

General Terms and Conditions of Webpower

Version of May 2018

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General Terms and Conditions

These are the General Terms and Conditions of Webpower (hereinafter also referred to as "we" or "us"). Webpower strives for clear and simple terms and conditions. We have therefore made every effort to ensure that the General Terms and Conditions can also be understood by non-lawyers and that they only regulate those subjects that are really important to us and our customers.

If the Terms and Conditions are unclear in any way, please do not hesitate to contact us.

Company name:	Webpower B.V.
Address:	Koolhovenstraat 1k 3772 MT Barneveld
Telephone:	+31 342 423 262
Email:	contact@webpower.nl
Chamber of Commerce number:	09103500

Conclusion and duration of the agreement

You can enter into an agreement with Webpower by accepting a quotation or by ordering certain products or services online. Our quotations are free of obligation and are valid until 14 days after the date stated in the heading of the offer.

The term of the agreement is specified in Webpower's quotation or online offer.

If no term is stated in the quotation or online offer, the following principles shall apply:

- If the agreement relates to a specific performance (for example, providing training or the development of custom work), the agreement automatically ends once this performance has been completed.
- If the agreement relates to a recurring performance (for example, a subscription for the use of certain software), the agreement is deemed to have been entered into for a period of 12 months

Agreements relating to a recurring performance are always automatically renewed at the end of the term by the same period as the initial term. Agreements may only be terminated at the end of the term in writing, with a notice period of 3 months. Agreements entered into for an indefinite period of time may be terminated at any time in writing, with due observance of a notice period of 3 months. It is not possible to terminate agreements prematurely.

Order of priority

These General Terms and Conditions form an integral part of any agreement you conclude with us and consist of various sections, namely

- (1) the general section,
- (2) a section about maintenance and support and
- (3) a section about the processing of personal data.

If any agreements in these various sections are contradictory, the following order of priority will apply (from high to low):

- the section about the processing of personal data;
- the section about maintenance and support;
- the general section of these General Terms and Conditions.

If the agreements in these General Terms and Conditions conflict with the individual agreements in the quotation or our online offer, the agreements in the quotation or the online offer have priority.

The term "the agreement" in the following refers to the quotation or our online offer and these General Terms and Conditions jointly.

Performance of the agreement

Webpower shall make every effort to deliver the purchased products and services within the agreed period of time. Delivery periods announced by us should be considered as a guideline rather than a deadline. If there is a risk of delay or problems with delivery, we will inform you as soon as possible.

In the performance of the agreement, Webpower may have certain work carried out by third parties. Related costs will be at our expense, unless it has been agreed in advance that the costs will be at your expense. In order to make our collaboration a success, we also expect your support on a number of points:

- You must provide us with all information that we may reasonably request or that you may reasonably understand is necessary for us to make a suitable offer or to provide our services.
- You must provide us with all support reasonably required by us. For example, you must give us access to accounts for (online) services of third parties if this is necessary for the configuration of our software.
- If we carry out work on location (e.g. at your office), you must give us any access and provide us with all facilities necessary for the work to be carried out. You will not be charged for this.

If you do not (or not timely) provide us with the necessary information or support, this may affect the delivery time of the products or services and we may adjust the agreed prices accordingly.

License

The use of our software (and possibly other materials supplied by us) requires a right of use (also known as a "license"). This license is linked to the subscription for our software for which you enter into an agreement with us. The license is granted on a non-exclusive and non-transferable basis and is valid for the duration of the subscription.

You will only receive the rights of use specified in the quotation or online offer or which have been granted by us in writing. Licenses are customer-specific and may only be used within the customer's own company. It is not allowed to give third parties access to the software or materials of Webpower. In addition, you are not entitled to a copy of or access to the source code of the software.

Third-party software may also be integrated into Webpower's software. The use of this third-party software may be subject to additional terms and conditions of the relevant supplier. If that is the case, those terms and conditions will be provided by us and these will apply to the agreement (taking priority over our own General Terms and Conditions). Unless otherwise stated in the relevant terms and conditions, the General Terms and Conditions of Webpower remain applicable to the use of third-party software.

Accounts

To access our software, end users need a user account. Webpower will provide login details for an administrative account at the time of entering into the agreement when you purchase software from us. This account allows you to manage the software and create user accounts for end users.

