



## General Terms and Conditions GitLabHost B.V.

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## **Article 1. Definition of used terminology**

In these General Terms and Conditions, the following terms should be understood as defined herewith:

Account: the right to access to a user interface that Customer can use to manage and configure (certain aspects of) the Services, as well as the information stored by Customer.

Agreement: every agreement between GitLabHost and Customer on the basis of which GitLabHost delivers Services to Customer.

Customer: the natural or legal person whom GitLabHost concludes the Agreement with, including parties negotiating with GitLabHost to that end, as well as their (authorised) representatives.

Emergency request: The request of the Customer because the Services are unavailable, not including scheduled maintenance; degraded performance; factors outside of GitLabHost's control, including any force majeure events; failures, acts or omissions of GitLabHost's upstream providers; failures of the internet; acts or omissions of Customer and its users; and enforcement of regulations.

General Terms and Conditions : the (provisions in the) General Terms and Conditions of GitLabHost.

GitLabHost: GitLabHost B.V., who also acts under the name of GitLabHost, established at Groningen, the Netherlands, registered at the Chamber of Commerce of the Netherlands under 70572321.

Party/Parties: GitLabHost and/or Customer

Regular request: The request of the Customer because the Services can be used with limited functionality or shows an inconvenient shortcoming.

Response time: the timeframe between an Emergency request or Regular request and the moment GitLabHost replies to the Customer.

Services: the products and/or services that GitLabHost shall deliver to Customer pursuant to the Agreement, such as providing space in a data centre for deploying a Gitlab instance and/or any other services and works including (but not limited to) hosting websites and (web) applications, software, house styles, logos, flyers, brochures, leaflets, lettering, advertisements, marketing and/or communication plans, concepts, images, texts, sketches, documentation, advices, reports and other products of the mind, including preparatory materials thereof and (whether or not coded) files or data carriers on which the materials are stored.

Uptime: uptime is the amount of time that the Services are available and operational.

Website: the website of GitLabHost, available in <https://gitlabhost.com>.

Writing: paper writings or e-mail to the extent the identity of sender and the integrity of the message can be sufficiently established.

## **Article 2. Scope of application**

- 2.1 All offers and/or quotations and all Agreements with GitLabHost are exclusively subject to these General Terms and Conditions. The Customer contracted under the General Terms and Conditions agrees to the applicability of the General Terms and Conditions to future and/or subsequent Agreements with GitLabHost.
- 2.2 The general conditions of the Customer and other stipulations contrary to the Agreement and/or the General Terms and Conditions are expressly rejected by GitLabHost unless they have been expressly agreed in Writing by GitLabHost.
- 2.3 If any (part of) provision of the Agreement and/or the General Terms and Conditions becomes fully or partially non-binding for any reason, this will not affect the binding nature of the remaining (part of the) provisions of the Agreement and/or General Terms and Conditions.
- 2.4 The General Terms and Conditions extend also to third parties engaged by GitLabHost for the performance of the Agreement.

### **Article 3. Conclusion of Agreements**

- 3.1. Customer can request the Services through the Website of GitLabHost by creating an Account. The Agreement is regarded as concluded if an email, containing the confirmation and acceptance of the request, is sent – whether or not by automatic means – to Customer.
- 3.2. If not 100% satisfied with the Services, the Customer may terminate the Agreement free of charge within a period of thirty days from the moment the Agreement is concluded.

### **Article 4. Execution of the Agreement**

- 4.1. Pursuant to this article, the Services are qualified as a best efforts obligation. GitLabHost commits itself to make efforts to achieve the intended result. There is a shortcoming only if GitLabHost has not made sufficient efforts to achieve the intended result. Whether or not the desired result is achieved is in principle irrelevant.
- 4.2. After the Agreement is concluded, GitLabHost shall make best efforts and apply sufficient care and craftsmanship to fulfil the Agreement. However, GitLabHost will only be held to deliver the Services and fulfil the Agreement after the Customer has given GitLabHost permission to monthly amortize (by direct debit) the indebted amount from the bank account of the Customer or after receiving the payment of the Customer (if the Customer opts for a 12 months payment in advance).
- 4.3. GitLabHost shall make efforts to effect qualitatively good and uninterrupted availability of the Services and their associated systems and networks, and to provide the Customer with access to data stored therein. However, GitLabHost does not make any warranties on the quality or availability, unless expressly agreed otherwise in Writing.
- 4.4. Any terms stated or provided by GitLabHost for the delivery of Services shall be merely indicative.
- 4.5. The terms indicated by GitLabHost within which the Services are to be delivered are not firm deadlines for GitLabHost unless expressly agreed otherwise in Writing.

