

General Terms & Conditions of Business of Astaro Services AG for the Astaro Mail Archive

Please note: By clicking the Confirm button, you will enter into a binding contract with Astaro Services AG, Rheinweg 7, CH-8200 Schaffhausen, which is subject to charges. You will also be confirming that you are concluding this Contract in execution of your commercial or freelance professional work, not as a consumer.

The order for the "Astaro Mail Archive ("**AMA**") service is governed exclusively by these General Terms & Conditions of Business of Astaro Services AG ("**Astaro**"). The Customer's General Terms & Conditions of Business will not be accepted, even if Astaro does not expressly reject their applicability. They will only apply if Astaro expressly confirms this in writing.

The Customer confirms that these Terms & Conditions of Business, including the specification and schedule of fees, will constitute part of its contract with Astaro.

1. Object of the Contract

AMA offers the Customer a means of saving, archiving, searching and viewing its e-mails, as well as of copying them into its applications. Details of the services provided by AMA to the Customer can be found in the "**Specification / AMA Price List**".

2. Provision of contractual services by Astaro

- 2.1. Astaro is entitled to provide its services via a hardware and software environment of its choice and within the borders of the European Union, remaining at all times within the bounds of applicable law. Astaro is further entitled to change this hardware and software environment at any time. Astaro does not guarantee that the hardware and software environment, or parts thereof, are intended for exclusive use by the Customer.
- 2.2. Astaro reserves the right both before and during the provision of the services ("services") to test the Customer's e-mail system to ascertain whether there are any problems with this e-mail system (for example, open relay, viruses, denial-of-service attacks, etc.), which may have an adverse affect on the AMA. If the Customer's e-mail system is found to have a problem, Astaro will inform the Customer accordingly and ask it to rectify the problem. In serious cases (AMA service to third parties disrupted), Astaro will reserve the right to discontinue its services immediately and withhold them until the Customer has rectified the problem.

- 2.3. In order to guarantee the comprehensive availability of AMA, Astaro reserves the right to make reasonable changes or adaptations to the content of the service, as well as to corresponding documentation at any time, in particular for legal or security reasons or due to urgent technical considerations. If the Customer cannot reasonably be expected to accept the changes, it will be entitled to terminate the contract for cause.
- 2.4. Astaro will keep a log of archiving actions, deletions, changes to retention periods, as well as searches. This will enable the Customer to trace the actions which have taken place in its archive within the scope of the compliance regulations of relevance to it.

3. Duties of the Customer

- 3.1. The Customer will undertake to pay the agreed remuneration.
- 3.2. Every e-mail received in the archive must be assigned to a mailbox. The Customer will acquire a user license for each mailbox being archived.
- 3.3. Excessive use (see No. 4 "Fair Use Agreement") or exclusive archiving in catchall mailboxes covering a large proportion of the Customer's e-mail users is not permitted.
- 3.4. The Customer must ensure compliance with statutory provisions (for example, provisions on authorizations to access archived e-mails).
- 3.5. The Customer is required, in particular, to ascertain that use of the AMA system meets any specific statutory archiving regulations. This will be subject to a legal check in individual cases for which the Customer must assume responsibility.
- 3.6. The Customer must ensure that all passwords, keys and configuration settings transmitted for the AMA service are properly retained and are saved securely at its premises or elsewhere. Astaro cannot assume any liability for the loss of passwords, etc.
- 3.7. The Customer will assume responsibility for the administration of access regulations, authorizations and such like for its e-mail archive.
- 3.8. If the contents of the Astaro e-mail archive are surrendered to the Customer within four (4) weeks of receipt of the archive and the pass phrase for decrypting the e-mails, it will undertake to check the e-mail archive. Objections against the deletion of the archive, which is held at Astaro and returned to the Customer, must be submitted to Astaro in writing within this four-week period.

4. Fair use agreement

From a purely technical perspective, "unlimited archiving of e-mail" is not possible. Nevertheless, we have decided to offer this service. However, we would

ask you to heed the following rules when saving your volume of data in the interests of fairness:

Our cost calculations are based on a "normal data memory volume" per mailbox. Astaro has costed the service on the basis of an average requirement of 1.2 GB of space per mailbox per annum. If the storage space exceeds triple this amount, on average, relative to all the mailboxes, Astaro will contact the Customer to seek a solution. If no solution is found, either side will reserve the right to terminate the contract with three months' notice. If you are aware that your volume is in excess of the average specified above, please let us know so that we can find the right technical solution for you.

