

General Terms and Conditions

1. General, Customers, Language

1. All offers, sales contracts, deliveries and services made on the basis of any orders by our customers (each, a „Customer“) through our website <http://www.baqend.com> (the „Website“) or our Service Offers shall be governed by these general terms and conditions (the „General Terms and Conditions“).
2. Our product or service offerings are directed to both Consumers and Business Customers (as defined below). For the purpose of these General Terms and Conditions, (i) a „Consumer“ is any individual entering into the contract for a purpose not related to his or her business, trade or self-employed professional activity (Sec. 13 of the German Civil Code), and (ii) a „Business Customer“ is an individual, company or partnership vested with legal capacity who enters into the relevant contract in the conduct of its business or its self-employed professional activity (Sec. 14 (1) of the German Civil Code).
3. Standard business conditions of the Customer do not apply, regardless of whether or not we expressly object to them in a particular case.
4. We shall inform the Customer of any amendments or additions to the terms no later than six weeks prior to the date of their becoming valid, in written form. Should the Customer not oppose the change within a period of two weeks as from receipt of the notification of change, in written form, the change shall become an integral part of the agreement. With every notification of change, we shall make Customer aware of the aforementioned period and the legal consequences of not taking advantage of the opposition option.
5. Our contracts with the Customer shall be made exclusively in the German or English language, in each case depending on whether the Customer makes the relevant purchase on our English language or on our German language website. Therefore, if the order is made on our German website, exclusively the German version of these General Terms and Conditions shall be relevant. If the order is made on our English website, exclusively the English version of these General Terms and Conditions shall be relevant.

2. Conclusion of Contract

1. The creation of or request for a Customer account on our Website by entering a username, email-address and password does not constitute an agreement between the Customer and us. Our offerings on our Website are non-binding. The Customer can submit a binding offer by clicking the “order now” button on our Website or sending a signed Service Order. We will confirm the offer by e-mail, by sending the countersigned Service Order or by dispatching or unlocking the product or service, which shall constitute an acceptance of the offer. The Customer can erase or correct his input on our Website at any time during the ordering process.
2. Any Customer who is a Consumer shall be entitled to revoke the offer and return the product in accordance with the cancellation and return policy as separately made available to the Customer on our website at [Instructions on withdrawal](#) during the ordering process.

3. Prices and Payment

1. Customers will be charged a monthly fee for the tariff booked. All fees are non-refundable and, unless otherwise stated, in Euro. All prices stated by us are including the applicable Value Added Tax.
2. Customer may select one the following methods of payment: credit card (Visa-, Mastercard and American Express) or SEPA direct debit.
 - If Customer chooses to make payments by credit card the monthly fee will be charged to a credit card that Customer gave us permission to charge. Customer will provide us with valid and current credit card information during the registration process. By accepting these General Terms & Conditions, Customer expressly authorize us to charge such credit card for the initial monthly subscription term and any renewal subscription term(s) thereafter.

Such charges shall be made monthly. Customer is responsible for providing complete and accurate billing and contact information to us and notifying us of any changes to such.

- If Customer chooses to make payments by SEPA direct debit, Customer shall complete a mandate form to authorize us to collect all payments arising from the contractual relationship by SEPA Core Direct Debit. This authorization also applies to new bank accounts specified by Customer. We shall give Customer advance notice of the collection by direct debit (so called pre-notification). This notice must be sent to Customer by email at least ten working day prior to debiting their account. Customer has to ensure that there are sufficient funds available in the bank account on the date the direct debit is due. Customer is obliged to reimburse us for any damage in connection with the Customer's bank refusing to process payments.
3. In Particular, our Services are charged on five key figures:
 - **Page Impressions (PIs)**. The number of views of a Customer's page triggered by a user action. A page is what is displayed by the user's browser. No user action and thus no PI are calls of content by automatic forwarding, automatic reload and calling of content via robots/spiders or similar.
 - **API Request**. Any HTTP/S request hitting the distributed REST API and every push notification sent to a client is counted as API Request. If an autonomic managed cache like the client cache, a forward proxy or the web cache of an internet provider answers, the request is not counted.
 - **Outbound Traffic**. Any network traffic leaving the datacenter. Inbound traffic is free of charge.
 - **Object storage space**. Customer database size. The maximum measured size is decisive.
 - **File storage space**. The average size of all files stored.
 4. The billing period in all tariffs is one calendar month. The first billing period commences with the conclusion of the agreement. Charges are non-refundable regardless of actual usage. Unused monthly quota expires at the end of the month. Customer can change in the current month at any time to a higher tariff.
 5. If Customer uses the automated shutdown limit (Limit) within his payment options, as it is set on 0 € before he consented to any payment at all. We will pause his Service after reaching the Limit. By activation of Limit or using the Service without adding payment details Customer actively instruct us to pause his App upon reaching the allowed cost. Pausing an App, effectively stops total availability and additional accumulation of cost until the beginning of next month
 6. Unless otherwise agreed, payment is due on the first day of the billing period, but not before Customer got an invoice.
 7. In the event that Customer defaults on payment, we reserve the right to block Customers use of our platform or Services.
 1. The Customer shall have no right of set-off or retention, except to the extent that the counterclaim has not been disputed by us or been determined by a final and binding decision.

