

Negometrix data processing agreement

This Processing Agreement has entered into force between:

Negometrix B.V. established and having offices at Rijnzathe 32, 3454 PV Utrecht, Netherlands, legally represented by S. de Vocht, Commercial Director, hereinafter referred to as: Negometrix, and

Customer, every User of a Negometrix software application; in the event that the Customer purchases a Negometrix license, a (Main) contract will be concluded between Negometrix BV and the Client; hereinafter referred to as: Customer

Taking into account that:

- a (Main) contract may have been concluded between the Client and Negometrix with regard to the use of services provided by Negometrix, hereinafter referred to as the 'Agreement';
- a Customer will enter data on the basis of this Agreement, including personal data, on the platform of Negometrix;
- a Customer can be only a User of the Negometrix software application without having to conclude an agreement but will still be able to enter personal data;
- parties in accordance with Article 28 of the AVG (GDPR), wish to lay down all their agreements regarding the processing of personal data by Negometrix in this agreement, hereafter: the '**Processing Agreement**'.

State to agree on the following:

Article 1 Definitions

The terms mentioned hereafter have the following meaning in this Processing Agreement, in the Appendix processing and in the Agreement:

1.1 Personal Data Authority (AP): supervisory authority, as described in article 4, paragraph 21 Avg.

1.2 Avg: the General Data Protection Regulation (GDPR).

1.3 Negometrix: Party to this Processing Agreement that processes Personal Data for Customer in the framework of the implementation of the Agreement and for non-licensee.

1.4 Appendix: appendices to this Processing Agreement that include, among other information, information regarding the intended use of the product and services of Negometrix, the affected security measures, sub-processors, certifications and dealing with the rights of the Data Subjects.

1.5 Data Subject: an identified or identifiable natural person.

1.6 Customer: party in whose assignment Negometrix processes personal data. The Customer can be both controller ("controller") and another processor. Customer can be a paying licensee or only user without license rights.

1.7 Agreement: the agreement between Customer and Negometrix on the basis of which Negometrix delivers services and / or products to Customer, of which the Processing agreement is a part of.

1.8 Personal Data: all information about an identified or identifiable natural person, as described in Article 4, paragraph 1 Avg, which Negometrix processes in the context of the performance of its obligations arising from the Agreement.

1.9 Processing Agreement: this agreement, which, together with the appendices, constitute the Processing agreement as referred to in Article 28, paragraph 3 Avg.

Article 2 General

2.1 This Processor Agreement applies to all processing of Personal Data that Negometrix does in the context of the delivery of its products and services and to all Agreements and offers. The applicability of processor agreements of the Customer is explicitly rejected.

2.2 The Appendix processing, and in particular the security measures included therein, can be adjusted from time to time by Negometrix to changing circumstances. Negometrix will inform Customer of significant changes. If the Customer cannot reasonably agree with the adjustments, the Customer is entitled to terminate the Processing agreement in writing, stating reasons, within 30 days after notification of the adjustments.

2.3 Negometrix processes the Personal Data on behalf of and commissioned by the Customer in accordance with the written instructions from the Customer and agreed by Negometrix.

2.4 The Customer, or his representative, is the controller in the sense of the Avg, has control over the processing of the Personal Data and has established the purpose and the means for the processing of the Personal Data.

2.5 Negometrix is a processor in the sense of the Avg and therefore has no control over the purpose of and the means for the processing of the Personal Data and therefore makes no decisions about, among other things, the use of the Personal Data.

2.6 Negometrix implements the Avg as laid down in this Processing Agreement, the Appendix processing and the Agreement. It is up to the Customer to assess on the basis of this information whether Negometrix offers sufficient guarantees with regard to the application of appropriate technical and organizational measures so that the processing complies with the requirements of the Avg and the protection of the rights of the Data Subjects is sufficiently guaranteed.

2.7 Customer warrants Negometrix that it acts in accordance with the Avg, that it adequately protects its systems and infrastructure at all times and that the content, use and / or processing of the Personal Data are not unlawful and do not infringe any right of a third party.

2.8 An administrative fine imposed on the Customer by the AP cannot be recovered from Negometrix, unless there is intent or deliberate recklessness on the part of Negometrix's management.

Article 3 Security

3.1 Negometrix takes the technical and organizational security measures, as described in the Appendix processing. When taking the technical and organizational security measures, Negometrix has taken into account the state of the art, the implementation costs of the security measures, the nature, scope and the context of the processing, the purposes and the intended use of its products and services. Processing risks and the risks and probabilities and various risks for the rights and freedoms of those involved that he might expect in view of the intended use of his products and services.

3.2 Unless explicitly stated otherwise in the Schedules for Processing, the product or service of Negometrix is not geared to the processing of special categories of Personal Data or data concerning criminal convictions or offenses.

3.3 Negometrix strives to ensure that the security measures to be taken by it are suitable for the use of the product or service as intended by Negometrix.

