

DCSPINE GENERAL TERMS & CONDITIONS

These DCspine General Terms & Conditions are applicable to every Order placed with DCspine as well as to all legal relationships arising therefrom or connected therewith. DCspine may unilaterally amend these General Terms & Conditions. Any amendment shall be notified at least 30 (thirty) days before it becomes effective

1. Definitions

In these DCspine General Terms & Conditions (hereinafter: General Terms & Conditions) the following terms and phrases have the following meanings:

Agreement

the agreement between DCspine and the Customer, comprising the Order, the General Terms & Conditions and the applicable Service Description and Service Level Agreement.

Customer

a Party that has entered into an Agreement with DCspine pursuant to which it has purchased one or more Services.

Customer Equipment

all equipment and/or other applications or measures utilised by the Customer to use the Service.

DCspine

Eurofiber Spine B.V.

DCspine Network

the network (including all active and passive (network) elements and equipment) which is owned by DCspine and is maintained, managed and operated by DCspine.

Effective Delivery Date

the date on which a particular Service is delivered by DCspine and accepted by the Customer (cf. Article 4).

Installation Costs

If applicable, the one-time fee that DCspine will charge the Customer in order to connect and/or activate the Service(s).

Event of Default

a structural breach of any material provision or obligation under the Agreement, including the failure to make (timely) payment due under the Agreement.

Force Majeure Event

any occurrence beyond a Party's reasonable control affecting the performance of its obligations under the Agreement including a refusal or failure by competent authorities to grant the necessary authorisations and/or permits in good time, labour disputes, time lost through frost (vorstverlet), epidemic, war, riot, civil disturbance, sabotage or adverse weather conditions.

Price

the (periodic) compensation for the Service as set forth in the Order.

Term

the term of the Service purchased by the Customer as set forth in the Order.

Location(s)

the location(s) where the Service is delivered.

Order

a request by the Customer for one or more Service(s), also including any follow-up, additional or altered request made using the DCspine online portal.

Parties

DCspine and the Customer jointly. DCspine and the Customer are also individually referred to as a Party.

Proprietary Information

all information which relates to the business affairs, prices, product developments, network information, trade secrets, know-how and personnel (data) of either Party as well as any information which may reasonably be regarded as proprietary information of either Party, and all information (in whatever form) designated as confidential or proprietary by the Parties..

Service(s)

one or more network related services delivered by DCspine to the Customer. Each separate Service has its own "Service Description & Service Level Agreement" drawn up by DCspine, which forms an integral part in full of the Agreement.

2. Conclusion of Agreement

DCspine may require security from the Customer in a manner to be determined by it prior to the conclusion of an Agreement. Each Agreement shall be subject to the condition subsequent that the Customer continues to meet DCspine's requirements in respect of creditworthiness.

Subject to the provisions in article 2.1, the Agreement shall only be effective and binding between the Customer and DCspine from the moment the Customer approves an Order in the online DCspine portal.

3. Services

The provision of services under the Agreement entails the right to use the Services as described (in detail) in the Order and the applicable Service Description and the Service Level Agreement during the Term. The Service meets Dutch legal and regulatory requirements.

The Customer acknowledges and explicitly accepts that the Agreement does not grant it any right to use any other element described under 3.1 or any other Service than explicitly agreed in the Order.

