

# InterCloud Autonomi Terms & Conditions

## Preamble

InterCloud is the leader in Cloud interconnection (Software-Defined Cloud Interconnect), providing fully managed solutions for seamlessly connecting large-scale, multi-cloud resources.

In order to adapt to companies' growing need for Cloud connectivity, InterCloud has developed a platform (the "Platform") that enables Clients to create connectivity projects autonomously, using features and services from multiple providers (including those from InterCloud): InterCloud Autonomi.

## 1. Purpose

The purpose of these Terms and Conditions (hereinafter the "T&Cs") is to define the conditions under which the Client may issue Order(s) on the Platform.

The T&Cs define the mutual obligations between the Client and InterCloud for this sole purpose. If the Client has already entered into a contract with InterCloud, this contract is not applicable to the use of the Platform and the placing of Orders for Services, but remains in force for all services covered by the contract.

The Client undertakes to ensure that its employees and/or any natural or legal person acting on its behalf comply with the Documentation.

## 2. Definitions

The following capitalized terms have the same meaning and scope throughout the Documentation, unless otherwise specified herein.

**Authorized User** : any User authorized to place an Order in the name and on behalf of the Client.

**Client** : Any legal entity on behalf of which a Client Account is created.

**Client Account** : account identifying the Client on the Platform and required for the placing of an Order by an Authorized User.

**Compliance/Compliant** : in accordance with the laws and regulations in force, with the Documentation, with the state of the art, the best practices of the profession and with the principle of loyalty.

**Documentation** : all and sole contractual documents applicable between the Client and InterCloud relating to the use of the Platform and the placing of Orders thereon, as defined in the "Purpose" section and listed in the "Contractual Documents" section hereinafter.

**Feature(s)** : functions available to all Clients on the Platform, as listed in the « Features » section hereinafter.

**Intellectual Property Rights** : all copyrights, software rights, trademarks, design rights, patents and rights over inventions, processes, methods and formulas, sui generis database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets), and any other intellectual property rights existing anywhere in the world, including all applications of such rights.

**Parties** : collectively, InterCloud and the Client.

**Platform** : interface available to Users, enabling the Client to order, on demand, one or more Services and benefit from the Features.

**Order(s)** : process(es) by which the Client selects and subscribes to one or more Services on the Platform, as described in the « Ordering » section hereinafter.

**Service(s)** : any component(s) or port(s) that the Client may order on the Platform.

**Site** : website hosting the Platform.

**Terms and Conditions (or « T&Cs »)** : the present document et its annexes.

**User(s)**: natural person(s) using the Platform, operating in the name and on behalf of the Client.

### 3. Contractual Documents

The Documentation consists of the following contractual documents in decreasing order of priority to the exclusion of any other document:

- The present Terms and Conditions (« T&Cs »), and their annexes.
- The General Conditions of Use ("GCU"), and their annexes.
- The Privacy Policy

In the event of any divergence or contradiction between two or more of the aforementioned documents, the higher-ranking document shall prevail.

Any agreement entered into between InterCloud and the Client relating to a subject other than the present Documentation shall not apply to the placing of Orders on the Platform but shall remain in force for any services covered by the said agreement.

## **4. Acceptance of the T&Cs**

The T&Cs are available to all Users on the Platform.

Any Client placing an Order on the Platform, via an Authorized User, is deemed to have read and accepted the present T&Cs and the General Conditions of Use in their entirety.

Before placing an Order, the Client undertakes to comply with the Documentation by ticking the box provided : *"I declare and acknowledge that I have read and accept without reservation the Terms and Conditions, the General Conditions of Use and the Privacy Policy"*.

The T&Cs may be regularly updated at InterCloud's sole discretion, in particular to adapt to the evolution of the Services offered on the Platform, to technical and/or commercial and/or financial restrictions, and to an evolution of the applicable regulations. Any Order implies the acceptance of the T&Cs in their latest online version at the time the said Order is placed. The Client therefore undertakes, before placing any Order, to consult the current version of the T&Cs online.

## **5. Duration of the T&Cs**

These Terms and Conditions apply to the Client from the conclusion of the Client's first Order on the Platform until the termination/completion of the last Order or until the expiration of all obligations relating to an order (whichever is the latest).

## **6. Services description**

### **6.1 Available Services**

The following list of Services is not exhaustive, and the denomination of a Service may differ depending on the supplier of said Service. In case of doubt regarding the denomination of a supplier's Service, InterCloud will indicate to the Client to which of the following category of Services the said Service belongs.

a. Client Physical Port :

A Client Physical Port is a Service enabling the Client to connect his environment to the Platform.

The connection of a Client Physical Port to the Platform is requested by the Client, paid for by the Customer and under the Customer's responsibility.

b. Access Node :

An Access Node is a Service enabling the Client to exchange network traffic with a Client Physical Port to different destinations.

c. Transport :

A Transport is a Service enabling the Client to transfer data from one Location to another.

