

## Terms of Service

Last Revised: May 3, 2024

These Terms of Service (the "Terms of Service"), together with an Order Form (as defined below) collectively constitute a binding agreement (the "Agreement") between Xeneta AS, a company registered in Norway with business registration number NO 915 736 076 and with its business address at Biskop Gunnerus gate 14A, NO-0185 Oslo, Norway ("Xeneta") and the legal entity stated on the Order Form (the "Customer").

### 1. Definitions

"Account" means the account that Customer's Authorized Users (as defined below) will need to set up to access and use Xeneta's Products.

"Aggregated Data" means Customer's Data that has been processed pursuant to Xeneta's methodology (including data cleaning, analysis, standardization, and anonymization) which has been aggregated with data from other sources.

"API" means Xeneta's application programming interfaces and their associated tools and documentation.

"Application" means Customer application or service that allows Customer to receive Information from Xeneta's proprietary database via the API.

"Authorized User" means Customer's employees who have been provided access to the Platform by Customer or Xeneta.

"Confidential Information" means The Product(s), the Information as well as the Intellectual Property Rights and the content of this Agreement and other data, information or material provided by Xeneta and Customer's Data (as defined below).

"Data" means Customer's rate prices consisting of its costs for ocean and/or air freight from one point to another, including when applicable, all relevant surcharges.

"Data Protection Claim" means any claim related to personal data or personal identifiable information.

"GDPR" means Regulation (EU) 2016/679 (General Data Protection Regulation) as amended from time to time.

"Information" means The Products and all data, material and information made available to the Customer.

"Intellectual Property Rights" means all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in intellectual property rights (whether registered or not) and all applications for the same which may exist now, or in the future as well as the goodwill vested therein.

"Order Form" means the order form issued by Xeneta which states the subscription period and the Products and fees agreed by Xeneta and the Customer.

"Platform" means the software available at [app.xeneta.com](https://app.xeneta.com).

"Products" means the products and/or services provided by Xeneta, including the API.

"SCCs" means the standard contractual clauses published in the Official Journal of the EU on June 7, 2021.

"Website" means [www.xeneta.com](http://www.xeneta.com).

## 2. The Agreement

- 2.1 This Agreement governs the rights and obligations between Xeneta and the Customer.
- 2.2 By signing this Agreement, the Customer confirms to have understood and accepted the terms stated herein.

## 3. Binding Agreement

- 3.1 The Products and prices agreed by Xeneta and the Customer will be set out in the Order Form which Xeneta will submit to the Customer. The Customer will be bound by this Agreement by signing the Order Form. By signing this Agreement, the undersigned signatory is deemed to represent and act on behalf of the Customer.
- 3.2 The parties are responsible for providing each other with the correct contact details.
- 3.3 If the Customer orders additional Products from Xeneta, a binding Agreement for the additional Products is entered into when the Customer signs an Order Form specifying the additional Products and the price.

## 4. Payment

- 4.1 Customer agrees to pay Xeneta the fees specified in the applicable Order Form. All fees will be due from the invoice date as per the payment terms outlined in the Order Form.
- 4.2 For the avoidance of doubt, all fees stated or agreed to be paid by Customer to Xeneta under the Agreement are exclusive of value added tax (VAT) or similar indirect tax, and such indirect tax, where applicable, shall be payable by Customer in addition to the amounts stated or agreed. The payment due by the Customer under this Agreement will be made without any deduction or withholding for or on account of any taxes unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If the Customer is so required to deduct or withhold, then the Customer will:
  - a) promptly notify Xeneta of such requirement;
  - b) increase the payment as necessary to ensure that, after all required tax deductions are made, the net amount received by Xeneta is equal to the amount it would have received had no such deductions been made;
  - c) pay the relevant authorities the full amount required to be deducted or withheld in a timely manner and file the required withholding tax returns reporting the payment of such withholding tax;
  - d) promptly send to Xeneta an official receipt (or a certified copy) or other reasonably acceptable documentation evidencing such payment to such authorities; and
  - e) pay any and all present or future stamp or documentary taxes and any other excise or property taxes

or charges or similar levies which arise from any payment made under this Agreement or from the execution or delivery of, or otherwise with respect to, this Agreement.

