



**X E R V E R S**

H O S T I N G   S O L U T I O N S

## Special Conditions for Virtual Private Servers

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## Art 1: Object

The purpose of these particular conditions, which complement the general conditions of service of **xervers**, is to establish the technical and financial conditions by which **xervers** undertakes to maintain the Customer's Virtual Private Server on its platform.

These particular conditions shall prevail over the general conditions in the event of conflict between the two documents.

## Art. 2: Means

When providing the Service, **xervers** makes available to the Client a Virtual Private Server that has dedicated resources (hard disk partitions) and resources (RAM memory and processor) belonging to the Host Server that are shared by the various Virtual Private Servers installed there. Due to the high technicality of the Service, **xervers** is not bound to any result obligation towards the Client.

The **xervers** server platform on which the Virtual Private Server is installed is accessible to the Client as well as to the general public via the Internet network. Throughout the Virtual Private Server lease period, **xervers** makes available to the Customer the means of communication that allow him/her to access the Service.

## Art. 3: Technical Support

In the event of malfunctioning or breakdown of the Service for which **xervers** is responsible, the Client may contact the incident service provided by **xervers**, duly identified and accessible on the website <https://xervers.pt>.

## Art. 4: Conditions for the Realization of Benefits

**xervers** makes available to the Client different configurations of Virtual Private Servers whose description is accessible online at <https://xervers.pt>.

**xervers** invites the Customer to carefully study each configuration before confirming their order. It is up to the Customer to define the configuration and operating system that best meets his expectations and needs.

After confirmation of your order by **xervers**, **xervers** will send you the access codes that allow you to connect to the Virtual Private Server. **xervers** reminds you that every Virtual Private Server rented from **xervers** benefits from a fixed IPv4 address geolocalized according to the physical location of the Virtual Private Server.

The Host as well as the Virtual Private Server rented by the Customer shall remain the property of **xervers**.

Within the scope of the present agreement, the Customer is the sole administrator of its Virtual Private Server. Under no circumstances will **xervers** intervene in the administration of the Customer's Virtual Private Server.

At the same time, **xervers** is responsible for administering the hardware and network infrastructure, as well as for administering the Host Servers that constitute it and on which the Customer's Virtual Private Servers are installed.

The Client confirms that he/she has the technical knowledge required to properly administer a server equivalent to the Virtual Private Server provided by **xervers**, and that he/she is aware of his/her responsibility for backing up the data stored in the Service. The Customer also undertakes to be aware of the documentation made available by **xervers** regarding the VPS service.

The Customer has the ability to install software on the Virtual Private Server by himself/herself. Such installations shall be made under his sole responsibility, and **xervers** may not be held liable for any malfunction of the Virtual Private Server as a result of such installations.

**xervers** reserves the possibility of filtering some ports it deems sensitive for the preservation of the infrastructure. Likewise, the Customer acknowledges that UDP/ICMP flows are subject to limitations.

Within the scope of the Service, the Customer may modify the configuration of his Virtual Private Server. To do so, the Customer must order through its Management Interface the desired configuration for its Virtual Private Server. The aforementioned modification will be triggered within hours of the request.

Within the scope of a server in the VPS range, the guaranteed bandwidth is 100 Mbps (one hundred megabits per second) and the outgoing bandwidth traffic compatible with the switch port is limited to a given volume of 10 TB (ten terabytes) per month. This calculation occurs both for traffic inside the **xervers** network and for traffic outside the **xervers** network. When the monthly traffic volume is higher than the defined balance per month, the bandwidth associated with the service is limited to 1 Mbps (megabits per second) until the end of the current billing cycle.

The billing methods applicable to the Base Power Change are defined in article 13 of these conditions.

The Service is based on virtualization technologies. Due to this fact, the Customer acknowledges that **xervers** will not be able to guarantee switching requests.

**xervers** reserves the possibility to limit or restrict certain features of the Virtual Private Server in order to ensure the security of its Infrastructure. **xervers** will inform the Customer, to the extent possible, of the implementation of such possible blockages.

The Customer undertakes to use the Service diligently.

