

MoneyWatch Terms of Use

Welcome to MoneyWatch, an online accounting and personal finance management service designed especially for small businesses.

By registering to use the Service You acknowledge that You have read and understood these Terms and that You have the authority to act on behalf of any person for whom You are using the Service. You are deemed to have agreed to these Terms on behalf of any entity for whom You use the Service.

The MoneyWatch Service will evolve over time based on user feedback. MoneyWatch reserves the right to change these Terms at any time, effective upon the posting of modified Terms and MoneyWatch will make every effort to communicate these changes to You via email or notification via the Website or SaaS Application.

1. Definitions

"Agreement"

means these Terms of Use.

"Access Fee"

means the monthly or yearly fee (excluding any taxes and duties) payable by You in accordance with the Fee Schedule.

"Confidential Information"

includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Service but does not include information which is, or becomes, publicly available other than through unauthorized disclosure by the other party.

"Data"

means any data inputted by You or with Your authority into the Website.

"Fee Schedule"

means the information relating to subscriptions and billing set out on the MoneyWatch subscriptions and billing pages on the Website, or any other page(s) on the Website notified by MoneyWatch, which may be updated or amended by MoneyWatch from time to time.

"Intellectual Property Right"

means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

"Service"

means the online accounting and personal finance management services made available (as may be changed or updated from time to time by MoneyWatch) via the Website.

"Website"

means the Internet site at the domain www.moneywatch.ch or any other site operated by MoneyWatch.

"MoneyWatch"

means the name of the service provider or product operated by Viktor Puetzer, Chemin de Pully 11, 1801 Le Mont-Pèlerin, Switzerland.

"SaaS"

Software as a Service, meaning that the Subscriber has a license to use a software service over Internet in return of a monthly or yearly fee.

"Subscriber"

means the person who registers to use the Service, and, where the context permits, includes any entity on whose behalf that person registers to use the Service.

"You"

means the Subscriber. "Your" has a corresponding meaning.

2. Use of Software / Licensing

MoneyWatch grants You for the duration of this Agreement and in return of a fee, the right to access and use the SaaS Service via the Website with the

particular user roles available to You according to Your subscription type. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement.

The scope of the SaaS service is

1. The provision of software for use on the Internet
2. The storage of Data belonging to the Subscriber (Data hosting)

MoneyWatch shall enhance the software and shall improve it by means of ongoing updates and upgrades. The current range of functions can be seen from the specification of services on the MoneyWatch Website (www.moneywatch.ch). You shall have no right to demand use of a particular version of MoneyWatch.

MoneyWatch shall constantly monitor the complete functionality of the software, and shall remedy any software bugs in accordance with the technical possibilities. A bug shall exist if the software does not fulfil the functions specified in the specification of services, provides erroneous results or does not function correctly in any other way, so that use of the software is impossible or considerably restricted.

3. Rights of use in the software

1. MoneyWatch hereby grants You the non-exclusive and non-transferable right to use the MoneyWatch software during the term of the Agreement within the scope of the SaaS services, as intended.
2. You may neither duplicate nor edit the software. In particular, even only temporarily installing or saving the software on data carriers (hard disks, etc.) of the hardware used by the customer (with the exception of RAM) is not permitted.
3. You shall not be entitled to provide the software to a third party for use, either for a fee or free of charge. You are expressly prohibited from making the software available, in any form, to third parties.

4. Beyond the MoneyWatch software, You shall have the opportunity to order various addons from MoneyWatch. Such add-ons may, in particular, enable integration with software of third party suppliers. Should any access rights be required in order to use such an add-on, You explicitly declare Your agreement, upon ordering add-ons, to grant any access rights necessary for this purpose.

