



## Terms and Conditions

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serverloft is a brand of the European based Host Europe GmbH

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This is a translation of a German document. Errors and omissions excepted

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serverloft is a product of Host Europe GmbH.

Contractual partner is Host Europe GmbH, a 100% subsidiary of Host Europe GmbH, hereinafter referred to as Provider.

Host Europe GmbH provides any services solely based on these terms and conditions.

This also applies in the event that the customer uses other terms and conditions, and that Host Europe GmbH provides services while being aware of this.

## § 1 Subject of Agreement

Host Europe GmbH (Provider) operates computers, which are permanently connected to the internet (web servers). These are completely (dedicated) or partially (virtual dedicated) placed at the disposal of other companies for their own purposes. The information stored on the servers can be retrieved all over the world by means of the computer communication network internet.

## § 2 Contract Amendments

The Provider has the right to change the contents of this contract with consent of the Customer, as long as the amendment is reasonable for the Customer with regard of the Provider's interest. The amendment is considered as approved, unless the Customer objects to it within four weeks after receiving the amendment notification. The Provider commits himself to advise the Customer of the consequences of a neglected objection.

## § 3 Services of the Provider

a) The Provider delivers services by himself or by means of third parties according to the range of services published on the internet at the time of the order.

b) The Customer has the right to present other companies or their products and services on the web server. The Customer assumes liability for third party presentations in any case.

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c) Interested parties, who have internet access at their disposal, may retrieve the information stored on the web server at all times free of charge.

d) The Provider places an access to the Customer's disposal, by which means the Customer can manage his server by himself over the internet. This access is secured by a password. The Provider does not know the password. The Customer commits himself to keeping the password strictly secret and to inform the Provider immediately, as soon as it has come to his attention, that unknown third parties have come to know the password. If the Customer creates his web pages himself or has them created for him, he is solely responsible for the contents of his pages. He indemnifies the Provider internally from possible claims of third parties based on deficiencies regarding the web site's content.

#### § 4 Duties of the Customer

a) The Customer will always keep current backup copies of all data stored on the web server. Those backup copies shall not be saved to the web server.

b) For the services described in § 3, the Customer pays in advance the prices as stated in the range of services. All charges are inclusive of the current German VAT.

c) The Provider is entitled to raise the fees once per quarter at most. The price increase is subject to the Customer's consent. The consent is considered as given, if the Customer does not object to it within four weeks after receiving the notification of change. The Provider commits himself to inform the Customer in the notification of change about the consequences of an omitted objection. As long as the main obligation is not affected, i.e. the obligation to pay the usage-independent basic fee, the Provider determines the fees according to the current price list in his equitable discretion.

d) In case of an amendment to the statutory sales tax level, the Provider is entitled to adjust the fees for goods or services, which are delivered in the course of a continuing obligation, starting from the time this amendment is taking effect.

e) The Provider charges for his delivered services either monthly or for some months in advance, depending on the agreed payment method. The amounts listed in the invoice shall be paid immediately after receipt without deduction. The invoice may be sent via mail or e-mail at the Provider's option. The Provider is entitled to change the selected mode of dispatch, in particular if legal, organizational or technical reasons require it. No legal right shall be constituted to retain the dispatch method that was customary at the time of the conclusion of the contract. If the Customer requests an invoice by mail, which has already been sent to him, the Provider may charge a fee of € 7.50, if no legal causes explicitly demand the postage.

#### § 5 Contract Period, Cancellation

a) The contract starts with the order process online and is concluded either with or without a minimum contract period of up to 24 months, depending on the specification of services. Contracts without a minimum period can be cancelled anytime to the end of the respective accounting period. Contracts with a minimum period are renewed automatically for another 12 months, if they are not cancelled at least three months

before the end of the respective contract period. The cancellation must be sent in written form by registered mail. An indication of reasons is not required.

b) The right of an instant cancellation for good cause will remain unaffected. As good causes for the Provider to cancel the contract are particularly regarded

-the Customer violates legal interdictions, especially regulations regarding copyright, competition, names or data privacy,

-the Customer publishes national socialist, racist or radical content, or content that is illegal in any other form,

-delayed payment of more than 60 days,

-the continuance of other contract violations after the Provider has called the Customer to order,

-a fundamental change in the legal or technical standard on the internet, if it is impossible thereafter for the Provider to continue delivering his services in full or parts of it.

c) If a Customer should be in default, the Provider is at liberty to block the Customer without deadline and further notice from accessing his server over the internet. For handling the default and unblocking the server if applicable the Provider charges a handling fee of € 15.–. If the default should persist longer than 60 days, the Provider may cancel the contract without notice.

d) The Provider will destroy all data persistent on the customer's server in case of a cancellation of the contract at the time of the effectiveness of the cancellation.