## Art. 5: Obligations of xervers

**xervers** undertakes to act in a diligent and careful manner as required to provide a quality service in accordance with industry best practices and the state of the art.

**xervers** commits to:

**Art. 5.1:** Ensure the administration of the **xervers** Infrastructure and the Host Servers.

**Art. 5.2:** Keep the Host Server in good working order. In the event of its failure, **xervers** undertakes to replace the defective part as soon as possible, except in the event of a failure for which it is not

responsible, or for any intervention that requires an interruption of the Service that exceeds the usual replacement times. In the latter case, **xervers** undertakes to inform the Customer immediately.

**Art. 5.3:** Ensure the availability of the Customer's Virtual Private Server in accordance with the provisions of article 11 of these special conditions. **xervers** reserves the possibility of interrupting the Service to carry out a technical intervention in order to improve operation.

**Art. 5.4:** Intervene as soon as possible, at the Customer's request, in the event of an incident that is not due to the consequent misuse of the Virtual Private Server by the Customer.

**Art. 5.5:** Ensure that the best level of quality of these tools is maintained in accordance with the rules and usages of the profession.

## Art. 6: Responsibility of xervers

**xervers** cannot be held liable in case of:

- Client's fault, negligence, omission, or failure to act, as well as Client's disregard of the advice provided by **xervers**;
- The fault, negligence, or omission of a third party over whom **xervers** has no power of control or supervision;
- Force majeure, events or incidents beyond the control of **xervers**;
- Stoppage of the Service as a consequence of the causes stipulated in clause 7;
- Disclosure or illicit use of the password given confidentially to the Client;
- Deterioration of the application;
- Misuse of the terminals by the Customer or its Customers;
- Partial or total destruction of the information transmitted or stored as a result of an act imputable directly or indirectly to the Client;
- Intervention in the Service by a third party not authorized by the Client.

**xervers** reserves the right to interrupt the Service if the Customer's Virtual Private Server constitutes a danger to the security of the **xervers** Infrastructure, notably in the event of hacking into the Customer's Virtual Private Server or the detection of a system security breach.

**xervers** shall inform the Customer within a reasonable time and to the extent possible, indicating the nature and duration of the intervention, in order to allow the Customer to take action. **xervers** undertakes to re-establish the connection as soon as the Client makes the appropriate and requested corrections.

However, in the event of a repeat or particularly serious problem, **xervers** reserves the right not to put the Customer's Virtual Private Server back online.

**xervers** may not be held liable for the content of the information, sound, text, images, and form elements that are accessible on the websites hosted on the Customer's Virtual Private Server, transmitted or put online by the Customer under any pretext.

**xervers** may not be held liable for the total or partial non-performance of an obligation and/or failure of the operations of the operators of transport networks for the Internet and in particular the Client's access provider(s).

**xervers** does not perform any specific backup of the data stored on the Customer's Virtual Private Server.

Consequently, the Customer is responsible for taking all necessary measures to back up its data in order to be able to restore it in the event of its loss or deterioration, whatever the cause, including those not expressly referred to in the present conditions.

**xervers** does not offer any guarantee as to the consequences of the Customer's use of the Service, particularly with regard to the security and preservation of said data.

## Art. 7: Client Obligations and Responsibilities

**Art. 7.1:** The Client declares to have the capacity and availability necessary for the completion and performance of the obligations set forth in these particular conditions.

**Art. 7.2:** The Client undertakes to provide valid information that allows him/her to be identified, in particular: last name, first name, organization (if applicable), address, telephone number, email address, tax identification number. **xervers** reserves the right to request proof, which the Client must provide within 72 (seventy-two) hours following **xervers'** request. If no such proof is received, **xervers** reserves the right to suspend the Client's services. **xervers'** request may relate to the different websites hosted by the Client.

**Art. 7.3:** The Customer acts as an independent entity and consequently assumes the risks and dangers inherent in its activity. The Customer is solely responsible for the services and websites hosted on its Virtual Private Server, the content of the information transmitted, disseminated or collected, its operation and updating, as well as all files, including address files.

The Customer is a host within the meaning of [Law 32/2008, of July 17](#); therefore, is who "guarantees, even free of charge, to make available to the public via online public communication services, the storage of signals, texts, sounds or messages of any nature provided by recipients of these services".

