



General Terms and Conditions

These are the general terms and conditions of MessageBird B.V. a limited liability company (in Dutch: besloten vennootschap), that trades under the trade name 'MessageBird' ("MessageBird"), and has its registered office at the Baarsjesweg 285, 1058 AE Amsterdam, The Netherlands. The following terms and conditions describe under which conditions you ("User") are entitled and able to use the offered services on www.messagebird.com. By registering yourself, you accept the following Terms and Conditions, our Privacy policy and AUP (Acceptable Use Policy). The policies apply when you create a MessageBird account and you use our Services in any way. If you have any questions regarding these Terms and Conditions, you can contact us by using the [contact form](#).

General

1. These Terms and Conditions apply to all offered services and in the context of the offered services: offers, tenders and agreements by and between MessageBird and User.
2. Any deviations from these Terms and Conditions are only valid if agreed upon explicitly in writing.
3. The applicability of any purchase, delivery or other conditions of User are expressly rejected. By completing the registration form User expressly agrees to these Terms and Conditions.
4. MessageBird reserves the right to modify these Terms and Conditions at any time. In the event the Terms and Conditions are substantially modified, the User shall be notified not later than two (2) weeks in advance through the general e-mail address registered in your account. In the event the User has not objected against the modification within two (2) weeks after the notification, the Terms and Conditions shall be considered to be accepted by User. In the event the User does not accept the modified Terms and Conditions, MessageBird will reserve the right to cancel the account.

Services

1. MessageBird shall not be liable for any short-term or long-term interruption of the data transmission to the mobile phone of the User/receiver. MessageBird expressly does not guarantee that an SMS message is always received properly and on time and does not guarantee the complete and permanent availability of all services.
2. All periods and dates specified by MessageBird are target dates, unless expressly agreed otherwise in writing. MessageBird will only be in default

after having been given a notice of default in writing and after being granted a reasonable recovery period. MessageBird is entitled to have certain proceedings or services carried out by third parties.

User's obligations

1. User represents and warrants that is at least 18 years of age and is legally authorised and competent to enter into and bind itself at the company the User represents to these General Terms and Conditions. MessageBird may, in its sole discretion, refuse to offer the Services to any person or entity and change its eligibility criteria at any time.
2. User must in every respect behave as a responsible and careful internet user and SMS sender. When using the MessageBird services, User is required to take into account the applicable legal rules and the rules set by MessageBird. User guarantees to act in accordance with the local codes of conduct (i.e. the ACM rules of conduct for SMS services in the Netherlands) and indemnifies and holds MessageBird harmless for damages caused by acts in violation of these rules of conduct. The ACM rules of conduct can be found on www.ACM.nl.
3. User is fully responsible for the content of SMS messages sent by User, customers of the User or a third party at the request of the User. User indemnifies and holds MessageBird harmless for damages resulting from the content of sent SMS messages.
4. User will not send messages which include content or expressions that harms or can harm the interests of MessageBird or its advertisers.
5. User will not in any way make use of the services of MessageBird for utterances which are; unlawful, pornographic, abusive, racist, discriminatory, inflammatory and/or illegal in any way, which shall be determined at the sole

discretion of MessageBird. User guarantees that the use of MessageBird's services by him, will in no way infringe upon the rights of third parties.

6. Customer may not submit any Customer Data that includes a social security number, passport number, driver's license number, or similar identifier, credit card or debit card number, employment, financial or health information, or any other information which may be subject to specific data privacy and security laws including, but not limited to, the Gramm-Leach-Bliley Act (GLBA) or the Health Insurance Portability and Accountability Act (HIPAA) applicable to services provided in the United States of America, or which could give rise to notification obligations under data breach notification laws, without MessageBird's prior written approval. For clarity, and without limitation, MessageBird is not a "Covered Entity" and does not consider itself a "Business Associate" of Customer under HIPAA, in each case as those terms are defined under HIPAA (as amended).
7. MessageBird is entitled to view – electronic or otherwise – any messages (sent or to be sent) from User, in order to see whether the content meets or does not infringe the provisions of this article.
8. MessageBird is authorized to suspend the performance of its obligations or terminate a contract if User does not (fully) fulfil his obligations. Furthermore MessageBird and User are entitled to terminate (or have terminated) a contract for the supply of services if the other party is in suspension of payments, files for bankruptcy or is declared to be in a state of bankruptcy. If at the time of termination/cancellation, the User has already received any performance of the services, such services and related payments will not be subject to cancellation. Amounts in respect of already performed services - invoiced before the termination - will be immediately due and payable at the moment of termination. Without prejudice to its other rights, MessageBird is among other reasons entitled to terminate the agreement with immediate

effect when:

1. User fails in the performance of his/her obligations, or is in violation of the terms of the Agreement;
 2. MessageBird considers the User's medium might be contrary to public order or morality, or could in any way be considered to be offensive or violent; and/or
 3. MessageBird and/or its interest could in any way be harmed by the acts of the User.
9. MessageBird has the right to terminate the registration of a registered User if the User has not used the services of MessageBird for a continuous period of twelve (12) months. When applicable, any remaining credits will be cancelled.
10. Complaints with regard to performed services, should be reported by means of a written notice by the user to MessageBird as soon as User should have become aware of the event causing the complaint. The notice must contain a description of the failure as detailed as possible, so MessageBird is able to respond adequately. If a complaint is legitimate, MessageBird will perform its service (again), unless such performance demonstrably does not longer serve the User's interest. The latter should be expressed in writing by the User.
11. User is not allowed to use MessageBird's services for actions and/or behaviours that are in breach of or contrary to applicable laws, netiquette, the guidelines of the Advertising Code Committee (In Dutch: de richtlijnen van de Reclame Code Commissie) or any equivalent guidelines, the agreement or these Terms and Conditions. This includes, but is not limited to, the following actions and behaviours: 1. spamming: sending unsolicited bulk e-mails with the same content and/or posting a message with the same content in large numbers of newsgroups on the Internet; 2. violating copyright works or any other conduct which violates the intellectual property rights of third parties; 3. deception of others; 4. abusing the texts, logos, or the information from

MessageBird; 5. offering products or services that are not User's, without the consent of the rightful owner; 6. offering products or services which are not legal under Dutch law.

