

EUROPRIVACY^{TM/®}
WELCOME PACK AND ONLINE SERVICES
TERMS AND CONDITIONS

EP-P.OTC



Europrivacy.com
Privacy Audit and
Certification

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Contact: contact@europrivacy.com

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1 Introduction and Scope

These “Welcome Pack and Online Services Terms and Conditions” (hereafter referred to as the “**Terms and Conditions**” with capital T and C) are set by the European Centre for Certification and Privacy (ECCP) to specify the terms and conditions applicable to the use of Europrivacy-related online services and to Europrivacy Welcome Packs, delivered by ECCP and/or ECCP partners delivering online services subject to these Terms and Conditions (hereafter collectively referred to as the “**Service Provider**”).

These Terms and Conditions specifically apply to the Europrivacy-related online services, such as the Europrivacy Community website, the Europrivacy Online Academy, Europrivacy customised and online support, as well as to the Europrivacy Welcome Pack and any related ancillary duties and services associated to it. All these services are hereafter collectively referred to as the “**Service**” with capital S.

These Terms and Conditions are different, distinct, and complementary to the “[Europrivacy General Terms and Conditions](https://europrivacy.com)” available on <https://europrivacy.com> website and that apply to the use of the Europrivacy certification scheme and related Europrivacy consulting and certification services.

The present Terms and Conditions bind:

- all persons and legal entities that purchase and/or use the Service (hereafter referred to as the “**User**” with capital U);
- all legal entities that propose or prescribe the Service to potential or actual Users (hereafter referred to as the “**Prescribers**” with capital P).

The Users, the Prescribers, and the Service Provider are collectively referred to as the “**Parties**” and individually as the “**Party**”.

Unless otherwise agreed in writing, a User who has purchased an online Service or a Welcome Pack will receive one personal and non-transmissible access right for one single natural person to the related online resources. If more persons need to access these resources, they shall request complementary access rights.

Unless otherwise agreed in writing, all offers or services and all resulting contractual relationship(s) between the Service Provider and the other Parties with regards to the use, sale, and purchase of the Service shall be governed by these Terms and Conditions.

2 Terminology and Definitions

The following verbal forms are used:

“**shall**” indicates a requirement;

“**should**” indicates a recommendation;

“**may**” indicates permission;

“**can**” indicates a possibility or a capability.

2.1 Definitions

Applicable Data Protection Law: The data protection law(s) applicable to the Target of Evaluation, including the GDPR (General Data Protection Regulation EU/2016/679) and complementary national and sector-specific obligations.

Certified Object: Certified Target of Evaluation.

Content: Any content provided to a Service, including and not limited to text, comments, articles, news, forum messages, reviews, video, audio, images, photographs, and computer code.

Disclosing Party: Party sharing information with another Party.

Linked Content: Links to third party websites, resources, and advertisers.

Linked-Parties: The parties linked to a Party, including its affiliates, parent, brother and sister corporations, successors-in-interest, agents, representatives, shareholders, officers, directors, members and employees thereof.

Prescriber: All legal entities that propose or prescribe a Service to potential or actual Users.

Receiving Party: Party receiving information shared by a Disclosing Party.

Service: The Europrivacy Welcome Pack and/or the online services subject to these Terms and Conditions.

Service Provider: ECCP and/or any entity that is managing and delivering a Service subject to these Terms and Conditions.

Site: The website or user interface through which the Service covered by these Terms and Conditions is delivered.

Submission: The submission of Content to Services by Users.

User: All persons and legal entities that purchase and/or use Service.

3 General Terms and Conditions

3.1 General Provisions

This document specifies the Terms and Conditions that are binding on and shall be applied and respected by all Parties purchasing, using, or (re)selling a Service.

3.1.1 Implicit Agreement

The use of the Service is conditional to the prior acceptance of these Terms and Conditions. The Parties, upon purchasing, delivering, or using any of the Services, acknowledge their understanding and agree with these Terms and Conditions.

