

GENERAL TERMS AND CONDITIONS OF BUSINESS OF HOST EUROPE GMBH

These General Terms and Conditions are provided in English for your convenience. Please note that in case of a dispute or discrepancy between the German Terms and Conditions and the English translation, the German version shall prevail.

PART 1 GENERAL TERMS AND CONDITIONS

Section 1 Scope

(1) Host Europe GmbH, Welsersstraße 14, 51149 Cologne (hereinafter called "Provider") shall render its services exclusively on the basis of these General Terms and Conditions of Business which shall apply, even if not expressly agreed, to future contracts between the parties in the area of hosting and domains.

(2) We shall not accept deviating terms and conditions of business of the customer, unless we have expressly consented thereto in writing. Our General Terms and Conditions of Business shall apply even if we render our services without reservations in awareness of conflicting or deviating terms and conditions of the customer.

Section 2 The Provider's Duties to Perform

(1) The Provider's duties to perform shall ensue from the performance specification of the respective product.

(2) The Provider shall be entitled to expand its services, adapt them to technical progress and/or make improvements. This shall apply particularly if such adaptation appears necessary to prevent misuse, or if the Provider is legally obliged to adapt its services.

(3) If the Provider makes additional services available for no extra charge, the customer shall not have any claim to the performance of these services. The Provider may, within a reasonable period, discontinue, alter or start charging a fee for such services that were previously made available free of charge. In such case, the Provider shall notify the customer in due time.

(4) The Provider shall provide the customer with technical support only to the extent agreed by contract. Beyond this, the Provider shall not grant the customer any free support services. The Provider shall not provide support directly to the customer's customers, unless otherwise agreed in writing.

(5) Insofar as static IP addresses are made available to the customer, the Provider reserves the right to alter the IP address(es) allocated to the customer, if this becomes essential for technical or legal reasons.

Section 3 The Customer's Duties

(1) The customer hereby warrants that the information disclosed by it is accurate and complete. The customer hereby undertakes to inform the Provider forthwith of every change to its contact details provided and/or to its other data required for the implementation of the contract.

- (2) In respect of all data that the customer transmits to the Provider's servers, the customer shall make, or cause to be made, daily updated back-up copies (which shall not be stored on the server itself) to ensure that the data can be restored quickly and at low cost in the event of system failure. In the event of loss of data, the customer shall again upload the data stocks concerned on to the Provider's servers and restore configurations.
- (3) No statutory prohibitions, good morals or third-party rights (copyrights, trademarks, name rights, data privacy rights, etc.) shall be violated by the customer through its web presence or any banners superimposed thereon. The customer shall not register its Internet presence on search engines by using keywords, or similar techniques, that violate statutory prohibitions, good morals or third-party rights. In the event of breach of the aforementioned obligations, the Provider shall be entitled to discontinue its services with immediate effect and/or block access to the customer's information.
- (4) The customer hereby undertakes to regularly alter and keep strictly secret all passwords received from the Provider for accessing the Provider's services. The customer shall inform the Provider forthwith, if it becomes aware that unauthorised third parties know such password.
- (5) When designing its Internet presence, the customer shall refrain from using any techniques that would cause the Provider's facilities to be excessively used. The Provider may exclude Internet presences using such techniques from third-party access, until the customer has eliminated/deactivated such techniques. This shall not apply to servers available to the customer for its sole use (dedicated hardware).
- (6) Furthermore, no resources made available by the Provider shall be used by the customer for any acts that violate statutory prohibitions, good morals or third-party rights. In particular, this includes the following acts:
- (a) unauthorised intrusion into third-party computer systems (e.g. hacking);
 - (b) obstruction of third-party computer systems by sending/forwarding data flows and/or emails (e.g. DoS/DDoS attacks/spam/email bombing);
 - (c) searching for open access to computer systems (e.g. port scanning);
 - (d) sending emails to third parties for advertising purposes, unless the recipient has given its express consent, or unless other facts constituting permission are present;
 - (e) falsifying IP addresses, mail headers or news headers, or spreading malware. If the customer violates one or more of the aforementioned obligations, the Provider shall be entitled to immediately discontinue all services. The right to assert damage claims shall remain expressly reserved.
- (7) If the transmission of a certain quantity of data per accounting period has been agreed upon with the customer, the customer shall monitor this limit. If the data transfer volume (traffic) attributable to the customer's offering exceeds the maximum quantity agreed with the customer for the respective period, the Provider shall invoice the customer, at the prices agreed upon in this respect, for the amount attributable to such excess volume.

