

Terms of service Upxero.com



1. Definitions

In these Terms of Service (hereinafter: 'Terms'), several defined terms are used, which are written with a capital letter. Terms in the singular have the same meaning in the plural and vice versa.

Content

The content of the Website, consisting of texts, images, and/or video;

Services

All goods and services provided by Upxero, including subscriptions, and all work performed by Upxero for a Client, including advice provided. The details of the offered services and fees are described in the respective descriptions of the services offered on Upxero's website;

Domain Name

The internet address of the Website that Upxero provides to the Client;

Intellectual Property Rights

All intellectual property rights and related rights, such as copyrights, trademark rights, database rights, and neighboring rights, as well as rights to know-how and one-off performances, regardless of whether these rights have been registered or are registrable;

Client

The natural or legal person who has entered into an Agreement with Upxero or to whom Upxero has made an offer to that effect;

Upxero

The private limited company Upxero OÜ (Estonian abbreviation for 'Ltd'), with its registered

office at Ahtri 12, 10151 Tallinn, Estonia, registered in the Estonian Commercial Register under number 16534146, and VAT number EE102522936;

Agreement

The arrangements between Upxero and the Client, of which these Terms and the online order form are part;

Privacy Policy

The privacy policy of Upxero, available via the privacy policy link on Upxero.com;

Template

A page layout available within a Theme, referring to the layout of a single page, not the entire Website;

Theme

A group of files (images, stylesheets, and code) that determine the overall appearance of the Website;

Web Design

The visual design of the Website, including the colors and fonts used;

Website

Part of the Services provided by Upxero, where a website consists of a collection of related internet pages based on a Theme;

Webshop

A Website that enables the Client to sell and process payments for products and/or services online.

2. General, Applicability

2.1 These Terms apply to all Agreements, offers, quotations, and all (legal) acts between Upxero and the Client, even if such (legal) acts do not result in, or are not related to, an Agreement. The Terms also apply to any use of, or visit to, Upxero's website by the Client or any other visitor.

2.2 Deviations from these Terms are valid only if explicitly accepted in writing by Upxero.

2.3 The applicability of any general terms and conditions, purchase conditions, delivery conditions and/or any other terms of the Client and/or third parties is excluded.

2.4 If one or more provisions of these Terms prove to be null and void or invalid, they shall be replaced by a valid provision that most closely reflects the intent of the invalid or void provision. If necessary, Upxero will consult with the Client about the content of the new provision. The remaining provisions shall remain fully in force.

2.5 If there is any uncertainty about the interpretation of one or more provisions of these Terms, the interpretation shall be made 'in the spirit' of the relevant provision(s).

2.6 If a situation arises that is not covered by these Terms, it shall be assessed 'in the spirit' of these Terms.

2.7 If Upxero does not always require strict compliance with these Terms, this does not mean that the provisions of these Terms do not apply or that Upxero in any way waives the right to require strict compliance in other cases.

2.8 Additional terms and conditions may apply to specific services.

2.9 In these Terms, “in writing” also includes “by email”.

3. Offertes, aanbiedingen en bestellingen

3.1 All offers and/or quotations made by Upxero are non-binding and valid for 14 days, unless explicitly stated otherwise by Upxero in the quotation/offer.

3.2 Statements made by Upxero on its website regarding the provision of Services shall be regarded as an invitation to make an offer and/or request a quotation.

3.3 The Client agrees that Upxero may begin its work immediately after the Client accepts the invitation.

3.4 Upxero cannot be held to its offers and/or quotations if the Client can reasonably understand that the offer, or a part thereof, contains an obvious mistake or typographical error.

3.5 A combined price quote does not oblige Upxero to perform part of the assignment for a proportional part of the quoted price. Offers and/or quotations do not automatically apply to future orders.

3.6 Any cost estimates or price indications provided by Upxero are solely intended to help the Client assess the scope and implications of the assignment. No rights can be derived from such estimates, unless otherwise agreed in writing.

3.7 Upxero reserves the right to refuse orders without stating a reason.

3.8 If it appears that information provided by the Client is incorrect, Upxero is entitled to adjust the prices accordingly.