3.1.2 Inclusive Definition of the Parties

As used in these Terms and Conditions, all references to any Party implicitly include and refer to its agents, representatives, employees, consultants, subsidiaries, owners, and affiliates.

3.1.3 Territorial and Organisational Scope

Within the limits of the law, these Terms and Conditions are applicable to all Users and Prescribers regardless of their location and organisational structure.

3.1.4 Complementary Terms and Conditions

The use of Europrivacy certification scheme and Europrivacy-related consulting and certification services, including but not limited to the deliverance of Europrivacy certificates, are subject to a different and distinct set of terms and conditions specified in the [“Europrivacy General Terms and Conditions”](#).

3.1.5 Adaptations and Amendments

The Service Provider reserves the right to change, adapt and update its Services, their Content, and these Terms and Conditions, as well as other reference documents at any time.

The changes will be published through the corresponding Service and/or through the Europrivacy website and/or communicated to Parties in writing. The changes shall become effective within the indicated deadline.

Where changes may impact their clients, the Prescribers should inform them about these changes and their implications without undue delay.

All Parties shall commit to respect and comply with such changes without undue delay.

3.1.6 Written Form Required for Any Alteration

All contractual relationship(s) between the Service Provider and the other Parties shall be governed by written contractual clauses, including the latest version of these Terms and Conditions. No alteration or amendment to a contractual relationship shall be valid unless made in writing and agreed by the Service Provider.

3.1.7 Duty to Inform the Service Provider

Within the limits of their legal and contractual obligations, all Users and prescribers shall inform and report to the Service Provider without delay any breach of these Terms and Conditions and all incidents related to the Service that may impact the reputation of the Service and/or Europrivacy.

3.2 Certification Process Principles

3.2.1 Inherent Limitations to Certification

Legal conformity remains the sole and exclusive responsibility of the Applicant who must ensure that its Certified Object fully complies with the requirements of the Certification Scheme and the Applicable Data Protection Law.

A certification is neither a recommendation for the use of the Certified Object nor a guarantee that it is totally free from any exploitable vulnerability. Neither the Certification Body nor ECCP is liable for any loss or damage whatsoever and howsoever arising through the use of a Certified Object.

3.3 Specific Obligations of Prescribers

3.3.1 Support for Continuous Improvement

The Prescriber commits to support the continuous improvement of the Service by reporting to the Service Provider any identified area of improvement.

3.3.2 Commitment to Build Trust and Reputation

The Prescriber commits to preserve good reputation of the Services. It shall prevent any association of the Services with any illegal activity, act of corruption, or bribe.

3.3.3 Duty to Bind Clients with Appropriate Contractual Clauses

When selling or delivering the Service, the Prescribers have the obligation to ensure that clients receiving the Service through their intermediation are aware and contractually bound to respect and comply with these Terms and Conditions.

3.4 Confidentiality

3.4.1 Duty to Protect Confidential Information

All Receiving Parties commit to protect and preserve the confidential information received from Disclosing Parties.

3.5 Use of Certification Material and References

3.5.1 Intellectual Property

All Parties commit to respect and preserve the intellectual property rights of the Service Providers. The “Europrivacy” name, its logo, and mark of conformity, as well as all documents and online content developed, shared and/or made available by the Service Provider to another Party, are and shall remain the exclusive intellectual property of its original owner and are exclusively managed by ECCP.

Europrivacy name and logo are international trademarks registered in several jurisdictions. Their use is subject to strict rules, including the indication that Europrivacy is a trademark. Using them for advertising or external communication is not permitted without the prior written consent of ECCP.

3.5.2 Content made available through the Service

Any Content made available through the Service, including, and not limited to, any textual, visual, video, and audio content (hereafter referred to as the “Content”) shall be considered protected by copyrights. By default, the Content is owned by

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the Service Provider, except where created by third parties. All Parties shall abide by all additional copyright notices, information, or restrictions contained in any Content accessed through the Services.

