

Terms and conditions

These Terms and Conditions govern the relationship between Infinity Mobile BVBA, a Belgian registered company having its seat at Hoogstraat 29, 9850 Nevele, Belgium under company number BE0640.980.849 (hereinafter Infinity Mobile) and its Clients, specifically regarding the use of/interaction with the software of Infinity Mobile, which provides mobile solution software and applications.

Except express written agreement stating the contrary, these Terms and Conditions apply to all services and goods, quotations, orders, contracts and invoices (hereinafter jointly: the "Services") rendered, delivered or established by Infinity Mobile in relation with "Infinity Mobile", even in case of absence of any signed order form by the Client.

The Services rendered by Infinity Mobile might be subject to a specific agreement between Infinity Mobile and the Client. In case of contradiction between provisions from the present General Terms and Conditions and provisions from a specific agreement the latter conditions will prevail. All rights and obligations established between the Client and Infinity Mobile (together the "Parties") regarding the Services ordered by the Client shall collectively be called "the Agreement" to which the present General Terms and Conditions shall apply.

Both the present General Terms and Conditions as the conditions in a possible specific agreement between the Parties are considered to be known and accepted, either by the signature of the Client on a document referring to any of these conditions or by the absence of any opposition by the Client in writing within five (5) business days after receipt of the first document that communicates any of these conditions. In case of absence of a reaction within the before mentioned period, all information transmitted by the Client is considered to carry the latter's acceptance regarding the correctness and relevance of that information for the Services at stake. In case of continuous commercial relations the present Conditions can not be disputed anymore.

1. Conclusion of Agreement

- 1.1 Orders must be delivered to Infinity Mobile in writing (by letter or email). Any disputes shall be settled on the basis of written documents. In the absence of the latter Infinity Mobile cannot be held responsible in the event of any possible misinterpretation of an order or request made by the Client. Every order is irrevocably binding for the Client.
- 1.2 Infinity Mobile shall at all-time preserve the right, without having to provide for any reasons, to refuse the delivery of Services, including for applications that could potentially harm Infinity Mobile's quality of Services or its reputation. Infinity Mobile will also refuse any possible application that might or does violate any provisions of the Code of Conduct (see Section 6 hereunder) or that could be considered to be an "Unacceptable Use" of the Services (see Section 10 hereunder).
- 1.3 The offers and tenders provided by Infinity Mobile are established on the basis of the information provided by the Client. Any change regarding this information might imply a revision of the price and/or the delivery modalities by Infinity Mobile.
- 1.4 A written order from the Client or a confirmation of the order by Infinity Mobile is provided for each additional order.
- 1.5 The cancellation of the order by the Client must be made by written notice to Infinity Mobile.
- 1.6 The cancellation of the order, regardless of the reason, entitles Infinity Mobile to the payment of the full entire fee envisaged, subject to the right of Infinity Mobile to claim full compensation for any damage that might have occurred or occur because of the termination.
- 1.7 The provisions in this Section apply to all cancellations, whether before, during or after the completion of the Service(s) covered by the cancelled order.

2. Term

- 2.1 Except where otherwise clearly indicated, any Agreement will be considered to be concluded for a period of two (2) years, automatically renewed for successive one year terms thereafter. Unless the Client provides Infinity Mobile with a 2 month notice in writing, the Agreement will automatically renew at the end of the Term.
- 2.2 The negotiated deadlines for delivering the Services may be extended following a possible delay of the Client in providing the necessary information needed for the performance of the Services, as well as to the payment of its invoices provided by Infinity Mobile.
- 2.3 A delay in delivering the Services can in no way cause the cancellation of an order and/or the termination of the present Agreement, nor the payment of damages of any kind by Infinity Mobile.

