

# General Terms and Conditions (GTC) for Pingen

Valid from: May 18<sup>th</sup> 2018  
These GTC replace any previous versions

## 1. Introduction

1. Pingen GmbH (hereinafter referred to as „Provider“) operates under [www.pingen.com](http://www.pingen.com) and additional sub level and country specific top level domains a web application (hereinafter referred to as „App“) with which persons or companies may compose and manage electronic messages and physical letters and send them to domestic and international recipients.
2. These GTC for using the App are deemed accepted, if the user (hereinafter referred to as „Participant“) did confirm the acceptance either during the registration – or during the login process after the GTC have been updated - through a process intended for this purpose
3. If the Participant refuses to accept the GTC or the intended process, the Participant will be excluded from using the App from the time the updated GTC come into effect..
4. These GTC are valid for all current and future business relationships between the Participant and the Provider.s
5. If individual provisions of these GTC should become or be found to be invalid, the validity of the remaining provisions shall be unaffected thereby.
6. The Provider reserves the right to modify or amend the GTC at any time without prior notice.
7. By breaching the provisions of the GTC, the Participant forfeits the right of use for the App and entitles the Provider to close the Participant’s account or prohibit access to the account.

## 2. Conditions of Use

1. The use of the App and its interfaces is only permitted to legal entities or legally competent natural persons.
2. The Participant is obliged to provide truthful information when registering as a natural person or as an authorized representative of a legal entity. Furthermore, the Participant agrees to keep his/her data, in particular a deliverable postal and e-mail address, always up to date.
3. After the registration the Participant can use the App during a test phase free of charge in the business plan to decide whether it fulfills his/her requirements. To continue using the App after the trial period ended, the Participant must select a plan.

### 3. Scope of Service

1. By means of the App, Participants may create, send and manage letters and electronic messages. An Internet connection and a current web browser are required to use the App.
2. There is no guarantee that the App will be made available continuously, securely and free of errors at all times.
3. Unless otherwise specified by the Provider, technical support shall be provided exclusively via e-mail and on a „best effort“ basis.

### 4. Participant's Rights and Obligations

1. The Participant is obliged not to misuse the App. This applies in particular to the dissemination of documents produced. The Participant is the sole responsible for the contents of the documents and letters sent via the App.
2. The Participant is obliged not to use the App to create or distribute any content whose provision, publication or use violates applicable law, agreements with third parties or racial discrimination.
3. The Provider neither checks the business basis nor the correctness of the content or the legal validity and completeness of the documents that the Participant creates or sends via the App.
4. The access data to the App must be handled carefully by the Participant and protected against misuse.
5. The password shall not be easily identifiable (no license plates, telephone numbers, simple number sequences, etc.).
6. The Participant bears all consequences resulting from the use of his/her access information to the App. After successful logon the Provider must assume that the App is rightfully used by the Participant.
7. The Participant is obliged to minimize the risk of unauthorized access to the App by using appropriate measurements to secure the devices he uses to access the App (for example use an up to date anti-virus solution). In particular the Participant shall keep the operating system and the applications used to access the App up to date and install any updates or patches from the respective vendors immediately.
8. If there is reason to believe that unauthorized third parties have gained knowledge of the password, the Participant is obliged to change the password immediately. In case of suspicion of misuse of the App, the Provider must be notified immediately via the following email address in order to temporarily suspend the Participant's account: support@pingen.com

9. The Participant is obliged to keep sufficient credit on the account or to provide a credit card to automatically top up the credit balance in the amount of the monthly plan costs in order to pay for the services received.
10. If the Participant's account balance remains unbalanced for more than 60 days, access to the App will be limited or blocked by the Provider until the balance is settled. A limitation or blockage does not release the Participant in any case from the account settlement or his/her debt towards the Provider for any services used.

## 5. Prices and Scope of Service

1. No monthly costs are charged to the Participant for the use of the "Free" and "Integrator" service plans.
2. The monthly recurring costs of the paid service plans "Business" and "Enterprise" are prominently shown on the website and also directly before the purchase in the App.
3. With the purchase of a paid service plan or the use of one of the free service plans, the Participant is granted the non-transferable and non-exclusive, time-limited right to use the respective functions. All rights of use not expressly mentioned remain with the Provider as the owner of all copyrights and proprietary rights.
4. The contract for the use of a paid service plan comes into effect when the Participant orders the plan. The duration of the paid service plan begins with the activation by the Provider and is automatically extended if the Participant does not change the service plan or deletes his account.
5. The costs of a paid service plan will be charged at the beginning of each month for the paid plan services of the previous month either to the Participant's credit card or alternatively via invoice.
6. The respective charged service plan costs are composed of all paid services received during the previous month and are calculated monthly on a recurring basis as follows:
  - a. Plan costs of a newly ordered, paid service plan are charged pro rata on a daily basis from the day of the month from which a paid service plan was selected and activated until the end of the month.
  - b. Plan costs of an existing paid service plan are charged at the full monthly plan price.
  - c. When changing to a higher service plan (upgrade), service plan costs will be charged pro rata on a daily basis, i.e. pro rata amount of the previous monthly plan costs plus pro rata amount of the monthly plan costs of the newly selected plan, until- respectively from the day of the change.