All accounts are personal and may not be shared by several persons. Therefore, you must create a separate user account for each end user. All operations via the administrative account and the created user accounts are at your expense and risk. If abuse is suspected, you must change the password for the relevant account as soon as possible and report this to Webpower.

Use of your data

Our software allows you to store files and data. Webpower has the right to use these files and data only for the performance of the agreement. At the end of the agreement, Webpower will delete the files and data. In such a case, Webpower is not required to provide a copy of the files and data. You must therefore secure these or request a copy from Webpower before the end of the agreement. The costs of making a copy are not included in the agreed prices and may be charged separately by us.

Insofar as the customer data consists of personal data, additional and/or different rules may apply. See the section "Processing of personal data" of these General Terms and Conditions.

Confidentiality

Webpower and the customer are mutually obliged to keep strictly confidential any confidential information they receive from each other. Confidential information may only be shared with employees on a need-to-know basis, provided that the relevant individuals are bound to maintain confidentiality on the basis of an employment contract or other written agreement. Sharing confidential information with third parties requires the written consent of the party providing the information.

At the end of the agreement, and at the first request of the party providing the information, the confidential information must be destroyed. Destruction must be confirmed in writing to the party providing the information.

Confidential information includes all information that is marked with "confidential" or similar indications, or for which it is reasonably clear that the information is sensitive or a business secret and must therefore be treated confidentially. In any case, the content of the agreement and the prices communicated by Webpower are confidential.

Invoicing and prices

The prices for Webpower's products and services are stated in the quotation or online offer. All prices quoted are exclusive of value added tax (VAT) and other taxes or levies, unless otherwise indicated. Invoices are sent electronically. For each invoice, a payment term of 30 days from the invoice date applies, unless otherwise agreed. If the invoice must include a purchase order (or similar references or details), you must inform us thereof at the time of entering into the agreement, or no later than 14 days before the date of invoicing. With regard to invoicing, we also apply the following principles:

Sending messages

You can purchase credits for sending messages via Webpower software (such as email newsletters or push and text messages). These credits will only be delivered after payment and are valid for 12 months. Unused credits cannot be returned to Webpower, exchanged for money or transferred to other customers.

For some Webpower subscriptions, the credits are invoiced afterwards based on usage during the relevant subscription period (month or year). If this is the case, this is explicitly stated in the quotation or online offer.

Subscription fees

You need a license to use certain software of Webpower. You will be charged a subscription fee for this license. Webpower invoices subscription fees per subscription period (month or year) in advance. The subscription may be subject to certain usage limits, for example with respect to the maximum number of end users. If these limits are exceeded, Webpower may charge additional costs in accordance with the usual rates.

Training courses

In most cases, a fixed price is agreed for Webpower training courses. Webpower has the right to require advance payment for these training courses. Travel and accommodation expenses are not included in the fixed price and may be invoiced afterwards.

Consultancy, support and (software) development services

Additional consultancy, support and (software) development services from Webpower will be invoiced monthly in arrears on the basis of actual costs. Webpower uses standard hourly rates for this, which is stated in the quotation or offer, or which are available from Webpower on request in other cases. Webpower will send an invoice for this at the end of each month.

If you do not pay our invoice within the term of the invoice, you will owe statutory interest from the date on which the term of the invoice expires and administration costs of € 15 for the payment reminder to be sent by us. If payment is not made even after a reminder has been sent, we will have the right to hand over our claim. All (legal) costs incurred by us in or out of court to obtain payment of our claim will be at your expense.

Fair use

Webpower applies a "fair use" policy with respect to the amount of data storage and data traffic. Webpower will monitor how much data storage and data traffic is used via the software. In the event of excessive use, we will warn you and, if you fail to take action following our warning, we may impose restrictions on use or restrict access to the software. Excessive use shall in any event include using more than three times the amount of data storage and data traffic used by other customers with a comparable subscription. In urgent cases, we may intervene without warning you in advance.

Rules of use

We apply a number of rules of use for the software we offer. You indemnify us against any claims (for damages) from third parties, as well as against any fines imposed by regulators or other authorities relating to a violation of these rules of use. This indemnity applies to violations by you or by persons using the software through an account under your control.