A Transport is determined by the Location of its extremities, its flow rate and the underlying supplier.

d. Bridge Node :

A Bridge Node is an enabling the Client to interconnect two Transports in a given Location.

e. Cloud Node :

A Cloud Node is a Service enabling the Client to connect to a connectivity product offered by a cloud service provider ("CSP")

The technical and financial implementation of such connectivity product is the responsibility of the Client and requires access to the Client's cloud resources administration console.

The list of available CSP is given below for information only :

- Amazon Web Services
- Google Cloud Platform
- Microsoft Azure

## 6.2 Beta services

The Platform may offer early-stage Services, identified as "beta version", which do not include any performance or service level agreement (SLA) and offer limited

support. These restrictions no longer apply as soon as the Service is announced as available in its final version and the associated beta mention is removed.

The Client ordering a Service in beta version expressly waives its right to engage InterCloud's liability in the event of non-performance or poor quality of said Service.

InterCloud retains the right to terminate any Service in beta version as soon as said Service is announced as available in its final version, subject to one (1) month notice by e-mail.

## 7. Features

### 7.1 Resources

Resources are features made available to Users via the Platform's Web interface or API, independently of the order or deployment of any Service.

#### a. Workspace

The Workspace is feature enabling the Client to combine and create architectures with one or several Services.

#### b. The User(s) Account(s) :

The Client can create different User Accounts, granting each one with specific rights authorizing or prohibiting certain actions on the Platform.

### 7.2 Location

A Location is a physical point of presence (Datacenter) on the Platform.

Most of the Services available to order can be installed in the Platform's Locations.

Indicative list of available locations :

- Paris
- Frankfurt
- London
- Amsterdam
- Ashburn
- San José
- Hong Kong
- Singapore

## 7.3 Suppliers

Depending on the Client's choice, the Services available may be provided by different suppliers.

The suppliers are clearly identified on the Platform.

Indicative list of suppliers :

- Megaport
- Equinix
- InterCloud

## 8. Financial conditions

### 8.1. Tariff

Before placing an Order, the Client is informed of the total and detailed costs of such Order in the tab provided for this purpose.

All prices are quoted in euros and exclude taxes.

Prices shown before placing an Order are only valid for such Order.

The VAT rate applicable is the rate in force on the billing date.

Any bank charges are entirely at the Client's expense.

### 8.2. Invoicing

Services are invoiced in arrears (end of month).

Recurring charges are calculated and invoiced on a monthly basis, considering that :

- the deployment of a Service during the course of a calendar month will result in pro-rata invoicing for the number of days between the day of deployment of this Service (included) and the last day of such month (included) ;
- the termination of a Service during the course of a calendar month will result in a pro-rata invoicing for the number of days between the first day of such month in question (included) and the day of termination of the Service (included)

Non-recurring charges are invoiced upon validation of the Order.

Invoicing details are specified on the Platform when an Order is placed.

### **8.3. Invoice payment**

Invoices issued by InterCloud are payable without discount within thirty (30) calendar days from the date of their issue.

Any amount due and not paid by the Client within this period will bear interest at the rate applied by the B.C.E. to its refinancing operations, plus ten (10) points, with a minimum of fifty (50) euros.

In application of articles L441-6 and D441-5 of the French Commercial Code, a flat-rate indemnity of forty (40) euros for collection costs will be applied in the event of payment after the due date. This indemnity is additional to late payment penalties.

### **8.4. Price revision**

InterCloud retains the right to modify the prices of the Services without duration commitment, at any time, upon notification of the Client by e-mail.

Such notification specifies the applicable price revision and the date from which said revision becomes effective. In any case, no price revision may be applied to the Client without a minimum notice period of two (2) months. Under all circumstances, the old prices remain in force until the end of this notice period.

If the Client continues to use the Services after the date on which the price revision comes into effect, it is deemed to have accepted said price revision without reservation.

### **8.5. Late payment**

In the event of total or partial late payment of more than forty-five (45) days, InterCloud is entitled to immediately suspend the provision of the Service(s) to the Client, upon sending of a formal notice which has remained without effect within fifteen (15) days from the date of dispatch.

If the Client fails to fulfil its payment obligation within fifteen (15) days of the suspension of the Service(s), all Orders of the Client may be terminated immediately by InterCloud, without further formalities, to the exclusive detriment of the Client, who shall bear all the consequences of such termination. All amounts due by the Client for the Orders, up to the effective date of termination or the date of end of commitment (whichever is the later) become immediately due and payable.

## 9. Order

### 9.1. Requirements

Before placing an Order, the Authorized User acknowledges that the creation and configuration of the Client Account has been completed, in the course of which it has indicated the legal entity on whose behalf the Client Account is created and, on whose behalf, the Authorized User will place an Order on the Platform.

The Customer is ultimately responsible for verifying that such requirements are fulfilled prior to any use of the Platform, as these conditions are essential for the selection, configuration and deployment of the Services.

### 9.2 Order placement

Orders are placed on the Platform by an Authorized User.

In order to place an Order, the Authorized User selects a Service or a combination of several Services from the list of Services stipulated in the "Services description" hereinabove.