4. Data hosting

1. MoneyWatch shall provide You with dedicated storage space on a server, for storing your Data. Should the storage space not be sufficient for storing the Data, MoneyWatch shall inform You in good time. Should You subsequently fail to order further storage space in return for a fee, any Data which exceeds the existing storage space will no longer be stored.
2. MoneyWatch shall ensure that the stored Data is accessible via the Internet within the scope of the technical possibilities.
3. You shall not be entitled to license such storage space to a third party for use, either in part or in full, whether for a fee or free of charge.
4. You undertake not to store any content in the storage space, the provision, publication or use of which infringes applicable law or agreements with third parties.
5. MoneyWatch shall be obliged to take suitable and reasonable precautions, within the scope of the technical possibilities, to prevent Data loss or unauthorized access of Your Data by third parties. To this end, MoneyWatch shall make regular back-ups, check Your Data for viruses, and install firewalls.
6. You shall, in any case, remain the sole party entitled to the Data, and may therefore request MoneyWatch to hand over individual pieces of Data or all the Data, during the currency of the Agreement, without MoneyWatch having any right of retention.

This clause shall, however, not apply to any correspondence between MoneyWatch and You and to any documentation which You possess either as original or as copies. The restitution of Data shall, as a rule, take place through the download from Yourself of a journal of all accounting booking

for Your account or a log file of all transactions of Your account. You shall be responsible for the archiving of any Data in the legally prescribed manner as well as for complying with any statutory retention obligations. You shall have no claim to the software suitable for using the Data.

7. Following termination of the Agreement, You shall continue, for one month (as from the date of termination) to be entitled to extract Your Data, on the conditions laid down in Art. 6 above. MoneyWatch shall not be obliged to store Your Data beyond this period of time. Should You request that the Data be extracted or handed over once the one-month period has expired, and should the latter still be available from MoneyWatch, MoneyWatch shall hand over or extract the Data to You upon receiving payment of the actual expenses incurred for the latter.

5. Remuneration

1. You undertake to pay MoneyWatch the agreed fee plus the statutory VAT, in line with its subscription, for the licensing of the software and the Data hosting.
2. MoneyWatch shall be entitled to make an adjustment to the fee and service content as at the next possible termination date, by way of a written notification sent to You. Reasons for such a change in the services shall in particular include technical advancement and the enhancement of the software. Should You not wish to continue the Agreement at the amended tariffs, You shall be entitled to terminate it extraordinarily, giving 14 days' notice to the date of the change.

6. Your obligations

1. Payment obligations

An invoice for the Access Fee will be issued on a monthly or a yearly basis in accordance with the details set out in the Fee Schedule. MoneyWatch will continue invoicing You in accordance with the Fee Schedule until this Agreement is terminated in accordance with clause 12.

2. General obligations

You must only use the Service and Website for Your own lawful internal business purposes, in accordance with these Terms and any notice sent by MoneyWatch or condition posted on the Website. You may use the Service and Website on behalf of others or in order to provide services to others but if You do so You must ensure that You are authorized to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to You.

3. Access conditions

1. When using the SaaS services for the first time You need to generate a user ID and a password, which are necessary in order to make use of the SaaS services. You must ensure that all usernames and passwords required to access the Service are kept secure and confidential.
2. You must immediately notify MoneyWatch of any unauthorized use of Your passwords or any other breach of security and MoneyWatch will reset Your password and You must take all other actions that MoneyWatch reasonably deems necessary to maintain or enhance the security of MoneyWatch's computing systems and networks and Your access to the Services.
3. You shall be required to take any steps which are, according to MoneyWatch's best judgement, necessary for preserving or improving the security of the Data, the software and the network connections. You undertake to change the password regularly, however at least every 60 (sixty) days.
4. You shall be obliged to check Your Data and information for viruses or any other damaging components prior to entering or uploading it, and run state of the art anti-virus software to this end.
5. As a condition of these Terms, when accessing and using the Services, You must:
 - a. not attempt to undermine the security or integrity of MoneyWatch's computing systems or networks or, where the Services are hosted by a

third party, that third party's computing systems and networks;

- b. not use, or misuse, the Services in any way which may impair the functionality of the Services or Website, or other systems used to deliver the Services or impair the ability of any other user to use the Services or Website;
- c. not attempt to gain unauthorized access to any materials other than those to which You have been given express permission to access or to the computer system on which the Services are hosted;
- d. not transmit, or input into the SaaS application or Website, any files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use); and
- e. not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services or to operate the Website except as is strictly necessary to use either of them for normal operation.

