

Terms and Conditions for Creative Services

These Terms and Conditions govern the performance of creative services supplementary to the General Terms and Conditions. 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 Services

- 1.1 webfactory shall render creative services for the customer. The decisive basis for this shall be the specifications submitted by the customer.
- 1.2 webfactory shall submit the creative services to the customer on a suitable storage medium upon receipt of full payment. webfactory may choose the type of storage medium at its own discretion (§ 315 German Civil Code), if it was not possible to reach an agreement with the customer beforehand. The costs for the storage medium shall be borne by the customer.
- 1.3 Upon completion of the creative services, webfactory shall offer to take on the maintenance of these services.

2 Test

- 2.1 Should webfactory so request, the customer shall way of an independent duty assist in confirming that the creative services conform to the agreement (Test).
- 2.2 webfactory shall notify the customer in good time prior to the test being performed of the test procedure, the location, and time as well as the assistance to be provided by the customer and request that the latter takes part in the test. When fixing the date of the test, webfactory shall take the customer's interests into consideration.
- 2.3 Within the scope of the test, a written test log will be prepared, detailing the location, time, and technical circumstances of the tests as well as the test participants. Within the scope of the test, the customer shall confirm that the creative services conform to the agreement and record in the log any recognisable detrimental deviations of the creative services from the contractually agreed quality.
- 2.4 Should the customer not record recognisable detrimental deviations of the creative services from the contractually agreed quality, the creative services shall be deemed to have been rendered in the context of these unreported deviations. Should the customer culpably fail to fulfil his duty to participate in the test, either entirely or partially, the same shall apply mutatis mutandis with regard to deviations that would have been recognisable had the customer duly participated. In its notification pursuant to Section 2, webfactory shall draw the customer's attention to the implications of his conduct. This shall not affect the customer's duty to furnish notice of recognisable defects, even after the test has been performed.

3 Warranty

- 3.1 Technical data, specifications and performance data stated in public statement, in particular in advertising media, shall not constitute details of quality.
- 3.2 webfactory shall guarantee that the creative services are free of defects for a period of twelve months following delivery. Should the customer demand subsequent improvement (elimination of defects or delivery of services that are free of defects), webfactory may at its own discretion either eliminate the defect or provide substitute services that are free of defects.
- 3.3 The assertion of warranty claims shall depend on written notice of defects being submitted within one week of their discovery.
- 3.4 webfactory may refuse subsequent improvement so long as the customer has not yet paid in full the fee owing for the creative services and the outstanding fee is not unreasonably high taking into consideration the defect.
- 3.5 webfactory shall not accept any liability for defects if the customer modifies the creative services rendered by webfactory, unless such changes did not in any way give rise to the defects.
- 3.6 The customer shall assist webfactory in locating and eliminating the defects and grant immediate access to documents detailing the appearance of the defect.
- 3.7 If and to the extent that an alleged defect cannot be classified as a warranty obligation on the part of webfactory following a corresponding examination, webfactory may charge to the customer any costs arising in connection with the verification and elimination of defects at the rates applicable in each case.