

TERMS OF SERVICE

The Terms of Service below govern the use of the Product and the Services by the Customer. Capitalized terms used in these Terms of Service are defined in Appendix A.

ARTICLE 1. PURPOSE OF THE TERMS OF SERVICE

The purpose of the Terms of Service is to specify the terms and conditions applicable to the Services provided by Briskport to the Customer.

The Terms of Service shall not create any exclusive relationship between Briskport and the Customer. The Customer shall remain free to enter into any IT services agreement with any other IT services providers of their choice.

ARTICLE 2. SUBSCRIPTION AND EFFECTIVE DATE

The Customer may subscribe to the Services via the Crisp marketplace.

The Customer must select the subscription, along with any applicable fees and payment terms and accept the Terms of Service.

Once the payment has been accepted by Briskport, a Subscription Form detailing the Services to be provided by Briskport and the duration of the Services shall be issued.

The Terms of Service shall enter into force on the date stated in the relevant Subscription Form (the “**Effective Date**”). The duration of the subscription is indicated in the Subscription Form.

ARTICLE 3. SERVICES PROVIDED

The Product is available in SaaS (software as a service) mode for a limited number of Users and can be used following the instructions provided by Briskport.

Briskport is not responsible for providing any software or hardware required to use the Product. The Customer acknowledges that the Customer shall procure the necessary software or hardware so that it complies with the technical requirements set forth in the Documentation.

3.1. PROVISION OF THE SERVICES

Briskport shall provide the Services to the Customer in accordance with the Terms of Service, for the duration of the Subscription Form. The Services imply the granting to the Customer of a right to remotely use the Product.

The number of Users is indicated in the Subscription Form. Accesses are intended for designated Users only.

No User shall share its access, in case of need for a reassignment of Users (leave, illness etc.), the Customer shall ask Briskport to create new User accounts in order to replace former Users who no longer need to use the Service.

3.2. USE OF THE SERVICES

The Customer shall use the Services in accordance with the rules set forth in the Documentation solely for its own business as indicated in the Terms of Service and shall not (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, timeshare, or commercially exploit or provide the Services to any third party other than the Users or in any manner other than as contemplated herein, (ii) use the Services for any other purpose than to provide the Services to the Users, (iii) use or attempt to use the Services to gain unauthorized access to any person's data or network; or (iv) otherwise use the Services in a manner that could, in the opinion of Briskport, adversely affect the ability of other users or customers to use the Services or the Internet, including post or transmit information or data containing Malicious Software.

3.3. ADDITIONNAL SERVICES

The Terms of Service do not cover additional services requested by the Customer to meet its specific needs. For example, services related to specific developments and consulting and training services if required shall be covered by a separate agreement between the Customer and Briskport.

ARTICLE 4. IMPLEMENTATION OF PRODUCT

The Customer may request Briskport's assistance for the setting of the Product via the support email address. In any case, the Customer remains solely liable to test and verify the Product in test environment before launching the Product.

Within five (5) business days as from the Effective Date, and if the Customer did not raise any specific issue by written notice to Briskport within this timeframe, the Product shall be deemed accepted by the Customer.

ARTICLE 5. SUPPORT AND UPGRADES ON THE PRODUCT

5.1. BRISKPORT SUPPORT

Briskport provides for standard support on the Product at the Customer request via the support email address : support@briskport.com in accordance with the terms of this Article and/or the Services Level Agreement and/or the RACI

From time to time, Briskport may apply upgrades, patches, bug fixes, or other maintenance to the Product . Briskport shall notify the Client the planned support operations on the Product and the Services in accordance with Appendix C. The Customer agrees to use reasonable efforts to comply with any support operation requirements that Briskport may notify.

Briskport shall not be liable for any impact of any unavailability on the Customer's business resulting from support operations. The Customer shall not be entitled to any compensation for any interruption of the Services resulting from any support operation.

5.2. UPGRADES AND NEW PRODUCT VERSIONS

When new Product versions or upgrades are supplied, the Customer can inform Briskport via the support email address of any defect arising on the Product. Briskport shall provide reasonable assistance to restore the stability of such new versions and upgrades as well as the quality of the Product into production.