4. Communication Conditions

As a condition of these Terms, if You use any communication tools available through the Website or the SaaS application (such as any forum, chat room or message center), You agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Services, including (but not limited to): offers of goods or services for sale, unsolicited commercial e-mail, files that may damage any other person's computing devices or software, content that may be offensive to any other users of the Services or the Website, or material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use).

When You make any communication on the Website or SaaS application, You represent that You are permitted to make such communication. MoneyWatch

is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Services. As with any other web-based forum, You must exercise caution when using the communication tools available on the Website. However, MoneyWatch does reserve the right to remove any communication at any time in its sole discretion.

5. Indemnity

You indemnify MoneyWatch against: all claims, costs, damage and loss arising from Your breach of any of these Terms or any obligation You may have to, pay indemnities to MoneyWatch, including (but not limited to) any costs relating to the recovery of any Access Fees that are due but have not been paid by You.

7. Confidentiality

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

1. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.
2. Each party's obligations under this clause will survive termination of these Terms.
3. The provisions of clauses 7.1.1 and 7.1.2 shall not apply to any information which:
 - a. is or becomes public knowledge other than by a breach of this clause;
 - b. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - c. is independently developed without access to the Confidential Information.

8. Data protection

1. MoneyWatch undertakes to keep strict confidentiality concerning any confidential procedures of which it may become aware in the course of preparing, implementing and fulfilling this Agreement, in particular Your trade or business secrets, and not to pass on such information to external third parties without Your authorization. The latter shall apply to any unauthorized third parties, unless it is necessary to pass on information in order to properly fulfil MoneyWatch's contractual obligations.
2. MoneyWatch shall – subject to the reservation of Your written objection – be entitled to name You publicly as a reference, and make use of general information on the agreed contract in a suitable way for the purposes of marketing and distribution.
3. MoneyWatch shall, within the scope of the statutory provisions, be authorized to save and evaluate user Data for business purposes (in particular for market research). Anonymized Data shall be recorded, processed and used in statistical purposes. MoneyWatch shall be entitled to use cookies and notification services.
You hereby declare that You explicitly are in agreement with the latter.
4. To create in particular a more pleasant use of the site, cookies or other witnesses are used and susceptible to automatically record personal information. They can be done by MoneyWatch or by others partners companies. You have the possibility to deactivate them in the safety parameters of Your browser. If You don't make it, You agrees to the collection and to the processing of the collected data.

9. Intellectual property

1. General

Title to, and all Intellectual Property Rights in the Services, the Website and any documentation relating to the Services remain the property of MoneyWatch (or its licensors).

2. Ownership of Data:

Title to, and all Intellectual Property Rights in the Data remain Your property. However, Your access to the Data is contingent on full payment of the MoneyWatch Access Fee when due. You grant MoneyWatch a license to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the Services and for any other purpose related to provision of services to You.

3. Backup of Data:

You must maintain copies of all Data inputted into the Service. MoneyWatch adheres to its best practice policies and procedures to prevent Data loss, including a daily system Data back-up regime, but does not make any guarantees that there will be no loss of Data. MoneyWatch expressly excludes liability for any loss of Data no matter how caused.

4. Third-party applications and Your Data.

If You enable third-party applications for use in conjunction with the Services, You acknowledge that MoneyWatch may allow the providers of those third-party applications to access Your Data as required for the interoperation of such third-party applications with the Services. MoneyWatch shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by third-party application providers.

10. Warranties and Acknowledgements

1. Authority

You warrant that where You have registered to use the Service on behalf of another person, You have the authority to agree to these Terms on behalf of that person and agree that by registering to use the Service You bind the person on whose behalf You act to the performance of any and all obligations that You become subject to by virtue of these Terms, without limiting Your own personal obligations under these Terms.

