

# GENERAL TERMS OF BUSINESS OF HOST EUROPE SUISSE AG

*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

### Article 1 Scope of application

(1) Host Europe Suisse AG, D4 Platz 4, 6039 Root Längenbold (hereinafter "the Provider") provides its services exclusively on the basis of these General Terms of Business. They also apply to all future contracts between the parties in the area of hosting and domains, even if they are not expressly agreed in each case.

(2) Any deviating terms of business of the customer are not recognised, unless we have given them our express written consent. Our General Terms of Business shall also apply if we provide our services without reservation even in the knowledge of conflicting or deviating terms and conditions of the customer.

### Article 2 Performance obligations of the Provider

(1) The performance obligations of the Provider can be found in the specification of services of the relevant product.

(2) The Provider is entitled to expand his services, to modify them in line with technical progress and/or to undertake improvements. This shall apply in particular when the modification appears necessary to prevent any misuse or when the Provider is obliged to modify its services due to statutory requirements.

(3) If the Provider provides additional services for no extra charge, the customer shall not have any claim for performance in this regard. The Provider is entitled, with a suitable notice period, to discontinue or modify such services that were hitherto provided free of charge or to offer them henceforth only for a charge. In such a case, the Provider shall inform the customer in good time.

(4) The Provider is obliged to provide to technical support to the customer only within the framework of what was contractually agreed. Beyond this, the Provider does not provide to the customer any free support services. The Provider does not provide any direct support to the customer's customers unless some special written agreement in this regard has been reached.

(5) If the customer is provided with fixed IP addresses, the Provider reserves the right to change the IP address or addresses assigned to the customer if this becomes necessary for technical or legal reasons.

### Article 3 Obligations of the customer

(1) The customer guarantees that the information he provides is correct and complete. He undertakes to notify the Provider without delay of any changes to the contact data provided or to the other data required for execution of the contract.

(2) The customer shall create backup copies of all data transferred to the Provider's servers and update these on a daily basis; these backup copies are not to be saved to the server. This will enable quick and inexpensive restoration of the data in the event of any system breakdown. In the event of loss of data, the customer shall upload the relevant data inventories on the Provider's servers once more without charge and restore the configurations.

(3) The customer may not with its Internet presence or any banners displayed therein violate any statutory prohibitions, public morals and third party rights (intellectual property rights, trademark rights, name rights, data protection rights, etc.). The customer may not enlist his Internet presence in search engines if and insofar as the customer by using search terms and similar techniques when enlisting infringes against statutory prohibitions, public morals and third party rights. In the event of any such infringement against the said obligations, the Provider shall be entitled to discontinue its services with immediate effect and block access to the Customer's information.

(4) The customer undertakes to change regularly the passwords obtained from the Provider for accessing its services and to treat these with strict secrecy at all times. The customer shall notify the Provider immediately if it ever comes to his knowledge that unauthorised third parties have access his passwords.

(5) The customer undertakes, When designing his Internet presence the customer undertakes to refrain from procedures that cause an excessive utilisation of the Provider's facilities. The Provider can exclude Internet presences with such procedures from any third-party access until the customer has eliminated/deactivated these procedures. This does not apply to servers that are made available to the customer for his exclusive use (dedicated hardware).

(6) The customer furthermore undertakes not to employ the resources made available by the Provider for activities that are in breach of statutory provisions, public morals or any third-party rights. These include specifically the following activities:

- (a) unauthorised infiltration of external computer systems (e.g. hacking);
- (b) disablement of external computer systems due to the sending/forwarding of data streams and/or emails (e.g. DoS/DDoS attacks/ spam/mail-bombing);
- (c) search for open ports to computer systems (port scanning);
- (d) sending of emails to third parties for advertising purposes unless the recipient has provided written consent or some other circumstances constituting consent apply;
- (e) forging of IP-addresses, mail and news headers as well as the circulation of viruses, etc.

If the customer is in breach of one or more of the aforementioned obligations, the Provider shall be entitled to discontinue all services immediately, while expressly reserving the right to claim further indemnity.

(7) If transmission of a certain data volume per accounting period has been agreed with the customer, the customer shall monitor this limit. If the data transfer volume (traffic) due on the basis of the customer's offer exceeds the maximum volume agreed with the customers for the relevant period, the Provider shall charge to the customer the amount due for the excessive volume at the prices agreed.

#### **Article 4 Conclusion, term and cancellation of a contract**

(1) The contract comes into effect when the customer's contract offer is accepted by the Provider. This acceptance is either expressly declared or is recognised with the commencement of services by the Provider.

(2) Unless otherwise agreed, the minimum term of contract is 12 months and the period for ordinary cancellation is six weeks to the end of the term. Unless otherwise agreed, the term of contract will be extended by further periods equivalent to the relevant minimum term of contract when it has not been cancelled. If, however, this is longer than one year, then the extended term shall be for no more than one year.

