

General Terms and Conditions of Anoniemesms

Definitions

General Terms and Conditions: these General Terms and Conditions;

GDPR: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

Client: the natural person of at least sixteen (16) years of age or legal person who has accessed the Products, or has entered into an agreement with Anoniemesms or to whom Anoniemesms has issued a quotation or has made an offer;

Agreement: the agreement concluded between Anoniemesms and the Client with regard to the Product;

Parties: Anoniemesms and the Client;

Product(s): the SMS service(s) made available by Anoniemesms via the websites www.anonymoustext.com, www.anonymoustext.co.uk, www.anonymoustext.co.nz, www.anonymesms.de, www.anonymesms.at, www.anonymesms.ch, www.smsanonimo.es, www.smsanonimo.mx, www.smsanonima.pt, www.smsanonima.com, www.anoniemesms.nl, www.anoniemesms.be, www.anonimensms.bg, www.anonymnisms.cz, www.anonymsms.dk, www.anonumosms.gr, www.anonymymiteksti.fi, www.smsanonymes.fr, www.nevtelensms.hu, www.smsanonimi.it, www.anonymsms.co.no, www.ananimowysms.pl, www.smsanonim.ro, www.anonymsms.se, www.anonimsms.com en www.anonimnesms.com;

Anoniemesms: the company with limited liability Vanilla B.V., with its registered office in Eindhoven, registered under number 76313271 in the Trade Register of the Chamber of Commerce;

1. Information about the entrepreneur (Anoniemesms)

Name of the company:

the company with limited liability Vanilla B.V., with its registered office in Eindhoven, registered under number 76313271 in the Trade Register of the Chamber.

Trading under the names:

Vanilla

Email:

Ask your question via <https://www.anonymoustext.com/contact/>.

Address details:

Available by appointment from Monday to Friday between the hours of 9.00 a.m. and 5.00 p.m. Torenallee 45, 5617 BA, Eindhoven, The Netherlands.

2. Applicability of the General Terms and Conditions

2.1 The General Terms and Conditions apply to all offers of Anoniemesms and to all current and future commercial relations, agreements and other legal relationships between the Parties. Applicability of the Client's general terms and conditions is explicitly excluded.

2.2 By accessing or using the Product, or by downloading or posting any content from or through the Product, the Client acknowledges, agrees and indicates that it has read and understands and agrees to be bound by these General Terms and Conditions.

3. Offer and conclusion of the Agreement

3.1 Every offer of Anoniemesms is free of obligation, unless stipulated otherwise in the offer. Obvious (writing) errors and mistakes in the offer do not bind Anoniemesms.

3.2 The Agreement will in any case be concluded if the Client has clicked on the button with the text 'Send' or 'Continue' on one of the Product's websites.

4. Payment terms

4.1 All prices quoted are inclusive of turnover tax (VAT) and other levies imposed by the government, unless indicated otherwise in the offer.

4.2 Unless otherwise stipulated in the Agreement or in an offer made by Anoniemesms, payment must be made immediately after the Agreement has been concluded. Payment may in any case not be made later than five calendar days after the conclusion of the Agreement.

4.3 The Client waives the right and/or is not entitled to set off a debt to Anoniemesms against a claim on Anoniemesms.

4.4 If a Client is a natural person acting for purposes which are outside his or her trade, business or profession, and this Client has not fulfilled his or her payment obligations within the agreed payment period, he or she will owe Anoniemesms extrajudicial collection costs after having been informed by Anoniemesms of the late payment and Anoniemesms has given the Client a period of 14 days in which