- 3.4 The Customer is allowed to resell the Service(s) and potentially related bandwidth to third parties, but only under the following terms and conditions: these DCspine terms and conditions are accepted without any limitation by the third party and are complied with in full by the third party. The Customer is responsible for this towards DCspine. Following a breach of these terms & conditions, DCspine reserves all rights, including the right to immediately terminate the agreement.
- 3.5 The Customer may not use the Services for any action or operation contrary to the Agreement, the law, public morals and/or public order.
4. **Delivery and Acceptance**
- 4.1 DCspine reserves the right at all times to cancel an Order or to amend an Order in consultation with the Customer if DCspine cannot be expected according to standards of reasonableness and fairness to be bound by its offer.
- 4.2 DCspine is not liable toward the Customer for any other costs, loss and/or damage due to late delivery of the Service, unless in the event of willful misconduct or gross negligence.
5. **Pricing and Payment**
- 5.1 The Customer is required to pay the Price agreed in the Order by its chosen payment method in the online DCspine portal.
- 5.2 As from the Effective Delivery Date, DCspine is entitled to invoice the Customer the Price.
- 5.3 DCspine may review the Price each year and adjust it in line with the Consumer Price Index for all Households published by Statistics Netherlands, the so-called inflation adjustment. The inflation adjustment will be implemented in the online DCspine portal for the applicable Service(s) and will apply to the purchased Service(s) from that moment..
- 5.4 DCspine will invoice all amounts to be paid based on the Order on a monthly basis for the previous month. The invoice will include all Ordered Service(s) calculated on a daily basis at 24.00 hours on the given day(s). All payments due to DCspine shall be made in full within thirty (30) days of the date of the invoice without any right of set-off.
- 5.5 In the event the Customer fails to make any payment under the Agreement when due, such amount shall accrue statutory interest from the date such payment is due until the date the outstanding amount is fully paid.
- 5.6 All judicial and extrajudicial costs related to the collection of an amount owing to DCspine by the Customer shall be for the Customer's account. The extrajudicial costs shall amount to at least 15% of the amount due, with a minimum of €200 (in words: two hundred Euro), without prejudice to DCspine's right to claim any excess amount from the Customer in the event these costs are greater.
- 5.7 Payments made by the Customer to DCspine will firstly be allocated to meet any interest due and/or costs and only after this to settle the oldest outstanding amounts owed to DCspine, even if the Customer specifies otherwise on payment.
- 5.8 All amounts set forth in the Agreement are, to the extent applicable, exclusive of VAT and indexation.
- 5.9 If and to the extent the relevant (fiscal) authorities qualify the Service(s) provided under the Agreement as Leasing (verhuur), the Parties hereby opt to charge VAT pursuant to Section 11 subsection 1 sub b under 5 of the Dutch Turnover Tax Act 1968 (Wet op de omzetbelasting 1968). The Customer declares in this connection by signing the Agreement that it shall use the leased connection or space for activities that grant it an entitlement to claim deduction of all or almost all the VAT on costs incurred. In the event the leased connection or space is not used (any longer) by the Customer from any financial year for purposes for which there is an entitlement to deduction of all or almost all VAT on costs under Section 15 of the Dutch Turnover Tax Act 1968, without this being reasonably foreseeable in advance by the Customer, and the use of such connection or space in the following financial year similarly does not entitle the Customer to claim deduction of all or almost all the VAT on costs under Section 15 of the Dutch Turnover Tax Act 1968, then the exception concerning taxed lease shall no longer be applicable from the end of the financial year concerned. With effect from the date on which termination of the option for taxed lease becomes effective, the Customer shall be liable to pay DCspine an amount instead of VAT such that DCspine is fully compensated for any and all loss and/or damage sustained by DCspine due to the termination of the option
