

Terms and Conditions of Use of ANIA FocusNet Group Ltd Services

Introduction

FocusNet is registered company in Cyprus with registration number “HE338690” and is located in Nicosia, 36, Ippokratous str.

FocusNet (www.focus-net.net) offers server management, webhosting and email hosting services. FocusNet also created the “GotMsg” service (www.gotmsg.com) and the “SMSinstant” service (www.smsinstant.com) to provide email marketing and/or SMS marketing and/or transactional solutions via their websites.

The purpose of these terms and conditions is to outline the terms of use of FocusNet’s services. Any specific conditions negotiated between FocusNet and the user take precedence over these terms and conditions.

"Us", "we", "our", “ANIA FocusNet Group Ltd” and "FocusNet" mean the same.

"You", "Customer" and “user” mean the same.

"Effective Date": 01/Apr/2018

User account management

The use of FocusNet services requires an online account to be set up. The user is responsible for the accuracy of the information provided and undertakes to update all pertinent information or advise FocusNet immediately of any change to his/her situation.

The user will take all necessary steps to maintain the confidentiality of access to his/her account. In the event of fraudulent use of his/her account, the user undertakes to immediately notify FocusNet and change his/her access password.

Any costs resulting from unauthorized use of the user's account will be at the user's expense until such time as FocusNet has been notified. FocusNet will under no circumstances be responsible for any material or immaterial damage resulting from the use of an account by a third party, with or without the user's authorization.

FocusNet archives all messages sent and received via its platforms. Distribution lists are maintained from the time the user opens and correctly updates his/her account. FocusNet protects the integrity, confidentiality and the administrative, material and technical security of all of the user's personal information.

Financial conditions

Subscribing to FocusNet’s services commits the user to paying the purchase price for the services selected in his/her country of residence. Unless stipulated otherwise, the price of the services subscribed to will be paid at the time of subscription and in the currency in which they are invoiced.

Prices displayed on the website do not include charges and are VAT exclusive. Additional charges shown on the invoice will be based on the user's country of residence and any applicable statutory or regulatory provisions.

Use of services

Compliance with applicable regulations

Each party declares that it will comply with the regulations applicable to its activities.

In general terms, the user guarantees that the information sent via FocusNet's services does not contravene any applicable statutory or regulatory provisions or the provisions of any international agreement, particularly those in force in Cyprus, in the country in which the user operates and in the country of residence of the people on the distribution lists, or the rights of any third party.

For information purposes only and without this list being exhaustive, the sending of emails and SMS to customers is subject to the following rules:

- United States: Telemarketing Sales Rule, Federal Telephone Consumer Protection Act, Can-Spam-Act.
- In France: articles L.34-5 of the Postal and Electronic Communications Code and L.21-34-1-1 of the Consumer Code.
- In Italy: Codice in Materia di Protezione dei Dati Personali
- In Spain: the Ley 34/2002, de 11 de julio, de Servicios de la Sociedad de la Información y de Comercio Electrónico and the Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal.
- In the United Kingdom: The Privacy and Electronic Communications (EC Directive) Regulations 2003.

The user's intellectual property rights

The user authorizes FocusNet to use his/her name, brand and visual identity solely for the purposes of carrying out its services.

The user guarantees FocusNet:

- that he/she has the full power and authority to use and grant intellectual and industrial property rights and that these rights are in no way assigned, compromised, encumbered or attributed to a third party;
- that he/she has not and will not, through assignment to a third party or any other means, undertake any action likely to compromise the use of intellectual or industrial property rights;
- that he/she has not and will not introduce into his/her campaigns any sequence, reproduction or resemblance likely to violate third party rights;
- that no litigation or lawsuit has been filed or is pending that would compromise intellectual property rights.

Moreover, the user undertakes to protect FocusNet from any complaint by a third party or any accusation made against it arising from the failure to abide by this article.

FocusNet's intellectual and industrial property rights

All programs, services, processes, designs, software, technology, brands and trademarks, and inventions that appear on the website, are accessible via the website or via FocusNet's services are the property of FocusNet or its licensors.

The user undertakes not to use, in any way, shape or form, the website, services or any of the above-mentioned items for purposes other than those foreseen in the present document.

Protection of third party personal data

FocusNet has access to the information contained in the email distribution lists created by users of its services in their personal account, as well as to the subject line and content of emails addressed to distribution lists via FocusNet services.

This data is stored on secure servers and is subject to computer processing to provide the service subscribed to by the user and improve FocusNet's services.

With the user's authorization, the behavior of the recipients of these emails may be subject to analysis (tracking of an individual's open, click and bounce rates) to improve its email marketing campaigns.