12. If User acts contrary to the provisions of this article, MessageBird has the right to terminate the agreement with the User with immediate effect and to charge User with an immediately payable penalty of € 5.000 per event. This penalty does not affect the right of MessageBird to claim higher damages relating this matter. Any damage to MessageBird or third parties caused by acts contrary to the provisions of this article, can be recovered from the User.

Prices / terms of payment

1. All prices referred to herein are, unless otherwise agreed, excluding VAT and other government levies, as well as any other costs incurred in the execution of an agreement, including shipment, administration and operation costs.
2. MessageBird can not be held to its offers if the User could reasonably understand that the offer or tender or a part thereof contains obvious mistake(s) or error(s).
3. MessageBird reserves the right to change prices in its sole discretion. In the event prices are subject to change, such change shall at any time be mentioned on the website of MessageBird.
4. User shall be due a fee (as determined by MessageBird) per SMS message. Payment, if applicable plus VAT, will be made in the manner specified by MessageBird.
5. MessageBird is entitled to change its fee for SMS messages. If User does not wish to accept the changes regarding the fee and/or costs, the User is entitled to terminate the agreement.

6. Unless a separate agreement has been entered between User and MessageBird, MessageBird works based on prepaid (prepayment). User buys SMS credit (credits) and can use the purchased credit after payment.
7. No rights can be derived from the credits. Any remaining credits at the end of the contract will be cancelled as a result of the termination, this without an obligation for MessageBird to refund.
8. Except if User buys pre-paid credits, all payments to MessageBird must be made within 14 days after the invoice date, in a manner specified by MessageBird and in the same currency as the invoice.
9. Objections to the amount of the invoices shall not suspend the payment obligation.
10. User is not entitled to set off any (alleged) counterclaims on MessageBird against invoices of MessageBird.
11. If User fails to pay within the aforementioned period of 14 days, then User is in default by operation of law.

General liability

1. MessageBird is never liable for any damages suffered by the User as a result of a failure in the performance of the agreement, unless in the event of gross negligence or wilful misconduct of MessageBird.
2. If MessageBird is liable for any damages whatsoever, such liability is limited to what is provided for in these Terms and Conditions.
3. Besides the cases mentioned in this article, MessageBird shall not be liable

for damages, regardless of the grounds on which an action for damages will be based.

4. The total liability of MessageBird due to attributable failure in the performance of a contract is limited to direct damages up to the amount of the stipulated service fee or charge for a period of up to six (6) months, with a maximum of 5.000 euro.
5. MessageBird is never liable for indirect damage, also including consequential damage, lost profits, lost data, lost savings and damages due to business stagnation.
6. MessageBird is committed to safely transferring User's data. MessageBird, however, does not guarantee the complete security of such data. The use of MessageBird's services is, with regard to the security of data, at User's own risk.
7. User indemnifies MessageBird for any and all claims by third parties concerning intellectual property rights on material or data provided by the User made available by the User, for the performance of the services. User also indemnifies MessageBird for other possible claims by third parties who suffer damages in connection with the performance of the services and which are attributable to the User.

Privacy

1. MessageBird will not use data from the User for purposes other than the provision of services and will not sell such data to a third party.
2. MessageBird will not disclose any personal information of Users, if explicit consent is not granted or in the exceptional circumstance that such information is required for legal purposes.

3. MessageBird will comply with the applicable Dutch regulations regarding privacy. In case there is a legal obligation MessageBird will present data from User to third parties.
4. The information within MessageBird's storage is password protected so that only the User has access to the User's personal and account information. The username and password supplied by MessageBird to User are strictly personal and should be kept secret. User is responsible for the abuse of the username/password and shall immediately notify MessageBird of any loss, theft and/or abuse.
5. MessageBird takes several measures to keep its and your data as secure as possible, but MessageBird can not guarantee the safety of the data. The measures MessageBird takes in that context shall include (but not exclusively):
 1. Time restricted access to sensitive components;
 2. Two-factor authentication for sensitive components;
 3. Employee access to data on a need-to-know basis;
 4. Four eyes principle for several data including financial data;
 5. Extensive logging and monitoring (internal & external);
 6. Outsourcing policy with a confidentiality agreement;
 7. Data retention policy;
 8. Use of an internal and external Compliance Officer to validate that the internal procedures are being met, required PES (Pre-Employment Screening, including a certificate of good conduct (in Dutch: Verklaring omtrent goed gedrag) from the Ministry of Justice) for each newly hired employee.

Miscellaneous

If the agreement, for whatever reason, has been terminated, MessageBird has the right to block the access to the User's account.

Dutch law

To any agreement concluded by MessageBird, Dutch law is applicable. Any disputes arising from or related to the obligations resulting from the agreement concluded between the parties, will be exclusively submitted to the court in Amsterdam.