



## **Terms and Conditions**

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## 1. General contact information

### **Ubivox ApS**

Søtorvet 5, 1th

1371 Copenhagen K,

Denmark.

Telephone: +45 7070 1337

Registration (CVR) No.: 27379494

E-mail: [support@ubivox.com](mailto:support@ubivox.com)

These Terms and Conditions apply to Ubivox's service delivery.

The customer is required to comply with these Terms and Conditions, in every respect.

## 2. Definitions

- **The Customer** is the company that creates an account in the System.
- **The System** is Ubivox's mail system, which is available at anytime for software implementation.
- **The website is** [www.ubivox.com](http://www.ubivox.com).
- **Order date** is the date when the Customer creates an account in the system.
- **Party and/or Parties** is Ubivox and/or the Customer collectively and individually, according to the context.
- **Recipients** are the Internet users who have received via the System, or that are added for later, data/e-mails, sent according to the Customer's instructions.
- **Mailing List** is a collection of Recipients and mailings.
- **Administrator** is one of the Customer's appointed administrator users, who handle the administration of the system, including creation of users. The Administrator is also the person who has ultimate responsibility for account maintenance.
- **Users** are persons created by Administrators, and who have access to the system.
- **Mailing** is the final mailing of e-mails to the Customer's Recipients on the selected Mailing List.
- **Sample Mailing** is a mailing of e-mails to a limited number of Recipients on a Mailing List that is not included in calculating the total Consumption, and is not subject to statistical calculation.
- **The Account** is the Customer's collective data in the System and access to it.
- **Customer's Data** is data fed into the system by importing or uploading.
- **Subscription** is the service that the Customer pays for access to the System.
- **Additional Service** is a service that does not fall under the Account Subscription, and therefore must be charged according to a separate specific agreement.
- **Payment Cards** are the credit or debit card that the Customer will use for payment of the account invoices.
- **Consumption** is the data traffic created by the transfer of e-mails, photos, video, documents, audio clips, etc., which is calculated and invoiced to the Customer.
- **Due date** is shown on the individual invoice.

### **3. Registration**

The Customer is obliged to provide complete and accurate information about their company and contact people when creating an account in the System. The information will only be used in connection with administering the System and ensuring the System's functionality. The Customer is obliged to keep the information updated.

The Customer is responsible for ensuring secure and confidential safe-keeping of the username and password to the system. If the Customer becomes aware that the username and/or password is misused, or unauthorized use of Customer's account occurs, the Customer shall immediately make Ubivox aware in writing and with the necessary information concerning the abuse.

If Ubivox has reasonable suspicion of abuse of a username and/or password, Ubivox will inform the Customer and take the necessary measures to prevent further abuse.

### **4. Subscription and consumption**

The Customer pays a monthly subscription, depending on the type of account, to access the System. The subscription is automatically invoiced in advance, and Mailings exceeding the number of e-mails that are included for the Account, are invoiced in arrears. In the event of special consumption patterns, Ubivox reserves the right to settle more frequently than monthly.

Regardless of whether or not the email reaches the recipient or is rejected by the recipient system (bounces) or a third party system on the way consumption will still be recorded.

Invoicing is from the time the Customer orders their Subscription, even if there are subsequent changes/corrections/additions to the Recipients, or other changes to the subscription service, which must be corrected after the order date.

The invoice is sent as a PDF attached to an email to the person responsible for the Account or to the finance contact.

If the invoice is not paid before the Due date Ubivox retains the right to shut down the entire account or parts thereof including HTML forms, media, links, login, export etc. Ubivox will recover any outstanding payments for subscription and consumption that have not been settled. The reminder procedure imposes penalty fees under applicable law.

If a closed Account is reopened, Ubivox reserves the right to charge a fee of DKK 250.

All prices exclude VAT. Ubivox is entitled to regularly amend price rates.

## **5. Trial period**

Ubivox offers a trial period without charge. During the trial period the Account is limited to 50 Recipients per Mailing and 100 Recipients in total on the Account. During the trial period, Ubivox regularly contact the Customer with instructions for using the system, as well as information about the purchase process.

Ubivox reserves the right to close the Account during the trial period after notifying the Client.

## **6. Customer obligations**

The Customer is responsible for ensuring that the Customer's use of the system complies, in all respects, with applicable laws in the country where the customer operates. The Customer must also comply with Ubivox's Anti-spam Policy, refer to Appendix 1.

The Customer bears full responsibility to Recipients and third parties, for any claims arising from the Customer's use of Ubivox's products and services, and for Ubivox's sending data to Recipients as instructed by the Customer, and with contents formulated or approved by the Customer. If a claim is made directly against Ubivox in connection with the sending of data on behalf of the Customer via the System, the Customer shall hold Ubivox indemnified hereafter.

The Customer is also responsible to always provide correct and valid contact information.

