

SOFTWARE USER AGREEMENT AND TERMS AND CONDITIONS

Version 1.2 / Last update: April 2020

We are ProfitBird B.V. (**ProfitBird** or **we/our**). We offer online software as a service through our website <https://www.profitbird.com> or any subdomains or any website that replaces this website (the **Website**). Our software (**Software**) enables you to automatically trade and invest in (virtual/crypto)currencies by means of an automatic (crypto currency) trader bot – of which (solely) we control and configure the settings.

This software user agreement and terms and conditions (the **Terms**) apply to the relationship between ProfitBird and you for any use of the Website and the Software that ProfitBird offers and the use of your account. You cannot use the Software without accepting these Terms. All offers, including free trials are always subject to these Terms. We offer our Software in the Netherlands.

1. Definitions

1. **Account:** means an account held by a User with ProfitBird to use the Software.
2. **Base currency:** the currency indicated by a User in the Account and which is used to start trading with the Software and to transfer any profits to.
3. **Crypto currency:** means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically.
4. **ProfitBird:** ProfitBird B.V., a limited liability company incorporated under the laws of the Netherlands, registered with the Chamber of Commerce under number 73803820. The company's registered office is at Hengelosestraat 500, 7521 AN, Enschede, the Netherlands.
5. **Minimum investment amount:** an amount in your Base currency chosen by you, with a minimum amount as stated on our Website or an euro investment amount chosen by you, with a minimum amount as stated on our Website, or a higher amount if required by the relevant Crypto currency exchange and which applies to each Crypto currency exchange account connected to the Software.
6. **User(s)/you:** an individual private person or a legal entity making use of the Website and/or Software.
7. **Software:** the software ProfitBird has developed to enable Users to automatically trade and invest in Crypto currencies on the Crypto currency market, in the form of a (Crypto currency) trader bot or trading engine which is available through the Website.

2. Registration and personal account

To use our Software, you need to visit our Website and register and create an Account.

You can only register and create an Account and use our Software under the following conditions:

- ✓ If you are a natural person, you are 18 years or older and authorised to enter into a contractual relation with Us and to accept these Terms. If you are a company, you are authorised to enter into a contractual relation with us and to accept these Terms and you are represented by a person authorised to represent the company.
- ✓ You are aware of the high risks in relation to Crypto currency and trading of or investing in Crypto currency.
- ✓ You act on your own behalf (not for or on behalf of a third party).
- ✓ Your Minimum investment amount is available on the Software starting date.
- ✓ You have a bank account in your name with a licensed bank (authorised to provide banking services in the Netherlands).
- ✓ You have an account with a Crypto currency exchange supported by us.
- ✓ You need to provide us with the Application Programming Interface (**API**) key to enable ProfitBird to trade on your account(s) held by the relevant Crypto currency exchange(s).
- ✓ All funds on the account with a Crypto currency exchange as supported by us are legitimately obtained.
- ✓ You (including any representatives and ultimate beneficial owners) are not included on any sanction list.

You must protect the login details of your Account and keep your password strictly secret. We will assume that all actions taken from your Account are done by you.

You agree to provide up-to-date, complete and accurate information on your Account. You agree to promptly update your Account details, if any information provided changes.

We can request for more information at any time, for example in relation to a change in rules and regulations or to verify if you (still) comply with the above-mentioned requirements and these Terms (as amended from time to time).

ProfitBird will give you access to the Software once you successfully created an Account and the subscription to, and first payment of, a pricing plan has successfully been completed. No payment is required for the trial plan. Once the Software is connected to the Crypto currency exchange account, you request us and agree that we start applying the Software immediately.

During our contractual relationship, you can change the information that is used by us and our Software via your Account at any time, including the investment amount, the Base currency and the Crypto currency exchanges connected to our Software. If the changes result in a pricing plan upgrade, then the changes will apply once the additional payments have been received by ProfitBird.

If it concerns a corporate account, only an authorised person is allowed to trade with the Account. It is the responsibility of the User of the corporate account that only authorised persons have access to the Account.

You are obliged to review the information provided to you via your Account and to access your Account regularly.

3. Services / Software

Our service consists of making available to You our Software.

Account with a Crypto currency exchange supported by us

To use our Software, you need to have an Account and you need to have an account with a Crypto currency exchange supported by us. The Crypto currency exchanges supported by us can be found on our Website. We are authorised to decide which Crypto currency exchanges are supported by us. We can at any time decide that a Crypto currency exchange is no longer supported and we can add Crypto currency exchanges to our list of supported Crypto currency exchanges. If reasonably possible, we inform you in advance if a Crypto currency exchange is no longer supported. We can for example decide to no longer support a Crypto currency exchange if we have any indications that a license or registration obligation applies to the relevant exchange and the exchange does not comply with such an obligation. Further, indications such as fraud or lack of protecting measures can result in such a decision. That we support a Crypto currency exchange does not guarantee that the Crypto currency exchange does comply with rules and regulations. You are responsible for choosing your Crypto currency exchange.

