



**X E R V E R S**  
H O S T I N G   S O L U T I O N S

## Terms of service

Last Revision: 26.07.2021

## Index

Art 1: Object.....	3
Art 2: Obligations of xervers .....	4
Art 3: Responsibility of xervers .....	4
Art 4: Obligations and responsibility of the customer .....	5
Art 5: Technical support.....	6
Art 5.1: Tools and documentation provided by xervers.....	6
Art 5.2: Incident Statement Procedure .....	7
Art 5.3: Taking charge of the incident and making the diagnosis .....	7
Art 5.4: Anomaly Resolution .....	7
Art 5.5: Payment Terms .....	8
Art 6: Delivery, Tariff and Payment.....	8
Art 6.1: Delivery .....	8
Art 6.2: Rate .....	8
Art 6.3: Payment .....	9
Art 6.4: Duration .....	9
Art 6.5: Service Renewal .....	9
Art 7: Termination, Limits and Suspension of Service.....	10
Art 7.1: .....	10
Art 7.2: .....	10
Art 7.3: .....	10
Art 7.4: .....	10
Art 7.5: .....	10
Art 8: Exploitation Conditions .....	10
Art 9: Customer Information and Service Compliance .....	10
Art 10: Tolerance .....	11
Art 11: Personal Data .....	11
Art 12: Right of Withdrawal .....	11
Art 13: Change .....	11
Art 14: General Provisions .....	11
Art 14.1: Divisibility .....	11
Art 14.2: Titles.....	12
Art 14.3: Particular Conditions and Annexes .....	12
Art 14.4: Notifications.....	12
Art 14.5: Advertising and Promotion .....	12
Art 15: Competence.....	12

The present is concluded between:

- The company **xervers, unipessoal lda**, hereinafter referred to as **xervers**, with registered office at Estrada Nacional 229-2, 2, 3505-245 Viseu, Portugal, holder of the Legal Entity Identification Card nº 514 692 014,
- and between any natural or legal person, private or professional, private or public, wishing to subscribe to one or more of the services provided by **xervers**, hereafter referred to as the Client.

**Definitions:**

**Technical assistance:** Service responsible for advising the Customer on the installation and use of its Service, providing appropriate documentation.

**Customer:** A natural or legal person who is a signatory to the general and particular contractual conditions of **xervers** for any Service that is subscribed to at **xervers**.

**Incident:** Problem or anomaly found in the Service that is the responsibility of **xervers**. The following causes are considered the responsibility of **xervers**: material problem, network, power supply...

**Budget:** Description communicated by **xervers** containing the operations to be carried out in the future and the price applicable to the execution of these operations.

**Diagnosis:** Searches made by **xervers** at the Customer's request to identify a malfunction of the Service.

**Documentation:** **xervers** makes available to the customer a set of tools and documentation accessible on the **xervers** website.

**Customer Identifier:** Client Account, for all services subscribed to with **xervers** that allows access to the management interface.

**Infogérance:** Specific services provided by **xervers** at the express request of the Client, subject to invoicing.

**Management interface:** "Management" area accessible from the **xervers** site, by the Customer, after identification by entering the Customer ID and the corresponding password.

**Service:** Designates the set of services provided by **xervers**, in accordance with the contracts subscribed to by the Client.

**xervers site:** **xervers** company website, accessible from the Internet at <https://xervers.pt/>.

## Art 1: Object

The Client acknowledges having verified that the Service fits his or her needs, as well as having received, from **xervers**, all the necessary information and advice to subscribe to this contract, declaring to have read and understood its content.

The purpose of the present contract is to define the technical and financial conditions under which **xervers** commits to the Client.

The present general terms of service, supplemented as the case may be by particular and/or attached terms, proposed by **xervers** shall apply, to the exclusion of any other terms, notably those of the Client, to any order for the provision of services by the Client to the company **xervers**.

The provision of services offered by **xervers**, free of charge, is also governed by these general conditions of service.