to still fulfil his or her payment obligations, after the failure to make payment within the aforementioned 14-day period. The amount of the extrajudicial collection costs due will be determined in accordance with the legislation in force at that time regarding compensation for extrajudicial collection costs. At present, this is governed by the Extrajudicial Collection Costs (Standardisation) Act and the accompanying Extrajudicial Collection Costs Decree. The extrajudicial collection costs are calculated as a percentage of the outstanding principal sum, where the following percentages currently apply: 15% over the first EUR 2500 of the outstanding principal amount, 10% over the next EUR 2500 of the outstanding principal amount, 5% over the next EUR 5000 of the outstanding principal amount, 1% over the next EUR 190000 of the outstanding principal amount and finally 0.5% over the remainder of the outstanding principal amount. On the basis of the aforementioned legislation, the extrajudicial collection costs amount to a minimum of EUR 40 and a maximum of EUR 6775. If the legislation regarding the compensation for extrajudicial collection costs changes, the new legislation will form the legal framework for the chargeability and the calculation of the amount of the extrajudicial collection costs.

4.5 The previous paragraph does not apply in the event the Client acts in the exercise of a trade, business, craft or professional activity. The extrajudicial collection costs pursuant to this provision will then amount to 15% of the total outstanding principal sum. Notwithstanding the above, the minimum extrajudicial collection costs shall be at least EUR 40. The extrajudicial collection costs are due as soon as the Client, acting in the exercise of a trade, business, craft or professional activity, is in default. This means that no further deadline and/or demand for payment is required for the chargeability of the extrajudicial collection costs.

5. Right of termination

5.1 Under the law, the Client does not have the right to dissolve the Agreement on the basis of Section 6:230o of the Dutch Civil Code (also referred to as the right of termination, right of return or period of reflection). This follows from Section 6:230p sub d under 1° and 2° of the Dutch Civil Code.

6. Rights, obligations and responsibilities of the Client

6.1 The Client warrants that it is sixteen (16) years or older at the time of accessing or using the Product. When using the Product, the Client will act in accordance with what may be expected of a careful and responsible Internet and SMS user.

6.2 The Client shall not use the Product to send messages and/or communications that are unlawful in nature towards Anoniemesms and/or third parties. The Client shall not use the Product to send, among others (but not limited to), messages and/or communications of an offensive, racist, discriminatory, pornographic and/or inflammatory nature and/or to send messages and/or communications, which are qualified as unsolicited communications for commercial, idealistic or charitable purposes (also known as SPAM) and/or for whatever purpose or reason that could be qualified as unlawful and/or criminal.

6.3 The Client guarantees that the input of data and the sending of messages and/or communications via the Product will not in any way infringe the rights (including intellectual property rights) of third parties.

6.4 The Client shall not execute its own or external processes and/or programs on the systems and/or Products of Anoniemesms.

6.5 The Client shall avoid the use of software or other means that prevent the provision of the services and Products by Anoniemesms to other users.

6.6 The Client guarantees the lawful use of the sender's address by avoiding and ensuring the avoidance the use of telephone numbers not belonging to the Client, unlawful names (including trade names or first names and/or surnames not belonging to the Client), and unlawful terms or signs.

6.7 The Client is not permitted to enter, send and/or otherwise store personal data (as referred to in Article 4 of the GDPR) via, in and/or with the Product and/or the systems of Anoniemesms. The only exception in this context are the Client's own personal data which are necessary in order to be able to comply with the guarantee as included in the previous paragraph.

6.8 Notwithstanding the obligations set out in this article, the Client ultimately determines which data will be entered with the aid of the Product and which messages and/or communications will ultimately be sent. Anoniemesms does not check the data entered using the Product and the messages and/or communications to be sent. Therefore, the Client remains responsible and legally fully liable for the data entered and messages and/or communications sent by the Client. The Client indemnifies Anoniemesms against all demands and other claims by third parties (including, but not limited to, claims for compensation by third parties and fines imposed by a supervisory authority) and all ensuing damage resulting from an act or omission by the Client that is contrary to or deemed by a third party to be contrary to an obligation on the part of the Client as set out in this article.

