HYPERNODE®

Terms and Conditions

+31 520 21 6226 support@hypernode.com Ertskade 109, 1019 BB, Amsterdam

Article 1: Definitions

- “Customer”: the natural person or legal entity, unincorporated partnerships as well as their representative and authorized person, who have concluded or want to conclude an agreement with Hypernode.
- “Consumer”: the natural person acting for purposes that are outside his trade, business, craft or profession.
- “Agreement(s)”: all agreements used by Hypernode, in relation to the Customer, on which these General Terms and Conditions are applicable.
- “Use”: the use of web space, email space and database space agreed with the Customer (in the quotation), expressed in GB (GigaHypernodes).

Article 2: General

These General Terms and Conditions (hereinafter "General Conditions") apply to both the provision of services and the sale of goods by Hypernode BV, ("Hypernode").

By sending the order, the General Conditions are deemed to form an integral part of this agreement and will be accepted without reservation by the Client. The General Conditions and any specific Agreement constitute the entire and only Agreement between parties and will replace all previous oral agreements, proposals, promises, agreements or notices concerning the subject of the specific Agreement. General Terms and Conditions of the Customer are not applicable.

Hypernode's obligation to deliver the goods ordered by the Client or service at the predetermined price and paid by the Client, constitutes the principal obligation of the Agreement. If Hypernode is dependent on the involvement of an external party for the delivery of a good or provision of a service ordered by the Client, Hypernode's obligation to deliver will come into effect under the suspensory condition of availability of the good or service, at the time that Hypernode consults the external party, and subject to the predetermined price set by Hypernode and paid by the Client. The price paid by the Client is deemed a surety prior to

fulfillment of the suspensory condition. Hypernode undertakes to consult the external party to check the availability at this price within five (5) working days after receiving payment of the surety. If the ordered good or service is unavailable upon consulting the external party, the agreement will expire and Hypernode shall refund the paid surety, without any further obligations between parties. If the ordered good or service is available at a different price upon consulting the external party, then this agreement will expire and Hypernode shall allow the client to accept the different price. This shall result in a new agreement between Hypernode and the Client.

Article 3: Term and termination

Unless agreed otherwise between the parties, the Agreement is concluded for 1 year and will always be tacitly extended for the same period. Each party may unilaterally terminate this Agreement without stating reasons by means of a written notice by registered post or, in case of the Customer, electronically via https://service.byte.nl/ or https://my.hypernode.com/, no later than one month prior to the end of one year from the commencing date of the Agreement.

The unilateral termination by the Client does not entitle them to a refund or compensation in any way whatsoever, this also applies to previous payments made. If the Agreement is terminated, the claims of Hypernode on the Customer are immediately due and the already invoiced amounts for services provided will still be owed, without any obligation to cancel these. In case of dissolution by the Customer, the Customer may only dissolve that part of the Agreement that has not been performed yet by Hypernode. If the dissolution is attributable to the Customer, Hypernode is entitled to compensation of the damage that is caused by this.

Article 4: Prices

Prices indicated by Hypernode on its website and via other channels are always subject to obvious writing errors. Individual quotations can be withdrawn and are valid for 15 days, unless stated otherwise in the quotation. Unless stated otherwise, all prices are in euros and excluding Dutch VAT (BTW), and payable as indicated on the invoice. Unless agreed otherwise, the prices relating to the service are calculated for a period of one year. In accordance with Article 5, the full price must be paid at the start of this period.

Hypernode reserves the right to change the prices of the service at any time during the term of the Agreement. The Client will be notified of this via the website and via an individual notification. The altered prices will be payable by the Client after a period of two months from the individual notification, unless the Client has used the option to terminate the Agreement free of charge and without giving any reasons. The Client must give notice of termination by registered post or electronically via https://service.Hypernode.nl/ within thirty calendar days following the individual notification of the changed prices.

Discounts apply per Client and are not cumulative. In the event of misuse of offered discounts, for example but not limited to creating multiple accounts, Hypernode reserves the right but is not limited to remove the discounts.

Article 5: Terms of delivery, payment and protest

Hypernode's stated delivery periods are indicative and not binding, unless expressly agreed otherwise. The periods are indicated in working days. A reasonable delay in the delivery does not give right to cancellation of the order or compensation.

In the event of a complaint concerning the delivery of goods or provision of services, of whatever nature, the Client must notify Hypernode in writing within eight working days after the delivery of the goods or the commencing date of the provided services. A complaint concerning the delivery of goods or provision of services may not be used as a pretext for suspending or delaying the payment of invoices. The absence of a written objection to an invoice within eight working days after sending, entails the irrevocable acceptance of the invoice and the amounts, products and services stated therein.