## Art 2: Obligations of xervers

**xervers** undertakes to exercise all due care and diligence to provide a quality service, in accordance with the uses of the profession and the state of the art. **xervers** is only liable for an obligation of means.

## Art 3: Responsibility of xervers

**xervers** shall have no responsibility:

If performance of the contract, or of any of **xervers'** obligations, is prevented, limited or disrupted by reason of fire, explosion, failure of transmission networks, collapse of premises, epidemic, earthquake, flood, power failure, war, embargo, law, order, injunction, restraining order, request or demand of any government, strike, boycott, cancellation of the telecommunications operator's authorization, or any other circumstance beyond **xervers'** reasonable control ("Force Majeure Event") then **xervers**, subject to immediate notice to the Customer, shall be excused from performance of its obligations to the extent of such impediment, limitation or disruption and the Customer shall also be excused from performance of its obligations to the extent of such impediment, limitation or disruption, provided that the party so affected shall use its best endeavors to avoid or alleviate such causes of non-performance and that both parties shall proceed expeditiously as soon as such causes cease or are removed. The party affected by an Event of Force Majeure shall keep the other party regularly informed by e-mail of the prospects for the suppression or resumption of such Event of Force Majeure.

If the effects of a "Force Majeure Event" extend beyond 30 days from the date of notification of the force majeure event to the other party, the contract may be cancelled automatically at the request of either party, without right to compensation from one party to the other.

or by facts attributable to the Customer, namely in the following cases:

- deterioration of application;
- misuse of terminals by the Customer or its Customers, fault, negligence, omission or failure on its part, disregard for advice given;
- unlawful disclosure or use of the password transmitted confidentially to the Customer;
- fault, negligence or omission of a third party over whom **xervers** has no power of control or supervision;
- a request from a competent administrative or judicial authority for temporary or permanent interruption of the Service, or notification by a third party, as defined by [No. 7 of Article 6 of Law No. 41/2004, of 18 August](#);
- destruction, in part or in whole, of the information transmitted or stored as a result of errors attributable directly or indirectly to the Customer.

The remedies owed by **xervers**, in the event of a failure of the Service that would result from a fault established against it, shall correspond to the direct, personal and certain damage linked to the fault in question, to the express exclusion of any indirect damage such as, in particular, commercial damage, loss of orders, damage to brand image, any commercial disruption, loss of earnings or clientele (for example, untimely disclosure of confidential information following a defect or hacking of the system, action by a third party against the Client, etc.).

In any case, the amount of damages that could be borne by **xervers**, in the event of its liability, shall be limited to the total sums actually paid by the Client to **xervers** during the period in question or invoiced to the Client by **xervers** or to the total sums corresponding to the price of the service provided by the Service for which **xervers**' liability has been recognized. The lowest of these sums shall be taken into account.

**xervers** does not specifically safeguard the data stored. Consequently, it is up to the Client to take all necessary measures to safeguard his/her data in the event of loss or deterioration of the data entrusted to him/her, for any reason whatsoever, including those not expressly referred to in the present conditions.

The Client acknowledges that nothing herein shall relieve the Client from the obligation to pay all amounts due to **xervers** for services rendered.

#### Art 4: Obligations and responsibility of the customer

The Customer undertakes to have the power, authority and capacity necessary for the conclusion and performance of the obligations set out in these conditions.

The Customer undertakes to communicate to **xervers** his exact contact details and bank details.

The Customer is solely and exclusively responsible for the passwords required to use the Service. **xervers** shall not be held liable for any illicit or fraudulent use of the passwords made available to the Customer. The provision of passwords is considered confidential. Any suspicion of disclosure, intentional or otherwise, of the passwords provided is the sole responsibility of the Customer. In the event of a request by the Client for a password change, **xervers** shall invoice this service for the time spent on such an operation.

