



PlusServer GmbH

GENERAL TERMS AND CONDITIONS (GTC)

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PlusServer GmbH renders all services exclusively on the basis of these General Terms and Conditions.

The services are exclusively intended for businesses within the meaning of Article 14 (1) of the German Civil Code (BGB). PlusServer GmbH does not recognise deviating General Terms and Conditions unless expressly agreed to in writing. These General Terms and Conditions apply even if the Provider is aware of conflicting or differing terms of the customer and delivers the order to the customer without reservation.

Section 1: Object of the agreement

PlusServer GmbH (hereinafter referred to as 'Provider') operates computers that are constantly connected to the Internet (servers). The Provider makes these computers available to other companies for their own purposes either exclusively (dedicated servers) or partially (virtual dedicated servers).

Section 2: Services of the Provider

(1) The Provider renders services either directly or indirectly through third parties as laid down in the service specifications of the respective product. Other assurances, service commitments or supplementary agreements will only become effective if they have been confirmed in writing by the Provider. Unless expressly agreed otherwise, the Provider may use specialist staff or third parties to provide services to be rendered under this agreement.

(2) Unless agreed otherwise, the most recent version of the Service Level Agreement (SLA) will apply to the products in addition to the service specifications.

(3) By providing access to the server, the Provider enables the customer to manage his server directly over the Internet. This access is protected by a password. The Provider does not know the passwords of any individual customer. The customer undertakes to change the passwords received from the Provider to access services at regular intervals and to keep them strictly confidential. The customer shall inform the Provider immediately if he becomes aware that an unauthorised third party has compromised the password.

Section 3: Prices and payments

(1) The customer pays for services referred to in Section 2 in advance at prices specified in the scope of services. Prices are quoted inclusive of German VAT at the applicable rate. Private customers shall be charged VAT at the rate applicable in the relevant EU member state.

(2) Unless otherwise agreed with the customer, charges unrelated to use are due and payable in advance for the respective contract period. Charges related to use are due and payable at the end of the relevant billing period. All charges are based on the prices agreed with the customer for this purpose. Where individual services of the Provider are invoiced based on hours worked or consumption, the customer is entitled to receive monthly invoices by email, containing details about the type of invoiced services and the hours spent to provide these services or consumption.



(3) The Provider is entitled to adjust the prices for goods or services supplied or rendered on a basis of a continuing relationship to reflect a change in the applicable rate of VAT from the date the change in VAT takes effect.

(4) The Provider invoices the customer for his services either monthly or several months in advance depending on the agreed method of payment. The amounts specified in the invoice are payable in full upon receipt.

The Provider shall issue an electronic invoice and make it available to the customer via the customer system or by email. The customer hereby consents to receiving electronic invoices. If the customer requests to have an invoice sent by post, the Provider is entitled to charge the customer a reasonable fee per invoice, typically EUR 7.50. This does not give rise to any entitlement of the customer to continue receiving invoices in a form which was common at the time of conclusion of the agreement.

(5) If the customer fails to pay within 14 days of receipt of the invoice or a notification that the invoice is available in the customer system, he will be deemed to have fallen into arrears without the need for a formal reminder.

(6) If the customer has fallen into arrears with payment the Provider is entitled to charge late-payment interest of 10% p.a. The customer is entitled to prove that the Provider has not suffered any or substantially lower damage than that suggested by the late-payment interest.

(7) If a customer is in default of payment, the Provider is entitled to block the customer's access to the server via the Internet without the need for a further notice or grace period. The temporary suspension of services does not affect the customer's payment obligation.

(8) The customer may only set off undisputed or legally established claims against the claims of the Provider. This does not apply to warranty claims of the customer, if they are set off against the Provider's claim for payment.

(9) Unless otherwise agreed, the customer shall make payments by SEPA direct debit. Unless otherwise agreed, the customer shall complete a mandate form to authorise the Provider to collect all payments arising from the contractual relationship by SEPA Core Direct Debit. This authorisation also applies to new bank accounts specified by the customer. The Provider shall give the customer advance notice of the collection by direct debit (so-called pre-notification). This notice must be sent to the customer by email at least one working day prior to debiting their account. The customer has to ensure that there are sufficient funds available in the account on the date the direct debit is due. The customer is obliged to reimburse the Provider for any damage in connection with the customer's bank refusing to process payments.

Section 4: Conclusion, duration and termination of the agreement

(1) The agreement comes into effect upon the customer's offer to enter into a contract being accepted by the Provider, either expressly or implicitly by commencing performance of the service.