- 4.3 The Customer is responsible for providing complete and accurate billing and contact information to Xeneta and notifying Xeneta of any changes to such information. Late payment of any fees of more than 10 days may accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower. If Xeneta must initiate a collection process to recover fees due and payable hereunder, then Xeneta shall be entitled to recover from Customer all costs associated with such collection efforts.

## 5. Customer's Obligation to Share Data

- 5.1 The Customer shall update and/or share the Data with Xeneta on a regular basis, unless otherwise is explicitly specified for the relevant Product or in the applicable Order Form.
- 5.2 Customer owns and retains all rights in the Data, subject to Xeneta's right to create Aggregated Data as set forth in Article 6.1.
- 5.3 If the Customer does not fulfill its obligation to share Data in accordance with this Article 5, Xeneta may shut down the Customer's access to the Product(s) upon fourteen (14) days prior electronic notice.

## 6. Xeneta's Use of Data

- 6.1 Xeneta is expressly authorized by Customer to process the Data pursuant to Xeneta's methodology to create Aggregated Data. Xeneta shall exercise reasonable efforts to process Customer Data diligently and in a professional manner, in accordance with Xeneta's methodology.
- 6.2 Xeneta is hereunder entitled to create, generate, analyze, and use the Aggregated Data as part of its Products, for distribution in general benchmarking data and industry reports, advertising, marketing, and promotion of networking opportunities to other and prospective customers. Xeneta shall have exclusive ownership rights to the Aggregated Data for any purpose. Products that are accessed by Xeneta's customers shall only contain Aggregated Data.
- 6.3 Xeneta shall not disclose to third parties or use Data except as set forth in this Agreement or to comply with any legal, regulatory or similar requirement.

## 7. Limitation on Use

- 7.1 The purpose of Xeneta's Products is to increase transparency in the freight industry to enable market operators to adapt more efficiently to market conditions. Pursuant to applicable competition law the sharing of information between competitors may not take place if it may restrict, prevent or distort competition, in particular any information sharing that enables the market operators to foresee other operators' future conduct, which may lead to a violation of applicable law.
- 7.2 The Customer undertakes to:
- a) limit the use of Information to its own business operation. If the Customer wishes to make any other use of Xeneta's Information, the Customer must obtain prior written permission from Xeneta;
  - b) not disseminate Information to a third party, except if it is:

- in a limited manner, e.g., screenshots for a specified period;
  - clearly referencing Xeneta as the source; and
  - linked to a specific context, e.g., in negotiations with suppliers and internal reporting.
- c) not to or enable others to copy (except as expressly permitted by this Agreement), decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works from the Products and/or Information;
- d) not use any automatic services (robots, spiders, or indexation) or other ways of systematic use of the Information; and
- e) not share licenses. All access to Xeneta Products shall be through a license assigned to an Authorized User. Customer may transfer licenses among Authorized Users, but licenses shall not be shared between them.
- 7.3 Any of Customer's use of Information or the Platform that in Xeneta's reasonable judgement (i) threatens the security, integrity, confidentiality, or availability of the Products or the Platform, or (ii) violates applicable law, may result in the immediate suspension of Customer's access. Xeneta will use commercially reasonable efforts under the circumstances to provide Customer prior notice and an opportunity to remedy such threat or violation prior to any suspension.

## 8. Warranties

- 8.1 Customer undertakes to exercise its reasonable efforts to ensure that the Data they deliver as per Article 5 is accurate and not misleading. If Customer identifies a mistake in the Data, Customer undertakes to promptly inform Xeneta.
- 8.2 Customer warrants that it has the right to legally share the Data with Xeneta.
- 8.3 Xeneta relies on the quantity and quality of the original data that is provided by its customers, which is outside of Xeneta's control. Xeneta implements outlier detection systems to identify any faulty data. Xeneta's ability to make "market data" available remains conditional upon the number of customers who provide data, which can vary over time.
- 8.4 If the Product or Platform contains a defect, Xeneta shall rectify it as soon as possible at its own cost.
- 8.5 The Information is provided "as is", without any warranties from Xeneta, neither explicit nor implied, regarding the accuracy or completeness of the Information. The Information is in general intended only to give a general overview of the subject matter.
- 8.6 Xeneta aims to update the Information on a regular basis. Any Information may, however, be out of date at any given time.
- 8.7 Xeneta will use commercially reasonable efforts, consistent with prevailing industry standards and practices, to maintain the availability of Product(s) and the Platform. Nonetheless, the Platform and/or the Product(s) may be temporarily unavailable for (i) scheduled maintenance, in which case Xeneta shall notify Customer via email and/or the Platform at least 5 (five) days in advance, (ii) unscheduled emergency maintenance, or (iii) causes beyond Xeneta's reasonable control. In the event of unavailability due to unscheduled emergency maintenance or causes beyond Xeneta reasonable control, Xeneta shall notify the Customer as soon as reasonably possible.