Section 4 Conclusion of the Contract, Term of the Contract, Termination

- (1) The contract shall be brought about by the Provider's acceptance of the customer's offer of a contract. Acceptance shall either be expressly declared or regarded as commencement of service by the Provider.
- (2) Unless otherwise agreed, the minimum contract term shall be 12 months, and the notice period for ordinary termination shall be six weeks with effect from the end of the contract term. Unless otherwise agreed the contract shall, in the absence of notice of termination, be extended by the respective minimum contract term. If this term is longer than one year, however, the contract shall be extended by only one year in each case.
- (3) The right of both Parties to extraordinary termination of the contract for good cause shall remain unaffected. In particular, the Provider shall have such good cause if the customer

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- (a) enters into default with the payment of charges equal to two months' basic charges;
- (b) culpably breaches a material contractual duty, and fails to remedy the situation within a reasonable period despite a warning.
- (4) Any notice of termination shall be effective only in writing; sending such notice by telefax shall satisfy this requirement of form. Any email that satisfies the electronic form specified under Section 126a *BGB* [German Civil Code] (so-called qualified electronic signature) shall also meet this written form requirement. It is hereby made expressly clear that any notice of termination by email not in the electronic form as per Section 126a *BGB* shall not meet the written form requirement. The contract may also be effectively terminated within the Kundeninformationssystem (KIS), if the Provider makes such a termination feature available.
- (5) The domain registration relationship shall, with regard to termination, be governed by partly deviating provisions set out in Section 13 of these General Terms and Conditions of Business.

Section 5 Prices and Payment

- (1) Charges unrelated to usage shall be due and payable in advance for the respective contract term, unless a different accounting period has been agreed with the customer. Usage-related charges shall be due and payable at the end of the respective accounting period. All charges shall be based on the respective prices agreed with the customer in this respect.
- (2) The customer shall be in default, even without a reminder, if it fails to pay within 14 days of having received an invoice or a notification that the invoice has been posted on the Kundeninformationssystem (KIS).
- (3) Unless otherwise agreed, the customer shall pay by direct debit. The customer hereby authorises the Provider to collect all charges arising from the contractual relationship. This authorisation shall apply also to any new bank accounts disclosed by the customer. The customer shall ensure that there is sufficient cover on its bank account during the agreed direct debiting period. The customer shall compensate the Provider for loss incurred as a result of any refusal of payment by the institution where the bank account is held.
- (4) In the event of arrears in payment, the Provider shall be entitled to demand interest at the annual rate of 10%. The customer shall, on the other hand, be permitted to prove that a considerably lower loss of interest, or none, has arisen.
- (5) The Provider shall, in each case, make an electronic invoice available within the Kundeninformationssystem (KIS). The customer hereby consents thereto. If the customer requests that an invoice be sent by post, the Provider may levy an appropriate charge per invoice.
- (6) Any temporary blocking of services shall not affect the customer's obligation to pay.
- (7) The customer may set off against claims of the Provider only counterclaims that are undisputed or have been determined by a final and non-appealable court judgement.

