# General Terms and Conditions

The following General Terms and Conditions (GTC) are part of all agreements with webfactory GmbH (hereinafter webfactory). They are based on the model contracts (published in the Federal Gazette issue 31 dated 4 February 2002, p. 2607) recommended by the Bundesverband Digitale Wirtschaft e. V. (German Digital Industry Association).

## 1 Cooperation

1.1 The contractual parties shall cooperate in good faith and shall inform the other party of any deviations from the agreed upon procedures or doubts about the correctness of the other party's approach.

1.2 In the event that the customer notices that his own data and requirements are incorrect, incomplete, unclear or not feasible, he shall immediately notify webfactory of this and the consequences of this, as far is he is aware.

1.3 The contractual parties shall notify one another of the contact person and their representative, who will responsibly and expertly manage the implementation of the contractual relationship for the contractual party who has appointed them to do so.

1.4 The contractual parties shall notify each other of any changes in the appointed people without delay. Until such time as such a notification has been received by the other party, the aforementioned contact people and/or their representative shall remain entitled to make and receive statements, within the scope of their hitherto existing power to act as a representative.

1.5 The contact people agree to notify one another at regular intervals of any progress and obstacles affecting the implementation of the contract, so as to be able to intervene in the implementation of the contract if necessary.

1.6 webfactory may prepare a transcript of the contact persons' exchange of information. The transcript shall be forwarded to the customer. In the event of a conflict of opinion, the customer has the right to have his view included in the transcript. This right shall be executed within one week of receiving the transcript.

## 2 Customer's Duty to Cooperate

2.1 The customer shall support webfactory in carrying out its contractually-guaranteed services. In particular, this involves the timely provision of information, data material as well as hardware and software, insofar as the customer's duty to cooperate requires this. The customer shall instruct webfactory in great detail of what the latter is expected to achieve.

2.2 The customer shall make the required number of its own staff available to implement the contractual relationship, the former having the required expert knowledge.

2.3 Provided the customer has pledged to provide webfactory with materials within the framework of implementing the contract (images, sound, text or such), the customer shall immediately make these available to webfactory in a common, immediately-useable format (digital if possible). Should the material handed over by the customer require conversion into another format, the customer shall be liable for any costs involved. The customer shall ensure that webfactory receives the rights required to use these materials.

2.4 All cooperative acts on the part of the customer shall be for its own account.

## 3 Third Party Involvement

The customer shall stand in for third parties, just as he would for vicarious agents, who work for him at his own instigation or sufferance in webfactory's field of activity. webfactory shall not be answerable to the customer if the former is completely or partially not able to meet its obligations to the customer due to the behaviour on the part of one of the third parties described above.

## 4 Deadlines

4.1 Only the contact person of webfactory may agree deadlines for providing services on the part of webfactory.

4.2 The contractual parties shall put deadlines in writing, insofar as this is possible. Deadlines, which, if not met by a contractual party, result in default without warning according to Section 286 Paragraph 2 of the German Civil Code (binding deadlines), must always be recorded in writing and described as being binding.

4.3 webfactory shall not be responsible for delays in performing services owing to force majeure (e.g. strike action, lockouts, official decrees, general telecommunication disruptions etc.) and circumstances in the customer's area of responsibility (e. g. not providing cooperation services on time, delays caused by third parties contracted by the customer etc.). They give webfactory the right to extend the deadline for providing the finished products of the affected services by the length of the delay plus an adequate start-up period. webfactory shall advise the customer of any delays in the provision of services caused by force majeure.

## 5 Changes in Services

5.1 If the customer wishes to change the contractually-determined scope of the services to be provided by webfactory, the former shall detail the desired changes to webfactory in writing. The rest of the procedure shall be governed by the following provisions. webfactory shall be able to dispense with the procedure pursuant to Paragraphs 2 to 5, if the desired changes can be quickly checked and are estimated to be implementable within 8 working hours.

5.2 webfactory shall check what effects the desired changes will have, in particular on payment, extra costs and deadlines. Should webfactory discover that services are not able to be provided, or only with delays, due to their examination, webfactory shall notify the customer of this and point out the fact that the desired changes can only be examined further if the affected services are initially postponed indefinitely. Should the customer agree to this delay, webfactory shall complete the examination into the desired changes. The customer has the right to withdraw his desired changes at any time; the started process of change will end at that point.