- d. Plan costs when changing to a lower or a free service plan (downgrade) are charged at the full monthly price of the plan before the downgrade, since the newly selected plan will only become active at the beginning of the following month.
7. The Individual use of the App may incur additional costs not included in the service plan costs (e.g. costs for sending documents and letters to recipients via various channels). The Participant can fund his/her account with credit to pay for any services that are subject to a charge.
8. The Participant can fund his/her account by credit card, PayPal or via bank transfer. This credit can then be used to pay the Provider for services that are not covered in the service plan fees (like for sending documents and letters).
9. If credit is purchased via credit card or Paypal, the credit is usually credited immediately to the Participant's account. In the case of bank transfers, the credit is only credited to the Participant's account after the payment has been received and verified by the Provider. Incoming payments are checked automatically by the Provider on a daily basis.
10. If authorized by the Provider, the Participant also has the option to automatically top up the account via credit card once the credit balance of the account has fallen below a certain threshold. The Participant may apply for automatic recharging by sending an email to support@pingen.com
11. The Participant may withdraw unused credit from his/her account at any time, less any potential bank or transaction charges.
12. All prices in CHF include statutorily applicable VAT, all prices in any other currency are without VAT, unless otherwise explicitly stated.
13. Prices and periods of validity of the paid services shall be communicated in the App. The Provider reserves the right to change the prices at any time. New prices shall come into effect on the 1st day of the following month after they have been communicated in advance in the App for at least 20 days.
14. Within the scope of product development, the Provider may decide to extend or restrict the scope of products and service plans, to no longer support specific operating systems and browser versions and, in the case of service plans, to no longer offer specific plans. By continuing to use the App, the Participant automatically agrees to the changes.

## **6. Availability and Liability**

1. The Provider endeavours to ensure that access to the App is as seamless and uninterrupted as possible at all times.
2. The Provider reserves the right to interrupt access to the App and/or the services it offers at any time, particularly in the event of increased security risks or malfunctions or for maintenance work.

3. The Provider is neither liable for the correctness of the documents created by the Participant nor for the appropriate delivery by post or as electronic message.
4. All information in the App at the time of a dispatch is according to the best knowledge and belief of the Provider. However, the Provider expressly points out that no liability is assumed for items posted too late or for items delivered too late or items not delivered at all. There is also no entitlement to financial compensation for the Participant in this respect.
5. Data backups of the App are performed regularly. The Provider expressly disclaims any liability for the security and availability of the entrusted data and services.
6. Technical access to the App and any costs incurred to access the App are the responsibility of the Participant. The Provider assumes no liability for the network operators (providers) and, as far as legally permitted, also rejects any liability for the hardware and software required to use the App.
7. In the case of defects caused by App, the Provider only assumes liability for damages in the event of gross negligence or intent.
8. In any case the liability of the Provider is limited exclusively to direct damage and to a maximum of CHF 1000.00 per account. Any further liability, in particular for consequential damage, indirect damage or loss of profit, is expressly rejected.

## **7. Termination of Contract and Periods of Notice**

1. Free service plans can be cancelled by the Participant at any time. The cancellation must be made in writing or by deleting the account via the App
2. Paid service plans can be cancelled by the Participant at the end of the current month by reducing them to a free plan or by deleting the account via the App.
3. The Participant agrees not to intentionally disrupt, interrupt or manipulate the App or the offered functions in any way.
4. Selling, reproducing, copying and redistribution of the offered App is prohibited for every Participant.
5. Insufficient system knowledge and lack of security precautions can facilitate unauthorized access to the Participant's computer by third parties. It is the responsibility of the Participant to inform himself/herself about the necessary safety precautions and to apply them accordingly.
6. The Provider has the right to terminate the Participant's account at any time and without giving reasons, in whole or in part, subject to a minimum notice period of 10 days, in particular, but not exclusively, if the Provider becomes aware that the account is used in whole or in part to create or send abusive documents or is used in such a way that is negatively impacting App in general.
7. For the immediate prevention of misuse, access to the Participant's account can be blocked by the Provider with immediate effect, without any right for compensation by the Participant.

8. If the account is terminated by the Provider, any remaining credit balance will be returned to the Participant via bank transfer without interest.
9. If the Participant used means of payment (e.g. bank accounts, PayPal accounts or credit cards) to transfer funds or to pay for services, for the use of which the Participant was not authorized, all claims to any credit balances of the Participant with the Provider lapse.
10. If the payment processor cancels or reverses transactions of the Participant, the Provider is authorised to reclaim from the Participant the costs for any services already provided, plus compensation for the expenses effectively incurred by the Provider at an hourly rate of CHF 160.00.

## **8. Data Backup**

1. The Participant is responsible for the retention of the documents created and sent with the App within the scope of legal regulations. The Participant notes that even the data is regularly backed up by the Provider, it is not available for the individual recovery at the request of the Participant.
2. The Participant is responsible to ensure he/she has a copy (backup) of any data entered in the App. The Provider does not provide any means to restore data in the Participants's account.

## **9. Collaboration with Third Party Products**

1. The Provider offers the possibility to connect and/or integrate the App with third-party products. However, the Provider has no influence on the functionality and scope of functions these products offer.
2. The Provider points out that for any third-party products, the terms and conditions of these products apply and that the Participant uses these products at his own risk.
3. The Provider disclaims any liability and warranty in connection with the use of the App with third-party products.

## **10. Data Privacy**

1. Provisions concerning data privacy and the EU-GDPR regulation are defined in our separate privacy policy [https://www.pingen.com/privacy/04\\_PrivacyPolicy\\_Pingen\\_en.pdf](https://www.pingen.com/privacy/04_PrivacyPolicy_Pingen_en.pdf), which forms an integral part of these GTC.

## **11. Final Provisions**

1. Regardless of the Participant's location, Swiss law shall apply exclusively
2. The place of jurisdiction is Zurich, Switzerland