

## Terms of Use for DELTA POINT OCS® CashflowByWeb®

### 1. Subject and scope

These Terms of Use ("Terms of Use") for Delta Point OCS® BVBA, with registered offices in Blauwtorenplein 2, 2000 Antwerpen, Belgium, Register Legal Persons of Antwerp under number BE 0875 649 880 ("Delta Point OCS®") govern the provision and use of the services including the CashflowByWeb Software ("Software") provided by Delta Point OCS® (jointly called "Services"). There may at any time be explicit deviations from these Terms of Use by way of separate agreement between Delta Point OCS® and its customer ("Customer"). The Terms of Use shall apply to all Services, whether directly provided to the Customer or indirectly via an intermediary that acts on behalf of the Customer, and shall apply in general to any use of the Services or Software provided by Delta Point OCS®. The Customer agrees to waive its own general and special terms and conditions, even where it is stated therein that only those conditions may apply.

### 2. Offers

Every offer made by Delta Point OCS® for any Services (e.g. CashflowByWeb, consulting) under this agreement is valid under the conditions laid out in the offer. All offers are valid, unless stipulated otherwise, for a period of 14 days starting from the date of the offer.

### 3. Obligations of the Customer

#### 3.1. General

The Customer is not permitted to make modifications to any Delta Point OCS® Services nor Software. The Customer is liable for any damage that may arise as a result of modifications that are not permitted or not accredited by Delta Point OCS®, or from the unlawful or incorrect use of Services or Software by the Customer. The Customer undertakes not to download, send, or disseminate data containing viruses, worms, spyware, malware or any other similar malicious programs, nor will he carry out any operations or actions that may interrupt, destroy or restrict the functionality of the operation of the Services or Software or any program, computer or means of telecommunications.

It is the Customer's responsibility to ensure that his debtors accept the use of the Software for evidential purposes as described in clause 10.

#### 3.2. Required hardware, Software and telecommunication

Delta Point OCS® operates central computer hardware in a data center upon which certain Software applications are run and maintained. These Software applications are accessed through a web-enabled interface and are not installed on the Customer's computer systems. The Customer acknowledges that he is responsible for the choice, purchase and operation of the hardware, software and/or telecommunication services required to connect with the Delta Point OCS® Services or Software, and for the choice of electronic signature and corresponding digital certificate. The Customer is responsible for the installation and related costs of purchasing and/or licensing such hardware, software and/or telecommunication services. Delta Point OCS® is not liable for hardware, software, products and services of third parties, such as telecommunication equipment, operating systems and Internet browsers, e-mail, electronic signature and corresponding digital certificate, or any other programmes.

Delta Point OCS® reserves the right to modify at any time the requirements with which the Customer's Software, hardware and telecommunication facilities must comply. Except where there are exceptional or highly urgent circumstances, Delta Point OCS® undertakes to allow the Customer a reasonable term for carrying out any adjustments required.

The Customer must not only comply with Delta Point OCS®'s technical and security requirements, but must also take the necessary measures to protect its own data and be capable of recovering it in the event of loss.

#### 3.3. Storage – Back Up

The Customer undertakes to store all files, messages and documents sent by or on behalf of Delta Point OCS® on a medium that renders the Customer capable of storing personal information that is specific to it in a permanent manner (such as computer disks, CD-ROMs or the hard disk of the Customer's computer) or to print it out on paper so that this information remains available to the Customer and the Customer has access to the information at all times. The Customer, and not Delta Point OCS®, is responsible for back ups of Customer data, unless agreed otherwise in writing between Delta Point OCS® and the Customer.

The Customer must comply with all the laws and regulations related to running a sound legal business. The Customer himself must store all applicable documents that are made available by Delta Point OCS

© via the Software, either by printing or storing them on his own operating system. All data related to a "Reminder process" and individual "Reminders" will be stored for three (3) months after expiry. The Customer who can do the following with the documents: offers, invoices, credit notes, product lists and customer files can be printed and/or downloaded to his own operating system. These documents remain available on the Delta Point OCS ©' server for one year following the date of signature of the present agreement. At the end of the 14th month, Delta Point OCS © will remove all data from the server and can no longer be held accountable for it. Notwithstanding the application of clause 11, Delta Point OCS © shall take all the reasonable measures to deliver the Customer a backup of such data.

