

# Wetransfer B.V. Standard Terms & Conditions for Advertising

Version: April 30, 2019. Download PDF

## Clause 1 - Definitions

1.1 In these terms and conditions, the following capitalized terms will have the meanings set forth below:

Advertisement	A communication for promoting the sale of products or services, constituting of such text, graphics, images, content or any other marketing or promotional material.
Advertiser	The party described on the IO to which this document relates (including if such party is acting as an agent for a third party).
Agreement	The agreement entered into between WeTransfer and Advertiser and any subsequent agreements with respect to the displaying of Advertisements as specified in the corresponding IO or Order Confirmation and these Terms & Conditions.
Clause	A clause of these Terms & Conditions.
Confidential Information	A Party's non-public technical or business information that it designates as being confidential or which by its nature or the circumstances surrounding its disclosure reasonably ought to be treated as confidential, including without limitation: (a) financial statements and other financial information; (b) reporting information; (c) User Data and (d) the terms of the Agreement.
Effective Date	The date on which the Agreement becomes effective.
Fees	The Fees for the Services specified in the IO or the Order Confirmation.
IO	The insertion order that specifies the details of the Advertisement, the duration of the Advertisement will

be shown by WeTransfer and the price that will be paid for the Advertisement.

Intellectual Property Rights	All intellectual and industrial property rights including registered trade and service marks, patents, utility models, registered designs, unregistered trade and service marks, trade and business names (including rights in any get-up or trade dress), domain names, rights in domain names, copyrights, database rights, unregistered design rights and all other similar proprietary rights in every case which may subsist in any part of the world, including any registration, applications and any rights to make applications for registration of any such rights.
Notice and Take Down Policy	WeTransfer's notice and takedown policy, available for download at <a href="https://wetransfer.com/legal/takedown">https://wetransfer.com/legal/takedown</a>
Order Confirmation	An order confirmation sent by WeTransfer to the Advertiser, specifying the details of the Advertisement, the duration of the Advertisement will be shown by WeTransfer and the price that will be paid for the Advertisement.
Parties	WeTransfer and Advertiser are jointly referred to as " <b>Parties</b> " and each a " <b>Party</b> ".
Services	The services provided by WeTransfer pursuant to an IO or Order Confirmation.
Term	The period starting on the Effective Date and ending on the date of termination of an Agreement.
Terms & Conditions	The present terms and conditions.
Websites	<a href="https://wetransfer.com">https://wetransfer.com</a> and any and all other websites owned and/or operated by WeTransfer, as the case may be.
Wallpaper	Display of the Advertisement as background on <a href="https://wetransfer.com">https://wetransfer.com</a>
WeTransfer	Wetransfer B.V., a private company with limited liability ( <i>besloten vennootschap met beperkte aansprakelijkheid</i> ), incorporated under the laws of the

Netherlands, having its corporate seat in Amsterdam, the Netherlands, and its registered address at Willem Fenengastraat 19, 1096 BL, Amsterdam, the Netherlands, chamber of commerce no. 34380998, VAT no. NL822010690B01. WeTransfer is the owner of *inter alia* the trade name and the trademark 'WeTransfer' and domain name wetransfer.com.

## Clause 2 – Applicability

- 2.1 These Terms & Conditions govern the legal relationship between the Advertiser and WeTransfer as described on the IO or the Order Confirmation.
- 2.2 These Terms & Conditions apply to all requests, offers and agreements relating to advertising in which WeTransfer is a party or becomes a party.
- 2.3 Any amendment, supplement or modification of or to any provision of these Terms & Conditions and any waiver of any provision hereof at the request of the Advertiser, shall be effective only if made or given in writing on the IO, Order Confirmation or other document which shall be signed by both Parties. In the event of a conflict between the Terms & Conditions pursuant to the IO or the Order Confirmation and the present Terms & Conditions, the IO or the Order Confirmation shall prevail.
- 2.4 The applicability to the Agreement of Advertiser's general or special terms and conditions, however named, is hereby expressly rejected.
- 2.5 WeTransfer reserves the right to wholly or partially amend the provisions of these Terms & Conditions. The Advertiser will be informed of any changes prior to their introduction. All changes made to the Terms & Conditions will be applicable to all existing agreements between the Advertiser and WeTransfer. The latest version of the Terms & Conditions will be displayed on the Websites.

