

Netigate General Terms of Service

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1. Subject matter and scope of these General Terms of Service

(1) These General Terms of Service (hereinafter: "Terms") govern the rights and obligations of the Customer (hereinafter: "the Customer") and the company entity Netigate (hereinafter: "Netigate") in connection with the use of the service of Netigate for carrying out web-based online surveys.

(2) The Terms of Netigate shall apply exclusively. Any Terms and conditions of the customer which deviate from or are in conflict with these Terms shall not apply unless Netigate has expressly agreed in writing or in text form to them. These Terms shall also apply if Netigate provides its services without reservation even if the Customer's conditions deviate or are in conflict to those of Netigate.

2. Conclusion of Contract

(1) The use of Netigate services requires registration with Netigate. Netigate reserves the right to deny the set up for contract in individual cases.

(2) The contract shall only become valid after the Customer receives a confirmation in text format (e.g. email) from Netigate.

(3) If usage fees are not provided for in the tariff chosen by the Customer, the Customer can use the service in full, as per previous agreement, after receiving the confirmation by Netigate. By request, the agreement shall be documented in written form.

(4) If a usage fee is provided for in the tariff chosen by the Customer, the Customer can use the service after receiving the confirmation of Netigate.

3. Description of Services

(1) The Customer can use the service for internet-based online surveys in accordance with its chosen tariff in connection with the Description of Services/Price List within the respective possible technical and operational capabilities.

(2) Content and scope of the services shall be governed by the respective contractual agreements, and apart from that by the current functionalities which are available on the website of Netigate.

(3) The hardware and/or software requirements for the use of services are described in the user manuals of Netigate.

(4) Services of the Provider include in particular:

- conducting of internet-based online surveys with a plurality of participants
- evaluation of conducted online surveys.

4. Intellectual Property Rights

(1) The site and the services of Netigate and all information and screens appearing on the sites, including documents, services, site design, text, graphics, logos, images and icons, as well as the arrangement thereof, are the sole property of Netigate. Except as otherwise required or limited by applicable law, any reproduction, distribution, modification, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner or license. Netigate reserves all rights in the site and the services that are not expressly granted. [Netigate] is a Swedish and European trademark of Netigate AB. Nothing in the Agreement between the Parties shall be deemed to assign or transfer to the Customer any rights to any such intellectual property. The Customer furthermore acknowledges and agrees that content made available to the Customer through the services may be subject to the intellectual property rights of third parties.

(2) Netigate however allows the Customer to, during the entire agreement period, use protected material through the proper usage of Netigate.

5. Responsibility for Access Data

(1) Customer's access data (user name, password etc.) specified during the course of registration must be kept secret by the Customer and must not be made accessible to unauthorized Third Parties.

(2) The Customer is also required to ensure that the access to and use of the service of Netigate with the personal data of the user is done only by the user and/or authorised users. If there are facts justifying the assumption that unauthorised Third Parties have or will gain knowledge of the User's data, Netigate shall be informed immediately.

(3) In case of reasonable suspicion of unauthorised use of the account, Netigate has the right to lock the access to the account. In such case, the Customer will receive new access data from Netigate.

(4) Third Parties in the meaning of paragraph (1) - (3) for Customers who are legal persons or public institutions, not the employees of the Customer. However, the Customer has to pay attention that only those employees attain knowledge of the access data as far as necessary that they need for the performance of the Customer's tasks. Partners of Netigate which have concluded an according partnership agreement in writing, may, provided that the service is used by the Partner on behalf or to the benefit of a Third Party, make this service available for this Third Party. The Partner has to ensure that the Third Party only uses the service according to the agreed conditions, especially these conditions and the Description of Service.

(5) In accordance with statutory regulations, the Customer shall be liable for any use and/or other activity that is carried out with his access data.

(6) Access Data for any Netigate account is strictly personal and may not be used by several individuals. Netigate reserves the right to control and lock access to the account if this is breached.

6. General Obligations of the Customer

(1) The Customer is obliged to provide accurate and truthful information regarding his/her person or its business in the course of using the online survey systems by Netigate.

(2) The Customer is obliged to comply with applicable laws when using the online survey systems by Netigate.