(3) The above does not prejudice the right of both parties to extraordinary cancellation of the contract for an important reason. An important reason obtains for the Provider specifically if the customer

- (a) is in arrears of payment due for an amount totalling two monthly base charges;
- (b) is culpably in breach of a significant contractual obligation, and the customer despite warning does not remedy the situation even after a warning has been served indicating a suitable period for redress.

(4) Every cancellation is valid only if in writing, with transmission by fax being sufficient for compliance with this requirement. The written form is also fulfilled by an e-mail satisfying the requirements of electronic form pursuant to Article 14 (2bis) OR (so-called qualified electronic signature). It is expressly established here that notice to cancel served by e-mail that is not in the electronic form pursuant to Article 14 (2bis) OR does not fulfil the requirement for the written form. If the Provider makes a suitable cancellation function available, the contract can also be effectively cancelled within the Customer Information System (KIS - Kundeninformationssystem).

(5) Different regulations regarding cancellation apply for the domain registration relationship, and these are set forth under Article 13 of these General Terms of Business.

#### **Article 5 Prices and payment**

(1) Charges not based on use are due and payable in advance for the relevant contract term, unless some other accounting period has been agreed with the customer. Charges relating to use are due and payable at the end of the relevant accounting period. All charges are based on the prices agreed with the customer in this regard.

(2) The customer shall be in default of payment, even without a warning being issued, if he does not pay within 14 days of receiving an invoice or notification that the invoice has been placed in the Customer Information System (KIS – Kundeninformationssystem).

(3) Unless otherwise agreed, payments of the customer are due within 10 days of the order being placed.

(4) In the case of delays in payment, the Provider shall be entitled to demand interest at a rate of 10 % per annum. The customer on the other hand is entitled to furnish proof that no or a significantly lower interest damage was incurred.

(5) The Provider places each invoice in electronic form in the Customer Information System (KIS – Kundeninformationssystem). The customer hereby declares its consent to this procedure. If the customer demands that an invoice is delivered by post, the Provider is entitled to demand a suitable charge per invoice for this service.

(6) Any temporary discontinuation of services does not affect the customer's payment obligation.

(7) The customer is entitled to set off against the Provider's claims its own counterclaims only when these are undisputed or have been established in law. This does not apply to warranty claims of the customer when these are being set off against Provider's claims for payment of charges.

## Article 6 Warranty

(1) The customer shall notify the Provider of any faults without delay and shall support the Provider to the best of its ability in remedying such faults, if possible, and shall in particular take all reasonable measures to ensure data security.

(2) The Provider points out that according to the present state of the art it is not possible to provide hardware and software that operates faultlessly in all application combinations or that can be protected against all manipulation by third parties. The Provider does not guarantee that hardware and software made available by the Provider meet the customer's requirements, is suitable for certain applications and, furthermore is crash-free, fault-free and free of malware. The Provider guarantees towards the customer only that the hardware and software provided or used by the Provider functions essentially according to the manufacturer's specifications at the time it is provided under normal operating conditions and subject to normal maintenance.

## Article 7 Liability

(1) The Provider is liable, irrespective of the legal basis, only within the framework of the following regulations.

(2) The Provider is liable in the case of malice aforethought or gross negligence according to statutory regulations.

(3) In the case of minor negligence, the Provider is liable only for infringement against a central contractual obligation, fulfilment of which is necessary if the contract is to be properly executed and compliance with which the customer is normally entitled to assume (essential contractual obligation). In these cases, the Provider is liable merely to the amount of foreseeable damage that is normal for such contracts.

(4) In cases of minor negligence, liability is excluded for all other damage, in particular consequential damage, indirect damage or loss of revenue.

(5) The above limitations of liability do not apply to damage to life, limb or health, or to any liability in accordance with (German) Product Liability Act.

(6) If the Provider's liability is excluded or limited, this shall also apply to the liability of the Provider's staff, other employees, representatives or vicarious agents.

## Article 8 Data protection

The Provider collects, processes and uses personal data of the customer within the framework of statutory data protection regulations. Additional information in this regard can be found in our Data Protection Declaration.

## Article 9 Copyrights, license agreements

(1) The Provider grants to the customer a non-exclusive (simple) right of use limited to the term of the contract to all of its own or third-party software made available to the customer. The customer is not entitled to transfer this right, by way of contract transfer, or to grant sub-licenses to third parties unless with the consent of the Provider. Continued use after the contract has expired is prohibited. The customer shall delete all copies of software provided on expiry of the contract.

(2) Different regulations apply to open source programmes. The relevant terms of license will apply in this regard.

(3) Otherwise the terms of license of the relevant software manufacturer shall apply and, where relevant, the additional manufacturer-specific and software-specific terms of the Provider.