## Clause 3 – Services

- 3.1 WeTransfer shall make the Advertisement of the Advertiser available as a Wallpaper or as agreed otherwise, according to the conditions as specified in the corresponding IO.
- 3.2 The Services are provided by WeTransfer 'as is', with all faults. To the extent permitted by law, WeTransfer and its employees and third parties hereby disclaim all warranties, whether express or implied, including without limitation warranties that the Services are free of defects, merchantable, fit for a particular purpose, and non-infringing. The sole remedy that the Advertiser has in the event that a Service

is defective, in the broadest sense of the word, is a restitution of any Fee paid for the particular defective Service.

- 3.3 The starting date of the Advertisement as set out in the IO, shall serve as a target date. WeTransfer reserves the right, in case of any sudden, unexpected circumstances of technical nature, to postpone such date. In that event WeTransfer will be obliged to compensate the Advertiser by displaying the Advertisement for the agreed period as specified in the IO at the earliest date possible. In case it is not possible for WeTransfer to postpone the display of the Advertisement, WeTransfer will retribute the Fees for the Advertisement, if they have already been paid by the Advertiser, to the Advertiser.
- 3.4 The Advertiser shall submit the Advertisement to WeTransfer at least five working days before the agreed starting date in the IO or Order Confirmation.
- 3.5 In order to correctly show the Advertisement as a Wallpaper on different screens and devices or as otherwise agreed, WeTransfer may make the necessary technical adjustments to the Advertisement as delivered by the Advertiser, such as scaling or cropping. The Advertiser declares that it has read and understood and consents to the necessary adjustments that WeTransfer may make to the Advertisement such as those for producing the Wallpaper as explained on <https://www.wetransfer.com/advertise/guidelines>. The Advertiser waives any claims for damages in connection with the use, reuse or adaptation of any Advertisements or Wallpapers or any part thereof.
- 3.6 The Advertiser will deliver the Advertisement to WeTransfer according to the specifications, including technical and design requirements, as described in Clause 4 and on <https://www.wetransfer.com/advertise/requirements>.
- 3.7 The Advertiser may at any time and for any reason withdraw the Wallpaper. However, the Advertiser shall remain fully obliged to fulfil all payment obligations in relation thereto. WeTransfer shall not be held to retribute any Fees paid by the Advertiser in relation to a Wallpaper or other form of Advertisement that is wholly or partly cancelled by the Advertiser.

#### Clause 4 - Content of the Advertisement

- 4.1 Advertisements may not contain, advertise, link or otherwise relate to content that, at the discretion of WeTransfer:

is obscene, defamatory, libelous, slanderous, profane, indecent, discriminating or unlawful and/or is violent, sexual or abusive in nature so as to be reasonably likely to cause offence to any material group of people;

infringes or misappropriates third party Intellectual Property Rights and/or privacy rights or any other kind of rights;  
constitutes “hate speech”, whether directed at an individual or a group, and whether based upon the race, sex, creed, national origin, religious affiliation, sexual orientation, language or another characteristic of such individual or group;  
is factually inaccurate, misleading, deceptive;  
damages the reputation of WeTransfer or any of its brands or is likely to bring WeTransfer or any of its affiliates into disrepute;  
causes WeTransfer and its users to be exposed to any malware (such as without limitation computer viruses, worms, Trojan horses or any similar or other damaging components),  
and/or  
infringes the [Notice and Take Down Policy](#).

4.2 WeTransfer reserves the right to refuse or remove an Advertisement, including, but not limited to, situations where that the Advertisement, at the discretion of WeTransfer, would be in violation of:

any applicable law or regulation;  
any prior agreements of WeTransfer;  
Clause 4.1;

4.3 The Advertiser agrees to waive its right to claim compensation/damages in the event WeTransfer refuses or removes an Advertisement or Wallpaper, such as, but not limited to, on the grounds mentioned in Clause 3.3 and/or Clause 3.4.