Invoices must be paid within one month after the date of invoice. If the Customer has not paid in full after 14 calendar days after the payment term, he is in default after the first reminder that states the consequences of non-payment. If the Customer is in default, this has the following consequences: (i) legal interest is owed on the outstanding amount; (ii) the Customer owes 15% of the main amount for collection costs, or 40 euros if that amount is more than 15% of the main

amount, or, if the Customer is a Consumer, the amount that is owed according to the applicable legislation; (iii) the services provided to the Customer can be suspended without any further notice (and any websites hosted for the Customer may be made inaccessible) until the outstanding amounts, including interest, are paid; (iv) Hypernode has the right, by choice, to dissolve or terminate the Agreement pursuant to article 2 and to take back any delivered good insofar as this is possible.

Registration of a domain name is only possible if the Customer has declared in advance during the registration process that he explicitly agrees that the registration can be performed directly and the Consumer waives his right of withdrawal as soon as the domain name is actually registered. Article 8 of these General Terms and Conditions is then not applicable.

Article 6: Code of conduct and notice/take down

The Customer will always cooperate with Hypernode in good faith in order to promote the provision of services. The Customer will always use the services in accordance with Hypernode's Acceptable Use Policy, whose most recent version can be found on https://www.hypernode.com/assets/documents/Acceptable-Use-Policy-Hypernode.pdf. If the customer does not comply with his obligations arising from this Acceptable Use Policy, he agrees to bear all costs and charges that are related to the additional services performed by Hypernode to solve any problems that are the result of non-compliancy with his obligations by the Customers.

Hypernode cannot be held liable in any way for any loss of Internet connections due to technical or other malfunctions, both within and outside Hypernode's network, or for errors by suppliers that give cause to this. The Client is solely liable for the proper use of the good, service or software thereby taking into account Hypernode's specifications, documentation and instructions.

Article 7: Domain name registration

The correct execution of the payment by the Client and receipt of a welcome email and invoice from Hypernode does not guarantee the registration of the domain name. The domain name

will only be registered after Hypernode has expressly notified the Client in writing that the domain name has been registered. If it appears that Hypernode cannot register the domain name due to an error by the Customer, for example because the Customer appears not to be the current holder of the already registered domain name, the Client will be liable to pay Hypernode €25 in administration fees, without prejudice to the right of Hypernode to claim the actual damage suffered.

The registration of the domain names will occur in accordance with the regulations of the relevant parties responsible for registering domain names (like DNS Belgium (http://www.dns.be), SIDN (http://www.sidn.nl), DNS.LU (http://www.dns.lu), Afnic (http://www.afnic.fr) or ICANN (http://www.icann.org)). The Client has taken note of and accepts these General Terms and Conditions for domain name registration, available on the website of the domain registry, and declares that Hypernode has notified him of these General Terms and Conditions. The conditions can also be found in the register policy: https://www.hypernode.nl/images/downloads/Registerbeleid-Byte-B.V.pdf

For specific conditions, Hypernode refers to the websites of the relevant parties responsible for registering domain names. Hypernode bears no liability whatsoever for the Client's decision to register a domain name or to have domain names registered at the Client's request and which infringe upon the rights of third parties. The Client shall indemnify Hypernode against any third party claims pursuant to the registration of a domain name at the Client's request.

Article 8: Right of withdrawal

If the Customer is a Consumer, he has a period of 14 days to withdraw the Agreement without specification of reasons.

The Consumer has the right to inform Hypernode within 14 days after the day of receipt of the entire order (by the consumer himself or a third party appointed by him) that he wishes to cancel the purchase.

The period of 14 days starts from the day that the Agreement is concluded or, in case of the sale of goods, from the day that the Consumer physically takes possession of the goods.

If the Consumer wishes to exercise this right of withdrawal, he will inform Hypernode about this in writing within the aforementioned period. Hypernode will reimburse all payments received and delivery costs to the Consumer via the same payment method as used by the Consumer, when all goods have been returned.

Article 9: Liability

In the context of the conclusion or performance of the Agreement, Hypernode is not liable except in cases mentioned below, and for no more than the limits stated there.
The total liability of Hypernode for damage suffered by the Customer as a result of an attributable failure by Hypernode in the compliance with his obligations under this Agreement, explicitly including any failure in the compliance with a warranty obligation agreed with the Customer, or due to unlawful actions by Hypernode, their employees or third parties engaged by them, is limited per event or a series of related events to an amount that is equal to the total fees (exclusive VAT) that the Customer owes under the Agreement, or, if the Agreement has a duration of more than three (3) months, an amount that is equal to the fees that the Customer owed in the last three (3) months.

The total compensation for direct damage will never be more than ten thousand (10,000) euros (exclusive VAT).