- 4.6. GitLabHost is entitled to hire third parties to carry out certain work, if that is necessary for the proper execution of the Agreement. The costs of this will be charged on to Customer.
- 4.7. The Customer can select the location of the data centre where he wants to deploy his GitLab instance to. If the by the Customer selected data centre is no longer available and/or GitLabHost cannot reasonably be expected to store the data of the Customer at the selected data centre, GitLabHost is authorized to transfer the data of the Customer to an (in the opinion of GitLabHost) comparable alternative. If possible and available, GitLabHost will select a data centre in the same country as the previous data centre was located.
- 4.8. After Customer has created an Account, the Account shall be accessible by entering a username and password. Every action through the Account shall fall under the responsibility of Customer and shall be at Customer's own risk. If Customer suspects or should reasonably suspect that an Account is being abused, Customer shall immediately report this to GitLabHost in order to be able to take measures.
- 4.9. GitLabHost shall make best efforts to provide an Uptime of 99,9% each month 24 hours a day 7 days a week.
- 4.10. GitLabHost shall be available to provide a reasonable level of customer support remotely by email, during normal working hours on Monday until Friday 09:00 to 18:00, local time for GitLabHost, not including public holidays, unless agreed otherwise by Writing.
- 4.11. GitLabHost shall make best efforts to provide a Response time up to 48 hours during working hours for Regular requests and a Response time up to 4 hours during working hours for Emergency requests.

## **Article 5. Obligations of Customer**

- 5.1. Customer is obliged to do whatever it reasonably takes to allow for a timely and correct execution of the Agreement. More specifically, Customer shall make sure to provide all data to GitLabHost of which GitLabHost has indicated that they are necessary for the delivery of the Services or of which Customer should reasonably know that they are necessary for that purpose. The term in which GitLabHost should execute the Agreement shall start only after GitLabHost has received all requested and necessary data. The necessary data includes in any case the payment details of Customer.

- 5.2 If Customer knows or expects that GitLabHost should take certain (extra) measures to be able to fulfil its obligations, Customer shall notify GitLabHost without delay. For example, this obligation applies where Customer knows or should know that an extraordinary peak in the workload of the systems of GitLabHost will occur, that are likely to cause the unavailability of the Services. This applies especially where Customer knows that Services are also delivered to other parties through the same systems as GitLabHost uses to deliver Services to Customer. All reasonable additional costs to prevent the unavailability of the Services made in this context by GitLabHost shall be borne by Customer, unless agreed otherwise in Writing.
- 5.3. If Customer needs any permit or other permission from a government agency or third party for the intended use of the Services, it is Customer's responsibility to obtain such permits or authorisation. Customer guarantees GitLabHost that it has all permits and permissions required for the intended use of the Services by Customer.
- 5.4. If Customer fails to comply with any of the obligations in the Agreement and/or this General Terms and Conditions, Customer is automatically in default.