The Customer alone shall bear the consequences of the defect of the service following any use by its staff or any other person to whom the Customer has provided its password(s). Similarly, only the Customer shall bear the consequences of the loss of the password(s).

The Customer undertakes to respect all the legal and regulatory provisions in force, particularly those relating to information technology, files, freedom and intellectual property, as well as the rights of third parties, and in particular undertakes to make any declaration concerning data processing to the National Data Protection Commission (C.N.P.D.). The Customer furthermore undertakes to take out all necessary insurance from a reputable and solvent organization in order to cover any damage which may be attributable to him/her in the context of these conditions or their execution.

The Client declares to fully accept all legal obligations arising from ownership of its services, and **xervers** may not be disturbed in this regard, for any reason whatsoever, in particular in the event of

violation of laws or regulations applicable to the Client's services. The Client's failure to comply with the aforementioned points and those mentioned in the particular conditions, namely any activity that may create civil and/or criminal liability, will entitle **xervers** to interrupt the Client's services without notice and to immediately and fully cancel the contract, without prejudice to the right to damages to which it may be entitled.

The Client undertakes to pay directly to the claimant any sum that the claimant may demand from **xervers**. Furthermore, the Client undertakes to intervene at **xervers'** request in any instance against **xervers**, as well as to guarantee **xervers** in any convictions that may be handed down against it in such a situation. Thus, the Client undertakes to treat as a personal matter, any claim and/or lawsuit, whatever its form, object or nature, against **xervers** and that relates to the Client's obligations under the present contract.

The Customer undertakes to inform **xervers** of any change to his situation within 48 hours, and of any possible loss of passwords within 24 hours (once he has become aware of these situations).

The Customer undertakes to clearly formulate his request, in accordance with the rules in use, in his contacts with **xervers**.

## Art 5: Technical support

### Art 5.1: Tools and documentation provided by xervers

**xervers** makes available to the Client, a set of tools and documentation accessible at the following address: <https://xervers.pt/knowledgebase>.

This page also contains the necessary contact details to get in touch with **xervers** staff.

**xervers** makes available to the Client on that page:

- A set of technical documents and guides that allow a better understanding and use of the Service ("Knowledge Base");
- Communication tools to establish access to **xervers** premises;
- Interfaces that allow viewing, in real time, the state of the **xervers** network;
- A forum accessible at <https://suporte.xervers.pt>;
- The coordinates that allow contacting **xervers'** Technical Assistance;
- An incident declaration form;
- Info-management service coordinates for the provision of additional services which are subject to separate invoicing (info-management, specific intervention, etc.).

Preliminary checks:

In the event of abnormal operation of the Service, the Customer is responsible for consulting the Documentation and carrying out the technical tests proposed on the following page <https://xervers.pt/knowledgebase>. By default, in order for the abnormal functioning to be resolved, the Customer must declare the Incident to **xervers'** services.

### Art 5.2: Incident Statement Procedure

To declare an Incident, the Customer must fill out the specific form available on the website and its management interface in which previous tickets containing the electronic exchanges between the Customer and **xervers** will be found.

It is the Customer's responsibility to complete the proposed form at <https://xervers.pt/submitticket.php> and communicate to **xervers** as much information as possible about the problem to enable a proper Diagnosis to be made.

For this purpose, the Customer expressly authorizes **xervers** and its employees to connect to the Customer Service and carry out all operations necessary for the preparation of the Diagnostic, both material and software.

In this regard, **xervers** reserves the right to refuse any intervention if, during searches, it is found that the Client is using the Service in violation of the general and specific conditions of **xervers** or any other laws and regulations in force.

All exchanges of information between the parties, particularly electronic exchanges, will serve as proof of the client's commitment to the intervention to be carried out by **xervers**.