Briskport keeps the Customer informed of new Product versions or upgrades by all written means, e-mails included.

The Customer remains liable for the implementation of the Product and new Product versions or upgrades in the Customer's Systems. Following a new Product version or upgrades, the Customer may terminate the Terms of Service according to the terms and conditions set forth in Article 16.

5.3. CUSTOMER SUPPORT MEASURES AND BACKUP PLAN

The Customer shall establish and maintain under its sole liability disaster recovery management capability, plans and processes in accordance with its internal IT policies on the Customer's Systems. To this end, the Customer shall consult the Appendix C accordingly.

ARTICLE 6. PAYMENT

6.1. USER FEES

Customer agrees to pay all fees set forth in the Subscription Form. Unless otherwise specified, fees are expressed and payable in Euros. The resulting payment obligations cannot be cancelled. Fees are non-refundable and the number of Users' access purchased cannot be reduced during the subscription period as stated on the Subscription Form.

The fees may be revised annually by Briskport. The Customer shall be duly notified of any such change which, unless the Terms of Service are terminated by either party, shall automatically and immediately apply to the Customer.

6.2. BILLING AND PAYMENT

Payment Processing: All payments made for our Services are processed through a third-party payment processor, Crisp. By choosing to use our Services, you agree to abide by Crisp's terms and conditions, which can be found at <https://crisp.chat/en/terms>. We do not store or handle any of your payment information.

6.3. LATE PAYMENT PENALTIES

In case of any delay in payment from the due date, Briskport will apply penalties up to 3 times the legal interest rate as well as a fixed indemnity of 40 EUR pursuant to Article L441-6 of the French Commercial Code.

When the collection costs incurred are higher than the amount of this fixed compensation, Briskport, on a case by case basis, may request additional compensation to the Customer, upon justification.

For any delay in payment exceed, Briskport reserves its right to suspend the Services according to the terms and conditions set forth in Article 15.

6.4. TAXES

Briskport' fees do not include taxes of any kind, direct or indirect (including VAT, withholding taxes, hereinafter "Taxes"). The Customer shall pay all Taxes relating to the Services as stated in the Subscription Form.

ARTICLE 7. OBLIGATIONS OF BRISKPORT

Briskport must provide the Services in a timely, efficient and professional manner using the skill and the care of a diligent, suitably qualified and experienced service provider in compliance with industry standards.

Briskport undertakes:

- (i) in addition to its confidentiality obligations described in Article 12, not to use, modify or disclose to any person, the Customer Data, except to duly authorized Users;
- (ii) to the extent that the Customer Data includes personal data ("personal data") within the meaning of the Data Protection Regulations, to process the Customer Data in accordance with the Terms of Service;
- (iii) take all reasonable measure to ensure that its employees and those of any subcontractors involved in the provision of the Services are informed and properly trained in such technical, organizational and security measures;
- (iv) to provide standard online support to Users via the support email address : support@briskport.com;
- (v) to provide the Customer with access codes and passwords for each of the Users to enable them to access the Product remotely.

ARTICLE 8. OBLIGATIONS OF THE CUSTOMER

The Customer undertakes to inform Briskport of any fact or event that may affect the provision of the Services, i.e. of any changes to the configuration on which the applications are implemented

The Customer agrees to follow Briskport's technical recommendations and prerequisite as set forth in the Documentation.

The Customer is responsible for all actions carried out by Users, via the Users' accesses, and for the Users' compliance with the provisions of the Terms of Service. The Customer shall (i) be fully responsible for establishing and maintaining its own password policy in connection with the use of the Services; (ii) be fully responsible for the quality and content of all Customer Data provided to Briskport, namely its accuracy, integrity, lawfulness, and appropriateness, (iii) will use reasonable efforts to prevent any unauthorized use of the Services and to notify Briskport promptly of any attempted unauthorized use known to it; and (iv) agrees to comply with all Applicable Law when using the Services.

The Customer shall have sole responsibility for the safekeeping of the information it owns or that is integrated into or used by the Product and the Customer's Data. The Customer accordingly undertakes to introduce all necessary procedures to protect and safeguard its data, computer programs and files and to ensure the security thereof on the Customer's System.