## **Article 6. Rules of conduct and Notice and Takedown**

- 6.1. Customer is prohibited to use the Services to violate Dutch or other regulations that Customer or GitLabHost is subject to, or to violate rights of others.
- 6.2. Customer is prohibited to use the Services to publish or disseminate materials (whether they are lawful or not) that:
- are evidently intended to support others to violate rights of third-parties, such as website containing (exclusively or predominantly) hack tools or explanations of cybercrimes that is evidently intended to enable the reader to execute the described criminal activities (and not to defend himself against such);
  - are evidently libellous, slanderous, abusive, racist, discriminatory or inciting hatred;
  - contain child pornography or bestiality pornography or are evidently intended to help other find such materials;
  - constitute a violation of the privacy of third parties, which also includes the dissemination of personal data of third parties without any permission

or necessity and the approaching of third parties with unsolicited communication;

- contain hyperlinks, torrents or references to (places containing) materials that evidently infringe copyrights, neighbouring rights or portrait rights;

- 6.3. Customer shall refrain from hindering other customers and internet users or harming the systems or networks of GitLabHost or other customers. Customer is prohibited to execute processes or programs, whether or not through the systems of GitLabHost, of which Customer knows or should reasonably know that these may cause damage or hindrance to GitLabHost, its customers or internet users.
- 6.4. If according to GitLabHost hindrance, damage or other dangers arise to the functioning of the systems or networks of GitLabHost or third parties and/or service delivery through the internet, GitLabHost shall be entitled to take all measures that it reasonably deems necessary to ward off or prevent such danger. More specifically, such danger may exist of excessive transmission of e-mails or other data, denial-of-service attacks, poorly secured systems or activities of viruses, Trojans or similar software.
- 6.5. If GitLabHost receives a complaint on violation of this article by Customer, or if GitLabHost establishes that there is such violation, GitLabHost shall notify Customer of such complaint or violation as soon as possible. Customer shall respond as soon as possible, after which GitLabHost shall decide how to deal with it. In exceptional cases, where the complainer has requested not to forward the complaint to Customer or GitLabHost established that the violation is evident, GitLabHost is not obliged to forward the complaint.
- 6.6. If GitLabHost establishes that there is a violation, GitLabHost is permitted to suspend the Services, to block the access to the Account and the data of the Customer, without removing the data definitely (if this proves technically impossible, GitLabHost shall make best efforts to create a backup if reasonably possible). GitLabHost shall make efforts to not affect other data in that process. GitLabHost shall notify Customer on the taken measures.
- 6.7. At all times, GitLabHost shall be entitled to report any detected illegal activities.
- 6.8. Although GitLabHost aspires to act in the most reasonable, careful and adequate way after complaints about Customer, GitLabHost shall never be obliged to compensate any damages resulting from the measures taken in the context of this article.

## **Article 7. Storage and data limits**

- 7.1. GitLabHost is under certain circumstances entitled to set a further maximum to the storage capacity or monthly data traffic that Customer may or can use in the context of the Services.
- 7.2. The limits are safeguarded by the system's functioning and cannot be exceeded, unless there is a hack or error. If such hack or error is caused by Customer or attributable to Customer, GitLabHost is entitled to charge the exceeded limits to Customer.
- 7.3 GitLabHost shall not be liable for any consequences of the inability to send, receive, store or change data in case the applicable limit for storage capacity or data traffic is exceeded by Customer.

## **Article 8. Intellectual property rights**

- 8.1. All intellectual property rights developed or made available by GitLabHost in the context of the Agreement shall be vested exclusively in GitLabHost, unless expressly agreed otherwise in Writing.
- 8.2. Customer only has the user rights or other rights that are granted under the Agreement or these General Terms and Conditions, or those that are otherwise explicitly granted in Writing. In other cases, Customer shall not reproduce the Services or make the Services available to the public.
- 8.3. Unless agreed otherwise in Writing, Customer is not allowed to remove or modify any notice of copyrights, trademarks, trade names or other intellectual property rights in these Services , including indications of the confidential nature and secrecy of the Services.
- 8.4. GitLabHost is allowed to take technical measures to protect its Services. If GitLabHost has protected its Services through such technical measures, Customer is prohibited to remove or circumvent such measures, except where mandatory law provides otherwise.

## **Article 9. Protection of personal data**

- 9.1 GitLabHost processes and protects personal data in accordance with the rules in force in the Netherlands, including the rules of the General Data Protection Regulation.



- 9.2 The Parties will conclude a separate data processing agreement in order to comply with the aforementioned rules.
- 9.3 GitLabHost is entitled to irreversibly anonymise personal data that it will process for the Customer and to use this anonymised data for statistical purposes and benchmarking.