- You may not use our software to store or distribute materials that infringe on the rights of third parties (such as copyrights or trademark rights) or that are libelous, defamatory, insulting, racist, discriminatory or inflammatory.
- You may not store or distribute erotic or pornographic materials through our software unless we have given our prior written consent.
- When using our software, you must comply with applicable legislation, including in any case privacy legislation (such as, but not limited to, the General Data Protection Regulation) and legislation regarding the distribution of unsolicited email communications (such as, but not limited to, the Telecommunications Act).
- You may not use our software to interfere with or cause damage to Webpower or other users, for example by starting processes or programs that you know or should know may delay the operation of Webpower's systems.
- You may not use our software to distribute malicious content, such as viruses, spyware or malware.

(Software) development services

If Webpower develops certain software or materials for you upon explicit request and against payment (also called "custom work"), the intellectual property rights shall remain with Webpower, so that Webpower can also use the custom work (whether or not in parts) for the benefit of other customers. Webpower grants the following license in this respect:

- In the case of custom software (and related documentation) you will receive the non-exclusive right to use this custom software and documentation for the duration of the agreement. It is not permitted to transfer the license or to give third parties access to the custom software and documentation in any other way. Webpower is not obliged to provide the source code of the custom software.
- In the case of other custom work (for example, the development of house styles, logos, advertisements, newsletters, etc.) you will receive the non-exclusive right to use the custom work during and after the end of the agreement. It is not permitted to transfer the license to third parties.

If Webpower uses third-party materials or (open source) software in its development, Webpower will inform you of any applicable licence terms. Any licence fees will be at your expense, unless otherwise agreed. The following procedure also applies to the development of custom work:

- Prior to the development of the custom work, the functional and/or technical requirements to be met by the custom work are determined in consultation. We will then develop and deliver the custom work as we see fit.
- You must check whether the custom work meets the functional and/or technical requirements, within 14 days after delivery. If you do not notify us in writing that the custom work is not satisfactory within 14 days, this will be deemed to constitute consent.
- If you reject the custom work, we will do our best to adjust the custom work, or we will indicate, in a motivated manner, why the arguments you have put forward do not apply. You will then be required to check whether the custom work is satisfactory, again within 14 days.
- If you repeatedly reject the custom work, both parties have the right to terminate the agreement. In that case, you only have to pay for the services and hours already worked by us, but you may not or no longer use the custom work.

If you supply us with (source) materials for the development of the custom work, you indemnify us against any claims from third parties alleging that the (source) materials infringe on intellectual property rights or are otherwise unlawful. If you do not follow the procedure described above, Webpower reserves the right to invoice the (development) services already provided.

Employees

During the term of the agreement or within one year after the end of the agreement, it is not permitted to employ Webpower employees or to have them perform work in any other way (directly or indirectly). The only exception is if we have given our prior written consent.

Employees are considered all persons employed by Webpower or any of our affiliates, or who were employed by Webpower no more than 6 months prior to entering into the agreement.

Liability

Webpower takes great care of the products and services offered, but cannot completely rule out errors. In the unlikely event that damage occurs, our liability, for whatever reason, is limited in accordance with the following rules:

- Webpower is liable up to the amount you owe us under the agreement. If the agreement has a term of more than one year, Webpower is liable up to the amount you owe in the year in which the damage occurs, with a maximum of EUR 50,000 on an annual basis. This liability regime applies regardless of the number of events and the number of agreements you have entered into with Webpower or its affiliates.
- Webpower is not liable in situations of force majeure, such as disruptions of the internet or telecommunication facilities, network attacks, power failures, attacks of malware or viruses, shortcomings by parties on which Webpower depends in the performance of the agreement, defects in goods, equipment or software the use of which by Webpower you have prescribed, fire, floods, sickness or absenteeism of members of staff, or government measures.
- Liability for lost profits, lost savings, mutilation or loss of stored data and damage caused by business interruption is excluded by Webpower.
- Any damage must be reported to Webpower as soon as possible. The right to compensation lapses if you do not notify Webpower of the damage, sufficiently motivated, within 30 days of the occurrence of the damage.

The liability scheme discussed above does not apply to damage that is the result of intent or willful recklessness on the part of Webpower's management, or that is the result of death or bodily injury.

Price changes

Price changes are announced by email at least thirty (30) days in advance. Webpower has the right to increase the agreed prices once a year by a maximum of 5 percent, without requiring your consent. In the event of other or higher price increases, you have the right to terminate the agreement within 14 days of the announcement. A notice period of 6 months applies, during which period the old prices of Webpower shall continue to apply. Price changes implemented by us also apply to agreements already concluded. However, a number of exceptions apply:

- Price changes do not affect agreements already concluded for which a fixed price has been agreed.
- Price changes do not affect credits already purchased that can be used via the software.