(2) Unless otherwise agreed, the minimum contract period is 24 months and the period of notice for termination is three months as at the end of the contract term. Unless otherwise agreed, the agreement will be automatically extended by the minimum contract term if not terminated by either party. If the minimum contract term exceeds one year, the contract extension will be limited to one year.

(3) This is without prejudice to the right to terminate the agreement without notice for a good cause. A good cause entitling the Provider to terminate the agreement is given, in particular, if the customer

- has fallen into arrears with payment and the outstanding amounts are equal to two monthly rentals;



- negligently violates a material contractual obligation and does not remedy the situation within a reasonable period of time despite being given a warning;
- violates statutory prohibitions and in particular, if the customer is in breach of copyright, competition rights, naming rights or data protection laws and regulations;
- publishes Nazi, racist, radical or any other type of illegal content.

(4) To be effective, the notice of termination must be served in writing. Customers can terminate the agreement by email provided this complies with the electronic form requirements pursuant to Article 126a of the German Civil Code (BGB) (so-called qualified electronic signature). If the Provider makes a relevant option to terminate the agreement available, customers will be able to terminate the contract effectively from within the customer system.

(5) For the purpose of domain registration, deviating provisions sometimes apply in relation to termination and these are set forth in Section 12 of these General Terms and Conditions.

Section 5: Warranty

(1) The customer shall notify the Provider immediately of any defects and endeavour to assist the Provider as far as possible in any defect resolution efforts, in particular, by taking all reasonable measures to ensure data security.

(2) The Provider hereby advises customers that under current technology standards it is not possible to create hardware or software that is fully compatible with all imaginable application combinations and that can be protected against all forms of manipulation by third parties. The Provider does not guarantee that the hardware or software used or made available by the Provider will meet the requirements of the customer, will be suitable for certain applications, or that it will not crash, contain any defects or malware. The Provider only guarantees that the hardware or software used or made available to the customer by the Provider will function in accordance with the manufacturer's specification under normal operating conditions and with normal maintenance at the time of handover to the customer.

Section 6: Obligations of the customer

(1) The customer shall make or have made daily backup copies of all data he transfers to the Provider's server, which may not be stored on the server, in order to ensure a rapid and cost-effective recovery of the data in the event of a system failure. In the event of data loss, the customer shall upload the relevant data back to the Provider's server for free and restore the configurations.

(2) The customer hereby warrants that the information he has provided is accurate and complete. The customer undertakes to notify the Provider immediately of any changes to the contact details or any other data necessary for the performance of this agreement.

(3) The customer may not offer or distribute any content that is protected by copyright without permission or licence. In particular, the operation of so-called P2P file sharing networks, download services or streaming services, which can be used to distribute copyrighted content illegally is not permitted. In addition, the customer undertakes not to provide any links to P2P file sharing networks, download services, streaming services or the content of such sites.



(4) The customer is, in particular, not permitted to use the server to send SPAM emails and make (d)DOS attacks, or to run open mail relays and other systems, which can be used to send SPAM emails and make (d)DOS attacks. The customer is furthermore prohibited from operating IRC-related services (Internet relay chat) such as Shells, Bouncer, Eggdrops, etc.

(5) The customer undertakes not to use technology in his IT project, which would result in excessive use of the facilities of the Provider. The Provider is entitled to block websites that use such technologies, so they cannot be accessed by third parties until the customer has removed/deactivated these technologies. This does not apply for servers provided to the customer for sole use (dedicated hardware).

(6) The customer, furthermore, undertakes not to use the resources made available by the Provider for purposes that infringe statutory prohibitions, moral standards or third-party rights (copyright, trademark laws, naming rights, data protection laws and regulations, etc.). This includes, in particular, the following acts:

- (a) unauthorised access to third party computer systems (e.g. hacking);
- (b) obstruction of third-party computer systems by sending/forwarding data streams and/or emails (e.g. DoS/DDoS attacks/spam/mail bombing);
- (c) searching for open ports (access) to third-party computer systems (e.g. port scanning);
- (d) the forging (spoofing) of IP addresses, email and news headers, as well as the spreading of malware.

(7) The customer may not register his website with search engines if the customer would be violating statutory prohibitions, moral standards or third-party rights through his use of keywords and similar technologies at the time of registration.