6.9 If the Client breaches an obligation as referred to in this article, the Client shall forfeit to Anoniemesms, without prior notice of default or legal proceedings, an immediately payable penalty of EUR 5000 for each breach, without there

General Terms and Conditions of Anoniemesms

	necessarily being any form of damage and without prejudice to the other rights of Anoniemesms, including the right to claim damages in addition to this penalty.	9.1	In addition to the provisions of Section 6:75 of the Dutch Civil Code, a failure on the part of Anoniemesms to fulfil any obligation to the Client between the parties also qualifies as force majeure in the event of a circumstance beyond the control of Anoniemesms, as a result of which fulfilment of the obligations to the Client is prevented in whole or in part, or as a result of which the fulfilment of the obligations of Anoniemesms cannot reasonably be required. Such circumstances shall in any case include non-performance by suppliers or other third parties, power failures, computer viruses, strikes and work stoppages.
6.10	If the Client fails to fulfil its obligations under the Agreement, Anoniemesms shall also be entitled to block the IP address, bank account number, credit card number and/or email address used by the Client for the use of the Product.		
7.	Rights, obligations and responsibilities of Anoniemesms		
7.1	Anoniemesms will make every effort to execute the Agreement carefully and properly.	9.2	If a situation as referred to in the previous paragraph arises as a result of which Anoniemesms is unable to fulfil its obligations towards the Client, such obligations may be suspended for as long as Anoniemesms is unable to fulfil its obligations. If the situation referred to in the previous sentence has continued for ten working days, Anoniemesms and the Client will be entitled to dissolve the Agreement in whole or in part in writing. In this case, Anoniemesms shall not be liable to pay compensation for any damage, even if Anoniemesms has any advantage as a result of the situation of force majeure.
7.2	All scheduled dates, provision times and delivery times referred to by Anoniemesms are target dates and do not bind Anoniemesms in any way. These scheduled dates, provision times and delivery times can therefore not be regarded as strict deadlines, unless this is explicitly stated.		
7.3	In the event of a malfunction caused by the connection to the Internet or due to the failure of hardware and/or software, Anoniemesms shall, without being liable, rectify the malfunction as soon as possible. To the extent Anoniemesms depends on third parties for this rectification, Anoniemesms cannot be held liable for the duration of the malfunction or for the malfunction itself. In the event that the malfunction is caused by the Client, the costs of recovery shall be borne by the Client.	10.	Privacy
7.4	Anoniemesms may temporarily take its systems out of service for maintenance purposes, without this leading to any liability on the part of Anoniemesms.	10.1	The Products of Anoniemesms are not directed or intended for children under sixteen (16) years of age. Anoniemesms does not knowingly solicit, collect or maintain information from those Anoniemesms actually knows are under sixteen (16), and no part of the Products is targeted to attract anyone under sixteen (16). Anoniemesms also does not send any form of correspondence to anyone who states that they are under the age of sixteen (16). If Anoniemesms later obtains actual knowledge that the user/Client is under sixteen (16) years of age, Anoniemesms will take steps to remove that user's/Client's Personal Information from its systems. If you are the parent or guardian of a child whom you believe has disclosed Personal Information to Anoniemesms, please contact Anoniemesms by mail so that such information may be deleted from our system.
7.5	Anoniemesms does not guarantee that a message and/or communication sent with the aid of the Product will be transmitted in the identical form to the intended recipient or will be received by the intended recipient at the agreed time. Anoniemesms is not liable for any incorrect or late receipt of a message and/or communication.	10.2	To the extent necessary, the Client expressly authorises Anoniemesms to process the Client's personal data and to make them available to third parties for the purpose of performing the Agreement.
8.	Liability	10.3	Anoniemesms reserves the right to provide personal data or other information at the request of investigative authorities if it is found that the Product has been used by the Client in a manner contrary to the law or in cases in which Anoniemesms is obliged to provide certain data pursuant to a court judgment. Anoniemesms reserves the right to provide personal data or other information to other third parties where Anoniemesms is obliged to provide certain data pursuant to a court judgment. The Client explicitly consents to this.