### **3.4. Invoice & Debtor Control**

The Customer shall to supply Delta Point OCS © with all relevant information required to issue invoices and perform credit management services and debtor control. The debtor will be requested via a reminder message to transfer the amount due to the bank account number stipulated by the Customer. If the account number changes, the Customer must immediately notify Delta Point OCS ©.

### **3.5. Proof and Supply of Details**

The Customer is obliged to furnish Delta Point OCS © with all the necessary details and proof required to perform the contracted debtor control or any other Services. The Customer guarantees that the details and proof supplied are correct and complete, and that communication of these details occurs in accordance with privacy legislation. Delta Point OCS © cannot be held responsible for the consequences of none or late payment by the Customer with regards to the availability of the Software. The costs for obtaining additional details required by Delta Point OCS © will be for the Customer's account. The Customer must without delay inform Delta Point OCS © about any payments, correspondence or other contact that occurs between the Customer and the debtor(s). The Customer shall not make any agreements with the debtor(s) related to payment demands, before discussing this with Delta Point OCS © beforehand.

### **3.6. Legal procedure**

Should it be necessary to take further legal action and/or to hire third parties to defend (e.g. bailiffs or attorneys) the interests of the Customer, Delta Point shall request permission from the Customer in writing or through the

Software. If the Customer agrees he shall confirm this in writing or through the Software and give Delta Point an express mandate to do so. All costs connected to the procedures and/or employment of third parties as described above are for the account of the Customer, whereas the recuperated costs are to the benefit of the Customer.

### **3.7. Irrecoverable debts**

It is at the discretion of Delta Point OCS © to return any order of debtor control or related advice either partly or entirely due to its irrecoverable nature.

### **3.8. User Name and Password**

The Customer confirms that his registration information is truthful, accurate and complete. A user name and password will be assigned by Delta Point OCS ©. The Customer is responsible for activities occurring under his account by his users. The Customer must change the password promptly and notify Delta Point OCS © if he believes his account is being accessed by others. Each user must register separately. A user may not give his user name and password to others. User name and password are strictly personal and the Customer is responsible for the safeguarding, confidentiality, security and appropriate use of it by him and its users and undertakes to take all steps to prevent any unauthorised third party from gaining knowledge and making use thereof.

### **3.9. Prohibited Behaviour**

The Customer will not upload, store or disseminate any content or make any communications whatsoever which violate or infringe the intellectual property or privacy rights of any person or which a reasonable person would consider abusive, profane, hateful, racially or ethnically offensive, which are defamatory or harassing, or which violate or encourage others to violate this agreement or any applicable law. The Customer will not upload or transmit pornographic or obscene images or files or disrupt the orderly operation of the Software. In order to protect itself, Delta Point OCS © may without liability actively cooperate with and furnish identifying and supporting information to any person likely to be harmed or affected by the Customer's violation of this agreement and to any law enforcement agency conducting an investigation. The Customer will not use the Software to make any communications that are unsolicited bulk advertising, spam or make communications of a promotional nature. The Customer may not harvest email addresses or any identifiers via the Software.

#### 4. Delta Point OCS ®'s obligations

The parties accept that all of Delta Point OCS ®'s obligations under this agreement are not to be qualified as obligations to achieve a certain result, but as obligations to apply reasonable efforts ("middelenverbintenis" / "obligation de moyens"). Delta Point OCS ® will take the commercially reasonable steps to ensure the continuity of Delta Point OCS ® Services and Software. However, unless specified otherwise in the separate prior written agreement with the Customer, Delta Point OCS ® cannot guarantee that the Services or Software will meet Customer's or its contractors' specific expectations, objectives or requirements.

Delta Point OCS ® may suspend the availability of Services and Software for reasons that include maintenance. Any such suspension will be notified in any way that Delta Point OCS ® sees fit insofar as this is possible. Such suspension of Services cannot in any way incur Delta Point OCS ®'s liability or lead to any entitlement to compensation. Such suspensions will also not last for more than a reasonably, acceptable duration. For updates, new versions or options, additional charges may be announced by way of the publication of a notice of change. Unless explicitly agreed otherwise in a separate prior written agreement with the Customer, the guarantees stated in these Terms of Use are the only guarantees made by Delta Point OCS ® regarding the Services and Software and are given in lieu of all other guarantees, including implicit guarantees or guarantees not to breach the rights of third parties.

