



# Conditions for use

Most recently updated: 8 July 2011

## 1. General

- 1.1 An agreement (hereinafter also referred to as: 'NETQ Account') to provide and purchase the NetQuestionnaires Service(s) is an agreement between the client (hereinafter referred to as: 'the User') and NetQuestionnaires Nederland B.V. (hereinafter referred to as: 'NETQ') in Utrecht, the Netherlands. 'Service(s)' are understood to mean the applications of NETQ with which the User can prepare and launch surveys, the main aim of which, for the User, is to obtain feedback and new views.
- 1.2 NETQ has various forms of services and the User can choose from different types of NETQ Accounts. Unless expressly stated otherwise, these conditions apply to all NETQ Accounts.
- 1.3 The agreement is considered concluded as soon as the User creates a NETQ Account. These conditions, the [NETQ Privacy Policy](#) and the [NETQ Anti-Spam Policy](#) form an integral part of the agreement. By concluding the agreement and making use of the NETQ Service(s) and Applications, the User declares that he/it has read and understood these conditions, the NETQ Privacy Policy and the NETQ Anti-Spam Policy and that he/it agrees to their applicability and contents.

## 2. The services

- 2.1 NETQ will provide the following services to the User: provision and continued availability of NETQ Applications online from a server made available by NETQ, storage of the data generated and entered by the User, protection of the User's data, maintenance and management of NETQ Applications and provision of user support, to the extent applicable to the Account and as determined in these Conditions for use.
- 2.2 The User is responsible for the management, which includes checking the settings, and use of the NETQ Service(s) and Applications and the manner in which the results of the NETQ Service(s) and Applications are used. NETQ is not responsible for the purchase and/or proper functioning of the User's infrastructure or that of third parties. The User is entirely responsible for providing instructions to and use of the NETQ Service(s) and Applications by any third parties involved. NETQ is not responsible for checking the accuracy and completeness of the results generated through use of the NETQ Applications. The User is responsible for performing these checks. The User is furthermore responsible for complying with the NETQ Privacy Policy and the NETQ Anti-Spam Policy.
- 2.3 The User must inform NETQ of any circumstances which may affect the use, functioning and availability of NETQ Applications. The User must inform NETQ immediately if he/it suspects that third parties have unauthorized access to the Service(s) through the User's username and password.
- 2.4 Unless otherwise agreed in writing, NETQ will never be obliged to perform a data conversion.
- 2.5 NETQ does not guarantee that the NETQ Service(s) and Applications will be adapted promptly to amendments in relevant laws and regulations.

## 3. Intellectual property rights

- 3.1 The intellectual and other property rights to the NETQ Applications are fully vested in NETQ or its affiliated companies or companies from which NETQ acquired the right to exercise these rights and are protected by national and international laws and regulations governing intellectual property rights, including copyright. In these Conditions for use, 'NETQ Applications' are also understood to mean any documentation, database structure, user interface, screen layout, survey templates, style sheets and similar functions made available or accessible by NETQ. The fact that NETQ Service(s) and Applications are made available never constitutes transfer of one or more of these rights.
- 3.2 The intellectual and other property rights to the data (including respondents' details) of the User that are used by the User for the NETQ Services and Applications or generated by means of the NETQ Service(s) and Applications will remain fully vested in the User or the company from which the User acquired the right to make use of these data.

