

Airly General Terms of Service

§ 1 Definitions

In these General Terms of Service, the following terms, which are written in capital letters, shall be understood as follows:

- a. "Client" - a natural person or a legal person, or an entity without legal personality to which legal capacity is granted by the law, who concluded the agreement with Airly under these General Terms of Service;
- b. "Consumer" - Client who is a natural person who performs with an entrepreneur a legal action not directly related to his business or professional activity;
- c. "Database" - owned by Airly database containing data on archival, current and predicted air quality status;
- d. "General Terms of Service" or "GTS" - these general terms of service;
- e. "Map" - map of air pollution placed on the Platform and Airly's mobile application;
- f. "Plan" - set of Services and key information regarding Services described in the Pricing;
- g. "Platform" - www.airly.eu and/or www.airly.org;
- h. "Pricing" - set of prices and other key information regarding Services placed on the Platform;
- i. "Sensor" - a device created by the Service Provider, used for measuring and reading air pollution rates and other data, having technical specifications described in the Platform in products section;
- j. "Service" or "Services" - a service offered through a Platform, specified in particular Terms of Service, having technical specifications described in the Platform in products section;
- k. "Service Provider" or "Airly" - Airly sp. z o.o. with its registered office in Kraków, ul. Mogilska 43, 31-545 Krakow, entered into the Register of Entrepreneurs kept by the District Court for Kraków-Śródmieście in Kraków, XI Economic Department of the National Court Register under the number KRS 0000639797, NIP 676-251-42-90, REGON 365524039, share capital PLN 15 350,00;
- l. "Subscription Period" - the period of time in which the Service is made available to the Client, but not longer than that specified in the Pricing and electronic request for the Service;
- m. "Terms of Service" - contractual models for particular Services, the acceptance of which is necessary to order and use these Services.

§ 2 General Provisions

1. The content of the agreement between Airly and Client is determined each time by GTS, relevant Terms of Service, Pricing and, if provided for a particular Service, the technical specifications or other documents referred to in relevant Terms of Service.
2. Administration of personal data is based on the provisions of common law and the Privacy Policy, which is available on the Platform.
3. The General Terms of Service, Terms of Service, their appendices and other documents referred to in § 2 paragraph 1, constitute a contractual model within the meaning of Article 384 § 1 of the Civil Code of 23rd April 1964.

4. The General Terms of Service are available to Client at any time on the Platform, Client can also copy the text of the General Terms of Service, save it or print it, using his/her device.
5. All terms defined in the General Terms of Service have the same meaning in Terms of Service, unless Terms of Service states otherwise.
6. All communication related to the agreement will be via e-mail, unless relevant Terms of Service provide otherwise.
7. The Client can contact Airly using the contact form available on the Platform, unless relevant Terms of Service provide otherwise. For safety purposes, Airly reserves the right to conduct the verification procedure of the Client's identity.
8. Airly will contact the Client using the e-mail address provided by the Client during placing an order, unless relevant Terms of Service provide otherwise.

§ 3 Technical requirements

1. The following equipment is required to use the Services:
 - a. a PC, smartphone, tablet or other device with similar functions;
 - b. an active Internet connection;
 - c. updated version of the Firefox, Chrome, Safari or Microsoft Edge web browser;
 - d. The Adobe Flash Player plug-in installed and JavaScript, Frames and CSS style support enabled;
 - e. active e-mail account.
2. The use of certain Services may be a subject of other technical requirements that are provided to the Client during the purchasing process or in particular Terms of Service.

§ 4 Payments

1. The fee for the provision of the Service is determined in accordance with the Pricing, binding at the time of ordering the Service, unless relevant Terms of Service state otherwise.
2. The fee for provision of the Service should be paid before the deadline indicated to the Client.
3. Airly reserves the right to change prices of Services, but such change does not affect the prices of Services ordered before the change.
4. Methods of payment may vary depending on the ordered Service, Plan and provisions of the relevant Terms of Service.
5. Where the Service involves the delivery of the goods and the place of delivery is outside the customs territory of the European Union, the Client may need to bear other, additional costs associated with the obligation to pay the so-called customs debt specified by the regulations of the country concerned.

§ 5 Ordering of Services

1. To order and manage Services, it is necessary for the Client to place an order in accordance with the form available on the Platform.
2. Terms of Service may provide alternative or additional requirements to place an order.

§ 6 Obligations and liability of the Client

The Client is obliged to:

- a. use the Service in accordance with its purpose, the GTS and Terms of Service;

- b. comply with generally applicable law regulations while using the Services and Map;
- c. refrain from providing unlawful content;
- d. refrain from actions which could negatively affect the Service Provider, Services, Map or computer systems of the Service Provider or making any interference in the Service;
- e. immediately inform the Service Provider about any changes in the contact details, in particular contact details necessary to issue invoices and deliveries and changes in the contact e-mail address under pain of the consequences of delivery of letters or e-mails to an out-of-date addresses. The abovementioned rigour of the consequences of delivery of letters or e-mails does not apply to Consumer or a natural person who concluded the agreement, which is directly related to his/her business activity and this agreement has non-professional nature for this natural person;
- f. pay for the Service in a timely manner;
- g. provide genuine and correct personal data in purpose of ordering and using the Service;
- h. use a software version with the support of this software producer;
- i. compensate the damage suffered by Service Provider as a result of Client's wrongful act;
- j. cover any tax or custom fees resulting from the national legislation of countries not belonging to the customs territory of the European Union.