(3) The customer is obliged to the confidential treatment of email or other electronic messages received in connection with the use of Netigate's online survey system or from other users and to not transmit them to Third Parties without the consent of the communication partner.

(4) If the Customer enables employees or vicarious agents the use of online survey systems in a permissible way, he shall oblige them in a suitable manner to comply with the obligations for Customers stated in these Terms.

(5) Further obligations arising from other regulations of this Terms shall remain unaffected.

7. Change of Services

(1) Netigate shall be entitled at any time to change its free of charge services which are provided on the Internet, to make new service available free of charge or against payment and to end the provision of free of charge services. When doing so, Netigate will regard legitimate interests of the users.

(2) The Customer is entitled to the services listed under section 3 of these Terms. Netigate may change or limit services beyond those mentioned at any time, as far as legitimate interest of the Customer are taken into account in appropriate manner.

8. Data Retention and Deletion

(1) The Customer may at any time via its access provided by Netigate, delete its questionnaires, addresses and survey results or let them be deleted by an employee of Netigate.

(2) Netigate has the right, without prior notice, to irrevocably delete all of the customer data set, including questionnaires, survey participants and survey results thirty (30) days after expiration of the contract.

(3) Netigate will delete Customer's data ninety (90) days after termination of contract.

9. Availability

(1) Netigate is committed to provide an almost uninterrupted usability of its services. However, due to technical disturbances (e.g. interruption of power supply, hardware and software failure, connection loss) temporary restrictions or interruptions may occur.

(2) For all services that are subject to charge, Netigate warrants, in its area of responsibility, an availability of 98% on yearly average. No part of the calculation of availability are the regular maintenance windows, with an amount of up to four hours each week, which are normally carried out between midnight and 6am CET. Netigate will notice the Customer immediately - wherever possible - about deviating planned maintenance in advance.

(3) Netigate points out that data loss may occur even with a duly performed data backup. The Customer is therefore recommended to store data like survey results and addresses regularly on its own, external storage devices.

10. Warranty

(1) Netigate warrants for the duration of the contract that the service provided by Netigate will fulfil the agreed functions. The prerequisite for warranty is the use of the service in accordance with the contract.

(2) Netigate will remedy any deviations from what is agreed in terms of functionality and scope through free rectification at our discretion.

(3) The Customer is only entitled to extraordinary termination of the agreement due to the failure to be granted use in accordance with the contract, if Netigate has been given sufficient opportunity to rectify the defect and such attempt has failed. The rectification may be deemed a failure only if rectification is impossible; if Netigate refuses the rectification or it is delayed to an unreasonable extent; if there are justified doubts as regards to success or if it is unreasonable for the Customer on other grounds.

(4) The rights of the Customer relating to defects shall not apply if Customer made changes or commissioned such changes to the online survey system of Netigate without consent of Netigate, unless the Customer proves that this changes have no undue effect for Provider in regard of analysis and remedy of defects.

(5) Warranty claims of the Customer shall expire after twelve (12) months.

11. Forbidden Activities

(1) When using online survey system of Netigate, the Customer is prohibited from any activities that violate applicable law, infringe the rights of Third Parties or violate the principles for the protection of children and young persons. In particular, the following actions are prohibited:

- providing, distribution, public display and advertising of content, services or products that are of pornographic nature, violate protection of children and young persons, data protection laws and/or any other applicable laws and/or is of fraudulent nature;
- utilisation of content that is offensive or slanderous to other participants or Third Parties;
- utilisation, provision and distribution of content, services and/or products that are protected by law or by the right of Third Parties (e.g. copyright) without having the explicit permission to do so.

(2) Furthermore, the following activities are also prohibited regardless of a possible violation of laws when using the online survey systems of Netigate:

- distribution of viruses, trojans and other files with similar purposes;

- transmitting junk emails or spam emails and chain mails;
- distribution of offensive, objectionable, sexually explicit, obscene or defamatory content or communication as well as of content or communication that is likely to promote or support racism, fanaticism, hatred, physical violence or illegal activities (either implicit or explicit);
- harassment of other participant, for example through repeatedly contacting them in person without or in contrast to the reaction of the participant as well as promoting or supporting such harassment.
- requesting other participants to disclose their passwords or other personal data for commercial or unlawful or illegal purposes;
- the distribution and/or public display of content available on the portal without having the explicit permission by copyright holder or without using a functionality which has been explicitly made available on the portal.