- 8.8 Xeneta will use commercially reasonable efforts to maintain appropriate administrative, physical, and technical safeguards for the protection of the security, confidentiality, and integrity of the Data.

## 9. Intellectual Property Rights

- 9.1 Xeneta is the owner and the licensor of the Platform and the underlying technology, the Information and the Products provided, including all Intellectual Property Rights vested in, related to or derived from the same.
- 9.2 Xeneta grants the Customer a non-exclusive, non-transferable license for the duration of the Order Form and on the terms and conditions of the Agreement to use the Product(s) to download, store, transmit, display and copy Information and the Intellectual Property Rights inherent in the same, as expressly agreed in this Agreement.
- 9.3 If Customer provides Xeneta any feedback regarding Xeneta's Products and/or Platform, the Customer grants Xeneta an unlimited, irrevocable, perpetual, sublicensable, royalty-free license to use any such feedback or suggestions for any purpose without any obligation or compensation.

## 10. Confidentiality

- 10.1 Confidential Information shall not be disclosed to any third party without obtaining the other party's explicit prior written consent. Xeneta may disclose Confidential Information to third parties having a legitimate need to know, provided that Xeneta remains responsible for their compliance with this Article 10 and those third parties are bound by strict confidentiality obligations no less restrictive than those contained herein.
- 10.2 If either Party suspects unauthorized use of Confidential Information such as, but not restricted to, copying, use or disclosure without the other Party's prior written consent, such Party shall immediately notify the other Party.
- 10.3 These confidentiality obligations do not apply to information that the receiving party can document (i) is or becomes public knowledge through no fault of the receiving party, (ii) is rightfully known or possessed prior to receipt of this Agreement, (iii) is rightfully received from a third party without breach of confidentiality obligations, or (iv) is independently developed without using the disclosing party's Confidential Information.

## 11. Linking to the Platform

- 11.1 The Customer may not establish a link to the Website, the Platform or the Product(s) in a way that suggests any form of association, approval, or endorsement between the parties where none such exists. The Customer shall not create a link to any part of the Platform or the Products but may create a link to the Website.
- 11.2 Xeneta reserves the right to withdraw linking permission without cause and notice.

## 12. Indemnity

- 12.1 Xeneta shall defend Customer from and against all claims, suits or actions arising out of or resulting from (i) breach of Xeneta's confidentiality obligations under this Agreement, and (ii) a third party claim

that Xeneta's technology used to provide the Products infringes or misappropriates any patent, copyright, trademark, or trade secret of that third party. Xeneta shall pay the amount of any final judgment awarded (including reasonable attorney's fees and costs) or final settlement made with respect to such claim. Notwithstanding the foregoing, in no event shall Xeneta have any obligations or liability under this Article 12.1 arising from: (i) use of Products in a modified form, (ii) use of Products in combination with materials, software, hardware or systems not furnished by Xeneta but solely to the extent that the alleged infringement is caused by such combination, (iii) any Customer Data, and when applicable, Customer Application, (iv) Customer's use of Products other than in accordance with this Agreement, or (v) Customer's gross negligence, willful misconduct, misrepresentation, violation of applicable law, or breach of the terms and conditions of this Agreement.