3. Execution of the Agreement, complaints and acceptance

- 3.1 Infinity Mobile undertakes to deliver the Services to the best of its ability in light of its available technical capacities and in accordance with the requirements and expectations of good practice to perform.
- 3.2 Infinity Mobile shall preserve the right to modify the manner in which it executes the Agreement following any possible changes relating to its technical framework, unforeseen workload, legal changes etc. The Client shall not have the right to claim any form of compensation due to such modifications made after reasonable consideration by Infinity Mobile.
- 3.3 If required for the proper execution of the Agreement Infinity Mobile reserves the right to have certain work done by third parties.
- 3.4 In order to be valid, the Client's complaints must be communicated by registered letter within eight (8) days after the delivery of the Services, and if applicable, the delivery of the goods.
- 3.5 An absence of a complaint regarding the delivered Services in accordance with Section 3.4. of the present General Terms and Conditions implies the Client's unconditional and irrevocable acceptance, without reservation, of the Services delivered as well as of the respective invoice.

4. Price and Payment

- 4.1. All prices in tenders, quotations and/or orders are exclusive of VAT, unless expressly indicated otherwise by Infinity Mobile. The Client will be the sole responsible to abide by the relevant VAT and other applicable tax provisions relating to the Services ordered.
- 4.2. Invoices are payable within thirty (30) days of receipt and without discount unless otherwise stated on the invoice. All invoices not paid on due date, shall automatically and without prior notice, result in contractual interest at the rate of 3% per month from the due date, with a minimum fee of 100 Euros.
- 4.3. In addition to Section 4.2. of the present Terms and Conditions the Client will have to pay a fixed and irreducible compensation of 15% payable on the outstanding invoice amount, without prejudice to the delay interest referred to in the previous Section 4.2. of the present Terms and Conditions, as well as any applicable charges and court fees.
- 4.4. The non-payment of any invoice when due, authorizes Infinity Mobile to demand immediate payment of the integral, outstanding balance from its debtor and provides Infinity Mobile the right to cancel all current orders unilaterally without any formal requirements. Such cancellation does not prejudice Infinity Mobile's right to obtain compensation.
- 4.5. Payments made in advance by the Client will be calculated within the price of the order.
- 4.6. The (fixed and variable) prices and fees used by the Operators might be subject to change, without any prior notification. In such case Infinity Mobile shall preserve the rights to impose new prices to the Client, even without warning.
- 4.7. Netting between undisputed amounts due between the Parties in the context of this Agreement shall be possible. Unless otherwise agreed, Parties shall be allowed to proceed with netting or any other form of compensation between undisputed amounts that Parties owe to each other under this agreement and any other amounts.

5. Liability

- 5.1. Infinity Mobile shall under no circumstance be liable for any damages hereunder, direct, compensatory, consequential, indirect, special, punitive or otherwise, regardless of the form of action or basis of any claim and the Client's sole and exclusive remedy hereunder shall be the termination of the Agreement.
- 5.2. Infinity Mobile cannot be held liable for the temporary failure or malfunctioning of the system, be it technical or otherwise, whether due to force majeure or not.
- 5.3. Infinity Mobile's liability shall in any event be limited to refunding the price of the non-conformingly executed part of the delivery. Liability for any other form of damage resulting from the relationships with the Client is hereby expressly excluded.
- 5.4. Infinity Mobile cannot be held liable for damages resulting from the deployment of third parties for the proper performance of the contract as defined in Section 3.3. of the present General Terms and Conditions.
- 5.5. Infinity Mobile cannot be held liable for damages of any nature whatsoever, which are the result of improper, incorrect or unclear information and/or data provided by the Client.
- 5.6. Infinity Mobile shall not be liable for any content whatsoever – including documents, projects, etc. – or property owned by or in the possession of the Client and handed over by the Client. The Client expressly indemnifies Infinity Mobile of any liability, particularly in the case of total or partial damage or loss due to any reason. Hence the Client shall remain the exclusive owner of the content he or she provides for.
- 5.7. Notwithstanding the payment modalities provided for in Section 4 of the present General Terms and Conditions, any reduction in the credit situation of the Client, or indications in this regard, shall justify Infinity Mobile's request for guarantees or for an advanced settlement, and this before the execution of the orders received.
- 5.8. The Client shall indemnify and hold Infinity Mobile harmless from and against any and all damages, liabilities, losses, costs and expenses (including reasonable legal fees) sustained, incurred or suffered by Infinity Mobile, arising out of or resulting from the Client, its officers, directors, members, suppliers, agents or representatives.
- 5.9. The Client shall indemnify Infinity Mobile for any legal claim from third parties regarding the transferred works, documents, information or elements and their content. The distribution of the content of the information published by the Client will remain the latter's sole responsibility. For clarity: the transmittal of any content (for example: a communication or a text) by the Client to Infinity Mobile shall imply the Client's acceptance of that content).