Consequently, **xervers** only guarantees the Client access to its Virtual Private Server allowing it to store its data and that of its clients.

**xervers** warns that it is up to the Client to take all technical measures that allow connection logs and all data to be held and stored in such a way as to allow the identification of any person who has contributed to the creation of the content or contents of the services of which the Client is the provider under the provisions of the legislation in force, namely the [Law 32/2008, of July 17](#), on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks for a period of 12 months.

**Art. 7.4:** The Client undertakes to respect the rights of third parties, personality rights, intellectual property rights such as copyrights, licence rights or trademarks. Consequently, **xervers** may not be

held liable for the content of any information transmitted, disseminated or collected, its use and updating, or for any files, particularly address files, for any reason whatsoever.

The Customer undertakes not to make files or hypertext links available to the public through the sites hosted on his Virtual Private Server in violation of copyright and/or intellectual property rights. The Customer undertakes not to use the Service to implement services for the purpose of downloading in large quantities from file hosting platforms.

The Customer agrees to purchase any licenses that may be required if he uses third-party software while using the Service.

**xervers** may only warn the Customer of the legal consequences that may result from illegal activities on the Virtual Private Server and declines all responsibility for the use of data made available by the Customer to Internet users.

Similarly, proven use by the Customer of spamming techniques on the Internet network shall lead without notice to interruption of the Service and termination of contracts relating to the Service. The Customer also undertakes not to perform any act of intrusion or attempted intrusion from the Virtual Private Server (e.g., port scanning, sniffing, spoofing, etc.).

In the situations described in the preceding paragraphs, **xervers** reserves the right to immediately and automatically terminate the contract, without loss of right to claim any damages and losses by **xervers** as a result of these unlawful acts.

**Art. 7.5:** The Client shall be solely and exclusively liable for the consequences of any defects in the functioning of the Virtual Private Service resulting from its use by members of its staff or any other person to whom the Client has provided his or her access data. Likewise, the Client shall be solely and exclusively liable for the consequences of the loss of said access data.

In order to maintain the security level of the Customer's Virtual Private Server and of all of the servers present in its Infrastructure, **xervers** undertakes to communicate, via email, the availability of updates to the applications maintained by **xervers** whenever a security defect is detected. If the update of these applications is not carried out after **xervers'** request, **xervers** reserves the right to interrupt the connection of the Virtual Private Server to the Internet network.

If **xervers** detects that the Customer's Virtual Private Server constitutes a security risk, a communication may be sent to the Customer via email, indicating that a reinstallation procedure is required to maintain the integrity of the Virtual Private Server and the Infrastructure. **xervers** reserves the right to interrupt the connection of the Virtual Private Server to the Internet network while waiting for the Client to reinstall its Virtual Private Server. The manipulation necessary to operate the transfer of data from the hacked system to the new system must be performed by the Client. **xervers** undertakes and limits its intervention to the installation of the new system only.

**Art. 7.6:** The Customer undertakes not to send unsolicited e-mail, or SPAM, from his Virtual Private Server under the terms of [Law 41/2004, of August 18](#).

Failure to comply with this clause may lead to suspension of the Virtual Private Server that is the source of the unsolicited mail and/or termination of the Agreement.

**Art. 7.7:** The Customer acknowledges that for security reasons certain features, practices and protocols (such as IRC or peer-to-peer file exchange) may be subject to limitations. Anonymizing (Proxy) and cardsharing (CCCam or equivalent) services are prohibited from the Service.

**Art. 7.8:** The virtual technologies used by **xervers** to manage the Customer's Virtual Private Server may in no event be considered as generating an obligation of results for **xervers** regarding the preservation of the Customer's data. All measures aimed at safeguarding data are the sole responsibility of the Client.

**Art. 7.9:** It is up to the Customer to acquire all licenses or usage rights contracted with **xervers**. By default, **xervers** reserves the right to suspend the Service without notice.

**Art. 7.10:** **xervers** reserves the right to exercise control over the compliance of the use of the Service with these provisions.