### Art 5.3: Taking charge of the incident and making the diagnosis

As part of this Incident reporting procedure, **xervers** will be required to perform a Diagnostic in order to search for the origin and cause of the abnormal operation observed. If during these investigations **xervers** determines that the abnormal functioning is an Incident, i.e., a problem that **xervers** is responsible for, the cost of performing the Diagnostics will be borne entirely by **xervers**, in accordance with the contractual terms applicable to the Service.

Conversely, if the diagnosis reveals that the incident detected by the Customer is not the responsibility of **xervers** or its existence cannot be confirmed, the time taken by **xervers** to perform the Diagnostic will be billed to the Customer on a fee basis communicated to the Customer when the Incident is declared.

In cases where **xervers** is not able to detect the source or cause of the abnormal functioning, the research related to the creation of a Diagnostic will not be invoiced to the Customer, since **xervers** cannot detect the cause of the problem, nor provide the Customer with an estimate for the correction of the anomaly.

The diagnosis will also not be billed to the customer, if **xervers** cannot provide the customer with an estimate to correct the problem.

The Customer undertakes not to make abusive use of Technical Support. **xervers** reserves the right to refuse a Customer's request if the Customer's behavior or the frequency of its requests is likely to disrupt the normal operation of the Technical Support service.

### Art 5.4: Anomaly Resolution

When the Diagnosis is created, **xervers** will communicate the cause of the problem and guide the Customer towards the technical solutions to be used to solve the problem detected. To the extent that the problem is not the responsibility of **xervers**, **xervers** will send the Customer a quote

corresponding to the cost of resolution operations, if the Customer wishes **xervers** to take charge of resolving the problem.

In this regard **xervers** reminds you that it is only subject to an obligation of means.

#### Art 5.5: Payment Terms

The sums due will be invoiced following the intervention of the Technical Assistance. In the event of a monthly renewal of the Service, all sums due for this service, including those resulting from the actions carried out by Technical Assistance will be invoiced. No new intervention may be carried out if payment for previous interventions has not been made.

### Art 6: Delivery, Tariff and Payment

#### Art 6.1: Delivery

The availability of the service is accessible within 48 hours from the effective payment of the order by the Customer. After this deadline, if the service is not made available by **xervers**, the Customer is entitled to request cancellation of the transaction and reimbursement of amounts already paid. Under the terms of [Portuguese Decree-Law no. 24/2014, of February 14, article 10, point C](#) and the [european legislation on returns and warranties](#), after the system has been installed and the respective payment made, the Customer will not be entitled to any refund of the fees paid in the meantime. Whenever the service is renewed, the Customer shall not be entitled to any refund for any payment made in the meantime.

#### Art 6.2: Rate

The tariffs in force for the different services proposed by **xervers**, can be consulted online at <https://xervers.pt> and upon request to **xervers**, at the following address: xervers, unipessoal lda, Estrada Nacional 229-2, 2, 3505-245 Viseu, Portugal.

The services ordered are listed on the order form; they include all taxes unless otherwise indicated and are payable in Euros. An additional fee may also be included depending on the payment method chosen.

**xervers** reserves the right to change its prices at any time, provided it informs the Customer by e-mail or by an online notice on the website <https://xervers.pt> with one month's notice if the new tax-free rates are less favorable to the Customer. In this case, the Client will have a period of one month from this information to terminate this contract without penalty. Otherwise, it will be assumed that the Customer has accepted the new rates. Tariff changes apply to all contracts, including those in progress.

**xervers** reserves the right to pass on, without delay, any new tax or fee or any increase in existing taxes.

The services provided by **xervers** are payable with the order. The Client is solely responsible for payment of all sums due under the contract for the provision of services by **xervers**. It is expressly agreed, except upon timely requested and agreed upon in writing by **xervers**, particularly the total or partial non-payment in due time, of any amount due under the contract, will lead, by operation of law and without prior notice to:



- immediate enforceability of any amounts owed by the Client under the contract, regardless of the agreed upon method of payment;
- suspension of all ongoing services, regardless of their nature, without prejudice to **xervers** ability to terminate the contract;
- inability to subscribe to new benefits or renew them;
- application of penalties at the rate of 10% per month.

