/or in full, EFCI shall be entitled, at EFCI's option:
 - a. to alter the Delivery Date or cancel the respective Order and bill the Customer for the associated termination charges; or
 - b. to charge the Customer the reasonable Price as well as the costs which EFCI has had to incur for work which was carried out on the Customer's behalf and which is attributable to the Customer's failure to perform its obligations, or failure to perform its obligations in good time and/or in full in order to enable the provision of the Service. Except in cases of urgency or emergency, where this is not reasonably possible, EFCI will inform the Customer each time it intends to exercise its rights referred to in this article.
5. The Customer is responsible for supplying, installing, configuring, monitoring and maintaining any equipment that is connected to the Service. The Customer warrants that any equipment referred to in the previous sentence will be used in accordance with the usual instructions and the applicable safety and security requirements.
6. EFCI reserves the right at all times to cancel an Order or to amend an Order in consultation with the Customer if EFCI cannot be expected according to standards of reasonableness and fairness (e.g. due to exceptionally high digging costs and/or implementation fee which could not reasonably be foreseen) to be bound by its offer.