5. Remuneration

- 5.1. The remuneration which the Customer is required to pay AMA is indicated in the "**Specification / AMA Price List**".
- 5.2. Astaro is entitled to engage the services of a third party to invoice and collect payments. This will not affect any of the Customer's rights under this contract.
- 5.3. Payment will be linked to the term of the contract and is due in advance.
- 5.4. If the Customer is two months in arrears with payment, Astaro reserves the right to suspend services after setting a prior extension of fourteen (14) days in writing. No new e-mail will be admitted to the archive until all outstanding payments have been made; the customer will not have access to the e-mail which is stored in the archive. The Customer will be made expressly aware of these legal consequences when the extension is set.
- 5.5. The Customer may only offset if its claim is undisputed or determined by a judicial decision.
- 5.6. All payments will be subject to statutory value-added tax, as well as any other taxes which may apply. If the Customer reclaims its e-mail archive before the end of the contract, it will nevertheless be required to pay the contractually agreed remuneration until the end of the regular term of the contract.

6. Term, termination

- 6.1. Trial period
 - 6.1.1 All Astaro customers are eligible to receive a one-off 30 day trial. Astaro certified partners are entitled to a trial period of one year, which may be extended by Astaro on request by the partner. The appropriate terms and conditions of Astaro Services AG apply
 - 6.1.2 The Customer will initially use AMA for a 30-day trial. The Customer may cancel using AMA at any time during this period by sending us an e-mail to tell us its

intention. In this case, the Customer will not owe any payment. Any e-mail which the Customer has archived up to that point will be deleted.

- 6.1.3 Should the Customer wish to continue the service before ending the trial period, it will purchase the license chosen by it from Astaro or from any of Astaro's authorized distribution partners.
- 6.2. If the Customer does not indicate that it wishes to continue during the 30-day period, the Contract will end automatically after the trial period. Any e-mail which the Customer has archived up to that point will be deleted. Should the Customer wish to continue the service after the end of the trial period, it will purchase the license chosen by it from Astaro or from any of Astaro's authorized distribution partners during the trial period.
- 6.3. Binding term
 - 6.3.1 The binding term will commence when the Customer purchases the license chosen by it.
 - 6.3.2 The Customer can order AMA with a fixed basic term of one (1) year, three (3) years or five (5) years.
 - 6.3.3 Once the basic term has elapsed, the Contract will be automatically renewed for another twelve (12) months unless the Customer cancels it giving notice of three (3) months to the end of the basic term or renewal period.
 - 6.3.4 This will not affect the right to terminate the Contract forthwith with cause.
 - 6.3.5 Notice must always be served in writing.
- 6.4. If the Customer also fails to effect payment after being set an extension to do so in accordance with No. 5.4 of these T&Cs and is in arrears, Astaro will reserve the right to cancel the Contract without notice for cause. It must cancel the contract in writing. In this cancellation Astaro will inform the Customer that its use of the e-mail archive pursuant to Nos. 5.4 and 6.2.4. has been stopped. The Customer will receive a final demand to settle the money outstanding in the letter of cancellation. If the Customer wishes to save a copy of the archive on one (or more) data carriers offered by Astaro in a data format offered by Astaro, it will also be required to pay the extra cost associated with this. Astaro will only make a copy upon receipt of the payment for creating the selected copy.
- 6.5. If the Customer fails to settle its payment arrears within the three-month time limit specified in No. 6.4, Astaro will inform it in writing that its archive will be deleted/destroyed within a further period of three weeks.

7. Surrender of the e-mail archive, consequences of canceling the contract

- 7.1. The Customer will reserve the right to reclaim its e-mail archive from Astaro, including more than once, irrespective of the term of the contract. The Customer will instruct Astaro accordingly in writing. The costs of this service can be found in the agreed "**Specification / AMA Price List**". Astaro will surrender the e-mail archive to the Customer within fourteen (14) working days of receipt of this request and payment, in accordance with the provisions below.
- 7.2. If the Customer reclaims its e-mail archive or ends the contract, it may choose between different formats and types of delivery which are detailed in the specification.
- 7.3. The Customer must pay a delivery fee, depending on the format, type of delivery and size of the e-mail archive; this is set forth in detail in the "**Specification / AMA Price List**". Payment will be owed every time the archive is handed over/delivered.
- 7.4. If the Customer does not decide upon a format and delivery type, Astaro will be entitled to make the decision.

8. Warranty rights, liability

- 8.1. It is made clear that Astaro does not have any say over the content of the e-mails archived by the Customer. Astaro is also unable to view these e-mails (encryption). The Customer will remain the owner of the data at all times, and responsibility for its content will rest with it. It will also be solely up to the Customer to check that the e-mails which have been handed over may be archived.
- 8.2. Astaro will provide its services carefully, professionally and in accordance with the specification.
- 8.3. Reduced performance in the event of maintenance will not constitute a defect. To find out further information, reference is made to the specification.
- 8.4. The Customer acknowledges that techniques and technologies are subject to ongoing further development, and that Astaro can provide neither an assurance nor a guarantee that the AMA will work fault-free at all times. Furthermore, the parties assume that the AMA cannot collect all e-mails which reach the customer's networks through systems other than the AMA system, including but not restricted to e-mails which are sent directly to the Customer's mail server (bypassing the AMA) and e-mails which are fed in within the Customer's network. Astaro reserves the right to engage the services of independent third parties to supply certain information which is required in order to maintain the AMA services.