- 3.3 An exception to the provisions of Article 3.2 is the NETQ GROW Student Account. With regard to data and information generated by the User using the NETQ Service(s) and Applications under a NETQ GROW Student Account, it applies that the User gives NETQ, free of charge, a nonexclusive, perpetual and transferable right to use and allow the use of these data and this information, in anonymous form.
- 3.4 In accordance with and for the term of the Account NETQ grants the User, after payment of any applicable fees, the nonexclusive, nontransferable right to use the NETQ Service(s) and Applications in accordance with the applicable Account, these conditions, the NETQ Privacy Policy and the NETQ Anti-Spam Policy, solely for his/its own use.
- 3.5 In these Conditions for use, a 'User' is also understood to mean a natural person – employed or contracted by or otherwise working for the User – who has been appointed by the User to obtain access to the server on which the NETQ Service(s) and Applications are made available. When a natural person, not in the course of his business or profession, creates an Account, this person is considered a User.
- 3.6 The User is not permitted:
- To use the NETQ Service(s) and Applications for purposes other than those described in these conditions or to emulate the underlying software or to modify the NETQ Service(s) and Applications in any manner whatsoever;
  - To make the NETQ Service(s) and Applications available or accessible to a third party;
  - To modify or hack the NETQ Service(s) and Applications or to modify another website in order to claim that such website is entitled to the NETQ Service(s) and Applications;
  - To remove any marks, symbols and references relating to the intellectual property rights of the NETQ Service(s) and Applications;
  - To use the NETQ Service(s) and Applications contrary to these conditions, the NETQ Privacy Policy and the NETQ Anti-Spam Policy and/or in order to commit and/or encourage the committing of offences by the User, his/its employees or third parties.
- 3.7 NETQ reserves the right to check whether these conditions are properly complied with.
- 3.8 Without prejudice to NETQ's other rights, NETQ has the right to block the User's access to the NETQ Service(s) and Applications, without a warning or notice of default being required, as soon as, in the exclusive opinion of NETQ, the User acts contrary to these conditions or an integral part thereof. If NETQ blocks the User's access to the NETQ Service(s) and Applications, it will never be obliged to reimburse payments already made.
- 3.9 The User grants NETQ the right, if applicable, to use the User's company name and/or logo as a reference on NETQ's website. When the User ceases to use the NETQ Service(s) and Applications, NETQ will, should the User so demand, permanently remove the User's company name and/or logo from its website.

## 4. Processing of personal data

- 4.1 The User guarantees that all the requirements for the lawful processing of the personal data entered by the User in connection with the NETQ Service(s) and Applications have been complied with.
- 4.2 The User will be responsible for the data obtained and/or processed by the User by using the NETQ Service(s) and Applications. The User guarantees NETQ that the data are not unlawful, have not been obtained unlawfully and do not violate the rights of third parties. The User indemnifies NETQ against any claims by third parties, for whatever reason, in connection with the processing of these data or the performance of the agreement.
- 4.3 Pursuant to the laws governing the processing of personal data (such as the Personal Data Protection Act (*Wet Bescherming Persoonsgegevens*)) the User has obligations towards third parties, such as the obligation to provide information, and to allow inspection of, to correct and to remove personal data of parties concerned. The responsibility for compliance with these obligations lies solely with the User. The parties agree that, in so far as applicable, NETQ is the 'processor' within the meaning of the Personal Data Protection Act where the processing of personal data is concerned. To the extent that this is technically possible, NETQ will assist the User in complying with the User's obligations arising from the laws governing the processing of personal data. The costs involved in rendering this assistance are not included in the agreed prices and payments for the NETQ Service(s) and Applications and will be payable by the User.

## 5. Term and extension

### 5.1 NETQ Accounts have different terms:

- The term of the trial versions of a NETQ Account is 1 month, after which the Account is automatically converted into a NETQ FREE Account.
- The term of a NETQ FREE Account is always 1 month, which will automatically be extended by 1 month at a time after this period has expired. Without notice of termination therefore, this Account will continue indefinitely.
- The term of a NETQ GROW Student Account is 6 months and ends by operation of law after this period has expired. Following termination of a NETQ GROW Student Account, it will automatically be converted into a NETQ FREE Account.
- The term of a NETQ GROW Flex Account is 1 month. After expiry of the initial term, the Account will automatically be extended by 1 month at a time and on the applicable conditions (with due observance of the provisions of Article 8.1, however), unless notice of termination is given by one of the parties. Following termination of a NETQ GROW Flex Account, it will automatically be converted into a NETQ FREE Account.
- The term of the other NETQ GROW Accounts is 12 months. After expiry of the initial term, the Account will automatically be extended by 12 months at a time and on the applicable conditions (with due observance of the provisions of Article 8.1, however), unless notice of termination is given by one of the parties. Following termination of a NETQ GROW Account, it will automatically be converted into a NETQ FREE Account.