#### 5. Access to the Services

Some Services, such as the Software, are made accessible through an Internet browser, which connects to one or more Delta Point OCS ®'s servers over the public Internet. Due to the dependency on the internet and taking into account its volatile and sometimes unstable nature, it is possible that access to the Services or Software is not available, for which Delta Point OCS ® cannot be held liable. Delta Point OCS ® cannot be held liable for any insecurity caused by the Customer's computer, browser, operating system, Internet connection, firewall, network, etc. The Customer himself, and not Delta Point OCS ®, is responsible for updating any security-related aspect of the Customer's browsing environment, including applying patches, updating firewalls, installing and keeping up-to-date virus scanners, scanning for spyware, malware and other malicious code, etc.

#### 6. Changes

In view of the service provision by Delta Point OCS ® and also given the further development of Delta Point OCS ®'s Services these Terms of Use, including the rates, may be subject to modifications by Delta Point OCS ®. In the event of such changes, the Customer will be informed of the change. The Customer will be notified of any changes at least one (1) month before the proposed modification comes into effect. Delta Point OCS ® reserves the right at all times to make changes to the technical characteristics and specifications of Services, Software and/or, if applicable, the corresponding documentation without giving prior notice.

#### 7. Term and termination

By agreeing to the present Terms of Use, the Customer and Delta Point OCS ® enter into an agreement of one (1) year that shall be tacitly renewed every year, unless it is terminated by notification of a period of notice of at least three (3) month whereby the agreement always ends at the end of a running period, or unless the agreement is terminated by another legal termination pursuant to the present clause. In case of late termination, the compensation is payable for the whole period. Using the Services or Software implies acceptance of the present Terms of Use on behalf of the Customer. If the Customer does not comply with any obligation Delta Point OCS ® may suspend the fulfilment of its obligations if such shortcoming is not remedied within ten (10) calendar days from the date on which notice of default is sent. The suspension will cease as soon as the Customer resumes compliance with its obligations. In the event of repeated or serious breach or in the event of risk of breach by the Customer, Delta Point OCS ® has the right to suspend access to the Services or Software, in whole or partially with immediate effect, without prior notice of default and without giving the Customer any right to compensation. Either party may, without prejudice to its right to full compensation, terminate by law the agreement without additional notice of default, with immediate effect, if the other party has not complied with an essential obligation and if such omission has not been rectified within thirty (30) days after the notice of default has been issued. The agreement may be terminated by law with immediate effect in the event of a cessation of business activities, bankruptcy or liquidation. In such event, all amounts paid by the party in a situation of ceasing its business activities or bankruptcy or any equivalent proceedings, will be acquired for Delta Point OCS ®.

## 8. Rates and invoicing

The use of the Services and Software will be invoiced in accordance with the rates in effect as mentioned on the rate card ("Rate Card") at the time the Services and Software were provided to the Customer. Invoices are due according to Delta Point OCS ®'s general invoice conditions. All charges are exclusive of VAT. In the event of the non-payment of the amount due on the due date, the Customer is lawfully and without further notification liable for the payment of interest as from the due date at 10% a year on the amount outstanding, increased by a flat-rate compensation amount of 15% of that amount, with a minimum of 125 Euros.

Delta Point OCS ® uses CashflowByWeb for follow up of its debtors. The Customer accepts that the log and the time stamps, as mentioned in clause 10, may be used as valid evidence in a court of law.

The non-payment of any invoice or account on the due date has the result of making all invoices and accounts still outstanding immediately payable by the Customer, even those not due, without taking into account the previously permitted conditions of payment. The payment without any reservation of a part of the invoiced amount applies as acceptance of that invoice. Partial payments are accepted by Delta Point OCS ® subject to all reservations and without prejudice. They are first allocated to any legal costs incurred, then to the interest due, followed by the flat-rate compensation and finally to the principal. Delta Point OCS ® reserves the right to cancel any Services not yet provided or to suspend the performance thereof on condition that it informs the Customer of this beforehand in writing. Any dispute regarding an invoice must be lodged with Delta Point OCS ® in writing within eight (8) days of the invoice being received. Once this period has expired, the dispute will be considered as inadmissible and the invoice will be deemed to have been accepted irrevocably and in full.