The Users and Prescribers shall not alter or misrepresent the Content in any way. Except where authorised in writing by the Service Provider, the Parties are not authorised to copy, publish, distribute, publicly display, create derivative works of, modify, and adapt in any form or media any content available in the Service.

The Service may contain links to third party websites, resources, and advertisers (hereafter referred to as “**Linked Content**”). The Parties understand and agree that ECCP and the Service Providers do not control, endorse, sponsor, recommend or otherwise accept liability for any of this Linked Content. As such, ECCP and the Service Provider are not responsible for the availability of these outside resources, or their contents, services or privacy practices. Accordingly, any concerns regarding any of this Linked Content should be directed to its respective owner or manager.

3.5.3 Content provided by Users to the Service

The submission of Content to the Service by Users (hereafter referred to as the “**Submission**”) are subject to specific rules:

The Users takes full responsibility for their Submissions. They must ensure that their Submissions are:

- (i) **honest, accurate, and courteous;**
- (ii) **do not breach any regulation, including personal data protection law(s);**
- (iii) **do not breach any third party’s rights, such as copy rights; and**
- (iv) **do not risk to harm the reputation of the Service.**

Any Content subject to third party’s intellectual property rights (IPR) shall not be submitted to the Service, except if this third party expressly authorised such use.

The User authorises the Service Provider to edit, remove, modify, publish, transmit, and publicly display and communicate the submitted Content without prior notification. By making a Submission, the User acknowledges, agrees with, and waives any objection to the above-mentioned actions.

The Services are designed to support knowledge sharing. **By submitting Content to the Service, the User authorises ECCP and the Service Provider to copy, use, modify, transmit, excerpt, publish, distribute, publicly display, publicly perform, create derivative works of, host, index, cache, tag, encode, modify and adapt in any form or media the submitted Content.** This right is granted on a perpetual, nonexclusive, worldwide, royalty-free, sub-licensable license basis.

3.6 Fees and Payments

3.6.1 Fees

The Service Providers reserve the right to adjust its rates and fees for its Service at any time.

3.6.2 Payments

By default, and except if otherwise agreed in writing, the fees of the Service shall be paid before or at the time of requesting the corresponding Service.

3.6.3 Date of Payment and Effect of Non-Payment

The use of the Service is conditional upon the timely payment of all related fees and charges due to the Service Provider who reserves the right to cease or suspend its Service to Parties who fail to pay their due.

All invoices from the Service Providers are payable within thirty (30) calendar days of the date of each invoice (the “**Due Date**”). The Party shall not be entitled to retain or defer payment of any sums due to the Service Provider because of any dispute, or to offset them based on an alleged counterclaim against the Service Provider.

The Service Provider may elect to assert its claim for the collection of unpaid fees in any court that has competent jurisdiction. The defaulting Party shall pay all Service Provider’s collection costs including reasonable attorney’s fees and related costs.

3.6.4 Refund Policy

The purchase of a Service is definitive and non refundable. The User can decide to cancel its Service at any time, but no refund is provided. In very exceptional cases, the Service Provider can decide, at its sole discretion and appreciation of the circumstances, to offer a credit to the User.

3.7 Liability and Indemnity

The Parties agree to the following with respect to liability:

3.7.1 No Implied Guarantees

The Service is provided on an “as-is” and “as-available” basis, without any express or implied warranties. The Service do not imply any guarantee, recommendation, endorsement or warranty of any nature, whether express or implied, by the Service Provider concerning the Prescribers’, Users’ and third parties’ Content, their respective processing activities, compliance, products, and services.

ECCP and the Service Provider do not represent nor endorse any User’s or third party’s Content accessible through the Service, including advice, opinion, statement, or other information displayed, uploaded, or distributed through the Service by any User, information provider or any other person or entity. Reliance upon any such opinion, advice, statement, memorandum, or information shall be at the sole risk of the person or legal entity using it.

3.7.2 Separation of Responsibilities

The Service Providers provide access to the Service.