8.1	The Products offered by Anoniemesms are meant to be used within the EER and The Netherlands in particular. If and insofar the Clients uses any of the Products outside of the EER, the Client does such at its own risk and for its own account. Any liability of Anoniemesms resulting out of the use of the Products by the Client outside of the EER is excluded.	10.4	The IP address used by the Client is stored when the Product is used. If payment has been made via iDEAL, Bancontact, Sofort, eps, Giropay or Multibanco, the bank account or card number used by the Client, together with the name, place of residence and/or email address of the account holder or cardholder, will also be stored in that context. If payment has been made via PayPal, the Client's name, email address and address will also be stored in that context. If payment has been made by credit card, Apple Pay, Google Pay or Microsoft Pay, the credit card details used by the Client will also be stored in that context. If payment has been made by telephone (by means of a paid number or a paid text message), the telephone number used by the Client will also be stored in that context. The data referred to in this article will be stored by Anoniemesms for a period of 18 months. The Client explicitly consents to this.
8.2	In the event of an attributable failure to comply with the Agreement on the part of Anoniemesms, Anoniemesms is only liable for direct damage up to a maximum of the amount charged to the Client in the twelve months prior to the occurrence of the liability, with a maximum of EUR 2500 per event or series of related events. The limitations and exclusions of liability on the part of Anoniemesms referred to in this paragraph cease to apply in the event and to the extent that the damage is due to wilful misconduct or gross negligence committed by Anoniemesms.	10.5	If the Client enters or otherwise processes personal data when using the Product, the Client will be regarded as the 'data controller' as referred to in Regulation (EU) 2016/679 (GDPR). The Client must therefore guarantee that there is a legal basis for the processing of personal data.
8.3	All liability of Anoniemesms for any other form of damage is excluded, including additional compensation in any form whatsoever, compensation for indirect damage or consequential damage or damage due to loss of turnover or profit. Under no circumstances will Anoniemesms be liable for damage caused by delays, damage due to loss of data, damage due to exceeding of deadlines as a result of changed circumstances, information or materials by the Client and damage due to information or advice given by Anoniemesms the content of which does not explicitly form part of the Agreement. The limitations and exclusions of liability on the part of Anoniemesms referred to in this paragraph cease to apply in the event and to the extent that the damage is due to wilful misconduct or gross negligence committed by Anoniemesms.	10.6	The Client indemnifies Anoniemesms against all demands and other claims by third parties (including, but not limited to, claims for compensation by third parties and fines imposed by a supervisory authority) and all ensuing damage resulting from an act or omission by the Client that is contrary to or deemed by a third party to be contrary to applicable privacy regulations, such as the GDPR.
8.4	The condition for any right to compensation is always that the Client objects within two months after the delivery, stating that there is a defect in the performance of Anoniemesms. If a failure to perform has been proven, Anoniemesms will then have the opportunity to rectify the failure within a reasonable period of time, without being liable for damages.	10.7	In accordance with the General Terms and Conditions, the Client is not permitted to enter, send and/or otherwise store personal data (as referred to in Article 4 of the GDPR) via, in and/or with the Product and/or the systems of Anoniemesms (unless otherwise stipulated in the General Terms and Conditions). This means that Anoniemesms cannot be regarded as a data processor within the meaning of Article 4 of the GDPR. Should the Client fail to comply with the relevant obligation, Anoniemesms is still of the opinion on legal grounds that it cannot be regarded as a data processor within the meaning of Article 4 of the GDPR. In the event that the GDPR should still consider Anoniemesms a data processor of the Client, then (and only in that case) the provisions set out below in this article will apply between the Parties.
8.5	Any claim of the Client on Anoniemesms will lapse after twelve months after the claim has arisen and the Client has not taken any action regarding the claim.	10.8	This article constitutes a data processing agreement as referred to in Article 28 of the GDPR.
8.6	In the event of a wrongful act by Anoniemesms or an employee or subordinate for which Anoniemesms is held liable, the liability of Anoniemesms shall be limited to a maximum amount of EUR 2500. The limitations and exclusions of liability on the part of Anoniemesms referred to in this paragraph cease to apply in the event and to the extent that the damage is due to wilful misconduct or gross negligence committed by Anoniemesms.	10.9	The Client guarantees that there is a legal basis for the processing of personal data as referred to in Article 6(1) of the GDPR.
8.7	The limitations and exclusions of liability on the part of Anoniemesms contained in the General Terms and Conditions also apply in favour of all (legal) persons, employees and/or subordinates used by Anoniemesms in the performance of the Agreement.	10.10	Anoniemesms processes the personal data on behalf of the Client and in accordance with the Client's written instructions. If, in the opinion of
8.8	The limitations and exclusions of liability on the part of Anoniemesms described in this article are without prejudice to the other limitations and exclusions of liability on the part of Anoniemesms included in these General Terms and Conditions.		
9.	Force majeure		