6. **Substitution or Relocation**
- 6.1 If DCspine is required by order or other lawful action of any government or public authority or for technical reasons to substitute or relocate any part of the DCspine Network, including any of the facilities used or required in providing the Service(s), DCspine is entitled to proceed with such substitution or relocation provided that any such substitution or relocation (i) shall be performed and tested by DCspine to determine compliance with the specifications set forth in the relevant Service Description & Service Level Agreement following substitution or relocation, and (ii) shall not result in an unreasonable and material adverse change in the services rendered to the Customer. The Customer will be informed in advance by DCspine in the event of any substitution or relocation.
7. **Suspension**
- 7.1 DCspine may suspend (opschorten) its obligations under the Agreement:
- upon the occurrence of an Event of Default attributable to the Customer;
 - upon the revocation or expiry of any telecommunications authorisation, registration or licence that may be required for the Customer to fulfil its obligations under the Agreement and to use the Service(s);
 - if DCspine thereby complies with or is thereby obliged to comply with an order, instruction or request of any public authority; and
 - if the Customer has filed a petition for its own bankruptcy or has requested a moratorium on payments, if the Customer has been declared bankrupt or granted a moratorium on payments, if an administrator (bewindvoerder) or trustee (curator) has been appointed for the Customer's business, or if the Customer is otherwise no longer able to fulfill its payment obligations towards its creditors.
8. **Liability and indemnity**
- 8.1 DCspine's liability under an Agreement is limited to direct loss and damage only and will not exceed the total value of an Order, nonetheless with a maximum of EUR 25,000 per event or related series of events and EUR 50,000 per period of twelve months. Direct loss and damage will only consist of the following:
- the reasonable costs the Customer has incurred in order to ensure that DCspine's performance conforms to the Agreement. The aforementioned costs will not be compensated, however, in the event the Agreement has been dissolved and/or terminated by the Customer.
 - the reasonable costs the Customer has incurred in order to determine the cause and the scale of the loss and damage, in so far as the determination relates to direct loss or damage.
 - the reasonable costs the Customer has incurred in order to prevent or restrict any loss or damage, in so far as the Customer demonstrates that such costs have resulted in restriction or limitation of the direct loss or damage; and
 - the reasonable loss or damage due to damage to tangible property of the Customer which loss or damage is the direct result of activities of or on behalf of DCspine directly connected with the execution of the Agreement.
- 8.2 DCspine's liability for loss or damage resulting from death or personal injury shall be limited to the amount claimable under the liability or indemnity insurance taken out by DCspine.
- 8.3 DCspine is not liable for any indirect loss and damage, including but not limited to loss or damage due to loss of operating time, loss of goodwill, loss of data, loss of profits, lost savings, damage through business interruptions and any claims of clients of the Customer. It is solely the responsibility of the Customer to protect and store its information in an efficient manner. The Customer is responsible for making the necessary back-ups of such information.
- 8.4 The limitation of liability referred to in this article does not apply in so far as the loss or damage is due to willful misconduct or gross negligence committed by managers or supervisors of DCspine.