- 12.2 If a Product becomes or, in Xeneta's opinion, is likely to become the subject of a claim of infringement, Xeneta will, at its sole option and expense, (i) obtain the right for Customer to continue using the Product, (ii) provide a non-infringing functionally equivalent replacement, or (iii) modify the Product to be non-infringing. If Xeneta does not believe the foregoing options are commercially reasonable, Xeneta may terminate Customer's access to the Product in which event Xeneta will refund to Customer all prepaid fees for the remainder of the then-current Subscription Term on a pro rata basis.
- 12.3 Customer will defend Xeneta from and against all claims, suits or actions arising out of or resulting from (i) a breach of Customer's confidentiality obligations under this Agreement, (ii) a third party claim resulting from Xeneta's use of Customer Data, and (iii) Customer's breach of Article 7.2. Customer shall pay the amount of any final judgment awarded (including reasonable attorney's fees and costs) or final settlement made with respect to such claim. Notwithstanding the foregoing, in no event shall Customer have any obligations or liability under this Article 12.3 arising from Xeneta's gross negligence, willful misconduct, misrepresentation or breach of the terms and conditions of this Agreement.
- 12.4 The party seeking defense and/or indemnification will give the other party prompt notice of the claim and will not settle any such claim without the prior written consent of the other party (which will not be unreasonably withheld).

## 13. Limitation and Exclusion of Liability

- 13.1 Except with respect to Excluded Claims (as defined below), neither party shall be liable to the other for any indirect loss or any consequential damages incurred. Consequential damages include but are not limited to loss of earnings, loss of profit and loss of cost savings.
- 13.2 Each party's total liability for breach of contract, regardless of whether the Agreement is terminated, shall not exceed one hundred percent (100%) of the fees of the current one (1) year Subscription Term (as defined below) to which such liability relates (the "General Liability Cap").
- 13.3 In the case of a Data Protection Claim, each party's total liability to the other party shall not exceed two hundred percent (200%) of the fees of the current one (1) year Subscription Term to which such claim relates (the "Data Protection Claims Cap").
- 13.4 In no event shall either party (or its affiliates) be liable for the same event under both the General Liability Cap and the Data Protection Claims Cap. Similarly, those caps shall not be cumulative; if a party has one or more claims subject to the General Liability Cap and the Data Protection Claims Cap, the maximum total liability for all claims in the aggregate shall not exceed the Data Protection Claims Cap.
- 13.5 An "Excluded Claims" refers to (i) a party's obligation of indemnification under Article 12 (Indemnity), (ii)

liability resulting directly from a party's gross negligence, willful misconduct, criminal acts, or fraud, (iii) liability which, by applicable law, cannot be limited, or (iv) Customer's obligation to pay any fees owed to Xeneta under this Agreement.

## 14. Term

- 14.1 The term of this Agreement will commence on the start date set forth in the Order Form and shall remain in effect until the end date set forth in the same (the "Initial Term").
- 14.2 Unless otherwise specified in the Order Form, this Agreement shall automatically renew for one (1) year term (each a "Renewal Term"), unless either party provides notice to the other of its intention not to renew at least thirty (30) days prior to the expiration of the Initial Term or the then-current Renewal Term. The Initial Term and all Renewal Terms will collectively be referred to as the "Subscription Term".
- 14.3 The parties agree that the fees set forth in the Order Form may be subject to change upon any Renewal Term. Any such change shall be included on the Order Form of the Renewal Term which shall be submitted to the Customer in advance of the Renewal Term.

## 15. Breach Of Contract - Termination

- 15.1 Either Party may terminate this Agreement in the event of:
- a) the other party's material breach of this Agreement which it fails to remedy within thirty (30) days after notice of such breach;
  - b) the other party's liquidation, commencement of dissolution proceeding, assignment of substantially all its assets for the benefit of creditors, subject to applicable law;
  - c) the other party become the subject of bankruptcy or similar proceeding that is not dismissed within sixty (60) days; or
  - d) instructions by any court of law or enforcement body.
- 15.2 In addition to the above, Xeneta may terminate the Agreement with immediate effect, including, but not limited to, the following instances:
- a) if the Customer misuses, disrupts or undermines the security of the Product(s), the Information and/or the Platform, including, but not limited to, by introducing viruses or other material which is malicious or technologically harmful;
  - b) if the Customer attempts to gain unauthorized access to Product(s), the Platform, the Information or the server on which the Platform is stored or any server, computer or database connected to the Platform; or
  - c) if any undisputed amount under the Agreement is thirty (30) days or more overdue following advance notice by Xeneta.
- 15.3 In the instance described in sub-article c) above, Xeneta may suspend the Customer's access to the Platform or Products until such amounts are paid in full.
- 15.4 Upon termination or cancellation of this Agreement, all rights and obligations will immediately terminate except that any terms and conditions that by their nature should survive such termination will survive, including the license restrictions and terms and conditions relating to proprietary rights, data rights and



confidentiality, disclaimers, indemnification, limitations of liability and termination.