## **Article 10. Prices**

- 10.1. All prices given are denominated in euros (€) and are net, exclusive of taxes and/or levies (including turnover tax and import and export duties) and environmental levies, unless expressly otherwise indicated and/or agreed in Writing.
- 10.2 In the event of an increase in cost-price determining factors that occur after the offer is made and/or after the Agreement is concluded, irrespective of whether this could have been foreseen, GitLabHost reserves the right to increase the price of the Services (per package). Cost-price determining factors are defined, but not exhaustively, as price increases arising from increasing or changing wages, costs, taxes, duties, fees, freights, levies, prices of raw materials and energy, increases in the costs charged by suppliers and data centres, as well as exchange rate changes and legislative amendments. Price increases such as these will not give Customer the right to dissolve the Agreement and/or the right to reimbursement.

## **Article 11. Payments**

- 11.1. The payment will be made by means of direct debit or by (electronic) invoice. GitLabHost is entitled to amortize by direct debit and/or invoice amounts that are due periodically prior to the delivery of Services.
- 11.2. The payment term for an invoice is fourteen days after the invoice date, unless agreed otherwise in Writing.
- 11.3. If Customer has not paid the invoice within fourteen days after the payment term has lapsed or it is for any reason not possible to amortize the payable amounts, Customer is automatically in default.
- 11.4. If Customer defaults on a payment to GitLabHost and/or if Customer fails to meet any other obligation under the Agreement and/or these General Terms and Conditions, all of GitLabHost claims on Customer will become immediately due and payable, without any further notice of default being required, and

GitLabHost will be authorised to suspend its continued compliance with all Agreements with Customer.

- 11.5. If Customer is in default on a payment, a monthly interest rate of 1.5% will be payable over the outstanding amount from the due date until the time of full settlement.
- 11.6. If Customer is in default, the Account, GitLab instance(s), websites and/or (other) Services hosted by Customer may, without further warning, be made inaccessible until the outstanding amounts, interest and other payable amounts are paid.
- 11.7. GitLabHost is authorised at all times to require Customer to make an advance payment or to provide security. If Customer fails to meet the request for advance payment and/or security, then GitLabHost will have the right to dissolve the Agreement and to claim compensation for damages. Customer cannot invoke any rights whatsoever concerning compliance with the Agreement until the requested advance payment and/or security has been received.
- 11.8. Customer is obliged to report any inaccuracies in issued or stated payment details to GitLabHost without delay.
- 11.9. Payments by or for Customer will extend consecutively to settlement of the payable extrajudicial debt collection costs, the judicial costs, the payable interest and thereafter in the order of the age of the outstanding principal amounts, irrespective of any instructions to the contrary given by Customer.
- 11.10. Complaints concerning direct debits and/or GitLabHost's invoices must be submitted in writing within 8 days of the direct debit and/or invoice date, in the absence of which the direct debit and/or invoice will be deemed to be correct and complete and all claims against GitLabHost in that regard will be null and void.
- 11.11. Customer is under no circumstances allowed to invoke suspension, set-off or deduction.

## **Article 12. Liability**

- 12.1. In the context of the conclusion and execution of the Agreement, GitLabHost is not liable except for the cases stated below, and limited to the maxima stated therewith.
- 12.2. A shortcoming by GitLabHost will not be attributable other than in cases of intentional act or omission or gross negligence on the part of a manager.
- 12.3. In the event of GitLabHost's liability being insured in a given case, GitLabHost's liability will be limited to the amount paid out by the insurer.