Changes in the General Terms and Conditions

Webpower is continuously improving its products and services, which may also result in changes in these General Terms and Conditions. Webpower will keep the Terms and Conditions up-to-date as much as possible and will announce any changes by email at least 30 days before the new version takes effect.

If you do not agree with a change implemented by Webpower, you may lodge an objection within 14 days of the announcement. In consultation it may be decided to make some adjustments.

If Webpower decides to proceed with the change, you may terminate the agreement by (and no later than on) the date on which the new version of the General Terms and Conditions becomes effective.

Suspension and termination

Webpower has the option to immediately suspend (discontinue) the delivery of the products or services or to terminate the agreement in the following situations:

- You have not paid the agreed prices within the agreed payment period, or you have violated rules of use or other obligations under the agreement, unless this obligation is of minor importance.

- Due to delays on your part (e.g. due to not providing information) or unforeseen circumstances, Webpower can no longer be required to perform the agreement under the originally agreed conditions.
- You apply for a moratorium, file for bankruptcy or are granted bankruptcy, discontinue your business activities or dissolve or liquidate your company.

If Webpower decides to suspend or cancel the delivery of products or services, this does not affect its right to claim damages or to seek other legal remedies.

Applicable law and competent court

All agreements Webpower concludes with its customers are governed by Dutch law. If a dispute arises about the agreement or the products and services delivered by Webpower, the disputes will be submitted to the competent court in the district (sub-area) where Webpower has its registered office.

Maintenance and support

Help Desk

If you have any practical or technical questions about our software, please contact the Webpower help desk. Our help desk is available from Monday to Friday between 9:00 and 17:30 (CET) by telephone on (+) 31 342 423 262 or 24 hours a day, 7 days a week by email on support@webpower.nl, except for on officially recognised Dutch public holidays. Only persons who have successfully completed a training course for the use of Webpower software (who have been "certified" by us) may contact the help desk.

Unless otherwise agreed, the software subscription includes 3 hours of help desk support per year. Any additional hours will be invoiced separately by Webpower. Webpower will send an invoice for this at the end of each month.

Maintenance

Webpower aims to keep the software up-to-date and will periodically implement updates and upgrades to fix errors, improve security, add functionalities or improve the operation of the software. From time to time, Webpower may add functionalities to the software or change existing functionalities, at its own discretion.

Maintenance work may result in the software not being able to be used temporarily. To minimise inconvenience, scheduled maintenance is carried out within the following maintenance window:

- on Wednesdays between 22:00 and 00:00 (CET);
- on Sundays between 20:00 and 23:00 (CET);

In addition to the scheduled maintenance work described above, it may sometimes be necessary to carry out emergency maintenance (for example, if critical errors are detected in the software). Emergency maintenance may also be carried out outside the given maintenance window, during which we aim to limit inconvenience as much as possible.

Backups

Webpower backs up the configuration and the files and data stored by you via the software on a daily basis. These backups are kept for a period of 90 days, after which we delete or overwrite them.

The primary purpose of the backups is to restore software or files and data in the event of a catastrophic failure at Webpower. In such cases, we will restore the backup free of charge. If files or data are lost and this is not due to an attributable shortcoming on the part of Webpower (for example, if one of your employees has accidentally deleted files or data), we may charge you for the costs and hours worked related to restoring a backup.

It is not possible to restore individual files or data. If a backup is restored, any (changes to) files or data stored after the time of the backup will be lost.

Processing of Personal Data

General

When using our products and services, Webpower may process personal data on your behalf. Under the General Data Protection Regulation (GDPR), it is compulsory to make agreements about this. We do this by means of these General Terms and Conditions.

Terms from these General Terms and Conditions that are defined in the GDPR have the meaning as defined in the GDPR. When processing personal data, Webpower is a "processor" and you are the "controller" within the meaning of the GDPR.

The obligations arising from these General Terms and Conditions also apply to our employees who process the personal data and to any third parties engaged by us in the processing of personal data.

Types of personal data and categories of data subjects

The personal data Webpower may process on your instruction, depending on the products and services purchased by you, include:

- message data (content of emails or push and SMS messages sent via the software);
- contact details (including name, address and city, email addresses and telephone numbers);
- technical data (including IP addresses and browser information);
- login data (including user names and passwords);
- payment data (including account numbers and credit card information);
- other data stored via the software and/or otherwise provided to us for processing.