Any disagreement regarding billing and the nature of the services should be communicated by e-mail to <mailto:info@xervers.pt>, within one month, after the order is issued.

If the expenses are requested by **xervers**, **xervers** will inform the Client, communicating to him/her the justification and the corresponding invoice. The Client must then settle the amount due in euros.

### Art 6.3: Payment

Payment is made online through several payment methods that **xervers** makes available to the client at the time of conclusion of the contract.

The Client must choose the method of payment adapted to the service ordered and its execution time.

The service subscribed to by the Client is executed upon receipt by **xervers** of the order form accompanied by the Client's payment, subject to possible verification, by **xervers**, of the elements provided.

**xervers** will acknowledge receipt of the order form and payment to the Client, and will inform the Client by email of the implementation of the ordered service. For any exchange of information by email, the date and time of the **xervers** server will be taken into account. This information will be kept by **xervers** for the duration of the contractual relationship.

### Art 6.4: Duration

The duration of the service is that foreseen in the order. The data will be deleted when the service ends.

**xervers** undertakes to perform a minimum of three relaunches per e-mail, before the service is terminated.

### Art 6.5: Service Renewal

**xervers** will notify the Customer by email, sent to the Customer's billing contact (email address to be kept updated, Customer's responsibility) prior to the due date, of the obligation to settle the price for the renewal of the service, when this is possible.

Any lack of payment or irregular payment, i.e., namely, an incorrect or incomplete amount, or not including the required references, or made by a means or procedure not accepted by **xervers** will be simply ignored and will cause rejection by **xervers**, before the service ends.

## Art 7: Termination, Limits and Suspension of Service

**Art 7.1:** The contract is automatically terminated upon its expiration. It can be renewed from the site <https://xervers.pt>, upon payment by the Client of the corresponding price, under the conditions foreseen in article 6.

**Art 7.2:** Either party may terminate the contract automatically and without compensation in the event of force majeure lasting more than thirty days.

**Art 7.3:** For termination before the end of the contract, the Customer may do so by simple postal mail to the address: xervers, unipessoal lda, Estrada Nacional 229-2, 2, 3505-245 Viseu, Portugal, of the application which can be found at the following address: <https://xervers.pt> and the Customer will not be entitled to a refund of amounts already paid to **xervers**.

**Art 7.4:** In all other cases of default by either party to the other party of any of its obligations under the contract, not remedied within 7 days from either an e-mail sent by the complaining party notifying of the defaults in question, or any other form of notification, sent by said party, the contract will be terminated as of right, without prejudice to all losses and damages that may eventually be claimed from the defaulting party.

The date of notification of the letter containing the absences in question will be considered to be the date of the postmark when the letter was first submitted.

**Art 7.5:** **xervers** reserves the right to discontinue service to the Customer if such service constitutes a danger to the maintenance of the security or stability of the **xervers** hosting platform. To the extent possible, **xervers** will inform the Customer in advance.

## Art 8: Exploitation Conditions

The Client hereby acknowledges that fluctuations in the bandwidth and the access provider's aereas are elements that may lead to a discontinuity in the services offered by **xervers** and outside its technical means.

On the other hand, **xervers** may, as of right, restrict, limit or suspend service when:

- the Client apparently uses the services provided to him/her for an activity, whatever it may be, that does not comply with the Portuguese Civil Code or with these general conditions;
- under the terms of the particular conditions applicable;
- if **xervers** receives a notice to that effect served on it by a competent administrative, arbitral or judicial body in accordance with the appropriate applicable laws, or by a third party, and in particular pursuant to [Law No. 41/2004, of August 18](#).

## Art 9: Customer Information and Service Compliance

The Customer acknowledges having verified the suitability of the material and service for its needs and having received from **xervers** all information and advice necessary for it to enter into this undertaking on an informed basis.