Section 6 Warranty

- (1) The customer shall report to the Provider forthwith any defects discovered, and make every effort to support the Provider in any possible elimination of such defects. In particular, the customer shall take all reasonable data backup measures.
- (2) The Provider hereby points out that, given the current state of the art, it is not possible to produce hardware or software that functions faultlessly in all combinations of applications, or that can be protected against all manipulation by third parties. The Provider shall not guarantee that the hardware or software used or provided by the Provider will meet the customer's requirements or be suitable for certain applications, or that such hardware or software will be crash-proof, faultless and free from malware. The Provider merely warrants in relation to the customer that the hardware and software used or provided by the Provider shall, at the time of handover, essentially function in

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accordance with the manufacturer's performance specification, if operated under normal operating conditions and if normally maintained.

Section 7 Liability

- (1) The Provider shall, regardless of the legal basis, be liable only in accordance with the following provisions.
- (2) In cases of wilful misconduct and gross negligence, the Provider shall be liable in accordance with the statutory provisions.
- (3) In cases of minor negligence, the Provider shall be liable only in case of breach of an essential contractual duty that needs to be adhered to in order for the contract to be properly implemented in the first place, and that the customer may normally expect to be met (material obligation). In such cases, the Provider shall be liable only up to the sum of the foreseeable loss typical of this type of contract.
- (4) In cases of minor negligence, liability for all other loss, particularly consequential loss, collateral loss or lost profit, shall be excluded.
- (5) The above limitations shall not apply in cases of mortal injury, physical harm or health damage, or in cases of liability under the Product Liability Act.
- (6) Insofar as the Provider's liability is excluded or limited, this shall apply also to the liability of the Provider's employees, other personnel, representatives and authorised agents.
- (7) Insofar as the Telecommunications Act is applicable, the provision on liability under Section 44a thereof shall, in any event, remain unaffected.

Section 8 Data Protection

The Provider shall collect, process and use the customer's personal data in accordance with the statutory data protection provisions. Supplementary information hereon can be found in our Data Privacy Statement.

Section 9 Copyrights, Licence Agreements

- (1) In respect of the Provider's or third-party software made available, the Provider hereby grants the customer a non-exclusive (ordinary) right of use that shall be limited, in terms of time, to the term of the contract. Except with the Provider's consent, this right of use may not be transferred by way of contract transfer, nor may sublicences be granted to third parties. Continued usage after the contract has ended shall not be permitted. Copies of such software made available shall be deleted after the contract has ended.
- (2) Provisions contrary hereto shall apply to open source programmes. In this connection, the respective licence terms shall apply.
- (3) Moreover, the terms of licence of the respective software manufacturers and, if relevant, the Provider's manufacturer-specific and/or software-specific additional terms and conditions shall apply.

Section 10 Indemnification

The customer hereby undertakes to indemnify the Provider internally against any and all third-party claims based on unlawful or law-violating acts by the customer, or based on substantive errors in any information made available by the customer. This shall apply particularly to violations of the law on copyrights, trademarks, name rights, data privacy rights and competition.

Section 11 Applicable Law, Place of Jurisdiction

- (1) The laws of the Federal Republic of Germany shall apply, to the exclusion of the UN Sales Convention (CISG).

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(2) If the customer is a merchant or a legal entity or a special fund in public law, Cologne shall be the exclusive place of jurisdiction for all disputes arising from and in connection with the contractual relationship. Moreover, the Provider shall be entitled to bring an action against the customer at the customer's place of general jurisdiction.

Section 12 Other Provisions

(1) All information and declarations from the Provider, except notices of termination, may be sent to the customer electronically, particularly via the KIS or by email to the email address disclosed by the customer. However, the restriction under Section 4 (4) shall apply to notices of termination by the Provider.

(2) If any provision of the contract is or becomes ineffective, or if the contract contains a gap that needs to be filled, this shall not affect the effectiveness of the other provisions. The parties hereby undertake to replace such ineffective provision with an effective provision that most closely reflects the economic purpose of the ineffective provision. The same shall apply in the event of omission in the contract.