(8) In the case of a breach of any of the abovementioned obligations, the Provider is entitled to discontinue his services with immediate effect or to block access to the information of the customer. The Provider expressly reserves the right to seek further damages. In the case of serious or repeated violations, the Provider is entitled to exercise their right to extraordinary termination.

Section 7: Server administration

(1) Unless agreed otherwise, the Provider shall grant the customer full and exclusive administration rights for the rented server. Only the customer knows the individual administration password for the server. The Provider does not know the passwords of individual customers. Therefore, it is not possible for the Provider to manage the server rented by the customer. Accordingly, the customer is solely responsible at his own expense and risk for the management and security of his server. It is his obligation to install the necessary security software, to keep abreast of any known vulnerabilities and ensure they are mitigated. The installation of maintenance programs or other software, which is provided or recommended by the Provider, does not release the customer from his responsibility.

(2) The Provider is only obliged to provide technical support (support) to the customer as provided for under the terms of the agreement. Beyond that, the Provider will not offer the customer any free support services. Unless otherwise agreed in writing, the Provider will not provide direct support for the customer's customers.

(3) Where the customer has been provided with fixed IP addresses, the Provider reserves the right to change the IP address(es) allocated to the customer, if this becomes necessary for technical or legal reasons.

(4) If necessary and reasonable, the customer shall assist the Provider in making simple configuration changes, e.g. by re-entering his access data or carrying out straightforward changes to his systems.



(5) The customer is obliged to configure his programs in a way that they are automatically restarted when the operating system or hardware is rebooted.

(6) The customer shall set up and manage his server in a way as not to compromise the security, integrity and availability of the network, other servers, software and third-party data.

Section 8: Liability

(1) The Provider's liability for damages - on whatever legal basis - is limited in accordance with the following provisions.

(2) In cases of intent or gross negligence, the Provider is liable in accordance with the applicable laws and regulations.

(3) In cases of simple negligence, the Provider's liability is limited to breaches of material contractual obligations, i.e. obligations that are essential for the proper performance of the contract and the fulfilment of which the customer may routinely rely upon (cardinal duty). In these cases, the Provider's liability is limited to foreseeable, typical damages.

(4) In cases of simple negligence, the liability for other losses or damage, in particular, consequential damage, indirect damage or loss of profit is excluded.

(5) The above restrictions do not apply to injury to life, body or health or liability under the German Product Liability Act.

(6) If the Provider has excluded or limited his liability, this extends also to the liability of his employees, other workers, representatives and subcontractors.

(7) Within the scope of the German Telecommunications Act (TKG), the liability provisions of Article 44a TKG remains in any case unaffected.

Section 9: Data protection

The Provider collects, processes and uses personal data of the customer in compliance with the applicable data protection laws and regulations. For more information, please refer to the Privacy Policy of PlusServer GmbH. If the customer has been acquired through an intermediary, the customer hereby gives his irrevocable consent to transfer the data needed for the calculation of the commission to the intermediary.

Section 10: Indemnification

The customer undertakes to indemnify the Provider in the context of their internal relationship against any possible third-party claims based on illegal or infringing acts of the customer or on the basis of errors in the information provided by the customer. This applies, in particular, to infringements of copyrights, trademark laws, naming rights, data protection and competition laws and regulations as well as breaches of Section 6 of this agreement.



Section 11: Copyright, licence agreements

- (1) If the Provider develops software and individual configurations for the customer or for third parties on behalf of the customer, he shall transfer the non-exclusive right to use the developed software and configurations on the Internet for the duration of the contractual relationship.
- (2) The Provider grants the customer the non-exclusive right to use the Provider's software and third-party software for a period limited to the term of the contract. The granting of sub-licenses to third parties and the transfer of rights of use is not permitted except with the consent of the Provider by way of contract transfer. The continued use of the software following the termination of the agreement is not permitted; the customer shall delete any copies of the software provided upon termination of the contract.
- (3) Open source programs are in addition subject to the licence provisions of the respective software providers. The Provider shall make these licences available to the customer upon request. Where the terms and conditions of the software provider contradict these General Terms and Conditions, the terms and conditions of the software provider will take precedence.
- (4) In all other respects, the licence provisions of the respective software manufacturers and where appropriate, the manufacturer or software-specific additional terms of the Provider will apply.
- (5) If the customer independently administers, installs or distributes the licences installed on the servers, the correct licensing is the sole responsibility of the customer. The Provider is entitled to perform audits in order to check the customer's server for compliance with the contractual agreements and provisions, in particular the licensing provisions. As part of this audit, the Provider is, in particular, entitled to examine whether the customer has purchased a sufficient number of software licences. The customer is obliged to cooperate with the audit.