**xervers** reserves the right to monitor compliance with the conditions of use of the service.

## Art 10: Tolerance

The failure of **xervers** to enforce at any time any of these Terms and Conditions and/or tolerate a default by the other party in respect of any of its obligations under these Terms and Conditions shall not be construed as a waiver by **xervers** to enforce subsequently any of these Terms and Conditions.

## Art 11: Personal Data

**xervers** informs the Client that their data is registered and has been subject to a declaration to the National Commission for Data Protection, in accordance with the provisions of [Law No. 67/98 of 26 October \(Law on the Protection of Personal Data\)](#), for the purpose of managing the Client relationship.

Consequently, the Client has the right to access, change, correct or delete the data collected, simply by contacting **xervers** by any means it makes available.

Data transmitted by the Client is kept for the legal period necessary for the administration of the test. **xervers** may not undertake any disclosure, resale of nominative data relating to the Client, unless otherwise stipulated in the particular conditions. Only **xervers** subsidiaries may access such data.

## Art 12: Right of Withdrawal

The Customer acknowledges having given his express agreement to the execution of the ordered service to **xervers** upon receipt by **xervers** of his order form and his payment for the renewal of his service.

The Client is hereby expressly informed that he/she may not, under the terms of these provisions, and in view of the agreement reached regarding the performance of **xervers'** services, exercise his/her right of withdrawal from the services subscribed to and/or renewed with **xervers**.

## Art 13: Change

The online general and specific conditions take precedence over the printed general and specific conditions. The parties agree that **xervers** may, as of right, change its service without any formality other than informing the Client by an online notice and/or stating the changes in the general online conditions. Any change or introduction of new subscription options will be the subject of an online notice at the URL <https://xervers.pt> or by sending an e-mail to the Customer. In this case, the Customer may, by derogation from Article 7, terminate the contract within thirty days of the entry into force of such changes.

## Art 14: General Provisions

### Art 14.1: Divisibility

The nullity of one of the clauses of the service agreement, signed with **xervers**, as a result of the application of, namely, a law, regulation or following a decision by a competent Jurisdiction, final and conclusive, will not result in the nullity of the other clauses of the service agreement, which will maintain their full effects and scope.

In such a case, the parties shall, to the extent possible, replace the annulled provision by a valid one corresponding to the spirit and object of the Contractual Conditions.

#### Art 14.2: Titles

The titles of the articles in the Contractual Conditions are for ease of reference only and have no contractual value or particular meaning per se.

#### Art 14.3: Particular Conditions and Annexes

The particular conditions and eventual annexes are incorporated by reference into the **xervers** General Conditions of Service and are indissociable from said General Conditions. All of these documents are referred to in this document as the "General Conditions".

The set of documents incorporated in the present contract by reference can be consulted at the addresses indicated on the website <https://xervers.pt/contracts.php>. These documents are, on the other hand, subject to change or evolution.

#### Art 14.4: Notifications

All notices, communications, communications provided for by the General Conditions will be considered as having been validly delivered if they are sent by registered letter with acknowledgment of receipt to:

- To **xervers**: xervers, unipessoal lda, Estrada Nacional 229-2, 2, 3505-245 Viseu, Portugal.
- To the Client: to the postal and/or e-mail address you provided to **xervers**.

#### Art 14.5: Advertising and Promotion

**xervers** will be able to use the services provided to the Client as well as the Client's commercial documents and/or signage for publicity purposes, demonstrations, conferences, and specialized publications.

#### Art 15: Competence

IN CASE OF LITIGATION WITH A CLIENT, JURISDICTION IS EXPRESSLY ATTRIBUTED TO THE CIVIL COURT OF VISEU (PORTUGAL), NOTWITHSTANDING THE POSSIBLE EXISTENCE OF PLURALITY OF DEFENDANTS, INCLUDING FOR PRECAUTIONARY OR VOLUNTARY JURISDICTION PROCEEDINGS.