ARTICLE 9. INTELLECTUAL PROPERTY

9.1. INTELLECTUAL PROPERTY RIGHTS ON THE PRODUCT

Briskport retains full and exclusive ownership of the Product, including all intellectual property rights therein. The Terms of Service does not result in any assignment or transfer to the Customer of any of Briskport' intellectual property rights or title, except for the Customer's right to use the Product remotely as strictly provided for in the Terms of Service.

9.2.LICENSE

Briskport hereby grants to Customer a license on the Product for the duration of the Subscription Form or (if applicable) termination of the Terms of Service to use the Product solely for the purpose of receiving, using or enjoying the benefit of the Services in accordance with the Subscription Form.

The licence granted by Briskport is a non-exclusive, non-transferable, non-sublicensable license.

Customer shall not remove, or allow any third party to remove, any copyright notice included on copies of the Product and Documentation provided by Briskport to the Customer under the Terms of Service.

The Customer shall not, except as provided by law, (i) modify, copy or create derivative works from the Product; (ii) reproduce any content that is part of the Product, except to the extent of the performance of the Subscription Form and the Terms of Service; or (iii) disassemble, reverse engineer or decompile the Product, or (iv) access the Service in order to (a) develop a competing product or service, or (b) copy any ideas, features, functions or graphics from the Product and the Services.

It is understood that Briskport reserves the right to correct any errors on the Product or Briskport technology. If the Customer provides any suggestions to Briskport on the Product and/or the Services (the "Suggestions"), Briskport will be entitled to use the Suggestions without restriction. The Customer hereby irrevocably assign to Briskport all right, title, and interest in and to the Suggestions and agree to provide Briskport any assistance Briskport requires to document, perfect, and maintain Briskport's rights in the Suggestions.

9.3.CUSTOMER DATA

The Customer is the sole owner of all Customer Data. Customer Data shall be considered confidential information for the purposes hereof. The Customer is solely responsible for the content and quality of the Customer Data it provides to Briskport. Similarly, the Customer is solely responsible for verifying and ensuring that the configurations made by Briskport comply with its instructions. To this end, the Customer shall consult the Appendix C accordingly.

The Customer shall indemnify and hold harmless Briskport from any and all consequences of any claim or action by a third party relating to the content of the Customer's Data that does not comply with the applicable legal provisions.

The reproduction or use by Briskport, other than for the performance of the Subscription Form and the Terms of Service, of any material submitted by the Customer (including but not limited to data, files, documents or information) is prohibited unless authorized by the Customer.

9.4. MALICIOUS SOFTWARE

The Customer shall at all times have in place systems, configurations and processes to minimise the possibility of Malicious Software on any part of the Customer's Systems and shall use commercially available malware protection software in accordance with good industry practice on all and parts of the Customer's Systems. To this end, the Customer shall consult the Appendix C accordingly.

9.5. INDEMNIFICATION

Briskport declares that it owns the intellectual property rights on the Product and it is authorized to grant the License as set forth in Article 9.2. of the Terms of Service. Briskport declares that it owns the intellectual property rights on the Product or that it is entitled to use all or part of the source code of the Product protected by adequate open-source license.

If the source code of the Product protected by any open source license falls under another open-source license during the performance of the Contract that would render the Services impossible, Briskport will use its best efforts to replace such code and/or to obtain the right to use such code so that the Services can be delivered.

Briskport shall defend, indemnify and hold harmless the Customer from and against any damages finally awarded by a court adjudicating at last instance or expense incurred in connection with any claim, demand, suit or proceeding made or brought against the Customer by any third party alleging that the use of the Product constitutes an infringement of its intellectual property rights (the "Claim"), provided, however, that the Customer (i) immediately notifies Briskport in writing of the Claim (ii) gives Briskport sole control over the defense and settlement of the Claim; and (iii) provides Briskport with all reasonable assistance, and is subject to the Customer's use of the Service in accordance with the terms of the Terms of Service.

No indemnification shall be due in the event where the Claim result from a breach by the Customer of any provision of the Terms of Service and/or the use of the Product in connection with Customer Data or Customer's Systems.