- 12.4. The total liability of GitLabHost for damages suffered by Customer arising from attributable shortcomings by GitLabHost in complying with the obligations of the Agreement is limited, per event, whereby a series of connected events counts as one event, to an amount equal to the total payable amounts (excluding VAT) that Customer has paid under the Agreement until the moment the damage has occurred or, if the Agreement is concluded for a term longer than three months, to an amount equal to the payments that Customer has made in the last three months. The aforementioned shortcomings also include each shortcoming in complying with any possible concluded warranty agreed with Customer, or any wrongful action by GitLabHost, its employees or hired third parties. In no case shall the total compensation for direct damages amount to more than € 5,000.
- 12.5. GitLabHost is explicitly not liable for:
- a) damages arising from measures taken by GitLabHost in good faith, but that has nevertheless appeared to be wrongly imposed;
  - b) damages arising from unavailability of the Services, loss of data or breaches of technical or organisational security measures, and
  - c) indirect damages, consequential damages, lost profits, lost savings and damages arising from business interruptions.
- 12.6. The liability of GitLabHost for attributable shortcomings in complying with the Agreement only arises if Customer puts GitLabHost in default without delay and in Writing, giving a reasonable term (of at least 14 days) to redress the shortcomings, and if the attributable shortcomings of GitLabHost remain after this term. GitLabHost shall receive the notice of default within 8 days after establishing the shortcoming or the damage has been discovered, in the absence of which all claims against GitLabHost in respect of shortcomings will be null and void.
- 12.7. All exclusions and limitations of liability included in this General Terms and Conditions also apply in favour of all (legal) persons that GitLabHost makes use of in relation to the performance of the Agreement.
- 12.8. Customer is liable to GitLabHost for all damages arising from all errors or shortcomings by Customer. Customer indemnifies GitLabHost against claims concerning the use of the Services by Customer or with its permission in a manner not complying with the rules of conduct in these General Terms and Conditions. This indemnification of the Customer also applies to persons who are

not employees of Customer, but who nevertheless use the Services under the responsibility of or with permission of Customer.

### **Article 13. Force majeure**

- 13.1. Parties cannot be bound to any obligation in the Agreement in case of force majeure reasonably renders the compliance with an obligation reasonably impossible.
- 13.2. Force majeure must be understood to include (but shall not be limited to): interruptions of public infrastructure normally available to GitLabHost on which the delivery of Services depend, but which are beyond the factual or contractual control of GitLabHost, such as the functioning of IANA, RIPE or SIDN, and all networks in the internet that GitLabHost has not a contractual relation with; interruptions in the infrastructure and/or Services of GitLabHost caused by cybercrimes, such as (D)DOS attacks or (un)successful attempts to circumvent the protection of networks or systems; shortcoming and/or serious disruptions of the (selected) data centres and suppliers of GitLabHost; defects in things, equipment, programs, software or other source materials of the Customer; unavailability of personnel (because of illness or other causes); measures taken by the government; strikes; war; terrorist attacks and domestic disturbances.
- 13.3. If a case of force majeure continues for more than three months, each Party is entitled to terminate the Agreement in Writing. In such case, any performance already made on the basis of the Agreement shall be paid in proportion to the performance, without the Parties being obliged to pay any other amount.

### **Article 14. Secrecy**

- 14.1. Customer shall treat confidentially any information that is provided by GitLabHost before, during or after performance of the Agreement. Customer shall also impose this obligation on their employees and on any third party they engage with for performance of the Agreement.
- 14.2. GitLabHost shall make efforts to prevent that it takes notice of data that Customer stores or disseminates through its hardware or software in relation to the Services, unless this is necessary for a proper performance of the Agreement or GitLabHost is required to pursuant to a statutory provision or court order. In such case, GitLabHost shall make efforts to restrict the notice of such data as

much as possible (to the extent this is reasonably within its power) but GitLabHost will under no circumstances be liable for possible damage.

- 14.3. The obligations of this article will continue to exist after the Agreement has ended for any reason whatsoever.