6. Undertakings and Warranties

- 6.1. The Client undertakes to make available all materials and all documentation useful or necessary for the performance of the Services, and provide Infinity Mobile with all the resources necessary to enable Infinity Mobile to properly carry out its obligations under the Agreement.
- 6.2. The Client represents and warrants that it:
 - (i) has the right to enter into the Agreement which, once duly executed by both parties, shall represent a binding legal agreement, enforceable by Infinity Mobile in accordance with its terms;
 - (ii) shall faithfully and in a timely, professional manner, honor, adhere to and be in compliance with all of the requirements and obligations set forth in the Agreement;
 - (iii) shall ensure that its activities, conduct, actions, materials and/or relationships shall not infringe upon or violate the rights of any party, nor any laws, regulations, ordinances or orders of any judicial or governmental authority or the Code of Conduct described in Section 6 of the present General Terms and Conditions. To the extent such laws, regulations ordinances or orders conflict with the terms of the present General Terms and Conditions, the Client agrees to promptly notify Infinity Mobile and Infinity Mobile shall have the sole right to determine how to resolve such conflict, always subject to applicable laws, rules or regulations.

6.3. The Client represents and warrants that it holds all rights, approvals and licenses required for use or reproduction of the application (and its respective content) that the Client makes available to Infinity Mobile.

7. Termination

7.1. The Agreement shall be legally binding upon both parties from the signing of the order by both Parties unless terminated earlier in accordance with its terms and shall continue according to the provisions in Section 2 of the present General Terms and Conditions regarding the Term of the Agreement.

7.2. Infinity Mobile shall have the right to terminate the Agreement, by giving written notice yet without having to provide for reasons or indemnify the Client in any way, in the following cases:

- (i) gross negligence, fraud or violence by the Client;
- (ii) a material or repeated breach of the Agreement by the Client which renders any further cooperation impossible, or, if it concerns a breach that can be remedied, if such breach is not resolved and/or no end has been made to the breach within 7 days after written notification with acknowledgment of receipt provided by Infinity Mobile describing the breach of agreement and the request to make an end to such breach;
- (iii) any content made available through Infinity Mobile's Services by the Client in violation of the provisions regarding the Acceptable Use of Services in Section 10 of the present Terms and Conditions hereunder and if the content made available through Infinity Mobile's Services is not taken down immediately. For clarity: the transmittal of any content (for example: a communication or a text) by the Client to Infinity Mobile shall imply the Client's acceptance of that content;
- (iv) the Client suspending or threatening to suspend the payment of its debts, the Client being unable to pay its debts as they fall due, the Client admitting its inability to pay its debts, or the Client deemed unable to pay its debts following a decision of a competent national authority. Any other case practically identical or similar to the consequence of a potential bankruptcy of the Client.
- (v) a change of legal control of the Client as an entity;
- (vi) the existence of reasonable suspicion, or indications leading thereto, with regard to the insincere, deceptive or bad faith intentions of the Client, potential future irregularities, violation of any legal provision or any of the obligations in the Code of Conduct or the present Terms and Conditions.

7.3. Upon termination of the Agreement according to Section 8.2 of the present Terms and Conditions above, the Client shall immediately pay all remaining amounts due under the Agreement to Infinity Mobile. This includes all payments due for Services delivered until the termination as well as payments for the Services that were supposed to be delivered until the end of the Term.

7.4. In the case of non-fulfilment by the Client of its obligations or in default of payment of invoices according to the conditions specified in Section 4 of the present Terms and Conditions, Infinity Mobile may suspend the delivery of its Services without the suspension leading to a termination of the Agreement.