## Clause 5 – Intellectual Property Rights

5.1 For the Term of the Agreement, the Advertiser hereby grants to WeTransfer such non-transferrable, non-exclusive, royalty-free license to use and publish the Advertisement as required in order to enable WeTransfer to provide the Services.

5.2 With respect to the other Party’s Intellectual Property Rights, a Party shall only acquire such rights of use and powers as are explicitly granted in the Agreement.

5.3 Parties will not be permitted to remove from or change any designation to the other Party’s Intellectual Property Rights.

5.4 Parties will be permitted to take technical measures to protect their Intellectual Property Rights.

## Clause 6 – Fees

6.1 Unless otherwise agreed, within ten (10) business days after the end of each month, WeTransfer shall charge the Advertiser the Fees for the Services provided in the preceding month, payable in Euros.

6.2 In the event that the amount of Fees will be established on the basis of a Party's reports, the other Party shall have the opportunity to audit the reporting Party's records regarding all relevant data and records for the establishment of the Fees. Such audit shall be conducted by an internationally recognized certified accounting firm hired on a non-contingency fee basis, furnished at the requesting Party's sole expense, upon not less than fifteen (15) business days' advance notice and not more frequently than once per year during the Term, and once after expiration or termination of the Term, at a mutually agreeable date and time. The accountant shall be granted access during normal business hours to the reporting Party's records regarding all Fees payable hereunder. The information contained in such records is deemed Confidential Information as defined in these Terms & Conditions. Over- and underpayment of Fees in the amount of 5 % or more will be repaid to the other Party within thirty (30) days of the agreed final report of such audit. In case of over- or underpayment of more than 20 %, the Party that is due to pay or repay such balance, shall bear the costs of the audit.

## Clause 7 – Payment

- 7.1 Invoices from WeTransfer must be paid within forty-five (45) days of the date thereof, without any discount, reduction, setoff, counterclaim or compensation, and free and clear of any deduction for or on account of any tax, to the bank account designated by WeTransfer.
- 7.2 All payments to WeTransfer will be first allocated to collection costs, then to interest and finally to the oldest unpaid invoice(s) with regard to any Agreement.
- 7.3 In case Advertiser is overdue with any amount payable under any Agreement, WeTransfer shall, without any notice of default being required, be entitled to charge interest of 1 % per month over the outstanding amount until payment thereof in full and furthermore charge collection costs of 15 % of the outstanding amount, at a minimum of € 250.-.
- 7.4 To its exclusive discretion, WeTransfer may require Advertiser to pay any fees prior to providing the respective Services or to provide comparable security of payment failing which WeTransfer may suspend the Services or terminate the Agreement in accordance with Clause 11.1 hereof.

## Clause 8 – Notice and Take Down Policy

- 8.1 In the event that WeTransfer is notified of an (alleged) unlawful Advertisement or Wallpaper, WeTransfer will follow the procedure described in the [Notice and Take Down Policy](#). WeTransfer reserves the right to (temporarily) remove an

Advertisement at its own discretion, without being liable for any potential damages.

- 8.2 The Advertiser agrees to the [Notice and Take Down Policy](#) and agrees that no measure taken by WeTransfer on the basis of the [Notice and Take Down Policy](#), including the removal of the Wallpaper, will exempt the Advertiser from the obligation to pay the full Fee as specified in the IO or the Order Confirmation.