"Reminder processes" within CashflowByWeb that are not used within a year commencement of the agreement, are not transferable to an next year, and will not be reimbursed by Delta Point OCS ®. The Customer who has purchased a package(s) during the year, and who has agreed to a 1 year fixed term contract, may transfer any remaining "reminder processes" once the minimum annual basic subscription charges has been paid to Delta Point OCS ®.

The parties agree to apply a price index mechanism based on the monthly published "Agoria index (national

average) for salary costs and social charges dated 11/07/1981, with tax reduction of -37 916 BEF" ("Agoria Index"). Delta Point OCS ® is permitted to apply this adjustment to the price index twice a year (in January and July). Delta Point OCS ® will use the following formula for this purpose:

$$\text{New Charge} = \text{Current Charge} * \{0.2 + 0.8 (\text{Current Agoria Index}) / (\text{Base Agoria Index})\}$$

whereby:

- the Current Charge is the charge level shown in the current Rate Card;
- the Current Agoria Index is the Agoria Index published two months prior to the indexation date; and
- the Base Agoria Index is the Agoria Index for the month preceding the publication of the Rate Card in effect.

Delta Point OCS ® may inform the Customer of such indexation by letter or e-mail or any other electronic communication within the Software. If the Agoria Index should cease publication or undergo substantial modification regarding content and form, a comparable index will be proposed in consultation with the Customer.

Delta Point OCS ® is at all times entitled to deduct outstanding invoices and/or provisional accounts from remaining sums due to the Customer. The Customer is not allowed to compensate any invoice with another, unless Delta Point OCS ® has given him express written permission to do so. If the Customer requests a visit of Delta Point OCS ® on-site, transport costs will be charged at the rate mentioned on the Rate Card.

The Customer accepts that Delta Point OCS ® shall send invoices electronically, without prejudice to Delta Point OCS ®' right to send invoices at all times using conventional methods of communication. The Customer acknowledges that it is responsible for the appropriate archiving of the electronic invoices and for the fulfilment of all other legal requirements with respect to receiving electronic invoices.

Advice about user functionalities or remote assistance is offered by Delta Point OCS ® after acceptance of the corresponding offer by the Customer and shall be invoiced at the applicable charges as mentioned on the Rate Card.

## 9. Protection of privacy

With regard to the personal data submitted by the Customer to Delta Point OCS ®, which are recorded in databases and processed, Delta Point OCS ®

undertakes to honour the Privacy Act of 8th December 1992 with regard to the processing of personal data. The Customer hereby gives Delta Point OCS <sup>®</sup> specific permission to process his personal data for the following purposes:

1. for customer management (for example for the issue, collection and verification of invoices, for the exchange of correspondence in the context of the contractual relationship with the Customer, for identification in messages sent by the Customer, to prevent misuse and fraud, auditing compliance by the Customer with the present agreement and in the event of disputes);
2. for fulfilment of the agreement;
3. for information activities or the promotion of Delta Point OCS <sup>®</sup>, its products or services, or the products and/or services of its trading partners (direct marketing);

Customers not wishing to receive messages from Delta Point OCS <sup>®</sup> in the context of direct marketing campaigns may at any time ask Delta Point OCS <sup>®</sup> by registered letter to be included free of charge on the list created for that purpose. All Customers may be informed free of charge by Delta Point OCS <sup>®</sup> about any personal data that relates to them, by sending Delta Point OCS <sup>®</sup> a signed and dated written request, and, where appropriate, may request that incorrect, incomplete or irrelevant details be amended. More information about Delta Point OCS <sup>®</sup>' privacy policy can be found in the privacy policy that is available on the general website here:

<http://www.deltapoint.be/EN/documents/2009-01-25PrivacybeleidDeltaPointOCSen.pdf>

#### **10. Access log, time stamp, and evidence.**

Delta Point OCS <sup>®</sup> registers access to its Services and Software in a log, as well as sent and received messages, invoices, reminders, and every relevant information regarding debtor management. This log can be reproduced on paper or any other type of information medium. It provides evidence that access has been gained to the Services or Software unless the Customer can prove the contrary. It provides evidence that the above messages, invoices, reminders were actually sent and received at the date indicated in the log. In addition, the Customer can choose to apply a time stamp (payable option) Statements or copies relating to transactions by the Customer issued at the Customer's request and for legal reasons, are invoiced based on the rates in effect mentioned on the Rate Card. Parties

agree that this log (and if applicable also the time stamps) may be used as valid evidence in a court of law. This does not prevent the parties from each providing their own proof using permitted legal methods.