5.2 Notice of termination must be given taking effect from the end of the term of the Account through the Account. Early termination by the User is not possible; the provisions of Section 408(1) of Book 7 of the Dutch Civil Code (*Burgerlijk Wetboek, BW*) are excluded.

5.3 After an Account has been created, NETQ will give the User access to the NETQ Service(s) and Applications and the User will be entitled to exercise the rights arising from the Account, on the condition that any amounts due by the User are paid.

5.4 After termination of a NETQ GROW Account, it will automatically be converted into a NETQ FREE account and the User will possibly no longer have access to certain functions of the NETQ Service(s) and Applications.

5.5 During the term of a NETQ Account, the User can upgrade. When a User upgrades a NETQ Account, the difference between the payments due for both forms becomes immediately due and payable. A NETQ Account can only be downgraded with effect from the end of the term of a NETQ Account.

## 6. Execution of a NETQ Account

6.1 During the term of a NETQ Account, NETQ will endeavour to ensure that the NETQ Service(s) and Applications are available to the User 24 hours a day, seven days a week, with the proviso that NETQ does not provide any guarantee as regards availability. Availability may be interrupted for all kinds of foreseen and unforeseen reasons, including but not limited to preventive, adaptive and corrective maintenance, system management, protective measures, external reasons. If reasonably possible, NETQ will inform the User of such activities and resume its services as soon as possible.

6.2 NETQ may issue and install new versions of the NETQ Service(s) and Applications. NETQ is not obliged to maintain, modify or add any particular features or functions specifically for the User.

6.3 To the best of its ability, NETQ will remedy any defects in the NETQ Service(s) and Applications if the relevant defects have been reported to NETQ in sufficient detail, exclusively to be determined by NETQ. If applicable, NETQ may defer remedying the defects until a new version of the NETQ Service(s) and Applications is made available. NETQ does not guarantee that defects in parts of the NETQ Service(s) and Applications, which have not been developed by NETQ, will be remedied. NETQ has the right to provide temporary solutions or workarounds or problem-preventing restrictions. Defects can be reported in the manner described in Article 7. NETQ will never be responsible for any loss or corruption of data or for the repair of corrupted or lost data.

6.4 The User has access to the user forum referred to in Article 7.

6.5 A backup will be made of the database and the NETQ Service(s) and Applications. NETQ will save the most recent backups. NETQ will endeavour to ensure that the backup is handled and saved with care. NETQ will never be obliged to make backups available to individual Users.

- 6.6 The User must prepare and provide the information to be provided by the User in accordance with the conditions to be set by NETQ, in particular in accordance with the NETQ Privacy Policy and the NETQ Anti-Spam Policy. Transport and transmission of data and information, in whatever manner, will be at the User's risk and expense, also if this is carried out or provided by NETQ. The User guarantees that all the materials, information and instructions made available to NETQ by the User for the performance of the Service(s) are always correct and complete and have been obtained and are used lawfully.
- 6.7 The User is not permitted to make material available through the NETQ Service(s) and Applications which, according to NETQ, is offensive, unnecessarily hurtful, discriminating, inflammatory or otherwise contrary to general standards and values, these Conditions for use, statutory provisions or other applicable rules and regulations. This 'material' is also understood to mean pornographic or sexually explicit material, contents that incite violence or hate towards a group of persons, contents in which the personal details of minors are requested, contents promoting the performance of illegal activities or which constitute an illegal activity and contents that infringe intellectual property rights.
- 6.8 To the best of its ability, NETQ will endeavour to perform the Service(s) with due care. The Service(s) of NETQ will be performed based on an obligation to use best endeavours. NETQ does not guarantee that the NETQ Service(s) and Applications will function error-free or are suitable for specific purposes envisaged by the User. NETQ does not guarantee the correctness and/or completeness and/or promptness of the NETQ Service(s) and Applications. Use of the NETQ Service(s) and Applications will be at the User's risk and expense.
- 6.9 NETQ may make changes to the contents or scope of the NETQ Service(s) and Applications.
- 6.10 The server on which the NETQ Service(s) and Applications and the data provided and generated by the User are stored is in the Netherlands. The location of the server may, however, change and it cannot be excluded that it may be located outside the Netherlands or the EU in the future.
- 6.11 A condition for creating a NETQ GROW Student Account is that the User must have a valid student email address of a Dutch or Flemish university or a Dutch or Flemish institute of higher education. Only one NETQ GROW Student Account can be created per student email address.
- 6.12 In principle, an unlimited number of respondents will apply in the case of a NETQ GROW Unlimited Account. NETQ is nevertheless entitled to limit the number of respondents if NETQ is of the opinion that this is necessary in order to maintain its services, also for other Users. The User of a NETQ GROW Unlimited Account will in principle be entitled to a dynamic load of the server of NETQ of the average NETQ GROW Business User times a factor of twenty (20).