FocusNet undertakes to neither transfer nor rent the data contained in the distribution lists created by users of its services.

The personal data contained in the distribution lists may only be disclosed to a third party in the following instances:

- with the user's authorization and confirmation that the owner of this personal data has personally authorized its disclosure;
- at the request of legally competent authorities, upon presentation of a court order or within the context of a legal dispute.

As the creator of the distribution list, the user is responsible for processing the personal data that appears on this list under the terms of the Cypriot data protection law ["The Processing of Personal Data (Protection of Individuals) Law"] and the European General Data Protection Regulation 2016/679 (GDPR) – which replaces the Data Protection Directive 95/46/EC.

The user guarantees FocusNet that he/she will respect the provisions of the Cypriot data protection law ["The Processing of Personal Data (Protection of Individuals) Law"] and the European General Data Protection Regulation 2016/679 (GDPR), and notably:

Prohibited use

The use of FocusNet's services by subscribers to these services is strictly personal and may not be rented out or transferred to a third party free of charge or for a fee. Except where pre-authorized by FocusNet, only one account may be created per subscriber.

Any use of services that is liable to damage, disable or overload FocusNet's infrastructure or the networks connected to FocusNet servers, or hamper the use of the service for other users, is prohibited.

Any unauthorized attempt to access services, other accounts, IT systems or other networks connected to a FocusNet server or one of its services by hacking or any other means is prohibited.

The use of services with the aim of selling products or services related to illegal or fraudulent activities or encouraging such activities, in particular but not limited to illegal drug-related activities, hacker programs, instructions for assembling or creating bombs, grenades or other weapons, material containing violence against children or encouraging violence is prohibited.

Any use of services that contravene the regulations applicable to telemarketing, email marketing, anti-spam, anti-phishing and personal data protection is prohibited.

Any use of services that violates third party rights is prohibited.

In the event of non-compliance with this article, FocusNet reserves the right to immediately block the user from accessing its services and delete all of the information in his/her account without notice, refund, or other compensation.

FocusNet reserves the right to decline or limit service to any account that does not respect our policies, legislation governing business communications, or distributes unsolicited communications.

The following subject matter is prohibited on the FocusNet platforms:

- that the personal data contained in the transmitted file was collected and processed in accordance with the provisions of the aforementioned law;
- if applicable, the collection and processing were authorized by the owner of the data;
- that he/she will allow the owners of the processed data to exercise their individual right to access, amend, rectify or delete any of their personal information;
- that he/she undertakes to ensure that this information is rectified, completed, clarified, updated or deleted if it is inaccurate, incomplete, ambiguous or out-of-date, or if the owners wish to prohibit its collection or use, communication or retention.

FocusNet will destroy any file(s) containing the distribution list(s), as well as any media or copies made as part of the data processing and routing operations, after a maximum period of 30 days following the termination of the contractual relationship.

The user can retrieve his/her distribution lists at any time his/her personal account in FocusNet's platforms.

- All illegal activities
- Weight loss
- Forex, penny stocks and trading schemes
- Work from home, pyramid and other financial schemes
- Pornography or sexually explicit ecommerce
- Erectile dysfunction remedies
- Soliciting employment
- Political lists (consular, governmental, etc.) containing addresses of individuals who have not given their explicit consent to receive communications from an identified advertiser. Giving an e-mail address to a Consulate or an Embassy does not provide proof of commitment as does the opt-in.

Accounts related to the following activities may only be validated under specific circumstances:

- Clairvoyance and astrology
- Gaming, Gambling and lottery
- Dating services
- Communications to contacts harvested from social networking sites, such as LinkedIn and Viadeo

Responsibilities and guarantees

FocusNet's liability and guarantees

Except in cases of force majeure, FocusNet guarantees the user that it will provide its services in accordance with these terms and conditions.

Any compensation due by FocusNet to the user or a third party as a result of an incursion of liability by FocusNet, its subsidiaries or its partners while acting in accordance with the present document, shall not exceed the price paid by the user in exchange for the service(s) that gave rise to the aforesaid liability.

Under no circumstances does FocusNet guarantee the user any anticipated economic benefits for images or information in respect of emails or SMS sent under the terms of the present document.

FocusNet does not systematically monitor the content of messages sent by the user to his/her distribution lists, which remain the user's responsibility.

Under no circumstances can FocusNet be held responsible vis-à-vis third parties for damage resulting from the sending of emails or SMS from the user's account, in whatever capacity.

The user's liability

The user is solely responsible for the content of emails or SMS sent to his/her distribution lists in accordance with the terms of the present document.