4. Formation of the Agreement

4.1 The Customer may place an order for one or more of the Services offered by Upxero via the Upxero website. By placing an order through the Upxero website, an Agreement is established between the Customer and Upxero for the provision of the selected Services. All Agreements with Upxero are concluded exclusively online via the Upxero webshop. The applicable law is determined as described in Article 19 of these Terms and Conditions.

4.2 Agreements with consumers may be subject to national regulations concerning distance contracts or other mandatory consumer protection rules, in accordance with European regulations. For business customers, only the provisions of these Terms and Conditions apply, unless explicitly agreed otherwise in writing.

4.3 Upxero will, where possible, begin execution of its services immediately upon receipt of an order.

5. Subject of the Agreement, obligations of Upxero and the Customer

5.1 Upxero's obligations:

- Upxero will create and/or develop the Website once, determine the Web design in consultation with the Customer, and place the Content in consultation with the Customer;
- Content provided by the Customer will be placed insofar as it reasonably fits within the Theme and/or Templates. Upxero reserves the right to refuse Content, for example if the quantity is excessive;

- The Website is developed based on a fixed Theme and Templates, which means that not everything is technically and/or design-wise possible;
- During the term of the Agreement, Upxero will perform tasks such as updating the Website, providing Website hosting, registering a .nl/.be/.eu/.com domain name (if requested), providing an email address associated with the domain name, and hosting a mailbox;
- The Customer may create an unlimited number of pages or posts and modify Content without limitation within the boundaries as set out in Article 8;
- If Upxero registers a domain name in its own name on behalf of the Customer, Upxero will cooperate with a request from the Customer for transfer, cancellation, or relocation of the domain name;
- Upxero will make reasonable efforts to ensure the proper functioning of the Website and its Services;
- Upxero will make reasonable efforts to protect the Website's online security. For example, an SSL certificate is provided as standard with the Website;
- Upxero will strive to ensure uninterrupted availability of its systems and networks but offers no guarantees in this regard;
- Upxero does not provide backup copies to the Customer. It is therefore the Customer's own responsibility to make backups of the data stored with Upxero;
- Upxero will endeavor to keep the software it uses up to date. However, Upxero is dependent on its licensors. Upxero reserves the right not to install certain updates or patches if, in its opinion, this would not benefit the proper delivery of the Services;
- Upxero's service desk is available on business days between 9:00 AM and 5:00 PM.

5.2 Customer's obligations:

- The Customer must provide the Content so Upxero can include it in the Website and/or Webshop. The Website can only go online once the Content has been submitted by the Customer;
- The Customer is solely responsible for the Content on the Website at all times;
- The Customer agrees to use Upxero's Services only for ethically and legally acceptable purposes. Unethical or illegal use of the Website or other Upxero services is prohibited and may result in immediate, unilateral termination of the Agreement, without Upxero being liable for any resulting damages;
- If the Customer applies for suspension of payments, they must inform Upxero within 48 hours of such application;
- The Customer indemnifies Upxero against any damage related to (the use of) a domain name on behalf of or by the Customer;
- The Customer agrees that Upxero may include its company name in the footer of the Website it builds.

6. De Website

6.1 Upxero does not create custom-made Websites. The Website is based on a Theme, which may also be used for Websites of other Clients. As a result, there may be limitations regarding what can and cannot be delivered in terms of Web Design.

6.2 Upxero may update existing Themes and Templates, which may result in changes to the Client's Website.

6.3 Upxero may use (parts of) the Website for promotional purposes and may mention the Client in its communication materials, such as the website www.upxero.com.

6.4 The provisions of this article 6 regarding a Website also apply to a Webshop and, where applicable, to other (components of) Services provided by Upxero, such as plug-ins, domain names, mailboxes, and credits.

7. Duration and Termination of the Agreement

7.1 The Agreement is entered into for a minimum term of 12 months and is thereafter tacitly renewed for successive 12-month periods, unless otherwise agreed in writing. The Client may only terminate the Agreement after the initial 12-month period, subject to a notice period of 30 days. Termination must be in writing or by email.