PART 2 SPECIAL TERMS AND CONDITIONS

Section 13 Special Terms and Conditions Governing Domains

(1) If the customer causes a domain to be registered via the Provider, the contract shall be brought about directly between the customer and the respective allocation body or registrar. In this respect, the Provider shall act on behalf of the customer under an agency relationship. The terms and conditions of the respective allocation body or registrar shall apply. In respect of Denic eG, for example, such terms and conditions are Denic eG's domain guidelines, domain terms and conditions and price list.

(2) An automated procedure shall be used to register domains. The Provider shall have no influence on the allocation of domains. Therefore, the Provider shall not warrant that the domains applied for on behalf of the customer can be allocated (delegated), or that such domains are free from third-party rights.

(3) The customer shall provide reasonable co-operation with the registration, transfer and deletion of domains and any change to entries in the databases of the allocation bodies.

(4) The customer hereby warrants that its domains and the content retrievable thereunder do not violate any statutory provisions or infringe any third-party rights. Depending upon the type of domain or the objective of the content relating thereto, other national legal systems shall be equally observed.

(5) If a third party satisfactorily shows that its rights are being infringed by domains or content, or if any infringement of the law is deemed probable, to the satisfaction of the Provider, on account of objective circumstances, the Provider may temporarily block the content and take measures to make the domain concerned inaccessible.

(6) The customer shall indemnify the Provider against third-party compensation claims that are based on impermissible use of an Internet domain or related content.

(7) If the customer waives a domain in relation to the respective allocation body or registrar, it shall give the Provider notification thereof forthwith.

(8) In principle, termination of the contractual relationship with the Provider shall not affect the respective registration contract existing between the customer and the allocation body or registrar in respect of a domain. However, any termination requests concerning the registration relationship

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shall be sent to the Provider, as the Provider is the administrator of the domain on behalf of the domain holder, and any notifications by the domain holder, including notices of contract termination, are normally to be sent to the respective allocation body or registrar via the Provider.

(9) Therefore, termination of the contractual relationship with the Provider by the customer shall simultaneously bring about effective termination of the registration relationship in respect of a domain only if the customer has expressly declared in writing that the domain is (also) to be terminated and can be deleted. If the customer is not also the domain holder, any termination request and/or deletion request shall require in writing the consent of the domain holder or administrator. In both cases, "in writing" means the form permitted under Section 4 (4), sentences 1-3.

(10) The period for issuing domain termination requests to the Provider shall be six weeks for all domains in connection with the top-level domains .de, .at, .com, .net, .org., .biz, .info and .eu, with effect from the end of the term of the registration relationship. For all other domains, this period shall be three months.

(11) Such domain termination requests issued late shall be forwarded by the Provider to the registration body forthwith. However, it is hereby made clear that, if the customer fails to issue in due time a termination request concerning the domain registration contract, and if this causes the term of the domain registration to be extended in relation to the allocation body or the registrar, the customer shall remain obliged to pay the fee for the extended period.

(12) If the customer terminates the contractual relationship with the Provider without issuing any express instruction as regards what is to happen to the domains registered via the Provider hitherto, the obligation to pay a fee for the domains shall likewise remain in effect until further notice. If the customer fails to heed a request, sent to the email address supplied by the customer, to make in writing (Section 4 (4), sentences 1-3) a declaration relating to such domains within a reasonable period, the Provider shall be entitled to transfer the domains to the direct administration of the respective allocation body, or to release the domains in the customer's name. The same shall apply *mutatis mutandis* in the event of any termination of the contractual relationship with the customer by the Provider.

(13) If the customer does not place domains under the administration of another provider by, at the latest, the date of discontinuation of the agency contract between the customer and the Provider in respect of the administration of the domain, the Provider shall be entitled to transfer the domains to the direct administration of the respective allocation body, or to release the domains in the customer's name. In particular, this shall apply also in cases where the customer has indeed issued an instruction to transfer the domain to a new provider, but such instruction has not been implemented in due time.