## Article 10 Indemnification

The customer undertakes to indemnify the Provider in their mutual relationship from all third-party claims arising in relation to any unlawful or infringing acts by the customer or on the basis of errors in the information provided by the customer. This applies in particular to infringements of intellectual property rights, trademark rights, name rights, data protection rights and competitions rights.

## Article 11 Applicable law, legal venue

(1) The law of Switzerland applies with exclusion of the Standard UN Convention on Contracts for the International Sale of Goods (CISG).

(2) If the customer is a merchant, an entity under public law or a special fund under (German) public law (*öffentlich-rechtliches Sondervermögen*), Root shall be exclusive legal venue for all disputes arising from and in connection with this contractual relationship. The Provider is furthermore entitled to take legal action against the customer at his general legal venue.

## Article 12 Other

- (1) All information and declarations provided by the Provider, with the exception of declarations of cancellation, can be sent to the customer by electronic means, in particular through KIS or by e-mail to the customer's e-mail address. Declarations of cancellation by the Provider are, however, subject to the restriction under Article 4 (4) above.
- (2) If any provision of the agreement is or becomes void or ineffective in law or if the agreement is found to contain a gap, this shall not prejudice the effectiveness of the remainder of the provisions. The parties undertake in such a case to replace the void or ineffective provision by some valid arrangement that comes as close as possible to the commercial effect of the original. The same applies in the case of a gap in the provisions.

## PART 2 SPECIAL TERMS AND CONDITIONS

### Article 13 Special terms and conditions for domains

- (1) If the customer has a domain registered through the Provider, the contract shall be concluded directly between the customer and the relevant issuing agency or the registrar. The Provider shall act in this regard on behalf of the customer on the basis of an order. The terms and conditions of the relevant issuing agency or the registrar shall apply. For example, these are in the case of SWITCH its domain guidelines and domain terms and the SWITCH price list.
- (2) The registration of domains takes place in an automated process. The Provider has no influence on the domain being granted and accordingly accepts no guarantee that the domains applied for by the customer can be granted (delegated) and are free from third-party rights.
- (3) The customer is obliged to cooperate to a reasonable extent in connection with the registration, transfer and deletion of domains and in changing entries in the databases of the issuing agency.
- (4) The customer guarantees that his domains and the content that can be accessed therein are not in breach of any statutory regulations or third-party rights. Depending on the type of domain and orientation of the relevant content, the provisions of other national laws may also have to be taken into account.
- (5) If a third party furnishes evidence that some domain or content infringes against its rights, or if the Provider believes on the basis of objective circumstances that some unlawful act is likely, the Provider shall be entitled to block the content temporarily and take measures to make the domain in question inaccessible.
- (6) The customer indemnifies the Provider from all third-party claims for compensation based on any inadmissible use of an Internet domain or the relevant content.
- (7) If the customer renounces a domain to the relevant issuing agency or the registrar, he shall notify the Provider accordingly without delay.

(8) Cancellation of the contractual relationship with the Provider does not in principle affect the relevant registration agreement for a domain existing between the customer and the issuing agency or the registrar. Cancellation orders regarding the registration relationship are nevertheless to be submitted to the Provider, as the Provider administers the domain for the domain owner and any notifications of the domain owners, including cancellations of contract, are normally to be sent via the Provider to the relevant issuing agency or registrar.

(9) For simultaneous effective cancellation of the registration relationship for a domain, any cancellation by the customer of the contractual agreement with the Provider shall therefore require an express written declaration by the customer that the domain is also being cancelled and can be deleted. If the customer is not also the owner of the domain, the order for cancellations and deletion shall also require the written consent of the domain owner or Admin-Cs. The notification forms indicated as admissible pursuant to Article 4 (4), 1<sup>st</sup> to 3<sup>rd</sup> sentences shall also count as "in writing" in both cases.

(10) The period for placing orders for cancelling domains with the Provider is for all domains in combination with the top level domains .ch, .de, .at, .com, .net, .org, .biz, .info, .eu six weeks to the end of the term of the registration agreement and three months for all other domains.

(11) Any orders for cancellation of domains that are received late in accordance with the above shall be forwarded immediately by the Provider to the registration centre. It should, however, be stated clearly that any order for cancellation of a domain registration agreement that is not submitted by the customer in time, and when the term of the domain registration with the issuing agency or the registrar is extended as a result, the customers shall continue to be obliged to pay the relevant charges for the period of extension.

(12) If the customer cancels the contractual relationship with the Provider while at the same time issuing an express order regarding what is to happen with the domains registered hitherto through the Provider, the payment obligation for the domains shall also continue until otherwise regulated. When the customer is requested by message sent to the e-mail address he indicated to make a written declaration regarding the domains in question, and no response is received to this request within a suitable period (Article 4 (4), 1<sup>st</sup> to 3<sup>rd</sup> sentences), the Provider shall be entitled to transfer the domains to direct administration by the relevant issuing agency or to release the domains in the name of the customer. The same shall apply accordingly if the Provider cancels a contract with the customer.