Hypernode is explicitly not liable for indirect damage, consequential damage, loss of profit, missed saving and damage due to business stagnation. The liability of Hypernode due to attributable failure in the compliance with the Agreement only occurs if the Customer immediately submits a correct written notice of default to Hypernode in which a period of at least 14 days is stipulated to solve the failure, and Hypernode remains to attributably fail in the compliance with his obligations after this period. The notice of default must contain the most detailed description of the failure, so Hypernode is able to respond in an adequate way. The

notice of default must be received by Hypernode within 30 calendar days after the detection of the damage.

The exclusions and limitations referred to in this article will be void if and insofar as the damage is the result of intent or gross negligence of the management of Hypernode, as well as for death or physical injury of the Customer as a result of an action or negligence by Hypernode.

The Customer is liable towards Hypernode for damage that is caused by an error or failure that can be attributed to him. The Customer indemnifies Hypernode against claims regarding non-compliance with the code of conduct in these General Terms and Conditions by or with the permission of the Customer with the use of the services or goods. This indemnification also applies regarding people who are not employees of the Customer but nevertheless use the services or goods under the responsibility or with the permission of the Customer.

Article 10: Processing personal data

If the Customer as 'controller' within the meaning of the General Data Protection Regulation (GDPR) processes personal data with the use of the services, products or goods from Hypernode, the Customer must conclude a 'data processing agreement' with Hypernode based on the GDPR and use the option that is offered thereto by Hypernode. Insofar as the Customer does not use the option offered by Hypernode to conclude a data processing agreement, the Customer guarantees that he will not use the services or goods delivered to process personal data and the Customer indemnifies Hypernode against all damage or claims based on the statement that any processing of personal data with the use of the services or goods would be unlawful.

If the Customer as natural person ('data subject' within the meaning of the GDPR) uses the services, products or goods of Hypernode, Hypernode will comply with all obligations that the GDPR imposes on Hypernode as 'controller' in accordance with the privacy policy and registration policy of Hypernode (https://www.hypernode.com/assets/documents/Privacy-Policy-Hypernode.pdf).

Article 11: Intellectual property rights

All intellectual property rights concerning the products and/or services including the designs, software, documentation and all other materials that were developed and/or used to prepare or execute the Agreement between Hypernode and the Client, or arising rights, will exclusively remain vested in Hypernode or its suppliers. The delivery of products and/or provision of services does not constitute any transfer of intellectual property rights. The Client will acquire a non-exclusive and nontransferable user right to use the products and results of the services for the agreed purposes. The Client will adhere rigidly to the conditions laid down in the General Conditions, or otherwise imposed on the Client. Without prior written permission from Hypernode, the Client will not disclose the products and results of the services, either fully or partly in any way whatsoever, copy them or make them available to a third party. The Client shall not remove and/or alter the instructions of Hypernode or its suppliers relating to copyrights, brands, trade names or other intellectual property rights in any way. Hypernode warrants that it is entitled to grant the Client the user right and indemnifies the Client against any claims by third parties.

This provision does not apply if and in as far as the products and/or results of the services are altered and/or if delivered together with goods of third parties, unless the Client proves that, in the latter mentioned case, the claims by third parties exclusively pertain to products and/or results of services supplied by Hypernode. Hypernode is allowed to take technical measures to protect their products, services or goods. If Hypernode has secured these products, services or goods by means of technical protection, the Customer is not allowed to remove or bypass this security, except if and insofar as the law stipulates the contrary.

Article 12: Various

The Client's rights and obligations arising from the Agreement entered into with Hypernode may not be transferred, partially or wholly, to third parties without Hypernode's prior written permission.

If any provision in an Agreement entered into with Hypernode or its application, irrespective of which party or circumstance this concerns, is null and or unfeasible, the other provisions of the agreement will remain fully in effect.

Changes to contact information like addresses, telephone numbers, contact persons and email addresses of the Client must be immediately passed on to Hypernode via the necessary procedure. If the Client fails to immediately notify Hypernode, it will be entitled to recover the costs of search work or returned shipments from the Client. The log files and other administration, whether or not electronically, of Hypernode are the full proof of statements by Hypernode and the version received or stored by Hypernode of any (electronic) communication applies as authentic, except for counter proof to be provided by the Customer.

Article 13: Force majeure

Events of force majeure will dismiss Hypernode, for the duration of this event, from their obligations under these General Terms and Conditions, on the condition that Hypernode will inform the Customer in writing and describe the force majeure and will immediately continue the performance of the relevant obligations when and insofar as the event of force majeure has disappeared. The Customer will not be entitled to claim damage compensation for the non-compliance by Hypernode with one of their contractual obligations as a result of force majeure.

Article 14: Applicable law and exclusive competence

This Agreement concluded with Hypernode is subject to Dutch law. Insofar as the rules of mandatory law do not describe otherwise, all disputes as a result of the Agreement will be settled by the authorized Dutch Court in the district where Hypernode is established.