



## GENERAL TERMS AND CONDITIONS OF BUSINESS (GT&Cs)

as of February 4<sup>th</sup>, 2020

SERVER4YOU ist eine Marke der Host Europe GmbH

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**Gerichtsstand:**  
HRB 28495, Amtsgericht Köln

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Host Europe GmbH shall render for the brand SERVER4YOU all services exclusively on the basis of these General Terms and Conditions of Business. Any terms and conditions of business deviating herefrom shall not be recognised, unless expressly consented to in writing. These General Terms and Conditions of Business shall apply even if services are rendered unconditionally despite Host Europe GmbH knowing of terms and conditions of the customer that conflict with or deviate from these.

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.

### **§ 1 Subject-matter of the Contract**

Host Europe GmbH (hereinafter called "Provider") operates computers constantly connected to the Internet (servers). The Provider shall make these computers wholly (on a dedicated basis) or partly (on a virtually dedicated basis) available to the customer for its own purposes.

### **§ 2 The Provider's Services**

(1)

The Provider shall render services, itself or through third parties, as further detailed in the service specifications of the respective product. Other commitments, promises of services or collateral agreements shall be effective only if confirmed in writing by the Provider. Unless otherwise expressly agreed upon, the Provider may also appoint expert employees or third parties to render the services incumbent upon it.

(2)

The Provider shall provide the customer with access enabling the customer to administer its server itself over the Internet. This access shall be protected by means of a password. This password shall not be known to the Provider. The customer undertakes to regularly alter, and keep strictly secret, the passwords received from the Provider for the purpose of accessing the Provider's services. The customer shall promptly inform the Provider as soon as it becomes aware that the password has become known to unauthorised third parties.

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(3)

The Provider is entitled to extend its services, to adapt to technical progress and/or to make improvements to its services. This applies in particular if the adjustment appears necessary to prevent misuse or the provider is obliged to adjust the performance due to statutory regulations.

### **§ 3 Prices and Payments**

(1)

For the services specified in Section 2, the customer shall pay in advance the prices quoted in the offer for the services. All charges mentioned shall, unless otherwise expressly specified, include German value-added tax at the respective applicable statutory rate. Private customers shall be charged the respective value-added tax rate valid for their EU state.

(2)

Charges unrelated to usage shall be due and payable in advance for the respective contract term, unless a different billing period is agreed upon with the customer. Charges relating to usage shall be due and payable at the end of the respective billing period. All charges shall be based on the respective prices agreed upon for this with the customer. Insofar as individual services of the Provider are billed according to time spent or consumption, the customer shall be entitled to have bills sent monthly by email. These bills shall specify the type of service billed and the time spent or consumption.

(3)

If the value-added tax rate stipulated by law is altered, the Provider may, from the time when this change in the VAT rate enters into effect, adjust accordingly the charges for goods delivered, or services rendered, within the framework of continuing obligations.

(4)

The Provider shall, depending upon the agreed mode of payment, invoice its services either monthly or for several months in advance. The amounts specified in the invoice shall be due for payment, without any deduction, immediately upon receipt of the invoice. In each case, the Provider shall post an electronic invoice in the customer system or by email. The customer hereby agrees thereto. If the customer requests that an invoice be sent by post, the Provider may claim for this an appropriate charge per invoice, normally 7.50 € including VAT. This shall not establish any legal entitlement of the customer to the continual sending of invoices in the form customary at the time of the conclusion of the contract.

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(5)

The customer shall, even without a reminder, enter into default in the event that it fails to pay an invoice within 14 days of receipt of the invoice or within 14 days of notification that the invoice has been posted in the customer system.

(6)

If the customer defaults on payment, the Provider shall be entitled to claim interest at the rate of 10 % annually. However, the customer may prove that no interest loss, or a significantly lower interest loss, was incurred. Additionally, the customer shall compensate the Provider for the loss incurred as a result of any refusal of payment by the institution holding the customer's bank account.

(7)

If the customer defaults on payment, or if a charge-back occurs in the case of direct debiting, the Provider may, without setting a time limit and without further notice, block the customer's server from accessing the Internet. Temporary blocking of services shall not affect the customer's obligation to pay.

(8)

The customer may set off against claims of the Provider only with counter-claims that are undisputed or have been determined by a final and non-appealable court judgement. This shall not apply to warranty claims of the customer, insofar as these are set off against the claim due to the Provider.

(9)

The customer may make payments by SEPA direct debiting, insofar as the Provider offers this. By selecting this payment option, the customer shall grant the Provider a SEPA core direct debit mandate to collect all charges arising in the course of the contractual relationship. This mandate shall also apply to new bank accounts communicated by the customer. The Provider shall give the customer timely prior notice (so-called "pre-notification") of the corresponding direct debit. This prior notice shall be given to the payer by email at least one business day before the direct debit. The customer shall ensure that there is sufficient cover on its bank account during the agreed debiting period.

