infomaniak

Article 1 – Purpose and acceptance

1.1 These Special Conditions (hereinafter the “SC”) set out the terms under which Infomaniak Network SA, a company incorporated under Swiss law with its registered office in Geneva (hereinafter “Infomaniak”), provides the customer (hereinafter the “Customer”) with the SwissTransfer service (hereinafter the “Service”), accessible at swisstransfer.com.

1.2 Any capitalised term has the meaning defined in this contract or, failing that, the meaning set out in the Infomaniak Glossary available at: infomaniak.com/fr/cgv/conditions-generales.

1.3 Use of the Service implies full and unreserved acceptance of these SC as well as of the Data Processing Addendum (DPA): DPA

1.4 Infomaniak may amend the SC and their annexes at any time. In the event of any discrepancy, only the French version shall prevail.

Article 2 – Description of the Service

2.1 SwissTransfer is a free file-sharing infrastructure offering in particular:

- Sending of up to 50 GB per transfer;
- A maximum of 20 recipients;
- Access via secure HTTPS;
- Up to 250 downloads per file;
- Up to 5,000 files per transfer;
- A limit of 5 transfers per hour per IP address;
- A choice of availability period of 1, 7, 15 or 30 days, the 30-day period being subject to an intermediate confirmation by the sender (see art. 2.2).

2.2 Where the sender selects an availability period of 30 days, the continued availability of the transfer until that term is conditional upon confirmation by the sender.

On the twelfth day following the creation of the transfer (D+12), a message is sent to the sender, informing them, as the case may be:

- that the transfer has already been downloaded by one or more recipients; or
- that the transfer has not yet been downloaded.

This message states that, failing any action by the sender, the transfer and the files it contains will be automatically and permanently deleted three days later (D+15). By activating the link contained in this message, the sender extends the availability of the transfer until the end of the 30 days initially chosen.

In the absence of confirmation within this period, the transfer is deleted at the end of the fifteenth day, without such deletion giving rise to any compensation.

2.3 Upon expiry of the chosen period, the files are permanently deleted.

Article 3 – Infomaniak’s responsibilities and warranties

3.1 Infomaniak implements all reasonable technical and organisational measures to ensure the quality, security and availability of the Service.

3.2 Infomaniak does not commercially exploit the files or data transferred via the Service.

3.3 The files are not subject to proactive monitoring but are automatically scanned by open-source antivirus software in order to detect malware.

3.4 Infomaniak may block, suspend or delete any suspicious content or transfer, without notice, where there is a risk to the security, integrity or legality of the Service.

3.5 Infomaniak may cooperate with the competent authorities and disclose the necessary information where required by law or where its legitimate interests are threatened.

3.6 For this free Service, Infomaniak’s liability is limited to a maximum amount of one hundred (100) CHF.

3.7 Infomaniak does not warrant that the Service is suitable for any particular use the Customer may wish to make of it. Use of the Service is at the Customer’s own risk.

Article 4 – Customer’s obligations

4.1 The Customer declares that it has the power, authority and capacity necessary to enter into and perform the obligations provided for in this Contract.

4.2 The Customer warrants that it holds all the rights necessary to use, share and distribute these files.

4.3 The Customer is solely responsible for the content of the files transferred via the Service and retains full intellectual and material ownership thereof.

4.4 The Customer shall not use the Service to distribute content that is:

- Illegal, fraudulent, harmful, defamatory, offensive or discriminatory;
- Violent, cruel or harmful to humans or animals;
- Facilitating illegal activities (fraud, cybercrime, money laundering, terrorism, human trafficking, etc.);
- Related to the sale or distribution of prohibited goods or services (drugs, weapons, illegal gambling, etc.);

- Supporting terrorism, inciting public disorder or offences;
- Encouraging self-harm, suicide or dangerous behaviour;
- Disseminating misinformation or infringing the rights of third parties (intellectual property, privacy, image, religion, culture);
- Of a spam nature, unsolicited promotional content or abusive solicitations.

4.5 Use of the Service is subject to Swiss law, in particular the law relating to economic sanctions and export control.

4.6 Access to and use of the Service are prohibited from or to any country, territory, person or entity subject to economic sanctions or an embargo applicable in Switzerland, including those adopted by the United Nations and transposed by the Swiss Confederation.

4.7 The Customer declares and warrants that it is not established, located in or resident in a country or territory subject to sanctions applicable in Switzerland, and undertakes not to allow the use of the Service by the persons or entities concerned.

4.8 Any serious or manifest breach of the obligations set out in Articles 4.4 to 4.6 may result in the immediate deletion of the files, the suspension of the Service, without notice, as well as, where applicable, notification to the competent authorities.

4.9 The Customer shall fully indemnify Infomaniak for any loss (including legal costs) related to:

- Unlawful use of the Service;
- Infringement of third-party rights;
- The distribution of prohibited content.

4.10 The Customer is responsible for the distribution of the download links, which are freely accessible by the recipients.

Article 5 – Data protection

The processing of personal data is governed by Infomaniak’s Privacy Policy: infomaniak.com/fr/cgv/politique-de-confidentialite.

Article 6 – Communications

- To the Customer: at the email address provided when using the Service;
- To Infomaniak: by registered mail to: Infomaniak Network SA, 25 Rue Eugène-Marziano, 1227 Carouge (Switzerland).

Article 7 – Complaints and removal of content

7.1 Upon notification from a third party alleging an infringement of rights or of the law, Infomaniak may remove the content without waiting for the Customer’s response.

7.2 Infomaniak may forward to the injured third party the minimum information necessary to exercise its legal rights.

7.3 The costs related to these interventions (legal or administrative) may be charged to the Customer.

7.4 Infomaniak may use automated or human means to detect breaches. It may investigate, temporarily block access, filter or delete content, suspend or terminate access to the Service, and forward information to the authorities if necessary.

Article 8 – Agreement on evidence

For the purposes of this Contract, the parties agree that writing in electronic form is admitted as evidence in the same way as writing on paper. It is agreed that the data of Infomaniak’s information system or that of its subcontractors, such as connection logs, incident management reports or others, are fully enforceable against the Customer and admissible, including in litigation proceedings. Email exchanges shall be deemed received or sent by Infomaniak’s SMTP servers. The date and time of Infomaniak’s mail servers shall prevail between the Parties.

Article 9 – Disputes

9.1 The parties shall, as a priority, seek an amicable resolution.

9.2 The Customer remains solely responsible for disputes with third parties concerning the transferred files.

9.3 Infomaniak may not limit its liability in the event of wilful misconduct or gross negligence.

9.4 Disputes fall within the jurisdiction of the courts of Geneva, subject to an appeal to the Federal Supreme Court in Lausanne.

Article 10 – Force majeure

Infomaniak is not liable in the event of an unforeseeable event beyond its control (natural disasters, war, major cyberattacks, etc.).

Article 11 – Severability

If any provision of the Contract is declared illegal, void or unenforceable, such invalidity shall not in any way affect the other clauses, which shall retain their full effect and scope. In such a case,

Infomaniak undertakes to replace the void or unenforceable clause with a valid clause that most closely corresponds to its spirit and purpose, so that the common intention of the parties is thereby preserved.

Article 12 – Applicable law

12.1 This contract is governed by Swiss law.

12.2 Infomaniak shall endeavour to comply with the judgments of the authorities of OECD member countries.

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