## Clause 9 – Warranties

- 9.1 **Advertiser’s Warranties.** Advertiser hereby represents and warrants to WeTransfer that:
- 9.1.1 it has the full corporate rights, power and authority to enter into the Agreement;
  - 9.1.2 it is not and will not be in breach of any provision of the Agreement;
  - 9.1.3 any Advertisements will at all times comply with the requirements pursuant to the Agreement;
  - 9.1.4 owns all or has a license to the Intellectual Property Rights in the Advertisements, including the right to sublicense to WeTransfer on the terms set out in the Agreement as the case may be;
  - 9.1.5 the providing of the Services by WeTransfer in accordance with the Agreement will not infringe any right of any person, and will not breach any applicable law, regulation, rule or relevant industry codes (to the extent that such codes do not conflict with the Agreement);
- 9.2 **WeTransfer’s Warranties.** WeTransfer hereby represents and warrants to Advertiser that it is authorized to enter into the Agreement.
- 9.3 **No Other Warranties.** Unless specified in the Agreement, all express or implied conditions, representations and warranties, including any implied warranties of merchantability or fitness for a particular purpose, are disclaimed, except to the extent such disclaimers are held to be legally invalid.

## Clause 10 – Liability and indemnity

- 10.1 **Limitation of Liability.** Except for the Advertiser’s indemnification obligations set forth in Clause 10.2 below, neither Party will be liable for any lost profits, or any form of special, incidental, indirect, consequential or punitive damages arising out of or related to the Agreement and / or the use of the Services insofar, however caused and under any theory of liability (including negligence) even if such Party

has been advised of the possibility of such damages, insofar as this is allowed under mandatory law.

**10.2 Advertiser Indemnification.** Advertiser undertakes to pay to WeTransfer and hold WeTransfer harmless from and against any and all damages, costs, expenses (including reasonable legal and accounting fees and expenses), liabilities and losses, resulting from Advertiser's breach of Clause 9.1 or associated with any claim or action brought against WeTransfer or its third Party for a breach of Advertiser's warranties as set forth on Clause 9.1.

**10.3 WeTransfer Indemnification.** WeTransfer will defend, indemnify, and hold Advertiser harmless from and against any and all damages, costs, expenses (including reasonable legal and accounting fees and expenses), liabilities and losses associated with any claim or action brought against Advertiser or its third party for a breach of WeTransfer's warranty as set forth in Clause 9.2;

## Clause 11 – Termination

**11.1** WeTransfer may terminate the Agreement with immediate effect if:

the Advertiser materially breaches a term or condition of this Agreement and fails to cure such breach within seven (7) days of written notice specifying the breach;  
the Advertiser is put into liquidation or has ceased to conduct its business;  
the Advertiser requests or obtains (provisional) suspension of payment or is declared bankrupt;  
the Advertiser loses command over its assets or part thereof due to seizure, by being placed under trusteeship or in any other way;  
it should be reasonably accepted that the Advertiser can no longer meet its obligations under this Agreement.

**11.2** In the event of termination pursuant to this Clause 11, WeTransfer shall remove the Advertisement(s) of Advertiser with immediate effect. Furthermore, there shall be no liability or obligations arising on behalf of WeTransfer pursuant to the termination of the Agreement, nor shall WeTransfer be held to pay any damages or compensation or to restitute any paid Fees to the Advertiser.

## Clause 12 – Miscellaneous

**12.1 Data.** WeTransfer shall own any and all user and other data in connection to the use of the Websites and the Advertisements. WeTransfer shall handle and use such data in compliance with applicable privacy and other laws and regulations. Except in connection to any audits pursuant to Clause 6.2, WeTransfer shall not be obliged to share any such data with the Advertiser or its advisors.

12.2 **Notices and Contact Information.** All notices and demands under the Agreement will be in writing and will be delivered by personal service, express courier, express mail, or telefax and shall be deemed received upon delivery to the address provided in writing by the other Party (in case of WeTransfer this is always the address mentioned in Clause 1.1 (definitions)). Each Party bears its own responsibility for timely keeping the other Party up to date with the most recent address and contact information.