(3) Also prohibited is any activity that may impair the smooth operation of the online survey system of Netigate, in particular to stress the provider's servers unduly.

12. Prices and Terms of Payment

Netigate offers services in different price variants. Please refer to the relevant contract or the contractual regulations for the agreed prices.

13. Payment

(1) Netigate shall charge its customers according to the remuneration agreed on by both Parties. Payment of the fee for the corresponding invoicing period shall be made in advance. The Customer receives an appropriate invoice from Netigate. The right to remuneration is due on receipt of the invoice. Remuneration shall be paid within 20 days to the account of Netigate.

(2) Timeliness of payment will be acknowledged as soon as the amount will be at our unreserved disposal.

(3) In the event of default, Netigate shall be entitled to claim damage caused by delay at the statutory rate from the Customer.

14. Price Adjustment

(1) Customer and Netigate will redefine the level of remuneration as soon as the costs for the underlying services by Netigate rise in such amount through the introduction or modification of taxes or other levies or other legal provisions and regulations, by official measures, due to an increase in labour, material and other costs, that the contractual parties would have to make more than only minor changes to the existing levels of remuneration in the event of the theoretical conclusion of a renewal of the relevant schedule of services.

(2) In the event that the Customer and Netigate shall not be able to agree on the new level of remuneration within a period of thirty (30) days, the remuneration is determined (by a conciliator, to be appointed by both Parties) with consideration of the respective market price level.

(3) A price adjustment can be demanded for the first time in the 13th month after conclusion of contract. The preceding shall apply accordingly for an adjustment of the General Price List.

15. Indemnity Against Liability

(1) The Customer shall hold harmless Netigate, on first demand, from any liability vis-a-vis Third parties deriving from the Customer's violation (in connection with the use of online survey systems from Netigate) of legal regulations, against the right of Third Parties (in particular against privacy rights, copyrights or trademark rights) or against contractual obligations, warranties or promises, including the costs incurred for necessary legal defence in statutory amount.

(2) The Customer is obliged, in case of assertion of claims in the meaning of paragraph 1 to immediately and fully participate in establishing the facts of the matter and to provide Netigate with the necessary information in appropriate manner.

16. Blocking of Access

(1) Netigate shall have the right to block the access of the Customer to the online survey system temporarily or permanently if there are concrete indications that the customer violates or has violated the terms of this Terms and/or applicable law or if Netigate has a legitimate interest in a blocking of access. A legitimate interest of Netigate exists in particular if the Customer is in arrears with payment for more than 30 days.

(2) Netigate will take into account the legitimate interest of the Customer in his decision.

17. Data Protection

(1) Netigate shall ensure that personal data of users of the online survey systems are only collected, stored or processed as far as this is necessary for contractual performance and permitted by law or by the legislature. Netigate shall treat personal data confidentially and according to the provisions of applicable data privacy laws, and shall not disclose data to Third Parties, if this is not necessary for fulfilling contractual obligations and/or there is a legal obligation to transfer the data to Third Parties, such as the use of subcontractors

(2) In the event that within the framework of the use of services of Netigate, data protection declarations of consent have to be obtained from the user, it shall be pointed out that the user can revoke these at any time with effect to the future.

(3) If Netigate processes data on behalf of the Customer, there is the possibility of concluding a data processing agreement in the meaning of Article 17 of Directive 95/46/EC of the European Parliament and of the Council ("EU Data Protection Directive").

(4) Customer's use of Netigate is automatically registered and monitored by Netigate for the sole purpose of general statistical analysis in order to maintain good service. Any monitoring and analysis of registered and gathered Customer data is only for the internal purposes as indicated above. If the Customer has used any of Netigate's premade standardised surveys, such data may only be used by Netigate for external use if in aggregated form and if the Customer and any included data is kept completely anonymous.

