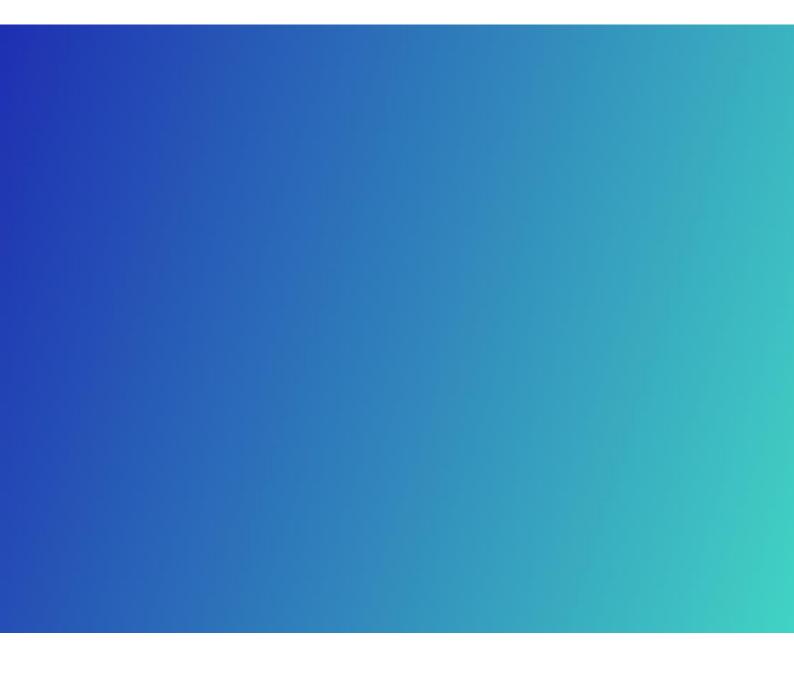# Terms of Delivery for Customers

For the performance of the SurePay IBAN-Name Check Service

surepay

IBAN-Name Check Services Terms of Delivery 2021

IBAN-Name Check Services Terms of Delivery of SurePay BV, having its registered office in Utrecht, and for this agreement with place of business at Nicolaas Beetsstraat 222 3511 HG Utrecht, registered with the Chamber of Commerce, number 77251733,

1. General Conditions:

1.1 The Agreement

1.1.1 These terms of delivery shall apply to any delivery of IBAN-Name Check services by SurePay to Customer (hereafter: "Agreement"). The Agreement between SurePay and Customer will be concluded by the mediation of a Partner or Software Supplier whereto the Agreement will also entail the agreement in place between Partner or Software Supplier and Customer.

1.1.2 Any other (general) terms and conditions of SurePay and/or Customer do not apply to the Agreement.

1.1.3 The Agreement shall be exclusively governed by Dutch law.
Any dispute between SurePay and Customer with regard to the Agreement shall exclusively be submitted to the courts of Utrecht, the Netherlands.

1.1.4 SurePay is allowed to assign the Agreement to a third party. By signing this Agreement, Customer consents with such future assignment.

1.2 Fees, Invoicing and Payments

1.2.1 The arrangements regarding fees, invoices and payments are described in the Agreement between Partner and/or Software Supplier and the Customer.

1.2.2 SurePay can change the fees at any given moment without prior notice during the term of the Agreement.

1.2.3 In the event the Partner is not responsible for paying the invoices of Customer, payable invoices shall be paid by Customer within 30 days after the date of the invoice.
If Customer fails to pay the amounts due or to pay the amounts due in a timely manner, statutory commercial interest shall be payable by Customer on the outstanding amount without a demand or notice of default being required.

1.3 Terms and termination

1.3.1 The Agreement shall come into effect and shall be entered into for the period Customer uses the Services. SurePay shall be authorised to either wholly or partially terminate the Agreement at its convenience at any moment, giving Customer a term of notice of one month.

1.3.2 Each party shall be authorised to either wholly or partially terminate the Agreement starting immediately, without further notice and without prior legal intervention, if:
the other party fails to comply with its obligations under the Agreement, unless the failure, in view of its special nature or limited significance, does not justify this dissolution and its consequences; insofar the non-compliance is not permanent, the authority to terminate does not arise until compliance with the obligations remains forthcoming after the expiration of a 30 days term specified in a written final notice.
the other party applies for a suspension of payments; - the other party has been declared bankrupt; - the other party is a legal person that is being dissolved.