Depending on the products and services you have purchased, these personal data may relate to the following categories of data subjects:

- your employees;
- other persons who use the software under your subscription; and
- persons to whom messages are sent using the software, such as via email, push and SMS.

Processing of Personal Data

During the performance of the agreement, Webpower will only process personal data under your authority and under your explicit final responsibility. We will not process the data for our own purposes and will only process the personal data during the term of the agreement. When processing personal data, we shall observe the provisions that apply to us pursuant to the GDPR.

You guarantee that the personal data provided and the instruction given to process personal data are not unlawful and do not infringe on the rights of the data subjects or third parties. You further warrant that all information obligations and consent requirements arising from applicable legislation, including the GDPR and the Telecommunications Act, have been complied with when using the software. You indemnify us against any claims from data subjects or third parties, as well as against any fines imposed by regulators or other authorities due to non-compliance with these warranties.

Transfer of personal data to third countries

Webpower may process the personal data in countries within the European Economic Area (EEA). When processing personal data outside the EEA, we will request your prior consent. At your request, we will provide you with an overview of the countries in which the personal data are processed.

Engaging third parties

You give us permission to engage third parties (also referred to as "sub-processors") in the processing of personal data. If we intend to hire new sub-processors, you will be informed by email in advance. You may object to the use of a specific sub-processor, but only if there are good reasons. Please be aware that we may not be able to (continue to) supply our products and/or services in full if the relevant sub-processor cannot be engaged.

If you object to the engagement of a sub-processor, we will try to find a solution in consultation with you. If no solution can be found within 30 days after having announced this by email, you have the right to terminate the agreement and we have the option to still engage the relevant sub-processor.

Security

We make every effort to implement appropriate technical and organisational measures to protect personal data against loss or any form of unlawful processing (such as unauthorised disclosure, deterioration, alteration or transmission of personal data). Within this context, we apply a security policy that we regularly update (for the current version visit our website). In addition, Webpower has been certified for quality management and security in accordance with ISO 9001:2015 and ISO 27001:2013 (for more information visit our website).

If you want Webpower to process personal data other than those described in these General Terms and Conditions, or have special personal data processed, you must inform us of this in advance. In consultation with you, we will then assess whether additional technical and organisational measures need to be taken and if so, what the related costs are.

Data breaches

In the event of a personal data breach, Webpower aims to report the data breach to you immediately, but in any event within 48 hours of its discovery. You must then assess whether you are required to inform the competent supervisory authorities (in the Netherlands, the Data Protection Authority) and, if necessary, the data subjects. If this is required under applicable laws and regulations, Webpower will cooperate in informing the competent regulators and data subjects.

Audits

You have the right to have audits carried out by an independent ICT expert who is bound by confidentiality, in order to check compliance with the agreements on the processing of personal data set out in these General Terms and Conditions.

Before you have an audit carried out, you should check with us whether audit reports already exist, for example of audits carried out by Webpower or by other customers. If these audit reports exist, you are only entitled to carry out an additional audit if there are reasonable grounds for doing so. Reasonable arguments may include the fact that the available audit reports are outdated or do not provide sufficient information about compliance with the agreements on the processing of personal data.

The date of the audit will be agreed upon and will be carried out no more than once a year. Webpower will provide all reasonable cooperation in the audit and will provide all necessary information to the ICT expert. Webpower will also make its employees available to the ICT expert, to the extent reasonably necessary.

The findings of the ICT expert will be assessed by Webpower in consultation with you. Should the audit give cause to do so, changes will be implemented by Webpower and/or by you. The costs of the audit (including the costs reasonably incurred by Webpower) are at your expense.

Requests from data subjects

If data subjects contact Webpower with a request to exercise legal rights, such as the right to access personal data, Webpower will forward the request to you and inform the data subject accordingly. You will subsequently be required to handle the request independently. If you need support from Webpower, we may charge you for the costs incurred.

Erasure of personal data

If the agreement is terminated or expires, we will immediately destroy the personal data we process on your behalf. If it has been agreed that Webpower will provide support in migrating to another supplier, the personal data may still be processed by the customer during the migration process. In that case, the personal data will be destroyed immediately upon completion of the migration process.