

This is a translation from the original German text. The legal effect of these Terms and Conditions must be based on the German original. The translation is merely informative.

## General Terms and Conditions of Klute-Thiemann Informationstechnologie GmbH & Co. KG

### § 1 General Provisions, Definitions

1. Klute-Thiemann Informationstechnologie GmbH & Co. KG (hereinafter referred to as "Provider") offers a multitude of Internet services, including in particular the registration of Internet domains and web hosting.
2. Services performed by the Provider are exclusively based on these Terms and Conditions. They apply to all future business relations, even if they are not again explicitly referred to.
3. "Consumers" within the meaning of these Terms and Conditions are natural persons with whom business relations are established and to whom no commercial or self-employed professional activity can be attributed.  
"Entrepreneurs" within the meaning of these Terms and Conditions are natural or legal persons or partnerships with legal capacity, with which business relations are established and which, on entering into a legal transaction, act in exercise of their trade or self-employed professional activity.  
"Customers" are both Consumers and Entrepreneurs.
4. No diverging, adverse or supplementary General Terms and Conditions of the Customer, even if known to the Provider, shall become part of the contract unless their validity has been explicitly consented to by the Provider in writing.
5. Deviations from these Terms and Conditions shall not be effective unless the Provider has confirmed them in writing. The contracting out of this written form requirement must also be made in writing.
6. The obligations and rights of the Customer hereunder shall not be transferred unless the Provider has consented to the transfer in writing.
7. The Provider shall always be entitled to change or supplement these General Terms and Conditions, including all attachments such as the user conditions and scope of services with appropriate prior notice. If the Customer does not oppose the modified terms and conditions within two weeks after receipt of the notification of change or by the day when the modifications shall take effect at the latest, the modifications shall take effect according to the notice. If the Customer does oppose in due time, the Provider shall be entitled to give notice to terminate the contract on the date on which the modified conditions shall take effect.

### § 2 Conclusion of the Contract

1. The offers of the Provider are not binding. Technical modifications and other changes remain reserved to the extent reasonable.
2. By placing an order the Customer makes a binding declaration that he wishes to make use of the ordered service. The Provider shall be entitled to accept the offer of contract implied in placing the order within seven days after receipt of order. The acceptance shall be either expressed in writing (e.g. by e-mail, fax or letter) or by providing the Customer with the service.
3. If the Consumer orders the service electronically, the Provider shall confirm the receipt of the order immediately. However, the confirmation of receipt does not represent a binding acceptance of the order. The confirmation of receipt, however, may be combined with the declaration of acceptance.

4. The Provider is entitled to refuse the acceptance of an order, for instance, after having checked the Customer's credit standing.
5. If the Customer orders the service electronically, the contract text will be stored by the Provider and sent to the Customer together with the General Terms and Conditions by e-mail on demand.

### **§ 3 Right of Revocation for Consumers**

1. If the Customer is a Consumer and the contract has been concluded exclusively by using means of telecommunication, the Consumer shall be entitled to revoke the acceptance of an offer within two weeks in writing without stating any reasons. The time allowed for revocation shall start with the receipt of this instruction in writing at the earliest. The timely dispatch of the notice of revocation is sufficient to observe the time limit.
2. The notice of revocation shall be addressed to:  
Klute-Thiemann Informationstechnologie GmbH & Co. KG  
Emil-Figge-Strasse 76-80  
44227 Dortmund / Germany  
Tel.: +49 231 974.24.123  
Fax: +49 231 974.24.124  
E-mail: info@klute-thiemann.de
3. The right of revocation expires if the Provider has started to provide the service with the explicit approval of the Consumer before the time of revocation has elapsed or the Consumer itself has arranged for the service to be provided.

### **§ 4 Services of the Provider**

1. The scope of services of the online services results from the scope of services provided by the respective service, as well as from the specifications of the acknowledgement of the order referring hereto.
2. The Provider reserves the right to extend, change and improve the services to the extent reasonable; the right to reduce the scope of services is also reserved.
3. In so far as the Provider performs additional services free of charge, the Customer has no claim to performance of these services. Within a period of time of 24 hours the Provider shall be entitled to drop or change such previously gratuitous services or to offer them only against payment in the future. In this case the Provider shall inform the Customer without delay.
4. In so far as it has not been explicitly agreed with the Customer in writing, the Provider provides no technical support free of charge. Support is provided on business days via e-mail and telephone during the common business hours.