API/power of attorney

To use the Software you need to enable us to trade on your account by providing us with your API-key via the Account. By accepting these Terms and by providing your API-key you authorise us and you provide us with a power of attorney to access your Crypto currency exchange account(s) for the purpose of opening buy and sell positions on the basis of the Software. Please make sure that the API enables us to trade and not to withdraw your Crypto currencies. Further, we need to be authorised to have insight in the trades made on the basis of our Software and the transaction fees charged by the relevant Crypto currency exchange(s).

Investment amount, Base currency and Crypto currencies

To start using our Software, the Minimum investment amount needs to be available on your exchange account on the Software starting date and time in the Base currency or euro.

The investment amount is the amount chosen by you via your Account. If your investment amount is in a Base currency other than Euro, the investment amount is calculated on the basis of a conversion of your Base currency / Euro according to the exchange rate available on the Crypto currency exchange. If the exchange rate on the Crypto

currency exchange is not available, we will use an exchange rate of another exchange rate website with high reputational standards in view of ProfitBird like www.coinmarketcap.com.

We are only authorised to apply the Software on the investment amount as chosen by you via your Account. Any profits made above your investment amount will not be included in the trades on the basis of the Software. If the amount on the account held with the exchange after the starting date falls below the Minimum investment amount, the Software will be applied to the lower amount.

Before you can use our Software, you need to choose your Base currency via your Account. This is the currency the Software uses to start trading and the currency that is used to make available any profits for you. Any fluctuations in your Base currency and any impact on your profits is for your own account and risk. Further, we recommend to store any Crypto currencies not used for trading on a safe, offline wallet and not to store/hold these Crypto currencies with a Crypto currency exchange.

You can only use the Software to trade and invest in Crypto currencies, whereby it is decided via the Software which Crypto currencies are used for trading. If the Crypto currency exchange as supported by us, also offers trading possibilities for security currencies or other products, including ancillary services such as margin trading, these security currencies and other products and ancillary services will not be included in our Software.

Via the API, the Software provides input on your Crypto currency exchange account(s) to buy and sell Crypto currencies. You can continue to use your exchange account as usual. The assets on your Crypto currency exchange account are yours, and you always have the right to intervene in the trades. You can also always withdraw your Crypto currencies from the exchange account, unless otherwise agreed with that exchange.

4. Pricing plans and payment

You need to subscribe to a pricing plan to use the Website and Software. Pricing plans are offered for a fixed amount per month and/or per year. You can subscribe to a pricing plan on the Website or via your Account.

ProfitBird can offer several pricing plans with different maximum investment amounts, number of Crypto currency exchange accounts, and base currencies which you can actively trade and invest on. You can find all plans on the Website.

The monthly pricing plans will be invoiced every month in advance in Euro, including VAT. The annual pricing plans will be invoiced every year in advance in Euro, including VAT.

You will need to pay any invoices received within 14 days or set the payment to an automatic payment. Possible methods of payment are displayed on the Website.

Pricing plans and changes

You can find the available pricing plans and most up to prices on the Website. We can always adjust our pricing. Revised pricing or pricing plans will be published on the Website. The price change for existing Users will take effect on the first day of your new monthly or annual contract period. We can however revise our pricing and/or pricing plans with immediate effect if this is reasonably required, such as on the basis of rules and regulations or instructions from authorised supervisory authorities.

ProfitBird reserves the right to offer multiple pricing plans or change the pricing plans. Each plan may differ in the maximum investment amount, number of Crypto currency exchange accounts which you can actively trade and invest on, amount of positions, selected Crypto currencies, frequency of scanning and trading the market and the support from ProfitBird.

5. Cancellation / termination by the User

You are always and at any time allowed to stop using the Software. You can always stop the Software via your Account.

Consumers have a right to cancel the subscription and terminate the Account after entering into the agreement within 14 days by providing us with a termination request by email (with confirmation request).

A monthly subscription will automatically continue for a month-to-month period, unless User terminates the subscription (our agreement) before the end of the monthly term (as already paid for). User can also modify the subscription to an annual subscription as of the first day of the next month.

An annual yearly subscription will automatically continue for a year-to-year period, unless User terminates the subscription (our agreement) before the end of the yearly term (as already paid for). After one year, Users that are consumers (natural persons not acting in the course of their business or profession) can terminate the automatically extended yearly subscription on a monthly basis (as of the first day of the next month).

The Account of the User will remain active for the period that User has already paid for. User can stop using the Software via the Account.