2. Acknowledgement

You acknowledge that:

1. You are authorized to use the Services and the Website and to access the information and Data that You input into the Website, including any information or Data input into the Website by any person You have authorized to use the Service. You are also authorized to access the processed information and Data that is made available to You through Your use of the Website and the Services (whether that information and Data is Your own or that of anyone else).
2. MoneyWatch has no responsibility to any person other than You and nothing in this Agreement confers, or purports to confer, a benefit on any person other than You. If You use the Services or access the Website on behalf of or for the benefit of anyone other than Yourself (whether a body corporate or otherwise) You agree that:
 - a. You are responsible for ensuring that You have the right to do so;
 - b. You are responsible for authorizing any person who is given access to information or Data, and You agree that MoneyWatch has no obligation to provide any person access to such information or Data without Your authorization and may refer any requests for information to You to address; and
 - c. You will indemnify MoneyWatch against any claims or loss relating to:
 - i. MoneyWatch's refusal to provide any person access to Your information or Data in accordance with these Terms,
 - ii. MoneyWatch's making available information or Data to any person with Your authorization.
3. The provision of, access to, and use of, the Services is on an "as is " basis and at Your own risk.
4. MoneyWatch does not warrant that the use of the Service will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Service, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. MoneyWatch is not in any way responsible for any such

- interference or prevention of Your access or use of the Services.
5. MoneyWatch is not Your accountant and use of the Services does not constitute the receipt of accounting advice. If You have any accounting questions, please contact an accountant.
 6. It is Your sole responsibility to determine that the Services meet the needs of Your business and are suitable for the purposes for which they are used.
 7. You remain solely responsible for complying with all applicable accounting, tax and other laws. It is Your responsibility to check that storage of and access to Your Data via the SaaS application and the Website will comply with laws applicable to You (including any laws requiring You to retain records).
 8. You undertake to free and relieve MoneyWatch from any claims made by third parties that are based on the Data stored by MoneyWatch, and reimburse MoneyWatch any costs which may be incurred by to the latter due to any infringements of rights.
 9. MoneyWatch shall be entitled to immediately block the storage space if there is a substantiated reason to suspect that the stored Data is illegitimate in nature and/or infringes any rights of third parties. A substantiated suspicion in regard to illegality and/or an infringement of rights shall in particular exist if courts, authorities and/or other third parties make MoneyWatch aware of the latter. MoneyWatch shall without delay inform You about the removal and the reason for it. The block is to be removed once the suspicion has been fully refuted.
 10. Within the scope of the statutory provisions, MoneyWatch hereby excludes any liability vis-à- vis You (or any third party), in particular for the fulfilment of its contractual and noncontractual obligations and the loss of Data and lost profits (including negligence). This disclaimer shall also apply to any loss that is incurred, either directly or indirectly, through the use of the “MoneyWatch” software.
 11. In all cases, irrespective of the basis for liability, the mutual liability of the contracting parties shall be limited to the amount of the monthly Access

fees received in the last twelve months prior to the damage occurring.

5. No warranties

MoneyWatch gives no warranty about the Services. Without limiting the foregoing, MoneyWatch does not warrant that the Services will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

6. Consumer guarantees:

You warrant and represent that You are acquiring the right to access and use the Services for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Services, the Website or these Terms.

11. Limitation of Liability

1. To the maximum extent permitted by law, MoneyWatch excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Service or Website.

2. If You suffer loss or damage as a result of MoneyWatch's negligence or failure to comply with these Terms, any claim by You against MoneyWatch arising from MoneyWatch's negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the Access Fees paid by You in the previous 12 months.

3. If You are not satisfied with the Service, Your sole and exclusive remedy is to terminate these Terms in accordance with Clause 12.

12. Termination

1. Trial policy

When You first sign up for access to the Services You can evaluate the Services under the defined trial usage conditions, with no obligation to continue to use the Services. If You choose to continue using the Services thereafter, You will be billed when You first add Your billing details into the Services, as set out in more detail in the Fee Schedule. If You choose not to continue using the Services, You may delete Your organization by sending an email to the MoneyWatch helpdesk.

2. Prepaid Subscriptions

Monthly subscriptions shall be concluded for an indefinite period of time, and may be terminated by either party, always giving one month's notice to the end of the month.

Annual subscriptions are concluded for a period of one year. Unless the Customer terminates the Agreement no later than thirty days prior to expiry of the annual subscription, the subscription shall always automatically be renewed for a further year. The annual subscription shall be invoiced annually in advance.

MoneyWatch will not provide any refund for any remaining prepaid period for a prepaid Access Fee subscription unless You upgrade to a higher plan or longer subscription period.