ARTICLE 10. WARRANTIES

Each party represents and warrants that it has the legal authority to enter into the Terms of Service. Briskport represents and warrants that (i) Briskport will provide the Service in accordance with the rules of the trade reasonably applicable to the provision of such Services, (ii) the Services will operate in accordance with the terms of the Terms of Service, (iii) the functionalities of the Services will not regress during the duration of the Subscription Form; (iv) the Services do not contain, nor will they transmit to Customer or the Customer's Systems, any Malicious Software (unless such Malicious Software are contained in attachments uploaded by the User or otherwise emanate from Users).

As the sole owner of the Customer Data and the data controller, Customer warrants that (i) the collection and processing of the Customer Data by Customer and/or in connection with the Terms of Service; and (ii) the content of the Customer Data comply with the Applicable Law.

The only warranties granted by Briskport are those expressly provided for in this Terms of Service, to the exclusion of any other warranty.

ARTICLE 11. DATA PROTECTION

In accordance with the Data Protection Regulations the processing of Personal Data under the Terms of Service shall be governed by the Data Processing Agreement (DPA).

ARTICLE 12. CONFIDENTIALITY

Unless stated otherwise, all information given to one party by the other party before or after the Effective Date is confidential and may only be used for the purposes of the performance of the Subscription Form in accordance with the Terms of Service.

Confidential information includes any financial statements disclosed by one party to another party.

Confidential information may not be disclosed to any third party under any circumstances, unless said third party is a subcontractor and the information is disclosed only in the context and under the terms of the Terms of Service.

Under the Terms of Service all Briskport assigned persons and the Customer will not be considered to be third parties. They undertake to comply with the confidentiality obligation contained herein.

The foregoing does not apply to:

- Information that was already known to the recipient before its receipt,
- Information that was public knowledge at the time of its disclosure or that subsequently becomes public knowledge provided this was not due to any fault on the part of the recipient,
- Information that was lawfully obtained from a third party,
- Information that must be disclosed to comply with legislation, an administrative authority or a judicial authority.

This confidentiality obligation shall remain in force until the information falls within the public domain or five (5) years after the expiration or termination of the Subscription Form.

ARTICLE 13. SUB-CONTRACTING

The parties agree that Briskport shall be free to sub-contract the Services it provides under the Terms of Service.

This right shall not release Briskport from liability under the Terms of Service. Briskport shall ensure that the subcontractors comply with all requirements and obligations of Briskport stated in the Terms of Service.

ARTICLE 14. LIABILITY

Briskport undertakes to provide the services covered by this Terms of Service with all due care (*obligation de moyens*), in accordance with the industry rules and practices.

Briskport shall not be held responsible for any unavailability or malfunction of the Product and the Services due to the following events:

- (i) Non-compliance with the Customer's technical or financial commitments (e.g., a malfunction of the Customer's System or non-payment of invoices on time) resulting in the unavailability of the Product and the Services;
- (ii) Force Majeure as defined in Article 17;
- (iii) Any malfunction related to the Customer's System or to the public access means (telecom network in particular) resulting in the unavailability of the Product and the Services;
- (iv) Partial and temporary malfunctions that do not alter the basic functions of the Product and the Services;
- (v) Any software malfunction (including operating systems) leading to unavailability requiring corrective action or interventions by the Customer's editors or service providers;

- (vi) Unavailability due to incidents attributable to the content provided or transmitted by the Customer or the Users via the Product and the Services;
- (vii) Unavailability due to system administration, orders and file transfers performed by the Customer or the Users;
- (viii) Unavailability resulting directly from Customer's lack of availability or response time to respond to incidents requiring Customer's participation to identify the source and/or resolve them.
- (ix) Any unavailability due to third-parties.

Briskport shall not be liable under any circumstances for any Customer' indirect loss including any financial or commercial loss, loss of profit, loss of data, disruption, shortfall in earnings, reputational damage, other losses or any action brought by a third party against the Customer as a result of or in connection with the consequences of the Services.