**xervers** reserves the right to suspend the Service without prior notice, within the conditions set forth in clause 7 of the **xervers** General Conditions of Service, in the event of non-compliance by the Client with the particular and general conditions of **xervers** and, in general, in view of all laws and regulations in force, as well as the rights of third parties.

## Art. 8: Measures against sending SPAM from the xervers network

**xervers** implements technical measures aimed at combating the sending of fraudulent electronic mail, as well as SPAM from its infrastructures.

To this end, **xervers** carries out measures to check the traffic sent to the Internet by the server used by the Client to port 25 (SMTP server) on the Internet. This is a traffic verification operation carried out using automatic tools.

The sends are not filtered or intercepted, but only checked at intervals of a few seconds. These operations are carried out in parallel and in no case up front between the server and the Internet network.

Likewise, no operation is performed on the emails sent: **xervers** does not tag emails and does not modify in any way the emails sent by the Client. No information is stored by **xervers** during these operations, other than statistical information.

The verification of this operation is carried out regularly and completely automatically. No human intervention is performed when verifying the traffic sent towards port 25 (SMTP).

In case emails sent by the Customer server are identified as SPAM or fraudulent, **xervers** informs the Customer and blocks the server's SMTP port.

**xervers** does not keep any copy of emails sent by an SMTP server, even when they are identified as SPAM.

Faced with the possibility of blocking the SMTP port, the Client may request that it be unblocked via its Management Interface.



Any new email identified as SPAM will cause the SMTP port to be blocked for a longer period.

After the third blocking, **xervers** reserves the right to refuse any new request to unblock the SMTP port.

## Art. 9: Mitigation (Protection against DoS and DDoS attacks)

**xervers** implements protection against DoS and DDoS (denial of service attacks), provided these attacks are massive. This protection aims to keep the Customer Service running during an attack.

This functionality consists in checking traffic destined for the Customer Service that comes from outside the **xervers** network. Traffic that is qualified as illegitimate will be rejected before it reaches the Customer's infrastructure, thus allowing legitimate users to continue accessing the applications offered by the Customer despite the computer attack.

These protection measures cannot intervene in the case of computer attacks such as SQL injections, Bruteforce, exploitation of security flaws, etc.

Due to the great complexity of the protection service, **xervers** is only subject to an obligation of means. It is possible that an attack will not be detected by the implemented tools, and that the tools will not allow the Customer Service to be kept operational.

Depending on the nature of the attack and its complexity, **xervers** will apply different levels of traffic protection in order to preserve its infrastructure and the Customer Service.

Mitigation is not activated unless an attack is detected by **xervers'** tools, and for a minimum duration of 26 hours. Consequently, it is the Customer Service that directly supports the attack, which may lead to its unavailability.

As soon as the cyber-attack is identified, mitigation is automatically activated, and can only be deactivated after 26 hours.

During the entire period of **xervers** combat activity you will not be able to guarantee the accessibility of Customer applications, but will strive to limit the impact of these attacks on the Customer Service and **xervers** infrastructure.

If, despite the activation of combat, the cyber-attack is of a nature that could jeopardize the integrity of **xervers** infrastructure or that of other **xervers** Customers, **xervers** will reinforce protection measures, which could lead to a degradation of the Customer Service or affect its availability.

It is possible that some of the traffic generated by the attack cannot be detected by **xervers'** equipment and reaches the Customer Service. The effectiveness of mitigation also depends on the configuration of the Customer's Service, in this respect it is the Customer's responsibility to verify that it has the necessary skills to ensure proper administration.

Attention is drawn to the fact that mitigation under no circumstances exempts the Client from implementing security measures (firewall, for example), regularly updating its system as recommended, backing up its data, or even checking the security of its computer programs (scripts, code, etc.).

## Art. 10: Geolocation

The choice of datacenter, or virtual server location is final and cannot be changed later.

The Customer acknowledges and accepts that it is subject to the laws applicable to the territory in which its equipment is installed.

The Customer acknowledges **xervers'** right to suspend the service if it is used for an activity prohibited in the location where the equipment provided by **xervers** is physically located.