Astaro provides its services under this contract "as they are" and can neither warrant qualities nor make any guarantees in respect of the systems used within the scope of this Contract; Astaro rejects all explicit and implicit guarantees, including but not limited to suitability for normal use, suitability for certain purposes and non-breach of industrial property rights. Astaro will make reasonable efforts to ensure that the Customer's selected e-mails work in accordance with the intended functionality of the AMA and of the selected options. However, given the very nature of the Internet and e-mail, Astaro cannot guarantee that this will be the case at all times. The only legal remedy available to the Customer and Astaro's liability arising from non-performance of AMA services is to grant service credit in accordance with the Service Level Agreement. Astaro ACCEPTS NO LIABILITY FOR CLAIMS ARISING FROM LOST PROFITS, LOST OR DAMAGED DATA, BUSINESS INTERRUPTIONS, MISSED BUSINESS OPPORTUNITIES, GOODWILL OR DAMAGE TO REPUTATION, AS WELL AS FOR INDIRECT LOSSES, LOSSES ARISING FROM CONTRACTUAL PERFORMANCE, COMPENSATION OR CONSEQUENTIAL DAMAGES, WHATEVER THEIR NATURE, ARISING FROM OR IN CONNECTION WITH THIS CONTRACT OR WITH THE OPERATION OR PROVISION OF AMA SERVICES IRRESPECTIVE OF WHETHER THIS LIABILITY ARISES FROM THE CONTRACT OR FROM UNAUTHORIZED ACTIONS (INCLUDING NEGLIGENCE) OR FROM OTHER LEGAL REASONS AND IRRESPECTIVE OF WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSSES. The Customer will hereby indemnify Astaro, its legal successors, its primary companies, subsidiaries and affiliated companies, as well as its employees, managers and executive directors against any claims, losses, damage, costs or expenditure (including reasonable solicitor's fees) arising from or in any way related to provision of the AMA services under this Contract.

8.5. Under no circumstances will Astaro be liable to the Customer for amounts which are higher than the sum total of the AMA fees received by Astaro or by one of its representatives for the services provided to the Customer in the 12 months immediately preceding the event which triggers the claim under this Contract.
Data backup

8.6. Astaro will expressly advise the Customer that AMA is not a substitute for AMA, nor does it make it unnecessary. Therefore, where Astaro is to blame for data loss, it will assume liability exclusively for the cost of duplicating the data from the backup copies which are to be made by the Customer, as well as for restoring the data, which would also have been lost even if data were backed up properly.

8.7. Force majeure

8.7.1 Incidents of force majeure will release both contracting parties from their respective performance duties for the duration of the disruption and within the

scope of its impact. The contracting parties will inform one another forthwith about any incidents of force majeure (both the start and end of them).

8.7.2 Force majeure applies to events for which neither party is to blame and which can significantly complicate, impair or frustrate the execution of the Contract and which are unrelated to the parties' operations, such as war, disturbances, state decrees, mobilization, terrorism, fire, natural disasters, lawful nationwide strikes or lockouts where this prevents the party from discharging its contractual duties.

8.8. Limitation

All claims by the Customer against Astaro under this contract will become statute-barred within 12 months of the commencement of the period of statutory limitation.

9. Confidentiality, data protection

9.1. Both parties will undertake to treat as confidential any business and trade secrets which the parties disclose to one another for an indefinite period of time, and not to divulge them to third parties or exploit them in any way. The documents, drawings, data, and other information which the other contracting party receives on the basis of the business relationship may only be used by that party for the execution of the contract.

9.2. Both parties will undertake to abide by the provisions of data protection laws and to impose the data protection obligations on their employees or agents as well.

9.3. Processing order data

9.3.1 Since the storage of the Customer's e-mails by Astaro may constitute a case of processing order data, the Customer may be obliged to place a written order with Astaro to do this. Astaro will undertake to conclude this contract with the Customer promptly at the latter's request.

9.3.2 Astaro will undertake to comply at all times with technical and organizational measures which are required in accordance with data protection legislation. They are set forth in "AMA Procedure Documentation" which the Customer can view and download here www.astaro.com/mail-archiving/ama-process-documentation.pdf. Astaro will reserve the right to change the process and the procedure documentation or internal control system where this is necessitated by statutory / technical or organizational requirements. This will be indicated by the fact that the procedure documentation is assigned a new version number and date.