General Terms and Conditions of Anoniemesms

Anoniemesms, such an instruction constitutes an infringement of the GDPR or of other provisions of EU or national law relating to data protection, Anoniemesms shall immediately inform the Client thereof.

- 10.11 Anoniemesms is entitled to involve a third party in the performance of the Agreement. Anoniemesms uses other data processors for the performance of the Agreement. These data processors include a web hosting company. In the event of intended changes with regard to the addition or replacement of other data processors, the Client will be given the opportunity to object to these changes if the Agreement between the Parties is still in force.
- 10.12 To the extent possible, Anoniemesms will assist the Client at the latter's first request in fulfilling the latter's obligation to respond to requests for the exercise of the rights of the data subject, as set out in Chapter III of the GDPR. Anoniemesms is entitled to charge the Client for the work associated with the assistance at an hourly rate agreed in the Agreement, or, failing that, at a reasonable hourly rate.
- 10.13 The Client will comply independently with the requests for the exercise of the rights of the data subjects as set out in Chapter III of the GDPR, if the Client (also) has access to the Personal Data that are relevant to the requests.
- 10.14 Taking into account the nature of the processing and the information available to Anoniemesms, Anoniemesms will assist the Client, at the latter's first request, in enforcing compliance with the obligations arising from Articles 32 to 36 of the GDPR. Anoniemesms is entitled to charge the Client for the work associated with the assistance at an hourly rate agreed in the Agreement, or, failing that, at a reasonable hourly rate.
- 10.15 Anoniemesms shall take all appropriate technical and organisational measures, as referred to in Article 32 of the GDPR, to ensure a level of security appropriate to the risk.
- 10.16 If it has become apparent to Anoniemesms that there is an infringement on the part of Anoniemesms in connection with personal data as referred to in Article 33 and/or Article 34 of the GDPR (hereinafter referred to as: "Data Breach"), Anoniemesms will inform the Client thereof as quickly as possible. In this case, Anoniemesms undertakes, also at the Client's first request, to provide all possible assistance, to ensure the Client can inform the supervisory authority and, if necessary, the data subject or subjects in a timely manner.
- 10.17 Anoniemesms and those working under the authority of Anoniemesms are obliged to maintain the confidentiality of personal data, unless a statutory provision obliges Anoniemesms to disclose this information or the task of Anoniemesms results in the need to disclose this information.
- 10.18 With regard to any liability on the part of Anoniemesms, only the provisions of this article and the provisions as already agreed between the Parties in the Agreement and the General Terms and Conditions are applicable.
- 10.19 Anoniemesms is not liable for any fine imposed on the Client by the competent supervisory authority, for example, the Dutch Data Protection Authority, except in the case of intent or wilful recklessness on the part of Anoniemesms.
- 10.20 Any shortcomings of third parties involved in the performance of this Processor Agreement are not attributable to Anoniemesms.
- 10.21 The Client is permitted to verify compliance with the obligations for Anoniemesms pursuant to this Processing Agreement by means of an audit. The Client shall notify Anoniemesms at the earliest opportunity of its intention to carry out an audit or to have an audit carried out. The Client must indicate which (legal) person will carry out the audit in question, in what manner and within what period of time. Anoniemesms will be given a reasonable period of time to object to the performance of the proposed audit. If, prior to the performance of the audit, Anoniemesms expresses any objections to this, the Parties shall consult with each other as soon as possible on the objections raised by Anoniemesms, with the aim of resolving these objections. During this consultation, the Parties shall take each other's legitimate interests into account. Anoniemesms may not refuse cooperation with the audit on unreasonable grounds (e.g. by expressing unreasonable objections to the Client). All costs associated with the audit of Anoniemesms shall be borne by the Client.
- 10.22 Upon request, Anoniemesms will make the information demonstrating Anoniemesms' compliance with the obligations set out in Article 28 of the GDPR available to the Client.