## § 6 Range of Services and General Service Conditions

The Provider delivers its services according to his Range of Services and General Service Conditions. The Range of Services and General Service Conditions are constituents of this contract and are on hand for the Customer at the time of contract conclusion.

## GENERAL SERVICE CONDITIONS

### § 1 Services of the Provider

a) Unless otherwise agreed, the Provider may let the services incumbent upon him be delivered by specialized personnel or third parties.

b) Individual services of the Provider are charged on a time and material basis. The Customer is eligible for monthly invoices via e-mail. Therein shall be stated a description of the services brought to account as well as the expended time and/or material.

### § 2 Third Party Rights

a) The Customer expressly affirms that the provision and publishing of his websites' contents neither violates German law nor the Customer's home country's law, particularly with regard to copyright, data privacy and competition law. The Provider reserves the right to block servers from internet access and to cancel the contract without notice, if there should be any questionable content published on those servers.

b) Under no circumstances may the Customer offer or distribute copyright protected contents on his rented server to which he is not entitled. In particular, the operation of so called P2P file sharing networks, download services or streaming services, which might provide for copyright protected material to be distributed unwarrantedly, is not allowed. Furthermore, the Customer commits himself to not providing links to P2P file sharing networks, download services, streaming services or their respective contents. The Provider reserves the right to block the server without announcement and to cancel the contract without notice.

### § 3 Server Administration

a) The Provider grants the Customer full and exclusive administration rights for the rented server. Only the Customer knows the server's individual administration password, but not the Provider. Therefore, it is not possible for the Provider to manage the server rented by the Customer. Thus, the Customer is solely responsible at his own expense and risk for the management and security of his server. It is his duty to install necessary security software, to constantly be informed about currently detected security gaps and to close them on his own. The installation of maintenance programs or other software, which is provided or recommended by the Provider, does not release the Customer from his responsibility.

b) Provided that Customers receive fixed IP addresses, the Provider reserves the right to change them in case of technical or legal necessity, and to allocate new IPs to the Customers.

c) If necessary and reasonable, the Customer participates in simple configuration changes, e.g. by re-entering his access data or through simple adjustments of his systems.

d) The Customer is obliged to configure his programs in a way that they are restarted automatically when the hardware or OS are rebooted.

e) It is the Customer's duty to setup and manage his server in a way, that the security, integrity and availability of the network, other servers, software and data of third parties are not endangered. It is especially not allowed for a Customer to use his server for the direct dispatch of SPAM e-mails and (d)DOS attacks, or to run open mail relays and other systems on the server, which enable SPAM mails and (d)DOS attacks to be spread. In case of violation, the Provider reserves the right to block the server without announcement and to cancel the contract without notice.

#### § 4 Guarantee of Performance

a) The Provider guarantees an availability of the web server's physical connection amounting to 99% annual mean, assuming no different agreement has been made in the Service Description. Exceptions thereof are downtimes due to technical or other problems, which are not under the Provider's sphere of influence (force majeure, fault of third party etc.). If this availability should be fallen below, the Provider shall pay compensation, with the amount thereof being agreed upon in a separate Service Level Agreement.

b) The Provider runs data centres in different countries of the EU and in the USA. In the Provider's data centre, the customers' servers are linked up to the internet through a complex network infrastructure. The data traffic is routed over multiple active and passive network components (routers, switches and others), which only allow for a certain transfer rate at a time. Thus, the data transfer capacities may be limited for single servers at certain points, and not comply with the maximum bandwidth, which is available at the switch port in theory. Unless otherwise agreed, the Provider may take over no warranty for the amount of bandwidth, which is actually available for a single server, but provides bandwidth according to the data centre's technical capacity with regard to the contractual obligation against other Customers.

c) The Customers may use the Provider's servers for an uncountable number of various applications and use different software at their own discretion. This leads to multiple millions of possible configurations for the servers. The mere plurality of options renders it impossible for the Provider to take over a guarantee for the capability and compatibility of the servers for a particular dedication.