4. Obligations of the Customer

1. Customer agrees to use our products and services in compliance with all applicable laws and any written guidelines and/or policies which we subsequently deliver to Customer in writing.
2. Customer is responsible for the security of his passwords and for any use of his account. If Customer becomes aware of any unauthorized use of his password or of his account, he agrees to notify us immediately. Customer hereby warrants that the information he has provided is accurate and complete. Customer undertakes not to submit false or data of third parties. In the event that the information of Customer changes, Customer undertakes to inform us of such changes without delay or, if possible, to modify the information in Customer's account accordingly.
3. Customer agrees not to use our products and services to:
 - publish, upload, post, email, transmit or otherwise make available any content or material that
 - a. Customer do not have the right to make available;
 - b. is unlawful, harmful, vulgar, obscene, hateful, or racially, ethnically or otherwise objectionable;

- c. infringes any Intellectual Property Rights of any party;
 - d. includes any unsolicited or unauthorized advertising, promotional materials, surveys, junk mail, spamming, chain letters, or any other form of solicitation, commercial or otherwise, or
 - e. contains a software virus, trojan horse, worm, cancelbot, corrupted file, or any other computer file or software designed to interrupt, destroy, damage or limit the functionality of any computer hardware, software or other property; defame, harass, abuse, stalk, threaten or violate the legal rights of others such as rights of privacy and publicity;
 - forge email headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the services;
 - download any file or content posted by another user that Customer know, or reasonably should know, should not be legally reproduced, displayed, performed and/or distributed in such manner;
 - interfere with or disrupt the Services, servers, or networks which support the Services, or disobey any requirements, procedures, policies or regulations of networks connected to the Services;
 - violate any applicable local, state, national or international law and any regulations;
 - harvest, collect, or store personal information or data of other Customers.
4. Customer shall be liable for ensuring that all statutory requirements, in particular those pertaining to trademark licences or copyrights, are observed when our platform is used as intended.
5. In the event of fault messages, unexpected behaviour or other problems, the Customer undertakes to inform us immediately where possible and no later than two working days after the incident.
6. In the case of a breach of any of the above-mentioned obligations, we are entitled to discontinue our Services with immediate effect or to block access to the information of the Customer. We expressly reserve the right to seek further damages. In case of serious or repeated violations, we are entitled to exercise the right to extraordinary termination.

5. Availability

1. We will use commercially reasonable efforts to make our Service available with a monthly uptime percentage from server to transfer point into the Internet of at least 99.5%, in each case during any monthly billing cycle (the "Service Commitment"). In the event we do not meet the Service Commitment, Customer will be eligible to receive a service credit. Service credits are calculated as a percentage of the total charges paid by Customer for the service for the monthly billing cycle. If the monthly uptime is less than 99.5% but equal to or greater than 98.00% Customer will receive a 10 % service credit percentage, if less than 98.00% 30 % service credit percentage. A service credit will be applicable and issued only if the credit amount for the applicable monthly billing cycle is greater than one Euro. Unless otherwise provided in the General Terms and Conditions, Customers sole and exclusive remedy for any unavailability, non-performance, or other failure by us to provide Services is the receipt of a service credit (if eligible) in accordance with the General Terms and Conditions.
2. We shall schedule regular maintenance windows to enhance the performance and stability of the Services even further and to ensure smooth operations of the Service. This period is used to carry out periodic, scheduled and unscheduled maintenance work on our system and our suppliers. Any limitations to the availability through such necessary work will be classified as monthly uptime rather than downtime. We shall announce any scheduled maintenance, which may affect or interrupt the Service of the Customer at least three working days in advance. As a general rule, scheduled maintenance will be typically carried out between 00:00 and 06:00. In exception cases, system maintenance can take place at any other time while ensuring that any disruption will be kept to a minimum.