§ 7 Obligations and liability of the Service Provider

1. The Service Provider is obliged to provide Services with due care.
2. In connection with the Services provided, the Service Provider shall not be liable for:
 - a. permanent or temporary and unexpected malfunctions of the Service caused by hacker attack, random circumstances, natural disasters or force majeure;
 - b. Client's lost profits [the provision does not apply to the agreement concluded with the Consumer or a natural person who concluded the agreement, which is directly related to his/her business activity and this agreement has non-professional nature for this natural person];
 - c. permanent or temporary malfunctions of the Service caused by third parties who participate in providing the Service to the Client [the provision does not apply to the agreement concluded with the Consumer or a natural person who concluded the agreement, which is directly related to his/her business activity and this agreement has non-professional nature for this natural person];
 - d. consequences of improper use of the Service by the Client or its representatives;
 - e. breakdowns or other damage of the Client's hardware or other equipment, devices, operating system, software or damage or loss of Client's data, caused by software provided by the Service Provider [the provision does not apply to the agreement concluded with the Consumer or a natural person who concluded the agreement, which is directly related to his/her business activity and this agreement has non-professional nature for this natural person];
 - f. the Client's use of software not supported by its producer, in particular in such case the Service Provider is not responsible for the safety and stability of the Service;
 - g. consequences of the Client's use of data or other information obtained through the Service, including consequences of making the aforementioned data or other information available to third parties.

3. The liability of the Service Provider towards the Client in connection with the Service is in any case limited to the value of the fee paid by the Client for providing this particular Service for the given Subscription Period. The preceding sentence does not apply to the agreement concluded with the Consumer or a natural person who concluded the agreement, which is directly related to his/her business activity and this agreement has non-professional nature for this natural person.

§ 8 Risks related to the Service

The use of the Services is not related to specific risks, with the exception of the risks commonly encountered when using the Internet. Irrespective of that, it is recommended to use antivirus software in order to minimize the introduction of harmful software into the Client's IT system by unauthorized persons.

§ 9 Consumer's right of withdrawal

1. The Consumer has the right to withdraw from the agreement without giving any reason within 14 days of concluding the agreement with Airly. In case the agreement involves the transfer of ownership of the goods, the period referred to in the previous sentence shall commence from the moment of handing over the goods to the Consumer or another person designated by the Consumer.
2. In order to withdraw from the agreement, the Consumer should submit to Airly the relevant statement. For this purpose, the Consumer may use a template statement: "Being aware of the consequences of withdrawal from the agreement, I hereby declare that I withdraw from my agreement with Airly sp. z o.o. concluded on the [date]", but using the template statement is not mandatory.
3. The statement of withdrawal from the agreement made before the Service Provider accepted the order makes the offer made by the Consumer no longer binding on him.
4. The Service Provider is obliged to return the full price for the Service, including the price of delivery of goods [except for the costs arising from the method of delivery chosen by the Client other than the cheapest method of delivery offered in the Platform] within 14 days of receipt of information on withdrawal from the agreement. The Service Provider shall make the payment using the same method of payment as used by the Consumer or another method agreed upon by the parties, provided that it does not entail additional costs for the Consumer.
5. The Consumer shall be liable for any diminished value of the goods resulting from their use beyond what is necessary to establish the nature, characteristics and functioning of the goods.
6. In the case of withdrawal from the agreement by the Consumer the agreement is considered not concluded.
7. The provisions of this § 9 shall apply accordingly to a natural person who concluded the agreement, which is directly related to his/her business activity and this agreement has non-professional nature for this natural person.

§ 10 Complaints

1. A complaint regarding non-performance or improper performance of Service shall be made by sending an e-mail and should include:

- a. Client's contact details, enabling identification of the Client and communication with him/her;
 - b. Service to which the complaint relates and objections regarding Service;
 - c. the circumstances justifying the complaint;
 - d. Client's demands related to the complaint.
2. A correctly submitted complaint will be reviewed within 14 days of its reception by the Service Provider. Within given deadline the Service Provider will respond to the complaint, indicating whether he accept the complaint [and how the Service Provider intends to execute it] or does not accept the complaint [along with a justification of its standpoint].
 3. If within 14 days the Service Provider does not respond to the request of the Consumer or a natural person who concluded the agreement, which is directly related to his/her business activity and this agreement has non-professional nature for this natural person, it means that he considered the requests to be justified.
 4. Service Provider reserves the right to extend the period mentioned in the paragraph 2 and 3 above by 7 days if additional circumstances need to be clarified, in particular those related to third party services provided to the Service Provider [the provision does not apply to the agreement concluded with the Consumer or a natural person who concluded the agreement, which is directly related to his/her business activity and this agreement has non-professional nature for this natural person].