5.3  Having examined the desired changes, webfactory will present the customer with the effects of the said changes on the affected agreements. The presentation shall entail either a detailed suggestion for implementing the desired changes or reasons why the desired changes are not able to be implemented.

5.4  The contractual parties shall promptly vote on the contents of a proposal for implementing the desired changes and add the result of a successful vote to the text of the agreement, to which the change relates to, as a rider.

5.5  Should there be no agreement or should the procedure of change end for any other reason, the original scope of services shall apply. The same shall apply if the customer does not agree with a postponement of the provision of services to continue the examination according to Paragraph 2.

5.6  The deadlines affected by the change procedure shall be extended if required, taking into consideration the time required for the examination, the vote on the proposed change and, if necessary, the time required to carry out the desired changes plus an adequate start-up period. webfactory shall advise the customer of the new deadlines.

5.7  The customer is liable for any extra costs connected with the desired changes. These include in particular the examination of the desired changes, preparing a change proposal and any downtime. In the event that the contractual parties agree on day rates, the costs shall be calculated according to them, in all other cases according to the usual webfactory rates.

5.8  webfactory is entitled to change the services to be provided according to the contract or to deviate from them, if the changes or deviations are reasonable for the customers considering the interests of webfactory.

# 6  Remuneration

6.1  The customer shall be liable for all costs such as travel and accommodation costs (overnight stay), expenses and, in the scope of implementing the contract, any remuneration costs associated with third parties. Travelling expenses shall only be reimbursed if the distance travelled is more than 50 km from the registered office of webfactory. The total journey time itself shall not be compensated for. For carrying out work with third parties, whose costs are directly passed on to the customer, webfactory may charge a handling fee of 15%.

6.2  Remunerating webfactory generally takes place according to time taken, which is billed monthly. The time taken shall charged at the relevant valid remuneration rates of webfactory, insofar as nothing else has been agreed upon. webfactory is entitled to change or adjust the agreed-upon remuneration rates at their discretion (Section 315 of the German Civil Code). Cost estimates calculated by webfactory or budget planning are non-binding.

6.3  webfactory has the right to demand advance payments for contracts with a flat-rate fee that exceeds the norm.

6.4  Should the contractual parties not have agreed upon the remuneration of a service provided by webfactory, which the customer would, given the circumstances, except to have to pay, the customer shall pay the usual charges for the before-mentioned service. In case of doubt, the fee rates charged by webfactory for its services shall be considered usual.

6.5  All contractually-negotiated remunerations do not include VAT.

## 7  Rights

7.1  Regarding the services provided, webfactory shall grant the customer the simple right without any restriction of territory or time to use theses services according to the agreement. If software is part of the service, Sections 69 d and e of the German Copyright Act shall apply.

7.2  The products may not be used beyond the scope described in Paragraph 1. In particular, the customer is prohibited from issuing sublicenses and from copying, renting out or exploiting the services in any other way.

7.3  Until such time as the services have been paid for in full, the company may revoke the services. webfactory may prohibit the use of such services, for which the customer is behind in his payments, for the duration of the default.

## 8  Violation of Industrial Property Right

8.1  webfactory shall indemnify the customer from all claims brought by third parties for violations of industrial property rights at its own cost (patents, licenses and other industrial property rights) resulting from services provided by it. The customer shall immediately inform webfactory of the legally-established rights of third parties. Should the customer not inform the agency immediately of the legally-established rights, the right to be indemnified shall expire.

8.2  Should industrial property rights be violated, webfactory reserves the right – irrespective of any rights to damages of the customer – at its own discretion and cost to make changes regarding the affected services, after prior consultation with the customer, which guarantee that a violation of industrial property rights no longer applies, insofar as the customer's interests are protected, or acquire the relevant users' rights for the customer.

8.3  The customer shall indemnify webfactory from all claims by third parties resulting from violations of property rights of material that the customer provided.

## 9  Rescission

The customer may only withdraw from the contract due to a breach not resulting from a defect of the item being purchased or the works of the said item, if webfactory is responsible for the said breach.

## 10  Liability

10.1  webfactory is liable for intent and gross negligence. In the case of slight negligence, webfactory shall only be held liable if it breaches a fundamental contractual obligation (cardinal obligation) as well as for loss of life, physical injury or damage to health.