Reference is made to clause 12, regarding your possibility to stop using the Software. You can cancel the subscription and terminate your Account by providing us with your termination request by email.

6. Fair use of our Website and Software

You may not use the Website, Account and Software in such way that you violate Dutch law or any other applicable laws and regulations. As a condition for using the Website, Account and Software, you agree not to provide any information, data or content to us or the Website and Software that is incorrect, inaccurate, incomplete or that violates any law or regulation. In addition, you agree that you will not, nor allow third parties to:

- a. enter any non-public / secure areas of the Website or Software;
- b. send viruses, worms, junk mail, spam, chain letters, unsolicited offers or ads of any kind and for any purpose;
- c. investigate, scan or test the Website of Software or any other related system or network, or violate any security or authentication;
- d. use any automated systems of software to withdraw data from the Website (“screen-scraping”);
- e. make and distribute copies of the Website or Software;
- f. attempt to sell, distribute, copy, rent, sub-license, loan, merge, reproduce, alter, modify, reverse engineer, disassemble, decompile, transfer, exchange, translate, hack, distribute, harm or misuse the Website or Software; or
- g. create derivative works of any kind whatsoever.

If you receive personal data or other sensitive information from other users, you will keep this information secret and return and delete the information.

7. Privacy

ProfitBird respects your privacy and applies the applicable privacy rules and regulations, including the EU General Data Protection Regulation (**GDPR**). When you use our Website and/or Software, we will collect certain personal data from you. In our Privacy Policy you can read which personal data we collect and for what purposes. You can find our privacy policy here: <https://www.profitbird.com/privacy>.

8. Intellectual property

ProfitBird is the exclusive licensee of all intellectual property rights vesting in and relating to (all content made available through) the Website and the Software, such as – but not limited to – patents, patent applications, trademarks, trademark applications, database rights, service marks, trade names, copyrights, trade secrets, licenses, domain names, know-how, property rights and processes (**Intellectual Property Rights**).

ProfitBird grants its Users a non-transferrable, non-exclusive, non-sublicensable and revocable license intended for fair use of the Website and Software on the subscription basis as offered by us. You are not allowed to access the

content of the Website and Software for any other purpose, such as selling or distributing the content of the Website and Software.

9. Availability of the Website and Account, use of the Software

The Website and access to the Account are available on computers and handheld mobile devices running iOS and Android. ProfitBird will use reasonable efforts to make the Website and Software available at all times.

User acknowledges that the Website and Software are provided over the internet and mobile networks and thus the quality and availability of the Website, and access to the Account and Software may be affected by factors outside ProfitBird's reasonable control.

ProfitBird does not accept any responsibility whatsoever for unavailability of the Website and Software and access to the Account, or any difficulty or inability to download or access content, or any other communication system failure which may result in the Website or Software or the Account being unavailable.

ProfitBird is not responsible for any support or maintenance regarding the Website or Software. ProfitBird may – at its own discretion – update, modify, or adapt the Website or Software and their functionalities from time to time to enhance user experience. ProfitBird is not responsible for any downtime resulting from these actions.

To the maximum extent permitted by applicable law, ProfitBird hereby disclaims all implied warranties regarding the availability of the Website, the Account and Software. The Website, the Account and Software are provided "as is" and "as available" without warranty of any kind.

10. Risks

You should be aware of the accompanying risks of possessing, holding, trading and using (Crypto) currencies and you take full responsibility for these risks.

You acknowledge and agree that you shall access the Website and your Account and use the Software at your own risk. You are aware of the risks of trading Crypto currency and you know that you can lose the value of your Crypto currency, which can also be a total loss of value.

You are aware that our services and Software are not regulated and that the services of any Crypto currency platform used by you may also not be regulated and that holding Crypto currency at such an exchange involves high risks and you are aware that these exchanges can for example be hacked.

11. Liability

ProfitBird is not liable to you for any (direct or indirect) damage you suffer as a result of the use of the Website or Software or the content provided thereon, which includes that ProfitBird is not liable for:

1. the proper functioning of (hyper)links provided by the Website or Software;
2. the (lack of) financial benefit or any losses for the Users through the use of the Website or Software;
3. any situation where Users mobile device, login details and/or password is stolen and any third party subsequently makes use of the Website or Software without User's consent;
4. any damage or alteration to User's equipment including but not limited to computer equipment or a handheld device as a result of the installation or use of the Website or Software;
5. a failure to meet any of ProfitBird's obligations under these Terms where such failure is due to events beyond ProfitBird's reasonable control;
6. unavailability of the Software or non-execution of orders provided by our Software due to circumstances beyond ProfitBird's reasonable control, including network or electricity disruptions, de-activation of or changes in your API or API-key;
7. any actions, omissions or disfunctioning of Crypto currency exchanges where you have an account, including the loss of any Crypto currencies held with such an exchange for any reason.