In parallel, in the case of geolocated IPs, the Client agrees not to use a service that violates the applicable legislation in the country in which the IP address is declared. In the event of such use, **xervers** may be forced to proceed with the suspension of all geolocated addresses associated with the Client.

## Art. 11: Service Level Assurance

**xervers** guarantees the availability of 99.89% of Virtual Private Servers over 12 months.

## Art. 12: Contract Duration and Service Renewal

The Client also has the option of subscribing to the Service by means of a subscription in accordance with the General Conditions of Service. In this case, the Service is subscribed for an initial duration of one month, renewable for successive identical periods.

The Client, through his or her Management Interface, may at any time change his or her subscription to the Service to subscription billing mode; in this case, the Service is tacitly renewed for periods of one month renewable from the date of expiry of the previous subscription.

## Art. 13: Pricing, Payment Methods, and Invoicing

The prices applicable to the Virtual Private Server are available at <https://xervers.pt>. Prices can be displayed with or without VAT by means of a checkbox at the beginning of the site. Only the price indicated on the order form published by **xervers** corresponds to the total amount payable by the Customer. The amounts due are paid in advance.

The payment methods accepted by **xervers** at the time of the first order for the Service are indicated on the page <https://xervers.pt/available-payment-methods.php>.

The Customer may perform a Base Power Change in the course of a billing cycle.

In this case, the Migration to a higher configuration is billed to the Customer according to the price basis applicable to the new configuration, as stipulated on the website <https://xervers.pt>.

If the Customer's **xervers** account has a credit balance equal to or greater than the amount billed for the configuration change, that amount will then be automatically debited from their **xervers** account.

In the absence of a credit balance, **xervers** will debit the Customer using one of the payment methods registered and associated with their **xervers** account.

If **xervers** is unable to debit the Customer using the associated means of payment, a message will be sent to the Customer inviting him to settle the amount of his overdue invoice. **xervers** has the right to suspend the Service in the event of non-payment.

The migration is effective from the date of the transaction until the expiration date of the Service. The difference between the applicable monthly price and the price applicable to the new VPS model is invoiced on a prorata-temporis calculation.

## Art. 14: Free Resolution

By derogation from the provisions of Article 14 of the General Conditions of Service, the Customer (as a consumer within the meaning of the provisions of the Consumer Protection Act) expressly agrees to the immediate execution of the service as of the validation of his order. Upon validation of payment, the Customer will have access to his Virtual Private Server. From that moment, and in accordance with the [Decree-Law 24/2014, of February 14](#), the Customer will not have the option to exercise his right of free withdrawal for any order or renewal of the Service.

These same measures are applicable in cases of Base Power Change.

## Art. 15: Resolution, Limitations and Suspension of Service

**Art. 15.1:** Both parties may, for reasons of force majeure, terminate the contract by operation of law and without compensation, in the event of the conditions set out in Art. 6 of these conditions.

**Art. 15.2:** In all other cases, the Customer is free to terminate the Contract by simply sending a postal order to the following address: xervers, unipessoal lda, Estrada Nacional 229-2, 2, 3505-245 Viseu, Portugal.

**Art. 15.3:** Failure by the Customer to comply with the provisions of Article 6 of the present Particular Conditions for the rental of a Virtual Private Server, namely any activity specifically prohibited from **xervers**' servers and/or likely to generate civil and/or criminal liability and/or likely to prejudice the rights of a third party, shall lead **xervers** to exercise its right to immediately disconnect and/or interrupt the Customer's services without prior notice and to immediately and automatically terminate the contract, without prejudice to the right to all compensation for damages that **xervers** may claim.

**Art. 15.4:** Under the terms of this agreement, for any reason whatsoever, the Customer's Virtual Private Server will be deleted as well as all data that may be stored there.

**Art. 15.5:** In any case, the restriction, limitation or suspension measures are exercised according to the severity and frequency of the fault(s). These will be determined according to the nature of the fault(s) found.

**Art. 15.6:** The Client agrees in advance that **xervers** may restrict, limit or suspend the Service offered, in the event that **xervers** receives notice to this effect from a competent administrative, arbitration or judicial authority, in accordance with applicable law.