#### **11. Risk allocation**

Delta Point OCS <sup>®</sup> is only liable for fraud, wilful misconduct and/or gross negligence in performing its obligations under the agreement that causes the Customer direct damage. Unless in the event of fraud or wilful misconduct of Delta Point OCS <sup>®</sup>, Delta Point OCS <sup>®</sup>'s liability in relation to this agreement shall under no circumstances lead to any compensation for indirect damage of a financial, commercial nature or any other kind, such as time lost, loss of or damage to clientele, loss of data, loss of earnings, loss of profits, increase in general overheads, disruption of business, claims from third parties, reputation or expected savings.

In the event Delta Point OCS <sup>®</sup> is held and found liable to compensate for damage, such liability will be restricted in all cases to the remedying of the proven direct damage. Delta Point OCS <sup>®</sup>'s aggregate liability with regard to this agreement shall be restricted to the highest of the following: the amount of the charges paid or payable by the Customer to Delta Point OCS <sup>®</sup>; or 1.000 EUR.

Delta Point OCS <sup>®</sup> may under no circumstances be held liable for shortcomings arising from the circumstances in article 11 or by third parties (more specifically delivery problems, hardware defects, connection or telecommunications problems). Except for more specific stipulations that may apply where appropriate, any complaint regarding Delta Point OCS <sup>®</sup> Products must be made in writing, by registered letter, within eight (8) days of the Customer having knowledge (or should reasonably have become aware) of the fact leading to the complaint. Delta Point OCS <sup>®</sup> will be discharged of liability in case of notification after such eight (8) days period. Delta Point OCS <sup>®</sup> is not responsible for the Customer's products or the hardware, Software, products or services of third parties. Delta Point OCS <sup>®</sup> cannot be held liable for the failure of any infrastructure (Software and hardware) that is not under Delta Point OCS <sup>®</sup>'s full control.

The Customer hereby agrees to indemnify and hold harmless Delta Point OCS <sup>®</sup> against any and all claims or demands from third parties arising from the use by the Customer of the Services in a manner that does not correspond with these Terms of Use and in general all applicable laws.

## 12. Force Majeure

Neither the Customer nor Delta Point OCS <sup>®</sup> shall be responsible for any damage caused by the non-compliance or delay in compliance of obligations resulting from a case of force majeure, such as war, insurrection, terrorism, attacks, strike, social conflicts, accidents, fire, floods, telecommunication breakdowns. The availability of the Services or Software may be suspended in case of events over which Delta Point OCS <sup>®</sup> has no reasonable control. Any interruption and the consequences therefrom may under no circumstances lead to any entitlement to compensation. Delta Point OCS <sup>®</sup> will endeavour to inform Customers about breakdowns within a reasonable period of time in any manner that Delta Point OCS <sup>®</sup> deems appropriate. It will also endeavour to restrict the duration of any such interruptions in a reasonable manner. If due to force majeure, the Services are interrupted for a period of more than thirty (30) consecutive business days, either party may decide to terminate the Services affected by force majeure, giving a period of notice of fifteen (15) days by registered letter.

## 13. Intellectual property rights

Delta Point OCS <sup>®</sup> is and remains the owner or beneficiary of the intellectual and industrial property rights and know-how associated with the Services and Software, and it also remains at liberty to use them for any other purpose. No rights are attributed to the Customer other than those expressly stated in these Terms of Use, unless explicitly agreed otherwise.