(5) The gathered data by the Customer from surveys made in Netigate is subject to strict confidentiality and Netigate undertakes not to use this data, with the exception above, without the Customer's approval. The Customer has the exclusive right and ownership to the results from conducted surveys. Raw data is stored in a secure environment and will not be shared with third parties. Upon termination of this Agreement all data relating to the Customer credentials is destroyed. The Customer undertakes not to spread or share information regarding the structure and functions of Netigate that is not already public knowledge to any third party.

(6) Unless specifically stated otherwise, Netigate may refer to the Customer as a user of Netigate or use services executed or products delivered as reference cases without specific permission thereof.

18. Limitation of Liability

(1) Netigate is liable without limitation for damages caused intentionally or by gross negligence by Netigate in connection with the performance of contractual services.

(2) In case of slight negligence, Netigate is liable in the case of injury to life, body or health.

(3) Otherwise Netigate is only liable in case of violation of an essential contractual obligation. Essential contractual obligations refer in an abstract way to such obligations that are essential for fulfilling the proper performance of the contract as such and the observance of which the contractual partner may regularly rely on. In these cases, liability is limited to the replacement of foreseeable, typically occurring damage, and to the maximum of a one-year license fee.

(4) In the event of loss of data, for which Netigate is responsible, the claim for damages is limited to the costs of data recovery from the last backup which has been made by the Customer and stored by the Customer. In that regard, we point out the Customer's duty of data backup in accordance with section 9 (3) of these Terms.

(5) Where the liability of Netigate is excluded or limited by said provisions, this also applies to its agents.

19. Contract Period / Termination

(1) The contract period arises from the statement of services or price list in conjunction with the tariff chosen by the Customer.

(2) Contracts are renewed automatically except if a notice of termination has reached Netigate thirty (30) days before end of contract period. For contracts with a fixed term an early termination is excluded. An extraordinary right of termination shall be unaffected.

(3) Netigate shall have the right of extraordinary termination in any case if the customer violates these Terms or other applicable contractual obligations with Netigate.

(4) Either party have the right to terminate the contract with a period of notice of thirty (30) days before the end of the contract period.

(5) The notice of termination has to be in written form.

20. Communication and Notices

(1) Netigate may provide the Customers with electronic notices, including e-mail, and information within the Netigate Service that is of importance regarding the service or the contractual relationship.

Notices are received by the Customer as of the date it's made available by Netigate to the Customer and it's the responsibility of the Customer to be available to such notices.

(2) Netigate may alter the Terms with a three (3) months' notice. Changes of less importance may be done with a one (1) month notice. Changes shall not concern already charged fees or services already paid for by the Customer.

21. Transfer of Legal Rights

(1) The Customer may not transfer this Agreement to another party or legal entity without the previous written approval from Netigate. Netigate may transfer this Agreement, partially or in full, if Netigate is subject to an organisational change where Netigate is transferred to a new majority ownership.

22. Force Majeure

(1) Where a party is prevented from fulfilling its obligations pursuant to an entered Agreement due to circumstances which are beyond the party's control such as lightning, labour disputes, fire, amendments to regulations issued by governmental authorities, intervention by the authorities and errors or delays in services from sub-contractors due to circumstances as stated herein, such circumstances shall constitute an excuse which occasions a postponement of operating performance and a release from liability in damages and any other penalties.

23. Final Provisions

(1) If the Customer is a merchant, legal body of public law or special property under public law, the jurisdiction for all conflicts deriving from this contract, the court of jurisdiction shall be the business location of Netigate and governed by the laws of that country.

(2) If the stated above means that Sweden is the country of jurisdiction, the dispute shall be finally settled by arbitration in accordance with the Swedish Arbitration Act. The arbitral tribunal shall be composed of one arbitrator. The place of arbitration shall be Stockholm and the language to be used in the arbitral proceedings shall be English and governed according to Swedish Law.

(3) If individual portions of the terms of use shall be or will be invalid, this fact shall not affect the validity of the terms and conditions in its entirety.

(4) Regardless of what is mentioned above the Supplier shall always be entitled to forward claims for payment through public administration. Claims following the Agreement must be put forth in writing to the other party without delay, no later than ninety (90) days, from when the cause to the claim arose.