- 8.5 Notwithstanding the provisions in this article, DCspine is not liable for any claim for compensation, irrespective of the grounds on which a claim may be based.
- 8.6 As a condition for the creation of any right to compensation the Customer will report the occurrence of such loss or damage as soon as possible in writing to DCspine. Claims for compensation shall lapse by the mere expiry of 24 months after the claim has arisen.
9. **Term and Termination**
- 9.1 An Agreement may only be terminated in accordance with the provisions in this Article 9.
- 9.2 An Agreement is entered into for at least the Term agreed upon in the online DCspine portal.
- 9.3 If the Customer does not wish to extend the Agreement, the Customer may terminate the Agreement immediately in the online portal after the expiry of the Term. The Customer is obliged to pay DCspine for the Service(s) until 23.59 hours on the day of termination of the Agreement, irrespective of the time of termination in the online portal.
- 9.4 A Party is only entitled to give notice to terminate the Agreement in writing prematurely by registered letter in case:
- of an Event of Default by the other Party and said Party is in breach (in verzuim) in this regard,
 - of a Force Majeure Event that continues for at least sixty (60) days as a result of which a Party is not able to perform its (material) obligations under the Agreement.
 - the other Party files a voluntary petition for bankruptcy or requests a moratorium on payments,
 - the other Party becomes bankrupt or is granted a moratorium on payments,
 - an administrator (bewindvoerder) or trustee (curator) is appointed for the other Party, and
 - the other Party has liquidated its business (liquidatie) and/or its legal entity (vereffening van de rechtspersoon).
- 9.5 Unless explicitly provided otherwise in writing in the Agreement, upon the termination of an Agreement all rights and obligations of the Parties thereunder shall terminate, without the Customer having any right to reimbursement by DCspine of any Prepaid fees and/or other payments, including the Price or any other fee paid to DCspine in advance by the Customer.
- 9.6 Section 226 of Book 7 of the Dutch Civil Code applies by analogy. Therefore, a sale of (any part of) the DCspine Network will not cause the Agreement and the obligations arising from it to terminate.
10. **Intellectual Property**
- 10.1 All intellectual property rights relating to the Services and the DCspine Network in whatever form, including, but not confined to, as-built drawings and maintenance data, shall at all times remain the property of DCspine or its licensors.
11. **Confidentiality**
- 11.1 Each Party agrees to maintain in strict confidence all Proprietary Information of the other Party which is disclosed in connection with the Agreement. Neither Party shall disclose to any third party Proprietary Information without the express prior written consent of the other Party.
- 11.2 All Proprietary Information shall remain the property of the disclosing Party, shall only be used by the receiving Party for the execution of the Agreement, and such Proprietary Information, including all copies thereof, shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the first request of the disclosing Party.
- 11.3 The provisions of Article 11.1 and 11.2 shall not apply to any Proprietary Information which:
- becomes publicly available other than through a breach of this article by the receiving Party;
 - is required to be disclosed by a governmental or judicial law, order, rule or regulation;
 - has been demonstrably independently developed by the receiving Party; or
 - becomes available to the receiving Party without any restriction imposed by a third party.
12. **No Partnership**
- 12.1 Nothing contained in the Agreement may be deemed to constitute the establishment of a cooperation, a partnership association (personenvennootschap), joint venture, any other co-operative entity or agency agreement between the Parties for any purpose.
13. **Complaints**
- 13.1 DCspine will only process complaints that relate to the rendering or execution of the Service.
- 13.2 Complaints must be notified to DCspine in writing and within thirty days after the occurrence of the event giving rise to the complaint. DCspine will respond to the complaint within fifteen working days of receiving the complaint.
- 13.3 The submission of a complaint shall not cause the suspension of the Customer's obligations. All rights and obligations set forth in the Agreement shall remain in full force.
14. **Personal data and privacy**
- 14.1 The Customer shall notify correct data, including name and address details, contact person details and account numbers to DCspine. Any changes must be notified to DCspine in writing in a timely manner after the Customer has become aware of the change. The Customer explicitly consents to the data relating to the Customer being recorded in DCspine's customer administration system, which system is necessary for administrative and management purposes. The data shall, within the limits prescribed by law, only be used in the interest of ensuring smooth business operations as well as for the purposes referred to in the General Terms and Conditions.
- 14.2 The data may be used by DCspine, similarly with due regard for the applicable statutory provisions and regulations in that regard, for the purpose of market research, sales activities as well as for direct marketing and in the interest of the Services rendered by DCspine and/or its affiliated enterprises, unless the Customer expressly objects to such use. The Customer must notify its objections in writing to DCspine. DCspine is not liable for any data that may have been previously provided or processed.
- 14.3 In the event DCspine provides the use of IP addresses in order to facilitate the rendering of the Service, these shall remain the property of DCspine and may be amended at any time. DCspine will notify any amendment in advance. In the event the Agreement and/or the Service is terminated, for whatever reason, DCspine may, where applicable, revoke or withdraw all identification data, IP addresses and/or codes immediately following the termination of the Agreement and/or Service.
15. **Miscellaneous**
- 15.1 The articles which by their nature are intended to remain operative even after the termination of the Agreement, such as articles 8, 11 and 14, shall remain in force even after the end of the Agreement.
- 15.2 If any provision, covenant or condition in the Agreement is deemed to be invalid or unenforceable by a court, DCspine may replace such provision with a similar provision which is enforceable at law, without this affecting the legal validity of the remaining provisions in the Agreement.
- 15.3 The Agreement replaces all prior agreements, arrangements and commitments between the Parties with regard to the Service concerned.
- 15.4 The administrative records kept by DCspine constitute full and conclusive evidence between the Parties, subject to evidence to the contrary to be provided by the Customer.
- 15.5 In case of a discrepancy between the provisions of the documents constituting the Agreement, the following order shall apply:

- 1) the Order,
 - 2)) the applicable Service Description & Service Level Agreement, and
 3. these General Terms & Conditions.
- 15.6 These DCspine General Terms & Conditions are available in Dutch and English. In case of a dispute concerning the contents or meaning of these DCspine General Terms & Conditions only the Dutch version thereof and meaning pursuant to Dutch law will be binding.
- 15.7 Any dispute relating to or concerning the Agreement shall be governed by and construed exclusively in accordance with the laws of The Netherlands.
- 15.8 In the event of a dispute and/or conflict arising from or relating to the Agreement, the Parties agree to submit to the exclusive jurisdiction of the District Court of Midden-Nederland, The Netherlands, subject to DCspine's right to opt instead for the court in the place where the Customer has its registered office.