(13) If the customer fails to transfer administration of a domain to some other provider by the due expiry of the order for administration of the domain agreed between the customer and the Provider at the latest, the Provider shall be entitled to transfer the domains to direct administration by the relevant issuing agency or to release the domains in the name of the customer. This shall also apply in particular in cases where the customer has issued instructions regarding transfer of the domain to a new provider, but this instruction is not implemented in time.

## Article 14 Special terms and conditions for e-mail services

(1) The customer shall access the messages received in his e-mail mailboxes at regular intervals. The Provider reserves the right to delete personal messages received for the customer if they have been accessed or forwarded by the customer or if they are not accessed within a period of three months of receipt on the mail server. The Provider also reserves the right to return personal messages received for the customer to the sender if the capacity limits provided for under the tariff in

question have been exceeded. The Provider is furthermore entitled to limit the size of in-going or out-going messages appropriately.

(2) The Provider is entitled to reject e-mails addressed to his customers on the basis of objective criteria if certain facts give rise to the assumption that an e-mail contains malware (viruses, worms, trojans, etc.), if the sender data is incorrect or concealed or if the e-mail in question is an unsolicited or concealed commercial communication.

(3) The sending of so-called spam mails is forbidden. This includes in particular the mailing of inadmissible, unsolicited advertising to third parties. It is moreover also forbidden to provide incorrect sender data when a mail is being sent or to suppress the identity of the sender in any other way. The customer is obliged in the event of commercial communication to indicate clearly its advertising character by suitable design of the e-mail and to comply with the statutory requirements in this regard.

(4) If the customer sends spam mails in the sense of the above paragraph, the Provider shall be entitled to close temporarily the relevant mailboxes of the customer.

#### **Article 15 Special terms and conditions for web hosting, online memory and shops**

(1) The customer expressly undertaken that the supply and publication of the content of the websites or data he presents on the Provider's server are not in breach of any Swiss or other relevant national laws, in particular intellectual property rights, trademark rights, name rights, data protection rights and competition rights. The Provider reserves the right to block temporarily any content that appears questionable in this regard. The same shall apply if the Provider is requested by some third party to change or delete the content on hosted websites as it allegedly violates third-party rights.

(2) If the customers presents evidence that there is no risk of violation of any third-party rights or any other infringement of rights, the Provider shall make the websites in question available to third parties once more. The customer hereby indemnifies the Provider from all third-party claims for compensation based on some inadmissible content on a website of the customer.

#### **Article 16 Special terms and conditions for dedicated and virtual servers, and WebHosting and Cloud Hosting**

(1) The customers is prohibited from providing the following services:

- Internet Relay Chat (IRC) services
- anonymisation services
- P2P file sharing networks

(2) If the customer has only administration rights, the Provider will not be able to administer the server. The customer shall therefore in this case be solely responsible for this content and the security of the server. It shall then be his responsibility to install security software, to keep regularly informed regarding any security shortcomings that may become known and to close any known security vulnerabilities. If the Provider provides security and/or maintenance programmes, this shall not release the customer from his obligations.

(3) The customer is obliged to set up and administer his servers such that security, integrity and availability of the networks, other servers, and software and data of third parties or of the Provider are not at risk.

(4) If a customer through his server puts the security, integrity or availability of networks, other servers, and software and data of third parties or of the Provider at risk, or if the customer is under suspicion of same on the basis of some objective circumstances, the Provider shall be entitled to block the server temporarily. This also applies in particular to so-called "Denial of Service attacks" (DoS attacks) that the customer performs through his server, as well as to cases where the customer is not responsible for the damaging activity or the situation, e.g. if the customer's server is manipulated or used by third parties. Malice aforethought on the part of the customer entitles the Provider to cancel the contractual relationship with immediate effect and without the need for any prior warning.

(5) If the server is used for sending spam mails (see section Special Terms and conditions for e-mail services), the Provider shall also be entitled to block the server temporarily.

(6) Unless otherwise regulated, the Provider is not obliged to secure customer data. If the customer places an order with the Provider for data security, the customer shall monitor the data secured by the Provider for completeness and suitability for data reconstruction as soon as possible and at regular intervals. The customer shall inform the Provider of any irregularities without delay.

(7) The Provider is entitled to carry out audits to monitor compliance of the customer's server with the contractual agreements and provisions, in particular the terms of license. Within the framework of these audits, the Provider is especially entitled to examine whether the customer has purchased a sufficient number of software licenses. The customer is obliged to cooperate with these audits.

(8) The above regulations apply for WebHosting and Cloud Hosting accordingly.

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