10. Final provisions

- 10.1. Astaro is entitled to engage the services of vicarious agents to perform its services. They will be bound by the same data protection regulations as Astaro and to the same degree.
- 10.2. The written form is satisfied by letter, fax and e-mail.
- 10.3. Should either party fail to assert its contractual rights over an extended period of time, this will not be construed as waiving the rights.
- 10.4. If a provision of this Contract is ineffective, this will not affect the effectiveness of the other provisions.
- 10.5. This Contract is subject to German Law. UN private law and legislation on contracts for the sale of goods are excluded. The place of jurisdiction is Karlsruhe. However, Astaro reserves the right to take legal action against the Customer at the court with jurisdiction over its registered office, as well.

Astaro Services AG specification for Astaro Mail Archive

1. Specification

The Astaro Mail Archiving Service ("AMA") from Astaro Services AG ("Astaro") offers the archiving of emails as a service. The customer assigns the emails to be archived to the Astaro service. The emails are then processed, archived and then made available again. All emails are encrypted in accordance with current technology status as soon as they reach the Astaro domain.

2. General points regarding service provision

- 2.1. Astaro provides your service twenty-four (24) hours a day, seven (7) days a week.
- 2.2. Every Astaro customer receives a customer account. The customer account provides primary access to the customer configuration and central access to the customer archive.
- 2.3. Following previous notification and for an additional fee, the customer can have the emails archived for as many internal customer end-user mailboxes within the customer account as he requires.
- 2.4. The emails identified by the customer for archiving are indexed by Astaro, encrypted and saved.

This ensures the following:

- Encryption is carried out in accordance with current technology status.
 - Customer emails cannot be seen or decoded by third parties.
- Emails saved in the archive can no longer be modified.
- The email archive can be searched using defined search criteria. Emails found are listed and can be seen by the customer and, if applicable, exported to current software applications and then processed further. But the archived email is not altered.
- Individual/defined emails can be deleted from the archive.
- All emails are archived in accordance with the parameters set by the and on the territory of the European Union. For customers from states outside the European Union, archiving is carried out on US territory.

2.5. At all times, the customer has the option of being informed through reports and logs as to:

- the scope and growth of the archive
- access to the archive
- the deletion of archived emails.

3. Maintenance work

3.1. Astaro is entitled to carry out maintenance work in order to maintain the AMA system. The same goes for system updates and upgrades.

3.2. As far as possible, planned maintenance work will be carried out without any adverse effect on service. This will be achieved by carrying out planned maintenance work at times when the amount of incoming email is low and - as far as possible – only affect certain parts of the network. During the carrying out of maintenance, emails to be archived will be directed to parts of the network that are not undergoing maintenance in order to keep service interruption to a minimum. However, interruption to AMA services during maintenance work cannot be ruled out.

3.3. If emergency maintenance is necessary and it is likely that service will be interrupted as a result, Astaro will endeavor to inform those customers affected and to send a notification alarm to the customer as soon as possible after commencement of emergency maintenance.

4. Support

4.1. Technical support will be provided by Astaro in accordance with Astaro Technical Support SLAs:

http://www.astaro.com/sites/default/files/Support/supportmaterial/Astaro_Technical_Support_SLAs.pdf

4.2. The support level for AMA customers corresponds to Astaro Premium Support.

5. Transfer of the email archive to the customer

5.1. When an email archive is transferred to the customer by Astaro, the following options are available to the customer:

5.1.1. Email format:

Emails are delivered in several compressed data packets which are then transferred in encrypted format. The decoded and decompressed format of individual emails complies with RFC822.

5.1.2. Transfer types:

The archive can be transferred to the customer as follows:

- as a free download
- as a chargeable consignment on hard disk(s) (minimum archive size applicable 50GB).

5.2. Transfer as hard disk(s) requires the customer to make a special order. The following fees apply:

- Per hard disk (capacity 1TB) €100.00.
- Per transferred GB of archive data €0.15.

5.3. The code for decoding the data will always be sent under separate cover to the customer's invoice address.

5.4. The invoice address last known to Astaro at the time of contract termination or surrender will apply.

5.5. The cancelled customer archive will be deleted within 6 weeks of transfer of data unless the customer has raised an objection in writing. The transfer date applicable will be that used for the allocation of the download or the delivery date of the data storage medium.

5.6. In the event that objections are raised, the parties will decide as to whether the archive can be deleted. Should the customer request further archiving, he must first pay the outstanding fee in accordance with the conditions of this contract.

6. Fee

6.1. The customer will pay Astaro a fee that will be due at the start of the contract period.

6.2. The fee level is determined by the basic period of the contract chosen by the customer and according to the number of customer inboxes applied for. Precise amounts can be taken from the current price list.