7.2 Upxero has the right to terminate the Agreement subject to a 30-day notice period, but not before the initial 12-month term has ended. Upxero may terminate the Agreement without notice if the Client fails to comply with one or more provisions of the Agreement with Upxero and/or the applicable specific terms and/or these general terms and conditions.

7.3 If the Client terminates the Agreement, the Website will go offline after the final payment term has expired.

7.4 Upon request, Upxero may export the Website Content against a fee of EUR 150 payable to Upxero.

7.5 Upxero cannot provide a copy of the entire Website, including its source code, Theme, Template, and/or Web Design.

7.6 In the event the Client terminates the Agreement, Upxero is under no obligation to refund any amounts already paid.

7.7 If the Client is granted or has applied for suspension of payments, is declared bankrupt or a bankruptcy petition has been filed, offers a private settlement to creditors, has decided to liquidate or otherwise cease business operations, or if assets are seized such that the Client can no longer fulfill the obligations under the Agreement, Upxero has the right to terminate the Agreement with immediate effect, without prejudice to its right to payment for Services already delivered and compensation for any damages.

7.8 If the Client is a natural person not acting in the course of a profession or business, the Client has the right to cancel the Agreement without stating any reason within fourteen (14) days of its conclusion, unless Upxero has already commenced execution of the Agreement within that period with the Client's consent.

8. Fair use policy

8.1 Upxero applies a fair use policy regarding data usage. This includes the amount of data traffic in MBs, the disk space used by the Website, and the mailbox storage.

8.2 Upxero will inform the Client in a timely manner if their data usage significantly exceeds the average.

8.3 Upxero reserves the right to charge the Client additional fees for excessive usage.

9. Delivery Terms

9.1 All (delivery) terms mentioned by Upxero or agreed upon with Upxero are indicative and are never considered binding deadlines.

9.2 If it appears that a term may be exceeded, Upxero and the Client will consult each other as soon as possible.

9.3 In the event Upxero exceeds a (delivery) term, the Client must provide written notice of default, granting Upxero a reasonable period to fulfill its obligations under the Agreement. During this reasonable period, the Client is not entitled to compensation for any damages or to terminate the Agreement unless full indemnification is provided to Upxero.

9.4 If Upxero depends on information and/or data from the Client for the execution of an Agreement, the delivery term will be extended by the duration of the delay caused by the Client, plus one week.

9.5 Upxero reserves the right to subcontract certain work to third parties.

9.6 If the Client fails to fulfill any obligation towards Upxero properly, the Client will be liable for all damages (including costs) incurred by Upxero directly or indirectly.

10. Prices

10.1 All prices quoted, agreed upon, or otherwise indicated by Upxero are exclusive of VAT, administrative fees, and any other government-imposed levies, unless stated otherwise.

10.2 Upxero reserves the right to unilaterally change its prices without prior notice. External developments beyond Upxero's control also entitle Upxero to change prices during the term of an existing Agreement.

10.3 The current rates are listed on www.upxero.com. All prices on the aforementioned website, offers, brochures, and other documentation are subject to programming and typographical errors. Upxero accepts no liability for the consequences of such errors.

10.4 The Client shall pay the price specified in the Agreement for the ordered Services. For services not included in the Agreement, Upxero's standard hourly rate of €15 excluding VAT applies unless agreed otherwise. The applicable fees will be charged in advance based on the duration of the Agreement.

10.5 If the Agreement is a subscription, Upxero has the right to increase its rates at any time. Upxero will inform the Client of price changes via its website or email at least 2 (two) months in advance. If the increase exceeds 10%, the Client has the right to terminate the Agreement, subject to one month's notice.

10.6 In any case, Upxero has the right to increase the prices agreed upon with the Client by 4% annually on January 1st, without the Client, being a business, having the right to terminate the Agreement.

10.7 All costs arising from the Agreement for Upxero are borne by the Client, unless agreed otherwise.

11. Payment

11.1 Upxero applies a payment term of 7 (seven) days unless explicitly agreed otherwise.

11.2 Payments must be made without deduction and/or set-off.

11.3 The Client may only object to an invoice in writing and with proper justification, and must do so within the payment term mentioned in article 11.1. If not, the Client is deemed to have accepted the invoice (and its amount) and forfeits the right to dispute it. Objections to the amount do not suspend the payment obligation.