6. Indemnity

Customer agrees to indemnify and hold us, our affiliates, subsidiaries, officers,

agents, partners, employees, and licensors harmless from any claim or demand, including reasonable attorney's fees, made by any third party due to or arising out of Customer's content or Customer's usage of the platform or our services, Customer's breach of this agreement or Customer's alleged violation of any other rights of a third party.

7. Intellectual Property Rights

1. Customer is granted a non-exclusive, territorially unrestricted, non-transferrable and non-sublicensable, revocable right of access through a generally available web browser or mobile device or application and use for our platform and services during applicable subscription term solely for Customer's use for purposes of developing apps and setting up and maintaining a cloud backend for Customer's apps.
2. Customer shall have no right to make copies of software, except for the purpose to use software pursuant to Section 8 (1) or for back-up purposes.
3. In no event shall we be required to make available the source code of software.
4. We claim no ownership or control over any content or application from Customer. Customer retains copyright and any other rights Customer already hold in the content and/or application. By submitting, posting or displaying content on or through our Service on the platform or Website Customer gives us a worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute such content for the sole purpose of enabling us to provide Customer with the Service. Furthermore, by creating an Application through use of our Services, you give us a worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute such application for the sole purpose of enabling us to provide Customer with the Service. Customer further represents and warrants to us that he has the right, title, and/or authority to grant such license to us.

8. Term of Agreement and Termination

1. Unless otherwise agreed, this agreement shall be concluded for an indefinite time.
2. Either party may terminate this agreement in writing (email suffices) with 15 days' prior notice to the end of the calendar month in its sole discretion and for any or no reason.
3. The right of either party to terminate the agreement for cause remains unaffected.
4. In the event of termination or expiration of this agreement, all the licenses granted to Customer hereunder will terminate. The definitions and rights, duties and obligations of the parties that by their nature continue and survive shall survive any termination or expiration of this agreement.
5. Customer is solely responsible for exporting his content and applications from our platform prior to termination of his account for any reason, provided that if we terminate Customer's account, we will provide Customer a reasonable opportunity to retrieve his Content and applications.

9. Liability

1. Claims for damages on the part of the Customer shall be excluded. Excluded from this are claims for damages of the Customer resulting from injury to life, body or health or breach of material contractual obligations (cardinal obligations) and liability for other damage based on an intentional or grossly negligent breach of duty on our part, our legal representatives or our vicarious agents. Material contractual obligations are obligations whose fulfilment is necessary to achieve the objective of the contract.
2. If material contractual obligations are breached, we shall only be liable for the foreseeable damage that is typical of contracts of this kind if said damage was caused by simple negligence, unless claims for damages on the part of the Customer based on injury to life, body or health are concerned.
3. The restrictions of subparagraphs 1 and 2 shall also apply for the benefit of our legal representatives and vicarious agents if claims are asserted directly against them.
4. The provisions of the German Product Liability Act shall remain unaffected by the provisions of this Section 9.

10. Data Protection

Our privacy policy explains how we treat and protect your personal information when you use our services. Please refer to <https://dashboard.baqend.com/privacy> for more information.

11. Applicable Law and Competent Courts

1. Any contracts entered into between us and the Customer shall be governed by the laws of the Federal Republic of Germany under exclusion of the UN Convention on the International Sale of Goods (CISG), without prejudice to any mandatory conflict of laws provisions. If the Customer is a Consumer and has his or her habitual residence in another country, the Customer shall, however, continue to have the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law applicable in the state of the Customer's habitual residence.
2. If the Customer is a corporation, limited liability company or commercial partnership or otherwise operates a commercial business (Kaufmann) within the meaning of Sec. 1 (1) of the German Commercial Code) or is a legal entity or special fund organized under public law, the courts in Hamburg shall have exclusive jurisdiction in respect of all disputes arising out of or in connection with the relevant contract. In all other cases, we or the Customer may file suit before any court of competent jurisdiction under applicable law.

August 2019.