1.3.3 SurePay shall be authorised to either wholly or partially dissolve this agreement starting immediately, without further notice and without prior legal intervention, if shares in or parts of the control over Customer's company are transferred to a third party.

1.3.4 SurePay shall be authorised to either wholly or partially terminate the Agreement starting immediately, without further notice and without prior legal intervention, without being liable to pay any damages or costs to Customer, if any party that provides SurePay with the data that are used by SurePay to perform its services towards Customer, does not allow SurePay to use such party's data for the provisioning of the services to Customer.

1.3.5 In the event of termination, Customer will immediately discontinue use of the services. The termination of the Agreement does not relieve parties from the obligations under the Agreement, which by their nature continue, such as - but not limited to - the provisions with regard confidentiality, liability, intellectual property, applicable law and competent court.

1.4 Collaboration

1.4.1 In order to facilitate the proper execution of the Agreement by SurePay, Customer shall at all times provide SurePay with all data or information that SurePay for that purpose deems to be useful, necessary and desirable and to give its full cooperation in a timely manner.

1.4.2 Customer shall bear the risk of the selection, the use, the application and the management within its organization of the IBAN Name Check services to be provided by SurePay. Customer itself shall arrange for the correct implementation and commissioning and for the procurement and application of the correct settings to the hardware, software, websites, cloud services, data files and other products and materials it uses in conjunction with the services.

1.4.3 If use is made of cloud computing, data or telecommunication facilities, including the internet, during the execution of the Agreement, Customer shall be responsible for selecting the correct resources required for this purpose and for ensuring that these are available in full and in a timely manner. SurePay shall under no circumstances be liable for losses or costs arising as a result of transmission errors, breakdowns or the non-availability of these facilities.

1.5 Use of third parties

1.5.1 SurePay is authorised to subcontract its obligations. With regard to third parties engaged by it, SurePay bears full responsibility for proper performance of the obligations under the Agreement.

1.6 Confidentiality and processing of personal data

1.6.1 Both parties recognise that the nature of the information that they receive within the scope of the implementation of the Agreement is strictly confidential.
Confidential information is understood to mean: the content of the Agreement as well as all data and information (including computer software) provided within the scope of the Agreement, as well as data and information derived from processing confidential information received. Personal Data (defined in article 1.6.4) and information regarding business relations of the Customer Group are always confidential information.

1.6.2 Parties shall in no manner whatsoever, directly or indirectly, orally or in writing or otherwise, reveal confidential information to third parties, other than after prior written permission of the other party. For the avoidance of doubt, confidential information may be shared with the Partner in order to facilitate the provision of the Services.

1.6.3 With regard to any confidential information from a party that - in whatever form or on whatever data carrier whatsoever – is held by or has been provided to the other party, the receiving party shall be obliged:
   a) to observe all reasonable technical, physical and organisational measures for safe processing, keeping or storage;
   b) not to use the confidential information for any other purpose than the implementation of the Agreement;
   c) not to hold the confidential information any longer than is reasonably necessary for the execution of the agreed obligations and to return the confidential information, including information derived from the confidential information and copies made, to the disclosing party immediately after full compliance with the said obligations or, after permission has been granted, to destroy it;
   d) to have the agreed obligations executed only by persons which the receiving party in all fairness considers to be reliable and are contractually bound to respect the confidential nature of the confidential information under terms equivalent to these of the Agreement.
   e) to notify the disclosing party promptly, about any security incident (which includes unauthorized use of confidential information or any data breach). In the event of a security incident, the receiving party is obliged to (i) take as soon as possible all necessary actions to rectify the security, (ii) keep the disclosing party informed about the situation, (iii) provide to the disclosing party immediately all requested information and assistance required to settle the incident and (iv) provide all necessary assistance to the disclosing party to comply with the statutory obligation to report data breaches.
   f) to promptly notify the disclosing party about any legally binding request for disclosure of the confidential data by a competent authority unless such notification is prohibited;
   g) to cooperate in the exercise of supervision by or on behalf of the disclosing party of storage and usage of confidential information;
   h) Unless explicitly agreed otherwise, the disclosing party remains entitled to the confidential information and owner of the data carriers.