11.4 Upxero reserves the right to adjust its rates. Changes will be announced at least 30 days in advance. The Client may terminate the agreement in writing before the effective date of the change.

11.5 If the Client fails to meet their payment obligations within the specified term, whether due to a failed automatic debit or otherwise, the Client is in default by law. Upxero is then entitled to suspend its services immediately without further notice. This includes taking the Client's website offline and/or replacing it with a default page. Personal data of the Client or their customers will never be displayed or processed in violation of the GDPR. Services will only resume after full payment of the outstanding amount, including any administrative costs.

11.6 If the Client fails to meet their payment obligations within the period mentioned in article 11.1, Upxero has the right, without requiring notice of default, to charge statutory commercial interest on the outstanding amount.

11.7 As long as the Client is in default or has reversed a direct debit, Upxero has the right to implement a redirect. Personal data of the Client or their customers will never be displayed or processed in violation of the GDPR. Once the Client has met their payment obligations, access to the domain name will be restored.

11.8 Any payment made by the Client will, regardless of the Client's indication, be allocated first to any extrajudicial and/or legal collection costs owed, then to any interest owed, and finally to the oldest outstanding invoices.

11.9 The Client may choose in advance whether invoicing will be done monthly or annually.

11.10 If the Client fails to pay the claim after a notice of default, the claim may be outsourced. In that case, the Client will be liable not only for the total outstanding amount but also for full compensation of extrajudicial and judicial costs, including fees from external experts in addition to court-awarded costs. These costs are set at a minimum of 15% of the outstanding invoice amount, with a minimum of €75. If actual extrajudicial costs are higher, the Client must pay the actual costs.

11.11 The payment obligation becomes immediately due and payable if the Client is declared bankrupt, applies for suspension of payments, if general seizure is made on the Client's assets, upon the Client's death, or if the Client enters into liquidation or is dissolved.

12. Services and Guarantees

12.3 Upxero is not obligated to inform or advise the Client about applicable laws and regulations regarding the placement or reading of cookies, including (but not limited to) Article 11.7a of the Telecommunications Act and the General Data Protection Regulation (GDPR). If Upxero nevertheless provides information or advice in the context of its services, this is merely a non-binding indication to which the Client cannot derive any rights. The Client is fully responsible for complying with applicable privacy and cookie regulations.

Upxero may optionally offer supportive tools but does not accept any liability for the Client's compliance.

12.4 Upxero has the right to temporarily take its systems, including the Website or parts thereof, offline for maintenance, adjustments, or improvements. Upxero shall never be liable for damages resulting from such unavailability. Upxero will make efforts to carry out such work outside of business hours and to inform the Client in a timely manner.

13. Liability

13.1 Any liability of Upxero arising from or related to an attributable failure or unlawful act, or based on any other legal ground, is limited to direct damages and to the amount (excluding VAT) invoiced by Upxero to the Client in the twelve (12) months preceding the incident causing the damage. Under no circumstances shall the compensation for direct damage exceed €500.

13.2 "Direct damage" is exclusively understood to mean:

The reasonable costs for determining the cause and scope of the damage, insofar as related to damage as defined in these terms;

Any reasonable costs incurred to ensure that Upxero's performance complies with the Agreement, unless such failure cannot be attributed to Upxero;

Reasonable costs incurred to prevent or limit damage, insofar as the Client demonstrates that these costs have led to a limitation of direct damage as described in these terms.

13.3 Upxero is not liable for indirect or consequential damage, including but not limited to lost profits, missed savings, diminished goodwill, business interruption, claims by third parties, or damage related to the use of materials, services, or third-party software prescribed by the Client.

13.4 Upxero is not liable for damage resulting from incorrect or incomplete information provided by the Client.

13.5 A prerequisite for any right to compensation is that the Client reports the damage to Upxero in writing as soon as possible, but no later than thirty (30) days after it has occurred.