Nothing in these Terms shall exclude or limit ProfitBird's liability when it cannot be excluded or limited under applicable mandatory law.

Users will indemnify, defend, and hold ProfitBird harmless from and against all liabilities, damages and costs (including settlement costs and reasonable attorneys' fees) arising out of third party claims regarding:

- any injury or damages resulting from behaviour of User related to the use of our Website and Software; and
- breach by User of these Terms or violation of any applicable laws and regulations.

12. Termination, block the Account, stop the Software by ProfitBird

We always have the right to (temporarily) stop the Software (and the input on your exchange account) or one or more of your exchange accounts for any reason including but not limited to maintenance, updates, breaches in our security systems, hacking and/or trading results and or possible compliance issues at the relevant Crypto currency exchange or if you have not paid the fees in time.

We can terminate our agreement and we can terminate your Account, taking into account a notice period of one month. We can terminate our agreement and terminate your Account, by sending you an email or inform you via your Account. We can terminate our agreement and your Account with immediate effect if:

- we have established that you have acted contrary to these Terms or that you do not comply or not comply anymore with the requirements to hold an Account with ProfitBird;
- changes in applicable rules and regulations that require us to terminate our agreement;
- instructions from authorised supervisory authorities;
- indications that you are involved in any criminal activities, including money laundering and fraud;
- you have been declared bankrupt or a request thereto has been filed; or
- if there are any other reasonable reasons that require such an immediate effect.

ProfitBird is entitled to (temporarily or permanently) block your Account and deny you access to the Website and/or the Software. We can do this in case of any (possible) suspicion acting contrary to these Terms, including if you have not paid the relevant fees in time. We can also do this for other reasons, including if we suspect abuse of the Account or the Website or the account held by you with a Crypto currency exchange. If you suspect abuse of your Account or if you suspect a third party has obtained access to your Account and/or passcode, you are required to inform us immediately.

13. Miscellaneous

ProfitBird reserves the right to change these Terms. When we change these Terms, we will notify Account holders by e-mail and we post the updated Terms on the Website. By continuing to use the Website and Software, you acknowledge the most recent version of these Terms.

If we do not enforce (parts of) these Terms, this cannot be construed as consent or waiver of the right to enforce them at a later moment in time or against another User.

User cannot transfer the rights and obligations from these Terms to third parties. ProfitBird is authorised to transfer the rights and obligations and/or our agreement to a third party and you agree in advance with such a transfer.

The invalidity or unenforceability of any provision of these Terms shall not affect the validity or enforceability of any other provision of these Terms. Any such invalid or unenforceable provision shall be replaced or be deemed to be replaced by a provision that is considered to be valid and enforceable and which interpretation shall be as close as possible to the intent of the invalid provision.

The administration of ProfitBird including regarding the trades, the investment amount, the input provided by the Software to your exchange account(s) and the profits is decisive.

14. Applicable law and jurisdiction

These Terms and our contractual relationship shall exclusively be governed by and construed in accordance with the laws of the Netherlands. Unless mandatory law compels differently, all disputes resulting from or arising in connection with these Terms shall be exclusively submitted to the competent court of Amsterdam, the Netherlands.

15. Communication

We can provide information in English and/or in Dutch and communication regarding our contractual relationship can also be in English or Dutch. We are authorised to communicate with you by (only) electronic means. Information included in your Account and information provided to the email address included in your Account, should be considered to be received by you. On your request our agreement/these Terms can always be provided to you during our agreement.

16. Helpdesk, advice and disclaimer

ProfitBird has a support helpdesk <https://support.profitbird.com> and through support@profitbird.com where User can ask questions about the Website and Software. ProfitBird will only give advice about the functioning of the Website and Software. You can contact our support helpdesk through: support@profitbird.com. ProfitBird explicitly does not:

- Give Users any information about the settings of the Software;
- Give Users any personal financial advice.

ProfitBird may upload general support material, frequently asked questions, tutorials, and videos on the Website, about the usage and functioning of the Website and Software. All support material, frequently asked questions, tutorials, and videos uploaded by ProfitBird are general and contain in no way personal and/or financial advice. All use of this material is at the sole risk of the User.

17. Complaints, comments and suggestions

ProfitBird strives to give you optimal service. If you have a complaint, comment or suggestion, you can contact us at contact@profitbird.com. Please provide us with your contact details, and a clear description and reason for your complaint. Complaints are usually processed within 7 working days.

18. Contacting us

If you have any questions, please contact us at:

ProfitBird B.V.
Hengelosestraat 500
7521 AN Enschede
The Netherlands
E-mail: contact@profitbird.com
Registration chamber of commerce: 73803820
VAT number: NL859669762B01