The user may be held responsible for any non-compliance with these terms and conditions or FocusNet's confidentiality or anti-spam policies, or any statutory or regulatory provisions arising from an applicable international agreement.

The user will protect FocusNet from any damage, complaint or legal recourse by a third party as a result of the user violating these terms and conditions or FocusNet's confidentiality or anti-spam policies, or any statutory or regulatory provisions arising from an applicable international agreement.

Changes to terms and conditions of use, and FocusNet's policies and products

FocusNet may be required to amend these terms and conditions of use, its anti-spam and confidentiality policies, and its products. When the user logs onto his/her account, he/she will be informed of any changes that have been introduced and invited to accept them in order to continue to use FocusNet's services. The latest version of the terms and conditions of use, anti-spam and confidentiality policies and FocusNet's product offering can be viewed at any time on the www.focus-net.net website.

Duration/Termination

This contract is valid for an indefinite period. It can be terminated by the user from his/her personal account at any time. Upon termination by the user, any sums paid in exchange for FocusNet's services remain due to FocusNet, including any unused sending quotas.

In the event that the user does not comply with these terms and conditions, FocusNet's confidentiality or anti-spam policies, or any statutory or regulatory provisions arising from an applicable international agreement, FocusNet reserves the right to terminate the contract subject to a 15-day notice period. The termination does not require a notice period in the event of non-compliance with article 'Use of services' of the present document.

Force majeure

A party's liability may not be invoked if the non-fulfilment or delay in meeting one of the obligations outlined in these terms and conditions arises from a case of force majeure.

Force majeure refers to any external or unforeseeable event or act of God as recognized by the jurisprudence of the Cypriot courts, making it impossible for either party to fulfil its obligations or causing the fulfilment of these obligations to be excessively costly.

Without this list being restrictive, the following events will be expressly considered cases of force majeure, in addition to those commonly cited by the jurisprudence of the Cypriot courts:

- wars; armed conflicts; riots; demonstrations; sabotage; acts of terrorism;
- total or partial strikes within or outside the company, a supplier or a national operator; lock-outs; transport or supply blockages for whatever reason;
- natural disasters resulting in the destruction of infrastructure such as fires, storms, floods and water damage;
- governmental or statutory restrictions; statutory or regulatory modification of forms of marketing; the suspension, cancellation or revocation of any authorization by any competent authority;
- interruptions to the FocusNet network or to that of its subcontractor or supplier caused by a computer breakdown or telecommunications blockage, whether this be the result of an external attack, an interruption to the service provider's services or other irregularity, or any other event not attributable to FocusNet, its subcontractor or supplier preventing the normal operation of services;
- electrical power outages lasting more than 48 hours

Each party will notify the other party by registered mail with delivery receipt in the event of any case of force majeure.

Protection of the user's personal data

Information gathered by FocusNet within the scope of its commercial relationship with the user will be processed and used for:

- commercial and accounting management under the contract;
- business development management;
- the compiling of sales statistics and the monitoring of regulatory compliance relating to data protection.

In accordance with the Cypriot data protection law [“The Processing of Personal Data (Protection of Individuals) Law”] and the European General Data Protection Regulation 2016/679 (GDPR) you have a right of access, correction and removal of your personal data which you may exercise by sending us an email to support@focus-net.net. Your requests will be processed within 30 days. We may require that your request be accompanied by a photocopy of proof of identity or authority.

The user may also, for legitimate reasons, object to the processing of data concerning him/her. By subscribing to FocusNet services, the user also accepts “ANIA FocusNet Group Ltd Privacy Policy”.

GotMsg - Legal requirements

GotMsg requires the user to comply with the following legal requirements established for commercial email service providers: CAN SPAM Act of 2003, the Directive 2000/31/EC of the European Parliament and Council of 8 June 2000, on legal aspects of information society services, in particular, electronic commerce in the Internal Market ('Directive on Electronic Commerce'), along with the Directive 2002/58/EC of the European Parliament and Council of 12 July 2002, concerning the processing of personal data and the protection of privacy in the electronic communications sector ('Directive on Privacy and Electronic Communications') and laws in force of the User's country of residence.

Partial nullity of the contract

The cancellation of one or more of the clauses in the contract will not invalidate the contract in its entirety provided that the balance and overall intent of the agreement are preserved.

Applicable law/assignment of jurisdiction

The contract is governed by Cypriot law alone. Any dispute among the parties arising from the validity, interpretation and/or execution, termination or breach of the contract may be submitted by either party to the Commercial Court in Nicosia. This also applies in the event of emergency proceedings, third party appeals and/or multiple respondents.