Section 14 Special Terms and Conditions Governing Email Services

(1) The customer shall regularly check its email mailboxes for incoming messages. The Provider hereby reserves the right to delete personal messages received for the customer, insofar as these have been retrieved or forwarded by the customer or have not been retrieved by the customer within three months of receipt on the mail server. Furthermore, the Provider hereby reserves the right to send back to the sender any personal messages received for the customer, if the capacity limits specified in the respective tariffs have been exceeded. The Provider shall, moreover, be entitled to appropriately limit the size of incoming and outgoing messages.

(2) The Provider may, on the basis of objective criteria, reject emails addressed to its customers, if any facts give reason to assume that an email contains harmful software (viruses, worms or Trojan horses, etc.), that the sender details are incorrect or concealed, or that the emails concerned constitute unsolicited or concealed commercial communication.

(3) Sending of so-called spam emails shall be prohibited. In particular, this includes sending impermissible unsolicited advertising to third parties. When sending emails, it shall be additionally

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impermissible to give incorrect sender details or otherwise conceal the identity of the sender. In the case of commercial communication, the customer shall design the email accordingly to make the commercial nature of the communication clear, and shall comply with the statutory provisions applicable in this respect.

(4) If the customer sends spam emails as defined in the above subsection, the Provider may temporarily block the customer's mailboxes concerned.

Section 15 Special Terms and Conditions Governing Web Hosting, Online Storage and Online Shops

(1) The customer hereby expressly affirms that the provision or publication of the content of the websites or data posted by the customer do not violate German law or any other relevant national law, particularly the law on copyrights, trademarks, name rights, data privacy rights or competition. The Provider hereby reserves the right to temporarily block any content that appears to it to be questionable in this respect. The same shall apply, if the Provider is called upon by a third party to alter or delete any content on hosted websites on account of such content allegedly infringing third-party rights.

(2) If the customer proves that there is no reason for concern that third-party rights have been infringed or that any other infringement of the law has occurred, the Provider shall make the third-party websites concerned available again. The customer hereby indemnifies the Provider against third-party compensation claims based on any impermissible content on a website of the customer.

Section 16 Special Terms and Conditions Governing Dedicated and Virtual Servers, as well as Web Packs and Cloud Hosting

(1) The customer shall be prohibited from providing the following services:

- Internet Relay Chat (IRC) services
- anonymisation services
- P2P exchange markets.

(2) If the customer has sole administrator rights, the Provider shall not be entitled to administer the server. Therefore, the customer shall be solely responsible for the content and security of the server. It shall be incumbent upon the customer to install security software, regularly inform itself of any security gaps that become known, and close such gaps. If the Provider makes available security or maintenance programmes, this shall not release the customer from its obligation.

(3) The customer shall set up and administer its servers in such a manner that the security, integrity and availability of the networks, other servers, third-party software and data and software and data of the Provider are not jeopardised.

(4) If a customer jeopardises, through its servers, the security, integrity or availability of networks, other servers, or software or data of third parties or of the Provider, or if the customer is under such suspicion on the basis of objective circumstances, the Provider shall be entitled to temporarily block the server. In particular, this shall apply also to so-called denial of service attacks (DoS attacks) carried out by the customer via its server, even if the customer is not responsible for such harmful act or condition, e.g. in cases where the customer's server has been manipulated or used by third parties. Any wilful act on the part of the customer shall entitle the Provider to terminate the contractual relationship without notice and without any prior warning.

(5) If spam emails (see the Section "Special Terms and Conditions Governing Email Services) are sent via the server, the Provider may likewise temporarily block the server.

(6) Unless otherwise agreed upon, the Provider shall not be under obligation to back up customer data. If the customer entrusts the Provider with data backup, the customer shall check in a timely

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and regular fashion that the data backed up by the Provider are complete and suitable for data recovery. The customer shall inform the Provider forthwith of any irregularities.

(7) The above provisions shall apply *mutatis mutandis* to web packs and cloud hosting.

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