#### § 5 Internet Domains

a) The acquisition and/or support of internet domains is subject to the services of the Provider, it will only act as a mediator between the Customer and DENIC, InterNIC, or any other organization that allocates domains. By contracts with such organizations, solely the Customer shall be justifiable and liable.

b) The Provider has no influence on the domain allocation. Therefore, the Provider takes over no warranty that the domains, which are applied for and delegated to the Customer, are free of third party rights or unique or endure for the long term. The same applies to the sub domains, which are allocated under the Provider's domain.

c) If the Customer should be called upon by third parties to give up an internet domain, because it supposedly violates other's rights, he will immediately inform the Provider about it. Vice versa, the Provider will inform the Customer if requested to give up the Customer's domain. The Provider is eligible in both cases to resign the domain on behalf of the Customer, if the Customer should not immediately provide a security for court and lawyer fees (at least € 4,000).

d) The Customer herewith dismisses the Provider in any case from third parties' claims for compensation, which are based on an improper use of an internet domain.

## § 6 Data Privacy

a) The Customer agrees to the understanding that personal data (inventory data) and other information concerning his usage behavior (call data, e.g. time, number and duration of connections, passwords, up- and downloads) is recorded by the Provider during the contract period, as far as this is necessary for the fulfillment of the contract's subject, in particular for accounting purposes. As parts of the inventory data, the Customer's phone numbers are recorded as well in order to secure a fast availability of the Customer in cases of urgent inquiries, to confirm orders and for the general Customer contact. The Customer may contradict this use of his data.

b) The Provider commits himself to provide the Customer by request anytime and free of charge with complete information about the recorded data, as far as it concerns the Customer. The Provider shall neither forward this data nor the contents of private Customer messages to third parties without permission from the Customer. Exceptions to this are legal obligations of the Provider to reveal this data to third parties, particularly government agencies, or when internationally accepted technical standards may call for it and the Customer does not disagree.

c) The Provider expressly advert to the Customer that data protection can not be comprehensively guaranteed for data transfer in open networks like the internet according to the current state of technology. The Customer is aware that due to the technical conditions, the Provider may review anytime the websites stored on the server and further data as the case may be. Other internet users may as well have the technical ability to disturb the network security without authorization and to control the communication traffic. Therefore, the Customer is responsible himself for the security of the data he transfers to the internet.

## § 7 Limitation of Liability

The Provider is liable for losses, which have been caused by him or his auxiliary persons grossly negligent or willfully. In case of a violation of constitutive contractual obligations, the liability is limited in cases of simple negligence with financial damage, regarding the constitution to foreseeable, instantaneous losses, and regarding the amount to the benefits of the general liability insurance between the Provider and Hiscox Insurance Company Ltd. with a maximum limit of liability of € 2.500.000.–. The limitation of liability as described above does not affect any claims of the Customer due to product liability and are especially not effective in cases of physical injuries assignable to the Provider, or in case of the Customer's death. Any warranty in excess thereof shall be excluded.

## § 8 Release

The Customer commits himself to release the Provider internally from all possible claims of third parties, which are based on illegal acts of the Customer, or errors as regards content of his provided information. This applies especially to violation of copyright, data privacy and competition rights.

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## § 9 Copyright

As far as the Provider undertakes software development and individual configurations for the Customer or for third parties on behalf of the Customer, he assigns to the Customer a non-exclusive right to use the developed software and configuration on the internet for the duration of the contractual relationship.

## § 10 Applicable Law, Jurisdiction

a) This agreement shall be governed exclusively by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods as well as reference to the legal conventions of other countries.

b) If the Customer is a merchant, the Provider may file suit against the Customer at the Customer's residence or business location, or in Cologne/Germany. In case the Customer should file a suit against the Provider, the local courts of the Provider's head office are exclusively responsible.

## § 11 Miscellaneous

a) Alterations or additions to this contract are only valid if agreed upon in written form. This applies for alterations to this written form requirement as well.

b) All announcements of the Provider can be forwarded digitally to the Customer. This applies also for billings in connection with the contractual relationship.

c) The Customer may only offset such claims against the Providers' as are undisputed or legally recognized.

d) Should any individual provision in the above options terms be or become invalid, either in part or in full, or impracticable, this will not affect the validity of the other provisions. The invalid or impracticable provision will be replaced by a ruling that is as close as possible in economic purpose to the invalid or impracticable provision, which would have been agreed upon by both parties, if they had known the invalidity of the provision. The same will also apply in the event of any unintended omission.

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