3. No-fault termination:

These Terms will continue for the period covered by the Access Fee paid or payable under clause 6.1. At the end of each billing period these Terms will automatically continue for another period of the same duration as that period, provided You continue to pay the prescribed Access Fee in accordance with the Fee Schedule, unless either party terminates these Terms.

4. Breach:

If You:

1. breach any of these Terms and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
2. breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any payment of Access Fees that are not paid in full in accordance with the requirements set out in the Fee Schedule);
3. Your business becomes insolvent or Your business goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction,
4. culpably infringe any legislation when using the contractual services, or encroach upon copyrights, Intellectual Property Rights or name rights of third parties;
5. make use of the services marketed for the purpose of promoting criminal, illegal or ethically questionable actions.

MoneyWatch may take any or all of the following actions, at its sole discretion:

1. Terminate this Agreement and Your use of the Services and the Website;
2. Suspend for any definite or indefinite period of time, Your use of the Services and the Website;
3. Suspend or terminate access to all or any Data.

For the avoidance of doubt, if payment of any invoice for Access Fees due in relation to any of Your Billing Contacts, Billing Plans or any of Your Organizations (as defined at clause 6) is not made in accordance with the requirements set out in the Fee Schedule, MoneyWatch may: suspend or terminate Your use of the Service, the authority for all or any of Your Organizations to use the Service, or Your rights of access to all or any Data.

5. Accrued Rights:

Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:

1. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
2. immediately cease to use the Services and the Website.

6. Expiry or termination:

Clauses 6.1, 6.4, 6, 7, 9, 10, 11 and 13 survive the expiry or termination of these Terms.

13. Help Desk

1. Technical Problems:

In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting MoneyWatch. If You still need technical help, please check the support provided online by MoneyWatch on the Website or SaaS application or, if failing, send an email to us at info@moneywatch.ch .

2. Service availability:

Whilst MoneyWatch intends that the Services should be available 24 hours a day, seven days a week, it is possible that on occasions the Services or Website may be unavailable to permit maintenance or other development activity to take place.

If for any reason MoneyWatch has to interrupt the Services for longer periods than MoneyWatch would normally expect, MoneyWatch will use reasonable endeavors to publish in advance details of such activity on the Website.

In any case, MoneyWatch will not be liable for interruptions to the Service and in particular shall not be liable for interruptions due to repairs and

maintenance, change to the infrastructure or the introduction of new technologies.

14. Notifications

1. All notifications are, unless a more stringent form is mandatorily stipulated in this Agreement or by law, to be directed in writing to the addresses given when You registered or specified on the MoneyWatch Website. e-mail shall always be sufficient to meet the requirement for the written form. Notifications by MoneyWatch to the e-mail address specified by You when registering shall, in any event, be deemed a written notification.
2. The contracting parties shall be obliged to let the other contracting party know about any changes of address (including e-mail address) without delay, otherwise any notifications sent to the last address notified in writing shall be deemed to have been received with legal validity.

15. General

1. Entire Agreement:

These Terms, together with the MoneyWatch Privacy Policy and the terms of any other notices or instructions given to You under these Terms of Use, supersede and extinguish all prior Agreements, representations (whether oral or written), and understandings and constitute the entire Agreement between You and MoneyWatch relating to the Services and the other matters dealt with in these Terms.

2. Waiver:

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

3. Delays:

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

4. No Assignment:

You may not assign or transfer any rights to any other person without MoneyWatch's prior written consent.

5. Severability:

If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

6. Notices:

Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to MoneyWatch must be sent to info@moneywatch.ch or to any other email address notified by email to You by MoneyWatch. Notices to You will be sent to the email address which You provided when setting up Your access to the Service.

7. Rights of Third Parties:

A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms.

16. Place of jurisdiction/choice of law

1. The parties hereby agree upon the application of the law of the Swiss Confederation in regard to any legal relationships arising from the contractual relationship

2. Lausanne is agreed upon as the exclusive place of jurisdiction for any disputes which may arise within the scope of executing this contractual relationship.

Le Mont-Pèlerin, 30.08.2017

MoneyWatch is an Internet service of:

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