## **Article 15. Term and termination**

- 15.1. The Agreement will be concluded for an indefinite period of time, unless agreed otherwise in Writing.
- 15.2. Customer may terminate the Agreement with due observance of a notice period of 1 day. If the Customer made an advance payment (in exchange for a discount) and/or Parties agreed on a fixed term for the Agreement, the Customer is not entitled to reimbursement.
- 15.3. In all circumstances (also if Parties agreed on a fixed term for the Agreement) GitLabHost is entitled to terminate the Agreement with due observance of a notice period of 30 days.
- 15.4. GitLabHost will have the right, without notice of default or legal intervention, either to suspend the performance of the Agreement or to have it fully or partially dissolved immediately, without being obliged to pay any compensation for damages or honour any guarantee, and without prejudice to its remaining rights, in the following cases:
- a) if the Customer fails to meet any of his obligations under the Agreement concluded with GitLabHost or any related agreement;
  - b) if there are good grounds to believe that the Customer is not or will not be able to meet its obligations to GitLabHost;
  - c) in the event of the bankruptcy, suspension of payment, discontinuing, liquidation, placing under administration or full or partial transfer of the business of the Customer, including the transfer of some of its claims.
- 15.5. Customer will only be authorised to suspend the performance of the Agreement or to have it fully or partially dissolved, after a proper and as detailed as possible written notice of default has been sent to GitLabHost in which a reasonable term (of at least 14 days) is set for the rectification of the shortcoming, attributable fails to perform substantial obligations under the Agreement.

- 15.6. If GitLabHost suspends the fulfilment of obligations, it retains the entitlements arising from the law and the Agreement, including the right of payment for the Services that are suspended.
- 15.7. If the Agreement is terminated, all claims of GitLabHost from the Agreement and other agreements against Customer are immediately due and payable. In case of termination or dissolution of the Agreement, outstanding invoices remain due and payable. In case of termination or dissolution by Customer, Customer may only terminate that part of the Agreement that has not yet been executed by GitLabHost and the Customer is only not obliged to pay for that part of the Agreement that is not been executed. If dissolution can be attributed to Customer, GitLabHost is entitled to claim damages arising directly or indirectly therefrom.
- 15.8. The entitlement of GitLabHost to suspension in aforementioned cases applies to all Agreements it has concluded with Customer at that time, even if Customer is only in default concerning one Agreement, and without prejudice to the right of GitLabHost to compensation for damages, lost profits and interest.

#### **Article 16. Procedure after termination**

- 16.1. After the Agreement has ended as a consequence of termination or dissolution, GitLabHost is entitled to immediately remove or make inaccessible all data of Customer and terminate the Account of Customer without specific measures to make removal irreversible.
- 16.2. GitLabHost will never be liable for damage of the Customer caused by the removal of data of the Customer as defined in this article.

#### **Article 17. Precedence and changes of conditions**

- 17.1. GitLabHost reserves the right to change or complement these General Terms and Conditions applying to its Services. Changes also apply to agreements already concluded, subject to a notice period of 30 days.
- 17.2. Changes shall be announced by e-mail to Customer, or by means of any other channel such as the Website. Non-substantive changes of minor importance may be made without any announcement.
- 17.3. Provisions related to specific Services shall take precedence over general provisions related to all Services. Further arrangements between GitLabHost and

Customer shall only take precedence over these General Terms and Conditions if agreed so explicitly in Writing, or if that is evidently the intent of both Parties.

#### **Article 18. Applicable law and disputes**

- 18.1. All legal relationships between GitLabHost and Customer will be governed by Dutch law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and foreign law is explicitly excluded.
- 18.2. All disputes arising from or related to the Agreement or Agreements and/or these General Terms and Conditions will be referred to the competent court in the Northern Netherlands district (Groningen). However GitLabHost is authorised at all times to refer the dispute to the court authorised to hear the dispute based on the place of establishment of Customer.

#### **Article 19. Other provisions**

- 19.1. Information and announcements, including price indications, on the Website are subject to programming and typing errors. In case of any inconsistency between the Website and the Agreement, the Agreement (and the General Terms and Conditions) prevails.
- 19.2. Log files and other, whether or not electronic, administration of GitLabHost constitute full proof of statements of GitLabHost and any (electronic) communication or stored version thereof received by GitLabHost shall be deemed to be authentic, subject to evidence to the contrary to be provided by Customer.
- 19.3. Customer shall notify GitLabHost without delay in writing regarding any changes of name, postal address, email address, telephone number or bank account number.
- 19.4. The Customer is only entitled to transfer their rights and obligations under this Agreement to third parties with prior permission from GitLabHost in Writing.