

Terms of Processing SendCloud B.V. 2019

These Terms of Processing (hereinafter the "Terms") shall apply to all Services (as defined below) provided by SendCloud B.V. (hereinafter "SendCloud").

Each party, company or business that holds an account at the SendCloud platform or makes use of the Services in any other way (hereinafter "Customer") shall be deemed to have accepted these Terms in full.

For purposes of these Terms, Customer shall be the Data Controller and SendCloud shall be Data Processor.

Preamble

Pursuant to Article 28 of Regulation (EU) 2016/679 (GDPR), these Terms shall apply to all Services provided by SendCloud to Customer and reflect the parties' agreement with regard to the processing of Customer Personal Data.

1. Definitions

1.1 "Customer Personal Data", shall mean any Personal Data processed by SendCloud or third parties commissioned by SendCloud in connection with the Services;

1.2 "Data Breach", shall mean any unauthorised or unlawful processing, disclosure of, or access to, Customer Personal Data or any accidental or unlawful destruction of, loss of, alteration to, or corruption of Customer Personal Data;

1.3 "Data Controller", shall have the meaning as set out in Article 4 of the GDPR;

1.4 "Data Processor", meaning as set out in Article 4 of the GDPR;

1.5 "Data Subject", shall mean a natural person whose Personal Data are processed by SendCloud;

1.6 "EEA", shall mean the European Economic Area;

1.7 "GDPR", shall mean the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

1.8 "Personal Data", shall have the meaning as set out in Article 4 of the GDPR;

1.9 "Privacy Shield", shall mean the EU-U.S. framework to provide companies with a mechanism to comply with data protection requirements when transferring Personal Data from the European Union to the United States;

1.10 "Services", shall mean any activities to be supplied or carried out by SendCloud for Customer, in relation to the use of: SendCloud.com; SendCloud.nl; SendCloud.be; SendCloud.es; panel.sendcloud.sc; shipping-portal.com, and other related websites provided and hosted by SendCloud;

1.11 "Sub-processor", shall mean any person or entity appointed by or behalf of SendCloud to process Customer Personal Data.

1.12 All terms not defined shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

In the course of providing Services to Customer, SendCloud may process Customer Personal Data on behalf of Customer. Parties agree to comply with the following provisions with respect to any Customer Personal Data, each acting reasonably and in good faith.

2. Applicability and Duration of Terms

2.1 These Terms shall apply to all Customer Personal Data processed by SendCloud in relation to the Services. SendCloud may trust that the person accepting these Terms is entitled to do so in the name of Customer. The Terms shall remain in effect until, and automatically expire upon deletion of all Customer Personal Data, as described in Section 11 of these Terms (Deletion or Return of Personal Data).

3. Processing of Personal Data

3.1 SendCloud shall process Customer Personal Data solely for the purposes of improving and providing Services to Customer. SendCloud shall only process Customer Personal Data on behalf of Customer and in accordance with these Terms and the documented instructions of Customer, unless required otherwise by the relevant law to which SendCloud is subject.

3.2 SendCloud shall comply with all applicable data protection laws in the processing of Customer Personal Data.

3.3 SendCloud shall promptly inform Customer if, in the opinion of SendCloud, an instruction of Customer in relation to the processing of Customer Personal Data, infringes relevant data protection laws and/or these Terms, unless the applicable law prohibits from doing so on important grounds of public interest.

4. Security Measures and Confidentiality

4.1 SendCloud shall implement and maintain appropriate technical and organizational measures to protect Customer Personal Data against a Data Breach. For more details please see the SendCloud Privacy Policy.

4.2 Security measures shall include, but not be limited to, measures to protect Customer Personal Data; the ability to ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services; the ability to restore timely availability and access to Customer Personal Data following an incident; and regular testing/assessing/evaluating the effectiveness of applied measures for ensuring security of the processing.

4.3 SendCloud shall take appropriate steps to ensure compliance with the security measures by the persons authorised to process Customer Personal Data, including ensuring that all persons authorized to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

4.4 SendCloud shall ensure that only the persons authorised to process Customer Personal Data are given access and only to the extent necessary to provide and improve Services to Customer.

5. Sub-processing

5.1 SendCloud shall only engage a Sub-processor for any processing activities pursuant to these Terms if such Sub-processor is located within the EEA, or the United States of America (subject to such US party being compliant with the Privacy Shield). In all other cases SendCloud shall notify Customer before using a Sub-processor and provide Customer the right to opt-out from the provision of Services by deleting Customer account.

5.2 Customer specifically authorizes the engagement of the Sub-processors listed in Appendix 1 (Sub-processors as of 10 May 2018). In addition, Customer generally authorizes the engagement of any other third parties as Sub-processors, as long as such parties are appointed in accordance with the rules stipulated in this Section. SendCloud shall update his overview of Sub-processors on a regular bases. The overview can be found here.