By clicking on the Order validation button, the Client acknowledges that :

- the Client is solely responsible for the selection and combination of the Services to be deployed, and for checking that the requirements detailed in section 9.1 hereinabove have been met.
- the Client is solely responsible for authorizing a User to place an Order.
- the Client waives any right of withdrawal, including a possibility to cancel or modify (in whole or part) the Order.
- the price of the Services ordered is due in full to InterCloud, including in case of incident in the deployment of the Services as a result of an inappropriate choice of Services or in case of a non-Compliant use of the Platform.
- The Client possesses all the technical data and knowledge required to operate the Services.
- All eventual expenses necessary for the proper functioning and/or deployment of the Services, external to the Platform, are at the full charge of the Client.

After the Order has been validated, a confirmation of the Order is sent to the Client by email.



### 9.3. Order deployment

Services are intended to be deployed as soon as the Order has been validated and no later than two (2) hours after the confirmation of the Order.

Billing for each Service starts as soon as the Service is deployed.

## 10. Support

In case of incident related to the use of the Platform or the deployment of the Services, the Client may contact InterCloud's customer service by e-mail at the following email : **adresse mail à renseigner par Seb**

For any administrative or billing-related questions, the Client may contact InterCloud's accounting department by e-mail at the following address: [comptabilite@intercloud.com](mailto:comptabilite@intercloud.com)

## 11. Suspension and Termination

### 11.1 Services suspension

Any non-Compliant use of the Platform by the Client, or more generally any use that may be detrimental to the interests of InterCloud, its suppliers, partners, or other customers, may result in the suspension of the Services at InterCloud's sole discretion.

In such case of Services suspension, billing continues, without prejudice to any damages that Intercloud may claim from the defaulting Client.

### 11.2. Services termination

#### 11.2.1 Termination by InterCloud

InterCloud retains the right to terminate the Services in an event of non-Compliance with the Documentation or in an event of non-Compliant use of the Platform by the Client.

A formal notice will be sent to the Client requesting the regularization of the situation. If the situation is not regularized by the Client within seven (7) days of the formal notice being sent, InterCloud is entitled to cancel the Client's Order(s), in whole or in part, without releasing the Client from its payment obligation.

A termination fee corresponding to the total amount of the Order (in an event of total termination) or to the amounts relating to the terminated Services (in an event

of partial termination), up to the end of the commitment period, less any amounts already paid by the Client, notwithstanding any penalties, damages, or interest that InterCloud may claim.

### 11.2.2 Termination by the Client

Termination of a Service is carried out by the Client on the Platform.

Certain Services have a minimum commitment period ; in such case, said commitment period appears expressly on the Platform.

- If a Service is subject to a minimum commitment period, early termination of an Order for such Service by the Client (i.e. before expiry of the minimum commitment period) shall result in the Client incurring a penalty equal to the price of the Order for such Service for the rest of the minimum commitment period. After expiry of the minimum commitment period, the Service may be terminated at any time by the Client without penalty, being specified that the Client will be invoiced until the day on which the Service is terminated (included).
- If a Service is not subject to a minimum commitment period, the Service may be terminated at any time by the Client without penalty, being specified that the Client will be invoiced until the day on which the Service is terminated (included).

Any Service deployed that is not subject to a minimum commitment period shall be invoiced to the Client, at least, for a commitment period of one (1) day.

## 12. Intellectual Property

All Intellectual Property Rights relating to the Services made available through the Platform are the exclusive property of InterCloud, its suppliers or its partners.

Nothing herein shall be interpreted as a transfer of any right, interest, or Intellectual Property Right of InterCloud, its suppliers or its partners in any way whatsoever.

The Client undertakes not to use the Services in a way that would infringe any Intellectual Property Right of InterCloud, its suppliers or its partners, in particular any adaptation, modification, correction, translation, arrangement, distribution, duplication, reproduction or decompilation, or more any other act infringing the rights and interests of InterCloud, its suppliers or its partners.

The Client acknowledges and accepts that all reports/discussions with InterCloud concerning the Platform and the Services, especially a Service in beta version, may result in the evolution of the Platform or the Services, without the Client being

entitled to invoke the ownership of any right over the content of such report/discussions or any Intellectual Property Right over such evolutions.

### **13. Liability**

The Client is sole responsible for the choice of the Service(s) ordered on the Platform in order to design the solution contemplated.

InterCloud declines all responsibility for the choice, quality and level of performance of the Service(s) ordered by the Client.

### **14. Applicable law and jurisdiction**

The Documentation is governed by French Law.

Any difficulty relating to the validity, application or interpretation of the Documentation shall be submitted, in the absence of amicable agreement after a period of thirty (30) days as from the occurrence of the dispute to the exclusive jurisdiction of the courts of Paris, to which the Parties attribute territorial competence, regardless of the place of performance of the Services or domicile of the defendant. This attribution of jurisdiction also applies in the event of summary proceedings, multiple defendants, or warranty claims.