The absolute liability of Briskport and of its assigned staff with respect to any breach, negligence or fault cited on the occasion of the performance of the Services, shall be capped to the amount of effective insurance coverage provided under Briskport's professional liability insurance policy (that can be requested to Briskport support at support@briskport.com), in the event that the breach is not covered by the said insurance policy, the absolute liability of Briskport shall be capped to the amount of the fees paid over the last 12 months by the Customer in respect of the Services called into question, in order to cover claims of any kind (including interest and expenses), regardless of the number of actions, foundations cited, or parties to the dispute.

ARTICLE 15. SUSPENSION OF THE SERVICES

Briskport may suspend the Customer or any User's right to access or use any portion or all of the Product or Services immediately upon notice to the Customer if Briskport considers that:

- (a) the Customer or any User use of the Product or the Services (i) raises a security risk to the Product or the Services or any third party, (ii) could adversely impact Briskport's systems, the Product or the Services or the systems or content of any other Briskport customer, (iii) could subject Briskport or any third party to liability, or (iv) could be fraudulent;
- (b) the Customer is, or any User is, in breach of this Agreement;
- (c) the Customer is in breach of its payment obligations under Article 6; or
- (d) the Customer has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

If Briskport suspends the Customer's right to access or use any portion or all of the Product or Service,(i) the Customer remains responsible for all fees and charges the Customer incurs during the period of suspension; and (ii) the Customer will not be entitled to any service credits under the Service Level Agreements (SLA) for any period of suspension.

ARTICLE 16. TERMINATION & REVERSIBILITY

16.1. TERMINATION

The Terms of Service may be terminated at any time, subject to one (1) month prior notice. The customer main account will receive an email.

The Terms of Service may be terminated, by any of the parties, in the event of material breach by the other party to its obligations as set forth in the Terms of Service, provided such party fails to remedy the breach within five (5) business days as from the notice of default sent by formal notice with acknowledgment of receipt. Early termination shall take place five (5) other business days after an unheeded formal notice has been sent by the party not in breach to the defaulting party by registered letter with acknowledgement of receipt, stating the intention to apply this early termination clause.

Any breach by the Customer to its payment obligations shall be considered as material breach.

16.2. REVERSIBILITY

In the event of termination or expiry of one or more Services, Briskport shall, as reasonably requested by any Customer pursuant to the RACI, provide the Customer with (i) all relevant information and documentation relating to the affected Services, and (ii) support in the planning and performance of the orderly handover of the affected Services back to the Customer or its designee. For such termination assistance, Briskport shall be able to charge the Customer on a time and materials basis according to Briskport applicable standard rates or as otherwise agreed.

Within thirty (30) working days following the termination of the Contract and in the absence of a reversibility request from the Customer on the Services in accordance with Article 16.2, Briskport will delete all Customer's Data.

ARTICLE 17. FORCE MAJEURE

Neither of the contracting parties shall be held liable in the event of force majeure, provided it has done everything in its power to satisfy its obligations and it promptly informs the other party of such event.

The parties expressly agree that force majeure shall be understood to mean those events usually defined by the French courts as cases of force majeure as well as any failures or shortage of power or other utilities such as internet networks.

Each party shall be required to take all preventive measures necessary to reduce, as far as possible, the consequences of any case of force majeure.

In the event a case of force majeure persists for more than sixty (60) days this Terms of Service may be terminated by either party.

ARTICLE 18. ASSIGNMENT OF THE Terms of Service

This Terms of Service may not be assigned in full or in part, for a price or free of charge, by the Customer without the Briskport's prior written authorization.

Briskport may assign the Terms of Service without consent of the Customer, under the following conditions:

- (i) the assignee party accepts such assignment in writing and undertakes to perform the obligations set out in the Terms of Service;
- (ii) Briskport shall provide written notice to the Customer within ten (10) business days of such assignment.

ARTICLE 19. REFERENCE

Each party is authorized to use the other party's name and logo in its customer or supplier lists. Such use includes the corporate website, printed materials, press materials, marketing and sales materials.

The Customer expressly authorizes Briskport to publish a press release prepared by Briskport, mentioning the subscription of the Services by the Customer.

Briskport reserves the right to ask the Customer for a reference or testimonial on the Product. This reference may be published on any media.