It is the Customer's own responsibility to ensure that the Customer's IT systems/databases can properly integrate with Ubivox's services, as well as maintaining the Customer's communication lines for use in maintaining Ubivox's services.

The Customer guarantee Ubivox that the content and materials supplied, including from third parties, will not infringe third party rights, including patents or copyrights. The Customer gives and guarantees that third parties give, Ubivox a permanent, non-exclusive right to use such content and materials, also after the agreement with the Customer may have be terminated. In particular the Customer gives and guarantees that third parties give Ubivox the right to make all modifications and generate new works, resulting from the production of graphic elements, imagery and other processes in connection with the Service and related application.

The Customer shall not hack, or attempt to do so, into the System, the System's underlying database or other system resources of Ubivox or its suppliers.

Resale of Ubivox may only happen by entering into a partnership agreement.

## **7. About Ubivox and spam**

The customer is obliged to comply with Ubivox's Anti-spam Policy, refer to Appendix 1.

All Recipients must have given the Customer consent to receive data sent via the System. This can be done using the System's facilities for this purpose, or by the Customer guaranteeing Ubivox that the Recipient has given consent. The Customer must, upon request from Ubivox or a Recipient, be able to indicate when and how a Recipient has given consent.

In addition, the Customer agrees and guarantees that the material sent via the system, does not contain and/or more than the Recipient has consented to receive.

Ubivox reserves the right to investigate any complaint from a Recipient, with the resources necessary for such purposes, including examining the Customer's data. If there are many complaints about the same Customer, Ubivox reserves the right to charge DKK 212.50, excluding VAT, for each 15 minutes commenced.

In addition, the Customer undertakes to use every product or any service provided by Ubivox, including the System, in accordance with the guidelines Ubivox provide from time to time. Ubivox reserves the right to continually update these guidelines and upload them to Ubivox's website.

Ubivox reserves the right to close a Customer's account without prior written notice, if literature of a general offensive nature is distributed. Ubivox take the final decision as to whether the material can be characterized as being of an offensive nature.

## **8. Consumption of data traffic**

Consumption information is continually collected for all Accounts. Consumption covers sent emails and downloaded images, streaming video, viewing of slide shows, links to documents on Ubivox's servers, etc., everything included and nothing omitted.

To ensure fair use for all Accounts Ubivox reserves the right to charge DKK 3.50 for each gigabyte (GB) commenced above 500 GB per month.

## **9. Ubivox's rights and obligations**

Ubivox provides support in connection for the use of the System, taking into account the existing personnel resources at Ubivox. Support is via e-mail and available between 10:00 and 17:00 Danish local time (CET) on weekdays, unless otherwise agreed.

Ubivox is entitled, without prior written notice, to update the System with new versions.

These updates can, to some extent, lead to changes in design, layout, functionality, etc., without the Customer making their remedy for breach of contract against Ubivox in this connection.

Ubivox keeps confidential customer information in a responsible manner, and will not disclose such information without obtaining the Customer's express written consent. Confidential customer information is considered as information identifying the Customer, persons/companies with a relationship to the Customer, and certain Recipients of data sent via the System.

To ensure the System's functionality, Ubivox has access to Customer data in the System. Access to Customer's data will only be done if necessary, and then only by authorized Ubivox employees.

Ubivox's servers are constantly monitored and maintained by a reputable hosting provider. The System is locked inside a fire and theft-proof room. Encrypted backups are made daily of all information on the System. This backup is stored for at least six months at several sites.

If the Customer loses data as a result of their own actions or circumstances, Ubivox can sometimes be helpful in obtaining data from a backup. The process is time consuming, and therefore first a quote is given for the recovery of data, which the Customer must accept in writing before work can commence.

In the event of a system crash, Ubivox will urgently commence restoration of the system.

Ubivox cannot be held liable for losses, arising directly or indirectly, attributable to a system crash at Ubivox or its hosting provider, unless it is due to serious and/or intentional neglect from Ubivox's side.

Ubivox acknowledges that data collected by the System on behalf of the Customer, may not be used by Ubivox for unauthorized purposes, and that the rights to this data belongs to the Customer. Ubivox reserves the right to analyze the Customer's use of the System in regards to making improvements.

Ubivox reserves the right to analyze all data in the System with the aim of providing general statistics, based on these data. These statistics will never be traceable to an individual customer, or to personally identifiable data held by the Customer. If Ubivox produces public, global statistics for the System, based on Customer data, Ubivox is obliged to make it available to the Customer free of charge.

In relation to Law on the handling of personal data, the Customer is "information systems manager" and Ubivox is the "information systems processor". It is the Customer's responsibility that the Law on the handling of personal data is complied with in connection with service, and sharing information or reports, etc.

## **10. Security and operation**

Ubivox strives to ensure that the System is run as safely and reliably as possible in accordance with good IT practice, but does not guarantee uptime.