11. Intellectual Property

- 11.1 The Client warrants that with the use of any Product, it will not infringe upon any intellectual property right of third parties. The Client is not permitted to remove or change any indication regarding intellectual property rights.
- 11.2 Anoniemesms is permitted to take technical measures to protect intellectual property rights. If Anoniemesms has protected the Product and/or intellectual property rights by means of technical measures, the Client will not be permitted to remove or evade such protection.

12. Complaints procedure

- 12.1 Anoniemesms shall make every effort to handle complaints from the Client to the best of its abilities. The Client can submit a complete and clearly described

complaint to Anoniemesms via the following link: <https://www.anonymoustext.com/contact/>. If reasonably possible, Anoniemesms will handle the complaint within five working days after receipt of the complaint, after which the Client will receive a substantive response at the earliest opportunity.

- 12.2 If the Client is a natural person acting for purposes which are outside his or her trade, business or profession, he or she also has the opportunity to submit complaints to the Disputes Committee via the European ODR Platform, which can be found on the following website: <https://ec.europa.eu/consumers/odr/>.
- 12.3 The complaints procedures referred to in this article shall be without prejudice to the Parties' rights to apply to the civil courts.

13. Final provisions

- 13.1 The legal relationship(s) between the Parties shall be governed by and construed in accordance with Dutch law. The applicability of the Vienna Sales Convention is excluded. The General Terms and Conditions have been written in Dutch and English. In case of divergences the Dutch version, as can be found on <https://www.anoniemesms.nl/voorwaarden/>, will prevail.
- 13.2 If the Client is a natural person acting for purposes which are outside his or her trade, business or profession, all disputes arising from the Agreement concluded with this Client will exclusively be submitted to the court in the district where this Client has his or her place of residence.
- 13.3 The previous paragraph does not apply in the event the Client acts in the exercise of a trade, business, craft or professional activity. All disputes arising from the Agreement concluded between Anoniemesms and a Client acting in the exercise of a trade, business, craft or professional activity shall be submitted exclusively to the District Court of the Central Netherlands in Utrecht.
- 13.4 The Client's rights under the Agreement cannot be transferred without written permission from Anoniemesms. This stipulation has effect under property law as referred to in section 3:83 (2) of the Dutch Civil Code.
- 13.5 If the Client is a natural person acting for purposes which are outside his or her trade, business or profession, this Client shall not be bound by stipulations and/or provisions which are voidable according to Book 6, Title 5, Section 3 of the Dutch Civil Code. Such voidable stipulations and/or provisions shall never form part of any agreement between Anoniemesms and a natural person acting for purposes which are outside his or her trade, business or profession.
- 13.6 Should any provision in the Agreement be void, voidable or non-binding, the Agreement will not be dissolved, but the Parties will convert the provision in question into a legally valid provision which has, to the extent possible, the same content and effect as the void, voidable or non-binding provision.