7.5. In case the non-fulfilment by the Client of its obligations – in total or in part – continues for a period of 30 days after a written notice is delivered by Infinity Mobile, the latter can consider the Agreement to be automatically terminated borne by the Client.

7.6. In case the Client would terminate the Agreement unilaterally, outside the framework of the conditions provided in the present Terms and Conditions, the Client commits itself to pay all outstanding amounts due as if the Agreement would have been terminated in respect of Section 2 of the present Terms and Conditions.

8. Data protection

Infinity Mobile shall store personal data of the Client in accordance with the Act of 8 December 1992 on the Protection of Privacy ('Wet van 8 December 1992 inzake de bescherming van de persoonlijke levenssfeer') and Infinity Mobile's Privacy Policy which can be found on www.infinity-mobile.io. Infinity Mobile will also provide Client with a copy of this Privacy Policy upon written request.

All data is stored in a physical protected datacenter, and selected data (custom fields) can be encrypted to prevent unauthorized persons to read the data. The Client will at all times be the sole owner of his imported data in the Infinity Mobile database (including profiles, mobile numbers and email addresses).

Infinity Mobile is not active in renting or selling email address lists and will refrain itself from the data of the Client, unless actions fall under normal operational activities (eg. Import/export on request of Client, checking log files, ...)

9. Acceptable Use of Services

9.1. In addition to the provisions regarding the termination of the Agreement expressed in Section 8 of the present Terms and Conditions, Infinity Mobile preserves the right to immediately terminate the Agreement, by giving written notice yet without having to provide for reasons or indemnify the Client in any way, if the Client makes use of Infinity Mobile's website or its Services in such way that it can reasonably be considered to be an "Unacceptable Use" of the Services in light of Infinity Mobile's reputation, the Code of Conduct or general good practices. Infinity Mobile may determine the foregoing in its sole discretion and without having to provide for a reason.

9.2. Infinity Mobile preserves the right to immediately, and without giving any reasons or having to indemnify the Client in any way, terminate the Agreement if the Client makes an 'Unacceptable Use' of the Services delivered by Infinity Mobile in any of the following manners (this list is non-exhaustive):

- (i) any use or attempted use impacting the availability, reliability or stability of Infinity Mobile's website and or Services, for example, attacking Infinity Mobile's (online) infrastructure by means of a denial-of-service attack, trying to bypass or circumvent any of Infinity Mobile's security mechanisms, testing the vulnerability of Infinity Mobile's infrastructure by reverse-engineering the Services etc. including any attempt of the before mentioned actions;
- (ii) any use or attempted use creating any form of risk, damage or danger regarding the security or the well-functioning of Infinity Mobile's Services, including for third parties;
- (iii) any use or attempted use that may subject Infinity Mobile or any third party to liabilities, damages or danger;
- (iv) any use or attempted use that is or might be considered a violation of the Code of Conduct;

- (v) any use or attempted use in any other way than expressly provided by the Agreement, including for reasons of (attempted) fraud;
- (vi) any use or attempted use implying any transmittal of material infringement of intellectual property rights of Infinity Mobile or third parties;
- (vii) any use or attempted use and viruses containing viruses, worms, bombs, Trojans or any other malicious, harmful or deleterious programs;
- (viii) any use or attempted use aimed at unsolicited advertising, spamming, marketing, SMS junking etc. in any way unwanted by recipient. Nor any use or attempted use aimed at collecting personal data and information (for example telephone numbers, email-addresses etc.) from others without the necessary prior permission;
- (ix) any use or attempted use aimed at the promotion and engagement in illegal activities including but not limited to: creating a false identity, forging email addresses, misleading others with regard to an identity, etc.;
- (x) any use or attempted use, whereby through the making available by the Client, of content that is or can be considered to be negative, libelous or defamatory or otherwise malicious or harmful to Infinity Mobile or any person or entity, or discriminatory based on age, sex, gender, religion, nationality, sexual orientation etc.;
- (xi) any use or attempted use that violates or might violate any European or Belgian legal provision, including civil – criminal and public law provisions.