Ubivox can close access to the System, entirely or partly, for security or operational reasons. Therefore, in the event of such service interruptions, and where possible, adequate notice shall be given to the Customer. Ubivox strives, where possible, to ensure that such interruptions occur between 20:00 and 06:00 CET.

## **11. Intellectual property rights**

Ubivox has, in relation to the Customer, all rights to the System and its individual components, including the name, logo, programming, databases, catalogues, design, graphics and texts of any Ubivox products, models, services, software, concepts and brand, and the server (or the third party that Ubivox may engage to run the server), and the Internet domain where the service is conducted, unless there is material that originally belonged to the Customer.

The Customer has all rights to the Customer's own data.

The Customer may not, without the written agreement from Ubivox, use material that forms part of the System and belongs to Ubivox. Customer acquires full and unlimited right to use graphics and text for newsletters, etc., which may have been developed separately for the Customer and which the Customer has paid for separately as an Additional Service.

The Customer has sole rights to use the service described above.

The Customer acknowledges that Ubivox have the right to use the general knowledge acquired in the development of specific services, for use in developing or adapting the System for third parties for any form of application, including, but not limited to, digital reproduction, distribution via the Internet, etc.

## **12. Compensation**

Ubivox is not responsible for indirect losses and consequential damages, including loss of data, goodwill, loss of profits, costs, or for any damage to the Customer's computer or other IT systems as a result of the Customer's use of the System. Ubivox's total liability is limited to the amount the Customer has paid to Ubivox during a year period, prior to the claim arising.

However, whatever the amount of the Customer's payment, the total liability is set at a maximum of DKK 10,000.

No responsibility is taken for data security during transmission over the Internet.

Regardless of the provisions just mentioned, also see point 16, the right to compensation for any documented losses still applies.

### **13. Force Majeure**

The Parties are in no way responsible if compliance with or fulfilment of these conditions is not possible due to Force Majeure. Force Majeure refers to hacking, strikes, lockouts, riots, acts of war, terrorism, disease epidemics, natural disasters and fires, and general events that are beyond the Parties control. A relationship with a subcontractor shall only be considered Force Majeure if the subcontractor is hindered by an obstacle covered by the first point, and which Ubivox could not have avoided or overcome.

Force Majeure can only be claimed if the claimant Party has given written notice to the other Party no later than 5 working days after the Force Majeure occurred.

In the event of a Force Majeure claim being delayed, it is only valid for the number of working days that the Force Majeure situation lasted.

### **14. Amendment of Terms and Conditions**

The current applicable Terms and Conditions for Ubivox can be changed with written notice of 30 days. The Customer is notified either via e-mail to the e-mail address the Customer has registered in the contact information at the account's creation, or at the first login to the system after the Terms and Conditions has been changed. Changes of a purely beneficial nature can be implemented without prior notice.

### **15. Commencement, duration and notice**

The Account is active until notice is given by either Party pursuant to this point 15, or it is terminated, see point 16.

The account must be terminated using the built-in function in the System in order to verify identity and privileges. Notice from the Customer must be within seven working days before the next invoice, otherwise an extra month's payment is incurred.

Notice from Ubivox to the Customer has to be given in writing with 3 months warning.

## **16. Termination and breach**

The Account Agreement can be terminated immediately if there is a material breach by the other Party, and it is not discontinued within a period of 5 working days after submission of a written demand thereof. In the event of a breach, Ubivox reserves the right to block access to the Account, when ascertaining the breach and to minimize the scale of the breach, and to ensure the gathering of evidence.

It is considered, inter alia, a material breach if:

- The Customer is using the System significantly contrary to its purpose,
- The Customer wrongfully copies trademarks, warranty certificates, content or other things belonging Ubivox or other companies,
- The Customer infringes upon the obligations specified in the Terms and Conditions, or
- The Customer begins insolvency proceedings or a worsening economic conditions occur for the Customer, which brings the payment obligation into danger, or
- The Customer does not comply with Ubivox's Anti-spam Policy.

In the event of termination due to a material breach on the Customer's part, there is no refund of any prepaid amounts. Any unsettled payments for Consumption are calculated and invoiced at the time of termination.

The requirement to give formal notice of 5 working days to remedy a breach also applies if a Party wishes to raise other claims of breach, other than cancellation of the purchase, in that the claim of breach is void if the defaulting Party remedies the breach within the deadline of 5 working days.

## **17. General provisions**

Communication: Legally valid communication to Ubivox should be sent as e-mail, or physically as a letter to the addresses stated in point 1.

The Customer may not transfer or otherwise assign their rights after the purchase without prior written consent. Ubivox is entitled to assign its rights to third parties, both total and partial.

Law and Forum Selection: Any litigation between the Parties concerning the Subscription Agreement must be brought before the City Court of Copenhagen in the first instance. Danish substantive law is applicable to the Account Agreement.