§ 11 Jurisdiction and Dispute Resolution

1. To matters not covered by the General Terms of Service, the provisions of the law of Republic of Poland shall apply. In case of Clients who are Consumers, the choice of law does not deprive the protection granted under the provisions that cannot be excluded by the agreement under the law of the country in which the Consumer has his or her habitual residence.
2. Consumer has the right to use out-of-court complaint handling and claiming. Among other things, such Client has the right to apply to a permanent amicable consumer court to resolve a dispute arising from a concluded agreement.
3. In the event of disputes, Airly encourages amicable solutions, in particular by means of the platform
<https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home.show&lng=PL>
4. Detailed information on out-of-court redress methods is available on the website at <https://uokik.gov.pl>.
5. Airly declares that it does not apply the code of good practices referred to in the Act of 23 August 2007 on counteracting unfair market practices.
6. For the avoidance of doubt, it is assumed that the place of provision of the Service is the Republic of Poland [the provision does not apply to the agreement concluded with the Consumer].
7. Potential litigations will be subject to the jurisdiction of the court of Airly [the provision does not apply to the agreement concluded with the Consumer or a natural person who concluded the agreement, which is directly related to his/her business activity and this agreement has non-professional nature for this natural person].

§ 12 Duration and termination of the agreement

1. The agreement between Airly and the Client for the provision of the Service is concluded for a fixed period of time equal to the Subscription Period, unless relevant Terms of Service provide otherwise.
2. The Service Provider may suspend the provision of the Services, if the Client will:
 - a. violate the provisions of the GTS and/or the Terms of Service; or
 - b. fail to comply with the GTS and/or the Terms of Service; or
 - c. fail to pay the fees in a timely manner, or
 - d. use the Service contrary to its purpose, the GTS and/or the Terms of Service; or
 - e. act to the detriment of the Service Provider or its other Clients; or
 - f. perform services competitive to the Service Provider, copies services, business model, especially [but non-exclusively] if these activities are for profit.
3. The suspension of the provision of the Services may take effect until the Client ceased to perform the infringement behavior, provided for the provisions of paragraphs 4 and 5 below. Before the suspension of the provision of the Services, Service Provider will send a prior notice to the Client to cease the violation.
4. If the Service Provider has suspended the provision of the Services for the reasons specified in paragraph 2 above, and the Client fails to cease the violation [in particular fails to pay the entire remaining fees], within the appropriate period set by the Service Provider, the agreement may be terminated by the Service Provider with the immediate effect.
5. Notwithstanding the above in the case of a violation of the agreement by the Client, the Service Provider may request the Client to stop the violation and set an appropriate term for this purpose. In case of further agreement violations by the Client, Service Provider may terminate the agreement with immediate effect.

§ 13 Final provisions

1. The General Terms of Service enter into force on 1st of January 2021.
2. In the event that any of the provisions of the GTS or the particular Terms of Service proves to be invalid, ineffective, illegal or unenforceable in whole or in part, this circumstance will not affect the validity of the remaining provisions of the GTS or the particular Terms of Service.
3. Matters governed by the GTS may be regulated differently by specific provisions contained in the Terms of Service. In the event of a contradiction between any provision of the GTS and particular Terms of Service, the provisions of the particular Terms of Service shall prevail.
4. Contractual penalties provided for in particular Terms of Service do not limit the parties' right to claim damages, including lost profits, on a general basis in excess of the contractual penalties.
5. The Service Provider reserves the right to make changes in the GTS and/or particular Terms of Service due to important reasons [such as, for example, changes in the legislation, changes in the Service Provider business model, changes of technical specification of the Service provision, changes of the terms of services provided to Airly by third parties, that are necessary for the performance of the Service by Airly, changes in the offer of the provided Service], after informing the Client via e-mail. Changes in the provisions of the GTS or Terms of Service shall come into force on a date indicated in e-mail, but after at least 14 days from the moment of notifying the Clients of new provisions by e-mail.

6. Changes in the name of the Service Provider and changes resulting from changes in the law, which do not affect the nature, manner and quality of performing the Service, do not constitute the change of the agreement.
7. The Consumer or a natural person who concluded the agreement, which is directly related to his/her business activity and this agreement has non-professional nature for this natural person may object to the proposed changes and terminate the agreement with the Service Provider within 14 days from the day he/she received the e-mail containing information on changes of the GTS or Terms of Service. The time period for objection to the proposed changes and termination of the agreement, for the Client who is not a Consumer or a natural person who concluded the agreement, which is directly related to his/her business activity and this agreement has non-professional nature for this natural person is 7 days from the day that such Client received the e-mail containing information on changes of the GTS or Terms of Service.
8. In the event of effective termination of the agreement by the Client in accordance with paragraph 7 above, the Service Provider shall refund the fees paid by the Client in proportion to the Services not used by the Client.