The Users take entire and exclusive responsibility for their use of the Service and for their Submissions. The Users shall inform the Service Provider of any Submission that breaches these Terms and Conditions or any third party's rights.

All Parties agree that the Service Provider cannot be held liable in any form whatsoever for any obligations of or claims asserted against a User or its employer for failure to comply with the applicable regulations and/or with the Certification Scheme requirements.

3.7.3 Users' and Prescribers' Liabilities

The Users and Prescribers acknowledge that a breach, default, non-compliance or non-observance of these Terms and Conditions or of the applicable regulations may expose other Parties to be in breach, default, non-compliance or non-observance of their duties, liabilities and obligations owed to third parties such that Parties will be liable in damages or otherwise will sustain loss, costs or expenses. Any such damages, loss, cost, and expense are hereby agreed to be within the contemplation of the Parties as being the probable results of any such breach, default, non-compliance or non-observance by the User or Prescriber of its duties and obligations.

3.7.4 Liability Exoneration from Users' and Prescribers' Actions

The Service Provider shall not be liable to any Party nor to any third party for any loss, damage or expense arising from: (i) a failure by the Party to comply with any of its obligations; (ii) any actions taken or not taken on the basis of the Service; and (iii) any incorrect, unclear, erroneous, incomplete, misleading or false information provided by a Party.

3.7.5 Claims Limitation against the Service Provider

In order to use the Service, all Parties must accept the Service as provided, on an "as-is" and "as-available" basis, and shall formally and definitely renounce any action or claim against the Service Provider, including with regards to the Content, quality, and reliability of the delivered Service.

All Parties recognise that they shall have no cause of action or claim against the Service Provider arising from or in connection with the Service. The Service Provider shall not be liable to any Parties for any loss of profit (whether direct or indirect), contracts or goodwill, loss or corruption of data or for any indirect, special or consequential loss or damage or any other claims for compensation whatsoever which arise out of or in connection with the provision, suspension, withdrawal or non-provision of the Service.

In case of any residual liability of the Service Provider in relation to the Service, the aggregate liability of the Service Provider for all direct and indirect loss shall be limited to 200% of the Service fees effectively received from the complaining Party (excluding Value Added Tax thereon) during the calendar year of the date that such liability arose.

3.7.6 Harmlessness of the Service Provider

Wherever the Prescriber provides or sells the Service to a User, the Prescriber commits to hold the Service Provider harmless in relation to the sold or delivered Service.

3.7.7 Delay for Acting

The Parties agree to have no liability against the User for claims for loss, damage or expense unless proceedings are commenced by the User within one year after the date of the performance, or in the event of any alleged non-performance, within one year of the date when such service should have been completed.

3.7.8 Severability of action, claim, loss or damage

In any action, claim, loss or damage arising from the Service, the Parties agree that their liability will be severable and claimed payment from each Party shall not exceed its proportionate share of the total liability based on its degree of fault.

3.8 Warranties and Remedies

3.8.1 Indemnity

The Parties shall indemnify the Service Provider from and against all losses, damages, expenses, and costs that it may sustain or incur as a result, whether directly or indirectly, of:

- any breach of regulations or contractual obligations (including the Terms and Conditions) by the Party;
- any negligent act or omission or wilful misconduct of the Party or its officers, employees and agents; or
- any loss of or damage to any property or injury to or death of any person resulting, wholly or partly, from any data processing, product, process or service in relation to which a Service has been used by the User.

3.9 Duration and Termination

3.9.1 Duration of the Service

Contractual relations for the Service to the User are variable and can be tacitly renewed if agreed by the User.

3.9.2 Termination

The deliverance of a Service ends at the end of the subscription period if it is not renewed. The Service Provider is entitled, at any time to terminate its contractual relationship with a Party that is in material breach of its obligations.

3.9.3 No effect on accrued rights

Termination of the Service will not affect any accrued rights of any Party, including any rights of appeal available to the User under any applicable rules.