10.2  In the case of slight negligence, liability shall be restricted to the amount of the foreseeable damage, which must typically be assumed in such an event. In any case, liability shall be restricted to the agreed upon remuneration.

10.3  webfactory shall not be liable for the loss of data and/or programs insofar as the damage was caused by the customer neglecting to perform data back-ups and thereby ensuring that lost data can be retrieved at reasonable expense.

10.4  The preceding regulations also apply to the vicarious agents working for webfactory.

## 11 Prohibition against Enticement

The customer agrees not to poach any employees of webfactory or employ them without the company's express permission during the duration of the contractual parties' cooperation and for a period of one year thereafter. For each case of culpable violation, the customer shall pay webfactory a contractual penalty to be set by the company and disputes arising thereunder shall be ruled upon by the responsible court.

## 12 Non-Disclosure, Press releases

12.1 The documents given to the other party as well as knowledge and experience passed on shall exclusively be used for purposes of this contract and may not be made available to third parties, insofar as they are not to be passed on to third parties according to their intended purpose and are not already known to third parties. Third parties do not include the auxiliary persons involved to implement the contractual relationship such as freelancers, subcontractors etc.

12.2 Moreover, the contractual parties agree to keep confidential the contents of this contract and the knowledge gained during its handling.

12.3 The non-disclosure obligation shall remain in place even after the end of the contractual relationship.

12.4 Should one contractual party so desire, the documents such as strategy papers, briefing documents etc. provided by it shall be returned, insofar as the other contractual party is not able to justify a legitimate interest in the said documents.

12.5 Press releases, information etc., in which one contractual party mentions the other, are only permissible by previous written agreement - also by email.

## 13 Arbitration

13.1 The contractual parties shall initially attempt to find a solution to any differences in opinion resulting from or in connection with this contractual relationship through detailed discussions between the contact persons.

13.2 Differences in opinion not able to be solved by the contractual parties shall be settled through an arbitration procedure. Insofar as one contractual party refuses to participate in the arbitration procedure, said party may resort to the general courts of law, as long as the other contractual party has been notified of such in writing beforehand.

13.3 To initiate arbitration proceedings, the contractual parties shall appeal to the arbitration board of the Bundesverband Digitale Wirtschaft e. V. (German Digital Industry Association), Kaistrasse 14 in D-40221 Düsseldorf with the goal of resolving the difference in opinion completely or partially, temporarily or permanently, based on its rules of arbitration.

13.4 To make arbitration possible, both contractual parties shall reciprocally waive the statute of limitations defence regarding the contentious life circumstances from the request for arbitration to one month after the arbitration procedure. The waiver shall result in the suspension of the period of limitations.

13.5 The deadlines affected by the arbitration discussion, including the preceding discussion between the contact persons, shall be delayed considering the duration of the arbitration and, if

necessary, the duration of any measures to be carried out according to the arbitration plus an adequate start-up period, insofar as this is necessary.

## 14 Other Provisions

14.1 The assignment of claims is only permitted with prior written permission of the other contractual party. Agreement shall not be denied without just cause. The regulation of Section 354 a of the German Commercial Code shall remain unaffected by this.

14.2 Right of retention may only be asserted due to counterclaims arising from the relevant contractual relationship.

14.3 The contractual parties may only offset claims, which have been legally upheld before a court of law or are undisputed.

14.4 webfactory may name the customer on their website or in other media as a reference customer. webfactory is further entitled to publicise or refer to the services provided for demonstration purposes, unless the customer can prove a conflict of interest.

## 15 Final Provisions

15.1 All changes and addendums to contractual agreements must be submitted in writing for legal reasons. Notice of cancellation shall be given in writing. Messages which are to be made in writing may also be made by email.

15.2 Should individual provisions of the parties' agreements prove to be wholly or partially unenforceable, this shall not affect the validity of the remaining provisions. In this case, the parties shall replace the unenforceable provision with a valid provision, coming as close as possible to the economic purpose of the unenforceable provision. The same shall apply for any regulatory gaps in the agreements.

15.3 The customer's general terms and conditions shall not form a part of this agreement.

15.4 German Law shall govern this agreement, expressly to the exclusion of International Private Law and the United Nations Convention on the International Sale of Goods.

15.5 Sole jurisdiction for all legal disputes arising from or in connection with this agreement shall be the registered office of webfactory.