(10)

When paying via Paypal, the corresponding Terms and Conditions of Paypal apply in addition to these terms. The customer authorizes the provider to collect the respective invoice amount from his Paypal account.

#### § 4 Conclusion of the Contract, Contract Term, Termination

(1)

The contract shall come into being upon the Provider's acceptance of the customer's offer of a contract. Acceptance shall either be specifically declared, or the Provider's commencement of execution of the service shall be regarded as acceptance.

(2)

The minimum contract term for all products is 1 month, contracts with a start date before 19.11.2010 have a contract term of 1, 12 or 24 months.

The notice period for contracts with 12 or 24 month terms is at least three months before the end of the contract term. Contracts with a monthly term can be canceled at any time to the end of the current monthly period.

(3)

The right to terminate the contract without prior notice for good cause shall remain unaffected hereby. In particular, the Provider shall have good cause, if the customer

- fails to show, despite repeated reminders from the Provider, that the fees still outstanding are expected to be settled, but no later than at such time as the customer enters into arrears with the payment of charges equal to two months' basic charges;
- sculpably breaches a material contractual duty, and the customer fails to provide redress within a reasonable period despite a warning;
- breaches statutory prohibitions, in particular by violating legal provisions relating to copyrights, competition, name rights or data privacy;
- publishes National Socialist, racist or radical content or illegal content in any other form.

(4)

Any notice of termination shall only be effective in writing. Customers may also give notice of termination by email, if this satisfies the electronic form under Section 126a BGB [German Civil Code] (so-called qualified electronic signature). Insofar as the Provider makes available a corresponding feature for giving notice of termination, notice of termination of the contract may also be effectively given within the customer system. Notwithstanding the previous regulations, consumers (acc. to § 13 BGB) can always give notice of termination in text form.

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The domain registration relationship shall, as regards notice of termination, be governed by provisions partly deviating herefrom, which are set out in Section 12 of these General Terms and Conditions of Business.

### **§ 5 Warranty**

(1)

The customer shall give the Provider prompt notification of defects and make every effort to support the Provider in the course of any possible rectification of defects, in particular by taking all reasonable data security measures.

(2)

The Provider points out that, under the present state of the art in terms of technology, it is not possible to create hardware and software that functions faultlessly in all combinations of use or that can be protected against all manipulation by third parties. The Provider does not guarantee that hardware and software used or provided by the Provider shall satisfy the customer's requirements and be suitable for certain applications, or that this hardware and software shall be crash-proof, bug-free 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 when it is made available, essentially function in accordance with the manufacturer's service specifications, provided that it is operated under normal operating conditions and is normally maintained.

### **§ 6 The Customer's Duties**

(1)

In respect of all data that the customer transfers to the Provider's servers, the customer shall make, itself or through third parties, daily updated back-up copies, which shall not be stored on the server itself, in order to ensure that the data can be restored quickly and at low cost in the event of any system failure. In the event of data loss, the customer shall, free of charge, once again upload the data stocks concerned onto the Provider's servers and restore configurations.

(2)

The customer represents and warrants that the details provided by it are accurate and complete. It undertakes to promptly inform the Provider of every change of its contact details provided, and of every change of its other data required for the implementation of the contract.

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(3)

The customer shall not offer or distribute on the rented server without authorisation any copyright-protected content. In particular, it shall not be permissible to operate so-called P2P exchange markets, download services or streaming services via which any copyright-protected content can be distributed without authorisation. Moreover, the customer shall not make available any links that refer to P2P exchange markets, download services, streaming services or their content.

(4)

The customer shall be prohibited from using the server for directly sending SPAM emails or (D)DOS attacks, and shall not operate on the server any open email relays or other systems via which SPAM emails or (D)DOS attacks can be distributed. Nor shall the customer be permitted to operate IRC-related services (Internet Relay Chat) such as for example Shells, Bouncer or Eggdrops.

(5)

When organising its IT project, the customer shall forgo technologies that cause the Provider's facilities to be excessively used. Websites containing these technologies may be excluded by the Provider from third-party access until the customer has removed/deactivated these technologies. This shall not apply to servers available to the customer for the customer's sole use (dedicated hardware).

(6)

Furthermore, the resources made available by the Provider shall not be used by the customer for any acts that violate statutory prohibitions, good morals or third-party rights (copyrights, trademark rights, name rights, data privacy rights etc.). In particular, this includes the following acts:

1. unauthorised intrusion into third-party computer systems (e.g. hacking);
2. obstruction of third-party computer systems by sending/forwarding data flows and/or emails (e.g. DoS/DDoS attacks/spam/email bombing);
3. searching for open access to computer systems (e.g. port scanning);
4. falsifying IP addresses, email headers or news headers, or spreading malware.