To the extent Delta Point OCS <sup>®</sup> makes Software or documentation available in the context of the supply of Services, Delta Point OCS <sup>®</sup> grants the Customer as from the commencement of the agreement and for the duration of the agreement a worldwide, non-transferable, limited, non-exclusive licence to use this Software or documentation. This usage is restricted to the Customer's own business purposes. It is the Customer's responsibility to verify whether he can legally use the Software in his jurisdiction.

If the Software of the Services contains components, the rights of which belong to third parties, these third parties may require the Customer to sign a separate licence contract. If this is the case, the Customer undertakes to sign the contract submitted to it. In the event of the termination or suspension of Services, the associated licences are also terminated or suspended immediately. The Customer undertakes and ensures that in the event of the termination of Services, it will, at Delta Point OCS

<sup>®</sup>'s sole discretion, return the Software, documentation and all copies thereof to Delta Point OCS <sup>®</sup>, and delete and/or destroy it.

The Customer must take all necessary measures to protect Delta Point OCS <sup>®</sup>'s intellectual and industrial property rights. In the event of a claim from a third party in connection with an infringement by Delta Point OCS <sup>®</sup> of the intellectual rights of third parties, the Customer undertakes to inform Delta Point OCS <sup>®</sup> immediately of such a complaint, as well as to provide all information and support, and to grant Delta Point OCS <sup>®</sup> the right to conduct any legal proceedings and negotiations. If Delta Point OCS <sup>®</sup> judges that any program may have infringed the intellectual rights of a third party, Delta Point OCS <sup>®</sup> will, at its sole discretion, make the choice of whether to adapt the infringing program in such a way that there is no more question of an infringement, or to obtain the right on behalf of the Customer to continue using the program, or, should Delta Point OCS <sup>®</sup> be of the opinion that neither of those options can be achieved, to terminate the right of use for the program in question and to reimburse any fees paid by the Customer for that program during the twelve months preceding the claim.

Without prejudice to the rights, if applicable, of the Customer under the legislation relating to the protection of computer programs, the Customer may not do the following regarding Software provided by Delta Point OCS <sup>®</sup>:

- modify, translate or adapt Software in any way;
- decompile or disassemble the Software in any way;
- copy the Software in any way, except to make a back-up copy; and/or
- pass on, dispose of, grant as a sub-licence, lease, lend or distribute the Software or documentation in any way to third parties.

Delta Point OCS <sup>®</sup> reserves the sole right to correct any errors.

Delta Point OCS <sup>®</sup> does not claim ownership in the content of the Customer's electronic communications made through the Software. If the Customer makes communications, he irrevocably grants Delta Point OCS <sup>®</sup> (and any affiliates and sub licensees) the worldwide, for the duration of the intellectual property right, royalty-free, sub licensable right and license to store, copy, reproduce, adapt, reformat, create derivative works of, transmit, disseminate, publicly display and perform such communications through the Software and to make such incidental and additional uses as may be needed to

operate the Software and any affiliated sites through any media or technology now known or hereafter created. The Customer irrevocably grants Delta Point OCS<sup>®</sup> the right to obtain a copyright in the "thread" or compilation of communications on the Software generally, including the Customer's and user's own communications.

#### **14. Notifications and announcements**

Except where agreed otherwise, all notifications, applications and other announcements are deemed to have been made correctly if such notifications or announcements are made in writing via an e-mail message, in an announcement at the Delta Point OCS<sup>®</sup> Internet website or by post. Electronic messages, connections, operations on the network and transactions between the Customer and Delta Point OCS<sup>®</sup> shall be proven using the logs and transaction files kept electronically by Delta Point OCS<sup>®</sup>. The Customer accepts the evidential value of this data.

#### **15. Application and invalidity**

If a provision of this agreement is finally determined to be, or becomes, invalid, illegal or unenforceable, then such provision shall, if possible, and insofar as such clause is invalid, illegal or unenforceable, be replaced by a valid, legal and enforceable clause reflecting as close as possible the initial intentions. If the invalid, illegal or unenforceable provision cannot be validly replaced, then no effect shall be given to said clause and it shall be deemed not to be included, such without affecting or invalidating the remaining provisions.

#### **16. Applicable legislation – competent courts**

For the application, interpretation and implementation of the Terms of Use, Belgian law alone shall apply, without regard to its private international choice of law provisions. The courts in Antwerp shall have sole jurisdiction for all disputes that may arise.