9.3. Upon getting aware of any form of Unacceptable Use in the light of this Section, Infinity Mobile will preserve the right to immediately suspend or terminate the Agreement, by written notice, without having to provide for any reason.

9.4. Infinity Mobile's right to suspend or terminate the Agreement, as described in Section 10.3 of the present General Terms and Conditions above, does not affect its right to claim compensation for damages that might have occurred, including but not limited to damage to its reputation or quality of Services. Such a suspension or termination of the Agreement by Infinity Mobile shall furthermore not prejudice Infinity Mobile's right to undertake any kind of legal action against the Client, until 5 years after the suspension and/or termination of the Agreement following an Unacceptable Use by the Client as described here above.

10. Intellectual property

10.1. All Services developed by Infinity Mobile remain the latter's intellectual property. Nothing in the Agreement, nor in any specific agreement with a Client, shall be understood as a waiver of Infinity Mobile's intellectual property rights, including copyright, to any of its Services.

10.3. The Client shall be the sole responsible to ensure the respect of all the intellectual property rights of third parties, including copyright, when making available, transmitting or providing content of any kind through Infinity Mobile's Services. This will include any content placed, communicated or made available by the End Users of the Services. Infinity Mobile will under no circumstance be liable for any damage that might occur, including the violation of a third party's intellectual property rights, following the content used through the Services for which Client shall remain exclusively responsible.

11. Notice

Notices under the Agreement shall not be valid unless in writing and sent to a Party at its known address.

12. Severance

If any provision of the present Terms and Conditions (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the present Terms and Conditions, and the validity and enforceability of the other provisions of the present Terms and Conditions shall not be affected. In the foregoing case the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

13. Confidentiality

13.1. Both Parties agree to regard and preserve as confidential all non-publicly available information related to the business and activities of both Parties, their members, suppliers and other entities with whom the Parties do business or with whom they are associated, that may be obtained by the Parties from any source or may be developed as a result of the Agreement.

13.2. The Parties agree to hold such information in trust and confidence and shall not disclose such information to any person, firm or enterprise, or use (directly or indirectly) any such information for its own benefit (other than for purposes of the Agreement) or the benefit of any other Party, unless authorized by the other Party in writing. Information is not confidential to the extent it is: (i) already known by a Party free of restriction when obtained; (ii) rightfully obtained from an independent third party free of restriction; or (iii) available publicly.

14. Miscellaneous

14.1. The Client may not assign the Agreement nor any of its rights or delegate any of its duties under it without the written consent of Infinity Mobile.

14.2. Any amendments to the Agreement, as well as any additions or deletions, must be agreed in writing by both Parties.

14.3. No failure or delay in exercising any right, option or remedy, enforcing any obligation or requiring performance, shall impair or be construed as a waiver or on-going waiver by Infinity Mobile of that or any other right, option or power of Infinity Mobile, unless in writing signed by Infinity Mobile.

14.4. No breach by the Client of any provision of the Agreement shall be waived or discharged except with the express written consent of Infinity Mobile.

14.5. The liability of a Party cannot be retained under these Terms and Conditions, in case of abnormal and unforeseeable circumstances beyond the control of the Party by whom it is pleaded, the consequences of which, despite all precautions could not be prevented.

14.6. Each form of delivery of the Services, by post or electronic, shall be at risk of the designated Party.

14.7. Infinity Mobile is allowed to refer to the rendered Services, goods and performance with the appointment of the Client for marketing or promotional purposes on Infinity Mobile's website or otherwise.

14.8. Infinity Mobile preserves the right to partially or entirely modify the present Terms and Conditions governing the Agreement at any time. Infinity Mobile will communicate any changes to the present Terms and Conditions to the Client.

15. Applicable law and competent court

The present Terms and Conditions shall be governed by and construed in accordance with the laws of Belgium. Any dispute or controversy relating to these present Terms and Conditions can only be brought in the exclusive jurisdiction of the Ghent's courts and each Party consents to the exclusive, personal jurisdiction of such courts.