1.6.4 Without prejudice to articles 1.6.1, 1.6.2 and 1.6.3, SurePay shall process personal data, as defined in article 4 sub 1 of the General Data Protection Regulation ("GDPR''), in a proper and careful manner and in accordance with the applicable legislation and regulations regarding the protection of personal data, as well as the applicable privacy and data protection regulations of the Customer Group. If and insofar - within the scope of the implementation of the Agreement - personal data is processed on behalf of Customer or parts of the Customer Group, the Agreement shall also apply as a data processing Agreement as specified in the GDPR.

1.6.5 The provisions of articles 1.6.1, 1.6.2 and 1.6.3 do not apply to confidential information that:
   a) Is or becomes public in any other way than as a result of an accountable failing of the receiving party with regard to the Agreement;
   b) Comes from a third party that does not have a requirement of confidentiality towards the revealing party with regard to this information;
   c) Is or has been developed or learned independently by the receiving party, without using the provided information and without accountable failing of the receiving party with regard to the Agreement;
   d) The receiving party is obliged to provide in order to comply with any legal obligations or judicial claims.

1.6.6 Parties can disclose confidential information to their employees, who have a need to know such information, provided that such employees, are contractually bound to respect the confidential nature of this information under terms equivalent to these of the Agreement.

1.7 Publicity

1.7.1 Customer shall, without prior written permission of SurePay, not mention the existence of a relationship with SurePay in publications or advertising. Each permission shall apply until it is cancelled.

1.8 Legal Regulations

1.8.1 Both parties shall ensure that they will comply with all applicable rules and legislations that apply to the delivery and use of the IBAN-Name Check service.

1.9 Liability

1.9.1 The total aggregate liability of SurePay due to an attributable failure to perform the Agreement or due to any other reason, explicitly including any failure to comply with a guarantee obligation agreed with Customer, shall be limited to compensation of the direct damage or loss not exceeding the total amount annually paid by Customer to SurePay under the Agreement.

1.9.2 The liability of SurePay for indirect damage or loss, resulting loss, loss of profit, loss of savings, reduced goodwill, loss due to business interruption, loss as a result of claims from the Customer's customers, loss in connection with the use of items, materials or software and/or services provided by third parties that SurePay is instructed to obtain by Customer and loss in connection with the engagement of secondary suppliers by SurePay on Customers instructions shall be excluded. The liability of SurePay due to the scrambling, destruction or loss of data or documents shall be excluded as well.

1.9.3 The exclusions and restrictions referred to in article 1.9.1 and 1.9.2 shall no longer apply if and in so far as the loss is the result of intentional acts or deliberate recklessness on the part of SurePay's management.

1.9.4 A condition for the existence of any right to compensation shall in all cases be that Customer notifies SurePay in writing of the loss or damage as soon as possible after it occurs. Any claims for damages against SurePay shall expire by the mere lapse of twenty-four months from the date on which the claim arose.

1.10 Audit

1.10.1 Upon request of SurePay, Customer shall immediately lend its full cooperation to any investigations to be conducted by or on behalf of SurePay in relation to Customer's compliance with the agreed restrictions on use. At the first request of SurePay, Customer shall grant SurePay, or an auditor engaged by SurePay access to its buildings and systems. SurePay shall maintain the confidentiality of all company information to be regarded as confidential that SurePay obtains from or on the premises of Customer within the context of this type of investigation, insofar as this information does not relate to the use of the software itself.

2. Special Provisions: Delivery of Services

2.1 Subject

2.1.1 The services to be provided are the IBAN-Name Check Services.
SurePay delivers the Service to Customer through a Partner or directly.
Customer may use the Service exclusively to verify account details of Subjects with the ultimate goal of preventing fraud and mistakes in Customer's payments (e.g. credit transfers or direct debits). To do so, Customers, directly or through a Partner, sends a Request to SurePay, that includes:
- IBAN;
- User input (name)

SurePay will validate the Request against the SurePay-database, that contains data of Dutch Banks (IBANs and names), the Dutch Chamber of Commerce and other data sources. SurePay will send a Response to Customer (directly or through a Partner), containing a name matching result and additional information on the account. SurePay may provide different types of Responses, depending on the Request content, as outlined in the API Specifications, which are subject to change.