(7)

The customer shall not be permitted to register its website on search engines, if and insofar as the customer violates statutory prohibitions, good morals or third-party rights by using keywords or similar techniques in its registration.

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(8)

If the customer breaches any of its above obligations, the Provider may, with immediate effect, discontinue its services or block access to the customer's information. The right to assert damage claims shall remain expressly reserved. In the event of serious or repeated breaches, the Provider shall be entitled to a special right of termination.

## **§ 7 Server Administration**

(1)

Unless otherwise agreed upon, the Provider shall grant the customer full and sole administration rights to the server rented. Only the customer, not the Provider, shall possess the customer's individual administration password to the server. Consequently, it shall be impossible for the Provider to administer the server rented by the customer. The customer shall, therefore, be exclusively and solely responsible, at its own expense and risk, for the administration and security of its server. It shall be the customer's duty to install necessary security software, keep itself constantly informed of vulnerabilities that become known and independently rectify these vulnerabilities. The installation of maintenance programmes or other software that the Provider makes available or recommends shall not release the customer from this obligation.

(2)

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

(3)

If the provider provides additional services without additional remuneration, the customer has no claim to performance on their provision. The Provider is entitled to discontinue, modify or offer such services, which have previously been provided free of payment, within a reasonable period of time. In such a case, the provider will inform the customer in good time.

(4)

Insofar as permanent IP addresses are made available to the customer, the Provider shall have the right to alter the IP address(es) allocated to the customer, if this is necessary for technical or legal reasons.

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(5)

If necessary and reasonable, the customer shall co-operate with simple configuration changes, e.g. by re-entering its access details or making simple changes to its systems.

(6)

The customer shall configure its programmes in such a way that they automatically re-start in the event that the hardware or the operating system is rebooted.

(7)

The customer shall set up and administer its server in such a manner that the security, integrity and availability of the networks, other servers, software and data of third parties are not put at risk.

### **§ 8 Liability**

(1)

The Provider shall, regardless of the legal basis, be liable only in accordance with the following provisions.

(2)

In cases of wrongful intent or gross negligence, the Provider shall be liable in accordance with the statutory provisions.

(3)

In cases of slight negligence, the Provider shall be liable only in the event of a breach of a material contractual duty whose fulfilment is a prerequisite for proper implementation of the contract and whose observance may normally be expected by the customer (material contractual duty). 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 slight negligence, liability for all other loss, in particular 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 Produkthaftungsgesetz [Product Liability Act].

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(6)

Insofar as the Provider's liability is excluded or limited, this shall also apply to the liability of the Provider's workers, other employees, representatives and authorised agents.

(7)

Insofar as the Telekommunikationsgesetz (TKG) [Telecommunication Act] is applicable, the provision on liability under Section 44a TKG shall, in any event, remain unaffected.

### **§ 9 Data Privacy**

The Provider shall collect, process and use the customer's personal data in accordance with the statutory provisions on data privacy. Supplementary information can be found in [Host Europe GmbH's Data Privacy Statement](#). Insofar as the customer was acquired via an intermediary, the customer irrevocably consents to the data necessary for the billing of commission being sent to the intermediary.

### **§ 10 Indemnification**

Internally, the customer shall indemnify the Provider against any and all third-party claims based on unlawful or illegal acts or substantive errors in the information made available by the customer. In particular, this shall apply to violations of the law on copyrights, trademarks, name rights, data privacy rights and competition, as well as in the event of breaches of Section 6 of this contract.

### **§ 11 Copyrights, Licence Agreements**

(1)

Insofar as the Provider undertakes software developments and customised configurations for the customer or on behalf of the customer for third parties, the Provider shall transfer to the customer a non-exclusive right to use the software created and the configurations concerned on the Internet for the duration of the contractual relationship.

(2)

In respect of the Provider's own software made available, or third-party software made available, the Provider grants the customer a non-exclusive (ordinary) right of use limited, in terms of time, to the term of the contract. Except with the Provider's consent, this right of use shall not be transferable by way of contract transfer, and no sublicences shall be granted to third parties. Continued usage after the contract has ended

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shall not be permitted. After the contract has ended, the customer shall delete copies of software made available.

(3)

The respective valid terms of licence of the software provider shall additionally apply to open source programmes. The Provider shall make these available to the customer on request. Insofar as the software provider's terms and conditions conflict with these Terms and Conditions, the software provider's terms and conditions shall take precedence.