ARTICLE 20. CONTRACTUAL DOCUMENTS

The Terms of Service, which is the only record of all the obligations of the parties, consists of the present document and the associated Appendices, in order of decreasing importance:

- The present document
- Appendix A – DEFINITIONS

In case of conflict or difficulty of interpretation between one or more provisions of these different documents, the higher-ranking document shall prevail.

The Terms of Service and the Appendices may be updated by Briskport from time to time or new Schedules may be added. Briskport undertakes to promptly inform the Customer of any substantial modifications of these documents and the relevant date of entry into force.

ARTICLE 21. MISCELLANEOUS

21.1. LANGUAGE

The language of the Terms of Service is English.

21.2. SURVIVAL

All provisions of the Terms of Service that by their nature or content may reasonably be interpreted as surviving termination or expiration of the Terms of Service will survive the termination or expiration of the Terms of Service, notably provisions related to intellectual property set forth in Article 9 of the Terms of Service.

Provisions related to confidentiality survive termination or expiration according to the terms and conditions set forth in Article 12.

21.3. ENTIRE AGREEMENT

The Terms of Service and the Appendices constitute the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral.

21.4. SEVERABILITY

If any provision of the Terms of Service is adjudicated to be unenforceable, such provision shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions shall remain in full force and effect.

ARTICLE 22. GOVERNING LAW, VENUE AND DISPUTES

The Terms of Service shall be governed by the laws of France.

In the event of any dispute arising out of or in connection with the Terms of Service, the Parties shall first proceed in good faith to submit the matter to amiable remediation.

The parties hereby agree to submit to the exclusive jurisdiction of the courts of Saint-Nazaire (France) over any claim or matter arising under or in connection with the Terms of Service.

1. APPENDIX A – DEFINITIONS

Applicable Law	Means all applicable laws, statutes, orders, rules, provisions, regulations, directives and guidelines which have legal effect, whether local, national, international or otherwise existing from time to time to the extent these relate to the Beneficiaries' receipt and use of the Services or affect Provider's provision of the Services. The Applicable Law include the Data Protection Regulations.
Briskport	Briskport is a registered trademark of Arsene.bzh
Customer	Means the natural or legal person who has subscribed to the Services via Briskport website and as detailed in the Subscription Form.
Customer Data	Means all files, documents, data or electronic information transmitted by the Customer as part of the Services and which may include personal data within the meaning of the Data Protection Regulations.
Customer's Systems	Means the system, hardware and any software used by the Customer, under its control and full responsibility, to which the Product may be connected. To ensure the implementation of the Product, the Customer's Systems must meet the technical requirements defined in the Documentation.
Data Protection Regulations	Means Law No 78-17 of 6 January 1978 on Data Processing, Data Files and Individual Liberties and Law No 2018-493 of 20 June 2018 on the protection of personal data; (ii) Regulation (EU) 2016/679 dated April 27, 2016 (hereinafter "GDPR"), which came into force on May 25, 2018; and (iii) any other normative act, decree, regulation or provision that would be enacted by a competent national or European supervisory authority.
Documentation	Means the documents relating to the use of the Services, as updated regularly by Briskport, it being understood that each update shall in no way diminish the Services initially subscribed to by the Customer.
Malicious Software	Means any malwares, viruses, worms, logic bombs, Trojan horses and any other malicious or harmful code, files, programs, scripts and/or agents.
Products	Means all applications and tools provided by Briskport.

Services	Means all IT services provided by Briskport in connection with the Products (including delivery, installation, maintenance etc.) as selected by the Customer under the Subscription Form, and made available to the Customer via the connection to the Briskport website https://briskport.com/ and/or other websites designated in writing to the Customer as well as the associated offline components as described in the Documentation.
Subscription Form	Means the order documents used for subscriptions to the Services by the Customer. Subscription Form is part of the Terms of Service.
Terms of Service	Means the terms and conditions between Briskport and the Customer composed of the following documents: the Terms and Conditions and Appendix - APPENDIX A – DEFINITIONS
Users	Means one or more employees, consultants, contractors or agents of the Customer duly authorized to use the Product and the Services. It is understood that each User will be bound by the terms and conditions of the Terms of Service, for which Customer is responsible, and will be under the full authority and responsibility of Customer.