## 7. User support

- 7.1 Calls may be placed by the User on the [user forum of NETQ](#). The [Get Satisfaction conditions](#) also apply to this user forum. Users of the NETQ Service(s) and Applications can offer each other help and support through this user forum. Any questions, comments and/or complaints placed on the user forum will not by definition be dealt with by NETQ. NETQ will never be obliged to respond to calls placed on the user forum.
- 7.2 Users with a NETQ GROW Business or a NETQ GROW Ultimate Account can furthermore also submit questions and comments through the help function in the NETQ Account. Users can at all times use this help function to place questions regarding the use or manner of use of the NETQ Service(s) and Applications and regarding alleged defects. Questions and reports will be dealt with on working days (not including public holidays) between 9 a.m. and 5 p.m. CET. NETQ will respond to the question and/or report as soon as possible. NETQ aims to respond within 2 hours during the above-mentioned opening hours. If NETQ has to transfer a call to another party (e.g. a supplier of NETQ), NETQ will inform the User of the progress and ensure that the supplier remedies the alleged defect as soon as possible.
- 7.3 In order to ensure that NETQ can perform its services to the best of its ability, every report made by the User must comply with the following conditions: a) the report must be made by the User, b) all the instructions given by NETQ with regard to the use of the NETQ Service(s) and Applications must be complied with and c) the report must contain a sufficiently clear description of the alleged defect and/or the question.

## **8. Prices and method of payment**

- 8.1 The rates payable for a NETQ Account are determined on a regular basis by NETQ and depend on the type of NETQ Account. In the event that the Account is extended, the price will be determined by the rates applicable at NETQ at the time.
- 8.2 The payments due for a NETQ Account (initial or extended) are payable by direct debit. The NETQ GROW Student Account, NETQ FREE Account and the trial versions of NETQ Accounts will be made available free of charge. A monthly fee is payable for the NETQ GROW Flex Account and an annual fee for the other NETQ Accounts.
- 8.3 NETQ will invoice the User electronically via the User's NETQ Account. The User agrees to this and will ensure that the contact and payment details given are always correct and complete.
- 8.4 The User authorizes NETQ, until further notice, to debit to the User's bank account the amount payable for making the NETQ Account available if the NETQ Account is extended or upgraded. NETQ will, for this purpose, make use of the information provided by the IDEAL or Credit Card or Paypal payment.
- 8.5 Payment must be made by direct debit. The fees will be due immediately after a NETQ Account has been created and will be due and payable no later than 1 month after the agreement was concluded. Payment terms are final. If a payment term is exceeded the User will immediately be in default without further notice of default being required. If payment is not made within the specified time, extrajudicial collection costs equivalent to 15% of the principal will be payable by the User in addition to the statutory interest (in accordance with Section 119(a) or 119 of Book 6 of the Dutch Civil Code for natural persons not acting in the course of their business or profession). The User will also be liable for all the other costs incurred by NETQ at law and otherwise, in particular lawyer's fees.
- 8.6 If payment is not made within the specified time, the full amount payable for the whole term of the Account will become immediately due and payable.
- 8.7 All prices and rates stated are exclusive of VAT and other applicable taxes and levies. The amounts payable by the User must, if applicable, be increased by these taxes and levies. This also depends on any reverse charging of VAT.