12.3 **Confidentiality.** Except as expressly and unambiguously allowed herein, each Party will hold in confidence and not use or disclose any Confidential Information and will similarly bind its employees and contractors in writing. Excluded from the Confidential Information is any information that: (a) is or has become readily publicly available with restriction through no fault of the receiving Party or its employees or contractors; (b) was received without restriction from a third Party lawfully in possession of such information and lawfully empowered to disclose such information; (c) was rightfully in the possession of the receiving Party without restriction prior to its disclosure by the disclosing Party; (d) is independently developed by the receiving Party by employees without access to the other Party's similar Confidential Information; or (e) is required by law or order of a court, administrative agency or other governmental body to be disclosed by the receiving Party. The Parties' obligations with respect to Confidential Information will continue for the shorter of two (2) years from the date of termination of the Agreement or until one of the above enumerated conditions becomes applicable. Each Party acknowledges that its breach of this Clause 12.3 will cause irreparable injury to the other for which monetary damages might not be an adequate remedy. Accordingly, either Party may be entitled to seek injunctions and other equitable remedies in the event of such breach by the other.

12.4 **Press releases.** Neither Party will issue any press releases or make public statements relating to the agreements specified in the IO Form or the relationship between the Parties without the other Party's review of and written consent to such press release or public statement. Such consent also applies to any subsequent press releases with respect to the same subject matter.

12.5 **Force Majeure.** No Party shall be deemed in default hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control, including but not limited to: earthquake, flood, or other natural disaster, act of God, labour controversy, civil disturbance, war (whether or not officially declared) or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree (each a "Force Majeure Event"). Each Party shall have the right to

terminate the Agreement immediately upon written notice if any Force Majeure Event of another Party continues for more than thirty (30) days.

The Advertiser shall not be excused from its payment obligations pursuant to this Clause 12.5.

- 12.6 **Modifications and Waivers.** No failure or delay on the part of either Party in exercising any right, power or remedy under the Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy. Unless otherwise specified, any amendment, supplement or modification of or to any provision of the Agreement and these Terms & Conditions, any waiver of any provision of the Agreement and any consent to any departure by the Parties from the terms of the Agreement, shall be effective only if it is made or given in writing and signed by both Parties.
- 12.7 **Assignment of Rights and obligations/ subcontracting.** The Advertiser may not assign, sublicense, transfer, encumber or otherwise dispose of the Agreement without the prior written approval of WeTransfer. Any attempted assignment, sublicense, transfer, encumbrance or other disposal of the Agreement by the Advertiser in violation of this provision will constitute a material default and breach of the agreements made in the Agreement.
- 12.8 **Independent contractors.** The Parties are independent contractors. Neither Party will be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither will have any right, power or authority to create any obligation or responsibility on behalf of the other.
- 12.9 **Unenforceability / invalid provisions.** Any provision of these Terms & Conditions and/or the Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the minimum extent necessary without invalidating the remaining provisions of the Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction and Parties shall in good faith negotiate to replace the invalid / unenforceable provisions with valid / enforceable provisions.
- 12.10 **Applicable Law.** These Terms & Conditions, the Agreement and the rights and obligations arising out of or in connection to the same shall be exclusively construed, governed, interpreted and enforced according to the laws of the Netherlands, without regard to any conflict of law rules under Dutch private international law.
- 12.11 **Mediation and Arbitration.** For the purposes of resolution of each and any dispute that has arisen or might arise further to the present Agreement, or any further

agreements resulting from the same, the Parties shall – or a Party shall – file a request for mediation with the NAI secretariat in accordance with the NAI Mediation Rules. If such request fails to result in a comprehensive resolution of the dispute by conclusion of a contract of settlement as referred to in Article 7(1) (a) of the NAI Mediation Rules, by an arbitral award on agreed terms as referred to in Article 8 of said Rules, or by a combination of both, the dispute – or any part thereof not resolved in any of the aforesaid manners – shall be resolved exclusively in accordance with the NAI Arbitration Rules. In such event the arbitral tribunal shall be composed of one arbitrator. The place of arbitration shall be Amsterdam and the arbitral procedure shall be conducted in the English language. Consolidation of the arbitral proceedings with other arbitral proceedings pending in the Netherlands, as provided in art. 1046 of the Netherlands Code of Civil Procedure, is excluded.