## 16. Notices

- 16.1 All notices or claims from the Customer to Xeneta under the Agreement must be given in writing to Postboks 9344 Grønland, 0135 Oslo, Norway or electronically to [legal@xeneta.com](mailto:legal@xeneta.com).
- 16.2 The Customer hereby accepts that any communication from Xeneta to the Customer under the Agreement may be electronic. Xeneta may hereunder contact and give notices to the Customer by email and/or by posting notices on the Platform.
- 16.3 Each party shall notify the other of any change in the contact details.

## 17. Entire Agreement

- 17.1 The Agreement and any document or otherwise expressly referred to in the Agreement represents the entire agreement between Xeneta and the Customer in relation to the subject matter of the Agreement and supersede any prior agreement, understanding or arrangement between the parties, whether oral or in writing. In the event of any conflict or inconsistency between the Order Form and these Terms of Service, the contents of the Order Form shall prevail.
- 17.2 The Customer acknowledges that, in entering into the Agreement, the Customer has not relied on any representation, undertaking or promise given by Xeneta except as expressly stated in the Agreement.
- 17.3 The Customer acknowledges that any term or condition stated in a Customer purchase order or any other document provided by Customer are hereby deemed null, void and of no effect.

## 18. Changes to the Platform and/or Products

Xeneta may modify the Products from time to time to reflect applicable contractual or statutory requirements, changes in technology, changes in the Platform's capabilities and changes in general market conditions affecting Xeneta's business. Changes to the Products that would adversely affect the Products' essential functionalities shall not be implemented without Customer's consent.

## 19. Personal Data processing in connection with Customer's subscription:

- 19.1 Customer Data set forth in Article 5 shall not contain any personal data. By using Xeneta Products, Platform and/or Website, the Customer and its Authorized Users acknowledge all applicable policies in relation to personal data processing, as made available via the Website and Platform.
- 19.2 Customer's Authorized Users will have to create an Account to access the Platform. Opening an Account will require Xeneta to obtain information from Customer's Authorized Users such as name, e-mail address, phone number, position, country location and/or company. The use of any personal data that the Customer provides Xeneta as part of the Account registration process is governed by this Agreement and any applicable policies made available via the Platform. Customer and Xeneta agree to comply with the legal requirements of data protection laws, in particular GDPR, and adopt without revision or modification the SCCs to ensure compliance with the requirements of GDPR on the protection of natural persons regarding the processing of personal data and the free movement of such data to a third country outside the European Economic Area/European Union.



## 20. Logo Rights

Customer grants Xeneta the right to use Customer's company name and logo as a reference for marketing or promotional purposes on Xeneta's website and in other public or private communications with existing or potential Xeneta customers, subject to Customer's standard trademark usage guidelines as provided to Xeneta from time-to-time. Xeneta shall not use Customer's name or logo in any way that would harm Customer's name or reputation. Customer shall retain all right and title to such name and logo and Xeneta is granted a nonexclusive right to display the Customer's name and logo for the duration of the Subscription Term.

## 21. API Provisions

- 21.1 Articles 21, 22, 23 and 24 of this Agreement shall only apply to Customers who have access to the API. Such access shall in any event be subject to an Order Form signed by the Customer clearly stating "API" as part of Customer's subscription.
- 21.2 Customer desires to license Xeneta's API which allows Customer to receive Information through the Application.
- 21.3 The fees set forth in the Order Form for the API do not include access to the Platform, which needs to be maintained in force for the term of the Order Form for the API to function as intended.