## **9. Liability and indemnification**

- 9.1 Except in the event of wilful misconduct or gross negligence, NETQ will not accept any liability for damage or loss as a result of or in connection with the use or inability to make use of all or part of the NETQ Service(s) and Applications or as a result of or in connection with the performance or incorrect or late performance of the NETQ Service(s) and Applications. Without prejudice to the above, NETQ's liability towards the User will at all times be limited to the amount of the payment made by the User to NETQ in respect of the Account for the term in which the damage or loss was suffered.
- 9.2 The User indemnifies NETQ against any claims by third parties, including its employees, in connection with or arising from the use, misuse or inability to use the NETQ Service(s) and Applications, including but not limited to an alleged infringement of intellectual property rights and obligations in accordance with the Personal Data Protection Act.

## **10. Exclusion of the right of withdrawal**

- 10.1 If the User is a natural person, not acting in the course of his business or profession, the option to terminate as referred to in Section 46(d) of Book 7 of the Dutch Civil Code does not apply. Due to their nature, the NETQ Service(s) and Applications cannot, as referred to in Section 46(d) subsection 4b(3) of Book 7 of the Dutch Civil Code, be returned.
- 10.2 Article 6(3) of the Directive on Distance Selling (97/7/EG) in this respect also provides that a consumer cannot exercise the right of withdrawal in respect of agreements concerning the delivery of services, the performance of which was commenced with the consumer's consent prior to the end of the right of withdrawal period of seven working days.

## **11. Transfer of rights**

- 11.1 NETQ is not permitted to transfer its rights under this agreement to third parties.

- 11.2 The User is only permitted to transfer rights under this agreement to third parties after receipt of written permission to do so by NETQ. NETQ has the right to withhold its permission, without stating any reasons.

## 12. Other provisions

- 12.1 If NETQ measures its service level and availability, the availability will be measured excluding the putting out of operation on account of maintenance, of which prior notice is given, and excluding circumstances which are outside the sphere of influence of NETQ and with due observance of the service as a whole during the term of the agreement. Subject to proof to the contrary, the availability and service level measured by NETQ will constitute conclusive proof.
- 12.2 The conditions stated here and the ensuing rights and obligations are governed by Dutch law and must be interpreted according to Dutch law. Any disputes arising from or relating to the NETQ Service(s) and Applications and these conditions or any part thereof will be submitted to arbitration before the Foundation for the Settlement of Automation Disputes (*Stichting Geschillenoplossing Automatisering, SGOA*) in Rijswijk, the Netherlands, and dealt with in accordance with the applicable regulations of the Foundation.
- 12.3 If one of the provisions of these conditions is declared null and void or nullified, this will not affect the legal validity of the other provisions.
- 12.4 NETQ may from time to time alter these conditions, the NETQ Privacy Policy and the NETQ Anti-Spam Policy and these altered conditions will then apply if they have been published on the website of NETQ, <http://www.netq-enquete.nl>. If the User is not in agreement with these altered conditions, the User may terminate the Account as described in Article 5. The applicable conditions will be published on the website of NETQ, <http://www.netq-enquete.nl> and can be downloaded and printed by the User.

## 13. Provisions with continuous effect

- 13.1 After notice of termination or termination of the agreement, the provisions of Articles 3.1, 3.2, 3.3, 9.1, 9.2, 11.1, 12.2 and 12.3 will remain in full force.

## 14. Contact details

- 14.1 NetQuestionnaires Nederland B.V.
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| Business address:           | Ondiep-Zuidzijde 6, 3551 BW Utrecht, the Netherlands                       |
| Correspondence address:     | PO Box 10058, 3505 AB Utrecht, the Netherlands                             |
| Telephone:                  | +31 (0)30-261 81 00  |
| Email:                      | <a href="mailto:info@netquestionnaires.com">info@netquestionnaires.com</a> |
| Chamber of Commerce number: | 30204020   |
| VAT number:                 | NL 814467994B01  |
| Website:                    | <a href="http://www.netq-enquete.nl">www.netq-enquete.nl</a>               |