5.3 With respect to each Sub-processor, SendCloud shall ensure that:

5.3.1 Such engagement is set out in a written contract or other written legal act;

5.3.2 The obligations as laid out in these Terms and under Article 28(3) of the GDPR are imposed mutatis mutandis on the Sub-processor;

5.3.3 Sub-processor processes Customer Personal Data in line with appropriate and technical organizational measures pursuant to these Terms and Article 32 of the GDPR;

5.4 SendCloud shall be responsible for the Customer Personal Data processed by a Sub-processor. This shall not apply to carrier-related liabilities, as described in the SendCloud Terms & Conditions.

6. Data Subject's Rights

6.1 SendCloud shall enable Customer on request to access, rectify, delete, object, or restrict the processing of Customer Personal Data, and to export Customer Personal Data in accordance with the procedures and timeframes specified in these Terms.

6.2 Data Subject Requests

6.2.1 In the event of receiving any request from a Data Subject in relation to Customer Personal Data, SendCloud shall support Data Subject to submit his/her request to Customer, who shall respond to such requests.

6.2.2 SendCloud shall assist Customer in meeting its obligation to respond to requests by Data Subjects, in order to enable exercising Data Subject's rights, as laid down in Chapter III of the GDPR.

7. Data Transfers

7.1 Customer Personal Data shall only be processed by SendCloud and/or appointed Sub-processors: (i) within the EEA; or (ii) the United States of America, if subject to such US

party being compliant with the Privacy Shield; or (iii) in a country recognised by the European Commission as providing an adequate level of protection for Personal Data.

7.2 Whenever SendCloud is permitted by Customer to transfer Customer Personal Data to any recipient or country outside the EEA or the United States of America, if subject to such US party being compliant with Privacy Shield; and such country is (i) not recognized by the European Commission as providing an adequate level of protection for Personal Data; or (ii) not covered by a suitable framework or certification recognized by the relevant authorities or courts as providing an adequate level of protection of Personal Data, then SendCloud shall implement Standard Contractual Clauses (pursuant to the European Commission's decision of 5th February 2010 on Standard Contractual Clauses for the transfer of Personal Data to processors established in third countries which do not ensure an adequate level of data protection).

8. Personal Data Breach

8.1 In the event of a Data Breach affecting Customer Personal Data, SendCloud shall promptly notify Customer after becoming aware of the breach. SendCloud shall promptly take measures to address the breach and mitigate any adverse effects.

8.2 SendCloud shall support Customer in ensuring compliance with any legal obligations to report the breach to a supervisory authority or inform Data Subjects of the Data Breach pursuant to Articles 33 and 34 of the GDPR.

9. Data Protection Impact Assessments and Prior Consultation

9.1 SendCloud shall provide assistance to Customer with regard to conducting data protection impact assessments, including any consultations with supervising authorities or other competent data privacy authorities, in order to fulfil obligations as outlined under Articles 35 and 36 of the GDPR, or equivalent provisions of any other data protection law.

10. Record of Processing Activities

10.1 SendCloud shall maintain a record of processing activities relating to these Terms and to Customer Personal Data, in accordance with the requirements stipulated under Article 30 of the GDPR [insert link].

10.2 SendCloud shall make such records available to Customer upon request and without undue delay.

11. Deletion or Return of Personal Data

11.1 Any Customer Personal Data shall be pseudonymized within 12 months after have been included in the SendCloud system.

11.2 Customer may at all times request SendCloud to close its account and/or delete all Customer Personal Data in writing. In such event SendCloud shall delete all Customer Personal Data within six (6) months from the request. SendCloud cannot support earlier deletion as this data may be required for adequate provision of the Services.

11.3 The provisions of this Section 11 are subject to EU or EU Member State law requirements regarding storage and retention of Personal Data.

12. Audit

12.1 Customer, or a third-party auditor acting under Customer's direction, shall have the right to conduct data privacy and security audits at own expense, concerning SendCloud's data security and privacy procedures relating to the processing of Customer Personal Data, and its compliance with these Terms and the relevant data protection legislation. Customer may require SendCloud to demonstrate evidence of compliance with these procedures in lieu of or in addition to conducting such an audit.

13. Liability

13.1 The liability of SendCloud, under these Terms or by law, shall at all times be limited to the amount covered by the liability insurance of SendCloud. If such liability insurance does not provide for adequate coverage, the aggregate liability of SendCloud shall at all times be limited to the amount of fees paid by Customer to SendCloud for the related Services in a given calendar year.

14. Final Provisions

14.1 These terms and its interpretation shall be governed by the law of The Netherlands.

14.2. Any disputes arising in relation to the Terms shall be brought before the courts in The Netherlands, which shall have exclusive jurisdiction to adjudicate, unless specifically agreed otherwise by the parties, in writing.

14.3 Any future modifications to these Terms shall be made in writing. Such modifications shall be made in the form of providing an updated version of these Terms.

14.4 Should any provision of these Terms be deemed invalid or unenforceable, the remainder of these Terms shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability whilst preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.