### **§ 5 Special Conditions for Internet Domains**

1. In so far as the subject matter of the Provider's services also comprises the procurement and/or maintenance of Internet domains the Provider shall only act as an intermediary between DENIC, CORE, InterNIC or any other organisation for domain delegation (in particular the individual country-specific registration organisations) and the Customer. Only the Customer is entitled and bound by contracts with such organisations.
2. The Provider has no influence on the domain delegation. The Provider therefore does not guarantee that the domains applied for on behalf of the Customer can be allocated at all, are free of third party rights or unique or are of lasting duration. This also applies to the subdomains delegated under the Provider's domain. The terms and conditions of the registry, which is responsible for the respective top-level domain, become an integral part of the contract. This applies to each individual contract of corresponding sub-level domain registrations.
3. If the Customer does not comply with his/her payment obligations or ceases to pay at all, the provider is authorized to suspend a domain and domain's services at first and terminate the domain registration and domain management contract without notice.

4. The Provider is bound by contract by the respective registries to make the registries' terms and conditions aware to the customer; if the customer acts as sub-provider/reseller, the Customer assures the Provider of making the terms and conditions bindingly aware to his customer and to all domain contacts on his part. The Customer has to compensate all costs and expenses and exempts the Provider of all claims and other impairments, that may arise from failure to comply to aforementioned terms or from failure of his customer to cooperate.
5. A domain registration and domain management contract is automatically extended by the former period at current prices, if it is not cancelled at least two months before expiration of the billing period and the customer changes the provider of the domain in time or requests the deletion of the domain. The customer has to provide necessary documents for provider change or domain deletion in time.
6. In case of a cancellation of the domain registration and domain management contract the Provider is authorized to register the domain for himself or third parties, if the Provider has received a correspondent order.
7. Should the Customer be asked by a third party to abandon an Internet domain because it allegedly infringes foreign rights, the Customer shall inform the Provider accordingly without delay. In such a case the Provider shall be entitled to abandon the Internet domain on behalf of the Customer if the Customer does not immediately provide sufficient security for possible costs of litigation and lawyer's fees (at least 7,500 Euros). The Customer herewith releases the Provider from claims for damages of third parties that are based on the unlawful use of an Internet domain.

#### **§ 6 Special Conditions for Projects and Software**

1. In so far as the Provider creates software or designs websites for the Customer or by order of the Customer, the Provider delegates a licence for the created software or designed websites to the Customer that is non-exclusive, inalienable and limited to the contractual period. The Customer only receives the absolute and exclusive licence and right of disposal for the entire result of the work performed by the Provider if this has been stipulated expressly. Source codes shall also not be handed over unless it has been stipulated expressly.
2. Should the Provider provide the Customer with software, the Provider shall delegate a licence to the Customer that is non-exclusive, inalienable and limited to the contractual period. In other respects the licence terms of the respective program manufacturers apply; in case of open source software the respective licences apply.

#### **§ 7 Obligations of the Customer**

1. The Customer shall create or let create daily back-up copies of its website, which are not stored on the computer of the Provider, in order to facilitate a quick and inexpensive recovery of the website in case of a possible system failure.
2. If the Provider provides the Customer with an own computer, the Customer shall be exclusively and at its own expense and risk responsible for the administration and security of its server. It is the Customer's obligation to install necessary security software, to inform itself consistently about security vulnerabilities that become known and to remove these vulnerabilities itself.
3. The Customer guarantees that the statements made and data furnished by the Customer are correct and complete. The Customer shall immediately inform the Provider about any changes of contract-relevant data. This includes the postal address, telephone numbers, e-mail address and company-related data.
4. The Customer shall commit itself to keep the passwords received from the Provider secret and to inform the Provider about any suspicion regarding a misuse by unauthorised third parties.
5. The Customer shall moreover commit itself to use the services of the Provider properly and to take care that the network infrastructure or part of it will not be overloaded due to

excessive use. Furthermore, the Customer shall not misuse the possibilities of accessing the online services and shall refrain from committing illegal acts.

6. The Customer shall also commit itself to not publish any immoral contents, in particular pornographic, racist or discriminating contents.
7. The Customer guarantees explicitly that contents of the offers distributed via the server do neither infringe German law nor the Customer's *lex patriae*, which may deviate from German law, in particular regarding trademark, copyright, data protection and competition laws. The Provider reserves the right to exclude pages seeming to be doubtful as regards contents from storing on the Provider's server. The Provider shall inform the Customer about the possible deletion of such pages without delay. The same applies if the Provider is asked by third parties to change or delete contents on its websites, because they allegedly infringe foreign rights.

If the Customer is able to prove that an infringement of third party's rights is not to be feared, the Provider shall make the respective contents available for third parties again. The Customer herewith releases the Provider from claims for damages of third parties that are based on the unlawful contents of a website of the Customer.