## 22. API Description

- 22.1 Customer is obligated to provide Xeneta with all necessary information regarding the Application.
- 22.2 The Customer must obtain API credentials to use and access the API (the "Token").
- 22.3 Customer shall notify Xeneta of any material changes to the Application, and Xeneta will assess whether to approve the changes within thirty (30) days of the Customer's notice. Xeneta's consent shall not be unreasonably withheld.
- 22.4 Xeneta can, at any time, with reasonable advance notice, request Customer to provide necessary documentation to prove the correctness of the descriptions of the Application.
- 22.5 In the event Customer exceeds the number of API calls included in the applicable Order Form, Xeneta reserves the right to suspend access to the API for the remaining period of the Subscription Term.

## 23. API Obligations and Warranties

- 23.1 Xeneta shall:
  - a) provide the API and any relevant materials to Customer as described in the Order Form and otherwise in accordance with this Agreement. Xeneta will use reasonable efforts to ensure that the API is delivered in accordance with industry standards; and
  - b) provide support to Customer if the API does not function as intended or as specified by Xeneta.
- 23.2 Customer agrees to:
  - a) use the API and display Information in accordance with the technical documentation, usage guidelines, call volume limits (as set out in the Order Form) and otherwise as described in this

Agreement or instructed on the Website;

- b) use the API to develop, test and support the Application, including allowing Authorized Users to access the Customer's integration of the API within the Application; and
- c) be solely responsible for its actions and the actions of its Authorized Users while using the Application and the Information.

23.3 Except as expressly agreed under this Agreement, Customer shall not:

- a) disclose or provide the API, the Information or the Application to others than Authorized Users;
- b) distribute or allow access to the API, other than through the Application;
- c) use the API for any other purpose than providing the Application as described herein;
- d) use the API in any manner that is competitive to Xeneta or the Xeneta Platform, or which substantially replicates products or services offered by Xeneta at any time, as determined in Xeneta's sole discretion;
- e) use the API in a manner that, as determined by Xeneta in its sole discretion, constitutes excessive or abusive usage, or otherwise fails to comply or is inconsistent with this Agreement; and
- f) make the Information available to anyone who ships 2,500 TEUs (ocean freight) or 1,500 tonnes (air freight) per year or more.

23.4 Customer represents, warrants, and acknowledges that:

- a) It is responsible, and that Xeneta has no responsibility or liability of any kind, for the information, development, operation, support or maintenance of the Application. Without limiting the foregoing, Customer is solely responsible for (a) the technical installation and operation of its Application; (b) creating and displaying information on, through or within its Application; (c) ensuring that its Application does not violate or infringe the Intellectual Property Rights of any third party; (d) ensure that the Application is not violating any applicable law; and (e) ensuring that the Application does not contain or introduce malicious software into the API or any other data stored or transmitted using the API; and
- b) Its activity with respect to the Application and the use of such Application by its Authorized Users, is in accordance with the terms of this Agreement, does not and will not violate any applicable local, state, national and international laws and regulations, including, without limitation, all applicable export control laws, and maintains all licenses, permits and other permissions necessary to develop, implement and publish its Application.

## 24. API Security

24.1 Customer shall be solely responsible for the confidentiality of the Token and shall not share the Token with any other developer or use it for more than one application or service. Customer agrees to keep the registration, site, Application, or service information accurate, complete, and updated for so long as Customer uses the API. If Customer believes an unauthorized third party has gained access to the Token, the Customer shall immediately notify Xeneta.

24.2 Customer will maintain secure access to the Application compliant with the industry-standard security measures, including strong authentication and authorization controls. If the Application is accessed by

an unauthorized third party, or in the event of any other security breach known to Customer, the Customer shall immediately notify Xeneta.

## 25. Governing Law and Jurisdiction

- 25.1 The parties' rights and obligations following from the Agreement shall be governed by Norwegian law.
- 25.2 The parties shall seek to solve amicably through negotiations any dispute, controversy or claim relating to this Agreement. If the parties fail to solve such dispute, controversy or claim by an amicable written agreement within fourteen days after such negotiations have been initiated by a party, such dispute, controversy, or claim shall be submitted to the courts of Norway with Oslo District Court (Oslo tingrett) as agreed legal venue.

For Xeneta AS

For Customer

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_