3.9.4 Remaining Obligations

The clauses related to liability, warranty, confidentiality, and data minimisation shall survive and apply notwithstanding the termination or expiry of the contractual relationship.

3.10 Force Majeure

If the Service Provider is prevented from delivering the purchased Service by reason of any cause whatsoever outside its control (including but not limited to acts of God, war, terrorist activity or industrial action; failure to obtain permits, licenses or registrations; pandemic, illness, death or resignation of personnel), it shall be relieved of any responsibility whatsoever for the partial or total non-performance of its contractual obligations.

3.11 Miscellaneous

3.11.1 Duty to Use Written Notifications

Any formal notification made by the Parties to the Service Provider under these Terms and Conditions must be made in writing to the address of the Service Provider or to the address of ECCP published on www.eccpcenter.org website.

3.11.2 Language of reference

The Service and all their related documents are by default issued in English. Unless differently agreed by the Parties, all the communications and exchange of information with the Service Provider shall be carried out in English or in French.

If contractual agreements are made in other languages than English, in the event of a dispute the English version of the Terms and Conditions shall prevail.

If required documentation cannot be provided in a language currently used by the Service Provider, the cost of any required translation shall fall on the Party providing the documentation.

3.11.3 Independence of the Parties

All Parties agree that the Service Provider and the Prescribers provide their services independently, as independent contractors, and that the contracts and collaborations among the Parties do not create any agency, employment or fiduciary relationship.

3.11.4 Attestation of Clarity

To the extent permitted by law, the Parties acknowledge that they have not been induced to enter into a contractual relationship under the assumption, or the grant, of any warranty, representation, statement, assurance, covenant, agreement, undertaking, payment, indemnity or commitment of any nature whatsoever other than as expressly set out in these Terms and Conditions. In any event, the Parties unconditionally and irrevocably waive any claims, rights or remedies which might arise to the Party in relation thereto.

3.11.5 Transfer and Assignment of Rights

The Users and Prescribers shall not assign or transfer any of their rights related to the Service without the Service Provider's prior written consent. Any assignment shall not relieve the assignor from any liability or contractual obligation.

3.11.6 Effect of Failure to Require

Any failure by a Party to require another Party to perform any of its obligations under these Terms and Conditions shall not constitute or be interpreted as a waiver of any obligation among the Parties.

3.11.7 Appeals and Complaints Mechanisms

The Service Provider and the Prescribers provide appeal and complaint mechanisms. Shall a Party wish to complain or appeal a decision, it shall do so in accordance with the corresponding Party's Complaints and Appeals Processes (as amended from time to time), which are available on request.

3.12 Data Protection

The Users and Prescribers commit to comply with the provisions of the European General Data Protection Regulation (Regulation EU 2016/679), hereafter referred to as "GDPR". Personal data shall be processed according to the principles of lawfulness and fairness with appropriate security measures for their protection and procedures in place to guarantee the data subjects' rights and freedoms, including purpose limitation.

The detailed data protection and privacy policies applied to the Service are published online on the corresponding website.

3.12.1 Data Breach Notifications

Any User or Prescriber that identifies any breach of personal or non-personal data in relation to the Service shall inform the Service Provider without undue delay.

3.13 Governing Law, Jurisdiction and Dispute Resolution

3.13.1 Mediation

In the event of any dispute arising out of or in connection with the present Agreement, the Parties agree to start by looking for amicable solutions through discussions. If no compromise is found, the responding Party may request to pursue mediation in accordance with the Swiss Rules of Mediation of the Swiss Chambers' Arbitration Institution in force on the date when the request for mediation was submitted in accordance with these Rules. The seat of the mediation shall be in the Canton of Geneva.

3.13.2 Legal Fora

These Terms and Conditions shall be governed by, and construed in accordance with, the laws of Luxembourg. Any dispute with the Service Provider shall be settled before the appropriate court of law in Luxembourg.

3.13.3 Invalidity & Severability

If any provision or provisions of these Terms and Conditions shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of these Terms and Conditions and such provisions shall remain in full force and effect.