2.1.2 Customer shall obtain a non-exclusive, non-transferable license to verify account details of Subjects with whom Customers have established/will establish a payment relation with the ultimate goal to prevent fraud and mistakes in Customer's payments, and for which the right of use is limited to Customer's own organizational purposes.
Explicitly excluded is any usage of the Response by Customer other than described herein, such as in any case, but not limited to:
- licensing, selling, leading, transferring, displaying, reproducing, or distributing (the deliverables of) the Service, or use the Service for any commercial purpose (i.e. to resell the responses obtained through the IBAN- based check services to third parties);

- modifying, translating, adapting, merging, disassembling, improving or reverse engineering any part of (the deliverables of) the Service or its derivatives;
- building a shadow database based on the responses;
- using the Service with an intent to create similar products or services to what SurePay offers.

The Agreement does not imply a transfer by SurePay of any patent rights, copyrights or brand rights to the services made available.

2.1.3 When SurePay receives a Request, SurePay obtains the right to use the Request to perform the Service. The right of use includes storage, transportation, processing of the Request data involved. SurePay is allowed to log the Request for incident management and fraud monitoring purposes for a maximum of 30 days.

2.1.4 SurePay reserves the right to suspend or terminate the delivery of the Service without Customer's prior consent, a.o. in case:
- the Service runs the risk of being hacked; and/or
- other emergency circumstances arise (f.i. changing laws and regulations) under which SurePay cannot reasonably be expected to continue delivering the Service.

2.1.5 In delivering its Service, SurePay relies on data retrieved from several external sources. SurePay cannot vouch for the correctness of those sources and therefore SurePay does not guarantee that a person can be identified correctly based on the responses obtained from the Service, nor that a suggested name is correct or adequate.

2.1.6 Customer recognises that the intellectual property rights on the software belonging to the computer system managed by SurePay (hardware including system and processing software used for the delivery of the services) rest with SurePay or with its suppliers of IT products.

2.2. Customer Responsibilities

Customer guarantees it is entitled to deliver the data incorporated in Requests to SurePay.

In case a Software Supplier is involved by Customer in connection with the receipt of the Service or in storing the Responses on behalf of Customer, Customer is required to sign a contract with these Software Suppliers in order to impose these terms and conditions upon them and their sub-contractors.
Customer is amongst others required:
- to comply with their legal obligations, in particular regarding, but not limited to, the transparency requirements under data protection law;
- to ensure that the SurePay data included in the SurePay Responses is stored in the European Economic Area.

Customer is allowed to save the SurePay Responses in its address book or environment with similar functionality.

3. Definitions

Term	Definition
Service	The IBAN Name Check Service as defined herein.
Customer	A Customer is defined as the party who ultimately benefits from the Service: who wants to have the details checked from its clients, suppliers, creditors and debtors in order to reduce fraudulent and misdirected payments and to that end has a contractual relationship with SurePay for the delivery of the Service.
Partner	The party with whom SurePay closes an agreement and who wishes to intermediate with respect to the delivery of the Service to Customers through its distribution network.
Software Supplier	The party that integrates the Service into its platform and delivers its platform services to Customers. This party is a subcontractor of the Customer. The Software Supplier can store SurePay Data on behalf of Customer, in which case Customer and Software Supplier have closed a data processing agreement.
Subject	The party who's IBAN and name are sent to SurePay in a request in order to have them checked. They are or want to become an end customer, supplier, creditor and/or debtor of Customer.
SurePay Data	Data that is contained in the body of the SurePay responses, e.g. the result of the name matching, information about the IBAN and personal data of the subject such as name details.

ACCEPTANCE OF THESE TERMS IN ANY WAY CONSTITUTES ENTERING INTO AN AGREEMENT WITH SUREPAY B.V. FOR THE PERFORMANCE OF THE SERVICE THROUGH THE USE OF AN INTERMEDIARY.