3.4 In the opinion of the Customer, the specified security measures, taking into account the factors referred to in Article 3.1, offer a level of security tailored to the risk of processing the Personal Data used or provided by Customer.

3.5 Negometrix may make changes to the security measures taken if this is deemed necessary in order to continue to offer an appropriate level of security. Negometrix will record important changes, for example in a modified Appendices Addendum, and will notify the Customer of those changes where relevant.

3.6 Customer can request Negometrix to take further security measures. Negometrix is not obliged to make changes to its security measures on such a request. Negometrix may charge the costs related to the changes made at the request of the Customer. Only after the amended security measures requested by the Customer have been agreed and signed in writing by the Parties, Negometrix has the obligation to actually implement these security measures.

Article 4 Infringements relating to personal data

4.1 Negometrix does not guarantee that the security measures are effective under all circumstances. If Negometrix discovers an infringement in connection with Personal Data (as referred to in article 4 sub 12 Avg), it will inform Customer without unreasonable delay. The Appendix processing specifies how Negometrix informs Customers about infringements related to Personal Data.

4.2 It is up to the controller (Customer) to assess whether the breach relating to Personal Data that Negometrix has informed them about must be reported to the AP or Parties concerned. Reporting of infringements in connection with Personal Data, which must be reported to the AP and / or Relevant Parties pursuant to Article 33 and 34 Avg, remains at all times the responsibility of the controller (Customer). Negometrix is not obliged to report infringements related to personal data to the AP and / or the Data Subject.

4.3 Negometrix will, if necessary, provide further information about the infringement in relation to Personal Data and will cooperate with the necessary information provision to the Customer for the purpose of a notification as referred to in Article 33 and 34 Avg.

4.4 Negometrix can charge the reasonable costs that it incurs in connection with this to the Customer.

Article 5 Confidentiality

5.1 Negometrix ensures that persons who process Personal Data under his responsibility have a confidentiality obligation.

5.2 Negometrix is entitled to provide the Personal Data to third parties, if and insofar as provision is necessary pursuant to a court order, a statutory provision or on the basis of a competent order issued by a governmental authority.

5.3 All access and / or identification codes, certificates, access and / or password information provided to the Customer by Negometrix and all information provided by Negometrix to the Customer that gives effect to the technical and organizational security measures included in the Appendix processing are confidential and shall be confidentially are treated as such by Customer and are only made known to authorized employees of Customer. Customer ensures that his employees comply with the obligations in this article.

Article 6 Duration and termination

6.1 This Processing Agreement forms part of every registration on a Negometrix application, the Agreement and any new or further agreement arising therefrom, comes into force at the time of the conclusion of the Agreement and is concluded for an indefinite period of time.

6.2 This Processing Agreement ends by operation of law upon termination of the Agreement or any new or further agreement between the parties.

6.3 In the event of termination of the Processing Agreement, Negometrix will remove all Personal Data received from Customer within the period set forth in the Schedules for Processing in such a way that they can no longer be used and are no longer accessible (render inaccessible), or, if agreed, return them to the Customer.

6.4 Negometrix can charge costs that it incurs in the context set out in article 6.3. Further agreements on this can be made in the Appendix processing.

6.5 The provisions of article 6.3 do not apply if a statutory regulation prevents the total or partial removal or return of the Personal Data by Negometrix. In such a case, Negometrix will only continue to process the Personal Data to the extent necessary under its legal obligations. The provisions of Article 6.3 also do not apply if Negometrix is the controller in the sense of the Avg regarding the Personal Data.

Article 7. Rights of Data subjects, data protection impact assessment (DPIA) and audit rights

7.1 Negometrix will, where possible, cooperate with reasonable requests from Customer that are related to the rights of the Data Subjects invoked by the Data Subjects. If Negometrix is approached directly by a Data Subject, he will refer it to the Customer.

7.2 If the Customer is obliged to do so, Negometrix will cooperate with a data protection impact assessment (DPIA) or a subsequent preliminary consultation as referred to in Article 35 and 36 of the Avg.

7.3 Negometrix can demonstrate compliance with its obligations under the Processing agreement by means of a valid Data Pro Certificate or at least equivalent certificate or audit report (Third Party Memorandum) from an independent expert.

7.4 At the request of the Customer, Negometrix will also make available all further information that is reasonably necessary to demonstrate fulfilment of the agreements made in this Processing agreement. If the Customer nevertheless has reason to assume that the processing of Personal Data does not take place in accordance with the Processing agreement, then it can be carried out no more than once a year by an independent, certified, external expert who has demonstrable experience with the type of processing that is carried out on the basis of the Agreement to have an audit carried out at the expense of the Customer. The audit will be limited to checking compliance with the agreements regarding the processing of the Personal Data as laid down in this Processing Agreement. The expert will have a duty of confidentiality with regard to what he finds and will only report to the Customer a shortcoming that constitutes an obligation in the fulfilment of what Negometrix has to do on the basis of this Processing agreement. The expert will provide a copy of his report to Negometrix. Negometrix may refuse an audit or instruction from the expert if, in his opinion, this is in conflict with the Avg or other legislation or constitutes an inadmissible violation of the security measures he has taken.