Section 12: Internet domains

- (1) If the customer registers a domain name through the Provider, the contract comes into effect directly between the customer and the respective issuing service or registrar. In these cases, the Provider acts on behalf of the customer as an intermediary. The relevant registration terms and conditions of the respective issuing service or registrar will then apply. If these registration terms contradict the GTC of the Provider, the relevant registration terms and conditions will take precedence.
- (2) The registration of domains is performed using an automated procedure. The Provider has no influence over the allocation of domain names. The Provider, therefore, does not warrant that the domain names for which the customer has applied for can be allocated (delegated) and are free from any third-party rights.
- (3) The customer undertakes to provide a reasonable degree of cooperation during the registration, transfer and deletion of domains and when making changes to entries in the databases of the issuing agencies.
- (4) The customer hereby warrants that his domains and the content that can be accessed via these domains do not breach statutory regulations or infringe the rights of third parties. Depending on the type of domain and/or the target audience for the related content, other national laws must also be observed.



(5) Should third parties be able to substantiate that domains or their content have infringed their rights or should the Provider become convinced that, based on objective factors, an infringement of the law is likely, the Provider may temporarily block such content and implement measures to make that domain inaccessible.

(6) The customer shall indemnify the Provider against third-party claims for compensation resulting from the unauthorised use of an Internet domain or the related content.

(7) Should the customer waive his right to use a domain name vis-à-vis the respective issuing service or registrar he must notify the Provider immediately.

(8) Termination of the contractual relationship with the Provider shall not materially affect the existing registration contract for a domain concluded between the customer and the respective issuing service or registrar. However, cancellation orders relating to the domain registration must still be addressed to the Provider because the Provider manages the domain for the domain owner and therefore, messages from the domain owner, including for contract termination, are to be regularly forwarded via the Provider to the respective issuing service or registrar.

(9) In order to terminate the domain registration simultaneously with the contractual relationship with the Provider, the customer must give express permission in writing to confirm that the domain is also to be cancelled and that it may be deleted. If the customer is not the domain owner, the cancellation or deletion order shall require the written consent from the domain owner or Admin-Cs.

(10) If the customer submits the domain cancellation order late i.e. after the end of the notice period, the Provider shall forward it immediately to the domain registration service. For the avoidance of doubt, it should be noted that if the cancellation order affecting the domain registration contract is not submitted by the customer within the prescribed time limit thus leading to the extension of the domain registration period vis-à-vis the issuing service or registrar, the customer will have to continue to pay for the domain over this extended period.

(11) If the customer terminates the contractual relationship with the Provider, but does not issue any express instructions with regard to the domains that were previously registered through the Provider, the customer will have to continue paying for the domains until further notice. Following unsuccessful requests sent to the email address provided by the customer to provide instructions for the domains within a reasonable period of time, the Provider is entitled to transfer the domains to the direct administration of the respective domain registration service or to release the domains on behalf of the customer. The same applies when the Provider terminates the contractual relationship with the customer.

(12) If domains are not transferred to the administration of a different provider by the termination date of the intermediary agreement (concluded between the customer and the Provider) at the latest, the Provider is entitled to transfer the domains to the direct administration of the respective domain registration service or to release the domains on behalf of the customer. This applies, in particular, in cases where the customer has issued instructions relating to the transfer of the domain to another provider, but the instructions were not actioned in time.

Section 13: Applicable law, place of jurisdiction

(1) This agreement is governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on the International Sale of Goods (CISG).



(2) Where the contractual partner is a business, a public legal entity or a public-law special fund, the place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship is Cologne, Germany. The Provider is entitled to bring legal action against the customer at his general place of jurisdiction.

Section 14: Miscellaneous

(1) To be effective, any amendments and additions to this agreement must be made in writing. This shall also apply to changes to this written form clause.

(2) Except for notices of termination, all information and notices issued by the Provider can be sent to the customer by electronic means, in particular, via the customer system or by email to the email address provided by the customer. This also applies to the invoices issued under this agreement.

(3) Should any provision of this agreement be or become ineffective, the validity of the remaining provisions of this agreement will remain unaffected thereby. The same will apply mutatis mutandis to any omission from the agreement. The parties undertake to replace the invalid provision with a provision that approximates as closely as possible the intended economic purpose of the void provision. The same applies to any omissions from the agreement.