13.6 Upxero is not liable for damage resulting from changes in the operation of third-party services (such as social media platforms or APIs) that affect Upxero's service provision.

13.7 The exclusions and limitations of liability stated in this article do not apply if and insofar as the damage is caused by intent or deliberate recklessness on the part of Upxero or its executives.

13.8 All claims by the Client expire twelve (12) months after the services to which the claim relates have been performed. This provision does not apply to consumers.

14. Indemnification

14.1 The Client indemnifies Upxero against any claims from third parties who suffer damage in connection with the execution of the Agreement due to actions or omissions by the Client.

14.2 If Upxero is addressed by third parties on such grounds, the Client is obliged to assist Upxero both in and out of court and to do everything that may be reasonably expected in such a case. If the Client fails to take adequate measures, Upxero is entitled—without notice of default—to take such action itself. All costs and damages incurred by Upxero or third parties as a result will be entirely at the expense and risk of the Client.

15. Force Majeure

15.1 In addition to the provisions of Article 6:75 of the Dutch Civil Code, any failure by Upxero to fulfill any obligation towards the Client cannot be attributed to Upxero in the event of a circumstance beyond its control that prevents or reasonably hinders the performance of its obligations. Such circumstances include, but are not limited to, emergencies (including extreme weather conditions, fire, and lightning strikes), restrictions and/or amended regulations by governmental authorities, (labor) strikes, war, riots, power outages, unforeseen failure of computer equipment, disruptions or failures of the internet, telecommunications infrastructure, network attacks, and other service interruptions caused by suppliers or other third parties.

15.2 If a situation as described in Article 15.1 arises, Upxero's obligations towards the Client will be suspended for as long as the force majeure persists. If this situation lasts for more than thirty (30) calendar days, either party may terminate the Agreement in writing, in whole or in part. In such cases, Upxero is not liable for any damages, even if it benefits from the force majeure situation.

16. Confidentiality

The parties shall treat all information exchanged before, during, or after the execution of the Agreement as confidential if such information is marked as confidential or if the receiving party knows or should reasonably suspect that the information is intended to be confidential. This obligation also applies to their employees and any third parties engaged in the execution of the Agreement.

17. Intellectual Property Rights

17.1 All Intellectual Property Rights to materials, software, analyses, designs, Themes, documentation, advice, reports, quotations, and any preparatory materials developed or made available as part of the Services are exclusively owned by Upxero or its licensors.

17.2 The Client is granted only the usage rights and authorities explicitly stated in the Agreement or otherwise granted in writing. The Client shall not reproduce or publish the software in any other way.

17.3 The Client is not allowed to remove or modify any indication of copyrights, trademarks, trade names, or other intellectual property rights from the materials, including confidentiality or proprietary notices.

17.4 Upxero may implement technical measures to protect the materials. If Upxero secures the materials using such protection, the Client is not permitted to remove or bypass it.

17.5 The Client is solely responsible for the Content and the Intellectual Property Rights pertaining to it. The Intellectual Property Rights to the Content are not transferred to Upxero.

17.6 The Client indemnifies Upxero against any third-party claims regarding Intellectual Property Rights relating to Content provided by the Client or published on the Website.

18. Changes to Terms and Conditions

18.1 Upxero reserves the right to amend or supplement these Terms and Conditions.

18.2 Changes will also apply to previously concluded agreements, with a notice period of 30 days after the announcement of the change on the Upxero website or via electronic communication. Minor changes can be implemented at any time.

19. Applicable Law and Competent Court

19.1 All offers from Upxero and Agreements concluded via the Upxero webshop are governed by the law of the European Union, unless otherwise agreed in writing. The applicability of the Vienna Convention on Contracts for the International Sale of Goods is excluded.

19.2 Any disputes arising from an order, assignment, or Agreement shall be submitted exclusively to the competent court in the Client's jurisdiction, unless otherwise agreed in writing, and subject to applicable European consumer rights legislation (if applicable).

20. Contact

For questions, comments, or complaints, Clients may contact Upxero at any time via WhatsApp at +31 97 010268675, by email at info@upxero.com, or via the contact form on [Upxero.com](https://upxero.com).