## **§ 8 Prices and Terms of Payment**

1. The prices of the Provider are, as far as not being marked otherwise, gross prices including the value added tax applicable on the date of invoice.
2. The Provider reserves the right to increase prices in case of cost increases even after the contract has been concluded, in particular in case of an increase of its cost price or in case of exchange rate fluctuations. Price changes of the online services are announced with a lead time of six weeks. If the Customer does not agree with the price change, the Customer shall be entitled to terminate the contract by giving a fourteen days' notice for the end of the month.
3. Monthly payments are calculated pro rata for the rest of the month starting with the day of the provision of the offer. The following monthly payments shall be paid by the third business day of the month. Invoices that are not to be paid on a monthly basis shall be paid immediately after receipt. The Customer shall bear the expenses for dishonoured cheques and contra entries, as well as expenses arising for instituted summary proceedings for payment of debts.
4. The Customer shall not be entitled to make a set-off unless the counterclaims have been recognized by declaratory judgment or by the Provider. The Customer shall be able to exercise its right of retention only if its counterclaim is based on the same contractual relationship.

## **§ 9 Contract Termination**

1. In case of contracts without minimum terms of lease the contractual relationship may be terminated by both contract parties by giving a fourteen days' notice for the end of the month. In case of a contract termination the Provider shall be explicitly entitled to delete all data of the Customer on the Provider's computers unconditionally.
2. The right of both parties to terminate the agreement for good cause shall remain unaffected. Good causes to the Provider are in particular the following causes:
  - The Customer's violation of legal statutory prohibitions, in particular the violation of trademark, licence, competition, name or data protection provisions;
  - Delays in payment from an amount of two monthly basic rates up;
  - The continuation of other contract violations after the receipt of a warning letter from the Provider;
  - A fundamental change of the legal or technical standard on the Internet if it becomes unreasonable for the Provider to provide all or part of its services according to contract due to this change.
3. Each contract termination shall be made in writing and sent by registered mail to take effect.

### **§ 10 Use by Third Parties**

1. A direct or indirect use of the online services by third parties is only permitted after explicit approval.
2. If a use by third parties has been approved, the Customer shall introduce these third parties properly to the use of the services. If a use by third parties has not been approved, no claim for reduction, reimbursement or damages ensues thereof.
3. The Customer shall also pay fees which have arisen due to the authorised or unauthorised use by third parties within the scope of the access and usage possibilities having been made available to the Customer.

### **§ 11 Limitation on Liability**

1. In case of slightly negligent violations of duties, the liability of the Provider is limited to the average damage which is foreseeable, typical to the agreement and immediate according to the type of the service. The same applies to slightly negligent violations of duties by legal representatives or vicarious agents of the Provider. The Provider shall not be liable to Entrepreneurs for the slightly negligent violation of non-essential contractual duties.
2. In case of slightly negligent violations of non-essential contractual duties, the violation of which does not endanger the execution of the agreement, the Provider and the Provider's vicarious agents shall not be liable.
3. The previous limitations on liability do not affect the Customer's claims based on product liability or guarantee. Furthermore, the limitations on liability are void in cases of damages resulting from the injury of life, body and health that are attributable to the Provider.

### **§ 12 Liability of the Customer, Exemption**

1. The Customer shall be liable for all consequences and disadvantages incurred by the Provider or third parties due to an improper or illegal use of the online services or because the Customer fails to honour its other obligations.
2. The Customer shall commit itself to exempt the Provider internally from all possible claims of third parties relying on illegal acts of the Customer or on errors as regards contents of the information provided by the Customer. This especially applies to trademark, licence, data protection and competition law violations. This exemption also comprises the necessary cost of bringing an action.

### **§ 13 Final Provisions**

1. Place of performance is Dortmund, Federal Republic of Germany. Exclusive place of jurisdiction for all claims based on and due to this contract including action arising out of a cheque or a bill, as well as for all disputes arising between the parties out of the bringing about, handling or termination of the contract is – in so far as the Customer is a fully qualified merchant, a legal person under public law or a special fund under public law – the registered office of the Provider.
2. The law of the Federal Republic of Germany shall exclusively be applied to this contract.
3. The legal successors of the Provider and Customer are also subject to the liabilities under the contracts that are concluded based on these Terms and Conditions.
4. Should one of the provisions of this agreement be or become invalid, the remaining provisions shall remain unaffected. A substitute provision will rather take effect in lieu of the invalid provision which corresponds or at least comes close to the purpose of the agreement and which the parties would have agreed upon to achieve the same economic result if they had known the invalidity of the provision. The same shall apply analogously to the incompleteness of provisions.