7.5 Parties will consult as soon as possible about the results in the report. Parties will follow the proposed improvement measures laid down in the report insofar as they can reasonably be expected from them. Negometrix will implement the proposed improvement measures insofar as they consider it appropriate to take into account the processing risks associated with its product or service, the state of the art, the implementation costs, the market in which it operates, and the intended use of the product or service shift.

7.6 Negometrix has the right to charge the costs that it incurs in connection with the provisions of this article to the Customer.

Article 8. Sub processors

8.1 Negometrix has stated in the Appendix processing whether and, if so, which third parties (sub-processors) Negometrix engages in the processing of the Personal Data.

8.2 The Customer gives permission to Negometrix to engage other sub-processors in order to fulfil its obligations.

8.3 Negometrix will inform the Customer about a change in third parties engaged by Negometrix, for example by means of an adapted Data Pro Statement. Customer has the right to object to the aforementioned change by Negometrix. Negometrix ensures that the third parties engaged by them commit to the same level of security with regard to the protection of the Personal Data as the security level to which Negometrix is bound to the Customer on the basis of The Appendix processing.

Article 9 Other provisions

This Processing agreement, together with the Appendix processing forms an integral part of the Agreement with licensees and the General Terms and Conditions of Negometrix for non-paying Customers. All rights and obligations under the Agreement, including the applicable general terms and conditions and / or limitations of liability, therefore also apply to the Processing agreement.

Appendix Processing

This is an attachment to the Negometrix Processing Agreement.

Date Annex: (...)

GENERAL INFORMATION

1. Description of products and services Negometrix

Negometrix provides smart software (SaaS) to support purchasing processes applicable in different markets. The products that Negometrix can provide are:

- Procurement management and (European) Tender management
- Contract and supplier management
- Electronic auctions
- Dynamic purchasing system (DAS)

2. Intended use

Negometrix is designed and built to process the following personal data for controllers:

- Initials and / or name and surname
- (business) email address and username account
- Office / location address
- (business) telephone number
- Password account
- Photo (not required)

The first person to register on behalf of an organization in the Negometrix software becomes the administrator of his organization. Only the administrator has the right and the responsibility to create other (colleague) accounts for his organization. The Customer fully determines which information and / or documents and files are placed in his Negometrix account. Negometrix has no influence or control over information and / or the documents and files used by the Customer and what kind of data, including any personal data, are included in those documents and files. Upon request, for example when a question is asked to the Negometrix service desk, a Negometrix employee may be asked to view into an account with a Customer.

Certain technical data is saved during the use of the software. This concerns data required for proper operation of the Negometrix software. Depending on the activity you perform with the software, Negometrix processes the following data in this context:

- IP address;
- Time of operations in the software.

The Negometrix products / services do not take into account the processing of special personal data.

3. Place of processing

Negometrix processes the personal details of its customers within the EU / EEA.

4. Negometrix uses the following sub-processors for its hosting:

- Rackspace data center / EEA - London / <https://www.rackspace.com/certifications-uk>
- Equinix datacenter AM5 / EER - Amsterdam / <https://www.equinix.nl/services/data-centers-colocation/standards-compliance/>
- Digital Realty datacenter / EER - Amsterdam / <https://www.digitalrealty.com/data-center-solutions/security-compliance/>
- Microsoft Azure cloud computing / EER - Western Europe / <https://azure.microsoft.com/en-us/overview/trusted-cloud/>
- Amazon cloud computing / EER - Western Europe region / <https://aws.amazon.com/compliance/>
- Myracloud threadprotection / EER - Germany / <https://myracloud.com/en/>

5. Delete personal data

After termination of the Agreement with a Customer, Negometrix will, after written request from the Controller, delete the personal data that it processes for the Customer within 3 months in such a way that it can no longer be used and can no longer be accessed (render inaccessible).

SECURITY POLICY

6. Security measures

Negometrix has taken security measures to protect its products and services. The security policy includes the following topics:

- Organizational security
- Classification and management of assets
- Security requirements regarding personnel
- Physical security and security of the environment
- Management of communication and operating processes
- Access security
- Development and maintenance of systems
- Continuity management

7. Certifications

Negometrix has conformed to the Information Security Management System (ISMS) on the basis of ISO27001 standards and is periodically audited by means of an ISAE3000 report (or equivalent).

8. Data breach protocol

In the case of a (possible) data breach of personal data, Negometrix identifies whether there is a chance that unauthorized persons have access to data or the chance that this could still happen. If this is the case, Negometrix will inform the Customers to which it relates by email within 24 hours of discovery.