(4)

Moreover, the terms of licence of the respective software manufacturers as well as, if relevant, the Provider's manufacturer- or software-specific additional terms and conditions shall apply.

(5)

Insofar as the customer itself administers or sets up or distributes licences on the servers, it shall be exclusively obliged to ensure correct licensing. The Provider shall be entitled to carry out audits in order to check that the customer's servers conform with the contractual agreements and provisions, in particular terms of licence. Within the framework of these audits, the Provider shall, in particular, be entitled to check whether the customer has procured a sufficient number of software licences. The customer shall co-operate with these audits.

(6)

For Microsoft products: Some services offered by the Provider are provided to the Customer directly by Microsoft; the Provider remains the Customer's contractual partner in this case. The usage of Microsoft Office 365 Services is subject to the Microsoft End User Licence Agreement ("Ms EULA") and the Microsoft Cloud Agreement, which are both part of this agreement, including regulations regarding data protection and data handling. The Customer is aware and accepts that Microsoft may use, store or process his data (including personal data) in accordance with the Microsoft Cloud Agreement. By booking Microsoft products, the Customer accepts the appropriate Microsoft regulations and policies.

## **§ 12 Internet Domains**

(1)

Insofar as the customer has a domain 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

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behalf of the customer under an agency relationship. Therefore, the relevant terms of registration and guidelines of the respective allocation body or registrar shall apply. Insofar as these conflict with these GT&Cs of the Provider, the respective terms of registration and guidelines shall take precedence over the Provider's GT&Cs.

(2)

An automated procedure shall be used for registering domains. The Provider shall have no influence over the allocation of domains. Therefore, the Provider does not warrant that the domains applied for on behalf of the customer will be allocable (delegated), or that such domains will be free from third-party rights.

(3)

The customer shall, in a reasonable manner, co-operate with the registration, transfer and deletion of domains and with the alteration of entries in the databases of the allocation bodies.

(4)

The customer warrants that its domains and the content retrievable thereunder shall not violate any statutory provisions or infringe any third-party rights. Depending upon the type of domain or, as the case may be, 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 an infringement of its rights is deemed to be probable on the basis of objective circumstances to the Provider's satisfaction, 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 based on impermissible use of an Internet domain or content relating thereto.

(7)

If the customer forgoes a domain in relation to the respective allocation body or registrar, it shall give the Provider prompt notification thereof.

(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 concerning a domain.

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However, any termination requests concerning the registration relationship shall be sent to the Provider, as the Provider administers the domain for the domain holder, and any notifications by the domain holder, including notices of termination of the contract, 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 concerning 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 or deletion request shall require the written consent of the domain holder or the admin-c.

(10)

Insofar as the customer submits a domain termination request late, i.e. after the notice period has expired, the Provider shall promptly forward this request to the registration body. However, it is pointed out 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.

(11)

If the customer terminates the contractual relationship with the Provider without issuing any express instruction regarding 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 a request that the customer submit a written declaration relating to the domains within a reasonable period is sent to the customer to the email address provided by the customer, and the customer fails to heed this request, the Provider shall be entitled to place the domains under the direct administration of the respective allocation body, or release the domains in the customer's name. The same shall apply mutatis mutandis in the event that the Provider terminates the contractual relationship with the customer.

(12)

If the customer does not place domains under the administration of another provider by at the latest the date when the agency contract between the customer and the Provider concerning the administration of the domain ends, the Provider shall be entitled to place the domains under the direct administration of the respective allocation body, or release the domains in the customer's name. In particular, this shall also apply in

cases where the customer has indeed issued an instruction to transfer the domain to a new provider, but this instruction has not been implemented in due time.

### **§ 13 Applicable Law, Place of Jurisdiction**

(1)

The laws of the Federal Republic of Germany, excluding uniform UN sales law (CISG), shall apply.

(2)

If the customer is a merchant, a legal entity under public law or a special fund under public law, Cologne shall be the exclusive place of jurisdiction for all disputes arising from or 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.

(3)

The European Commission's online dispute resolution platform is available at:

<http://ec.europa.eu/consumers/odr> . The Service Provider does not take part on a dispute resolution in front of a consumer arbitration board.

### **§ 14 Miscellaneous**

(1)

Amendments or supplements to this contract shall apply only if agreed upon in writing. This shall also apply to any amendment of this written form clause.

(2)

All information and declarations from the Provider may be sent to the customer electronically, in particular via the customer system or by email to the email address communicated by the customer. This shall also apply to billing within the framework of the contractual relationship.

(3)

If any provision in the contract is or becomes ineffective, or if the contract contains any omission that needs to be filled, this shall not affect the effectiveness of the other provisions. The parties undertake to replace any 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 any omission in the contract.

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