

# GENERAL TERMS AND CONDITIONS OF BUSINESS OF VPS-FOREX.NET

These General Terms and Conditions are provided in English for your convenience. Please note that in case of a dispute or discrepancy between the German Terms and Conditions and the English translation, the German version shall prevail.

## PART 1 GENERAL TERMS AND CONDITIONS

### § 1 Applicability

(1) Vps-forex.net, Friedrikestr. 22, 13505 Berlin (hereinafter referred to as the "Provider") shall deliver or the brand Vps-forex.net its services exclusively on the basis of these general terms and conditions of business. These general terms and conditions of business shall also apply to future agreements concluded between the parties relating to the areas of hosting and domains, even without any further explicit reference thereto.

(2) We shall not recognise terms and conditions of the Client that deviate from our own, unless we had expressly agreed thereto in writing. Our general terms and conditions of business shall apply even when we unconditionally supply goods and services to the Client while being aware that the Client's general terms and conditions contradict our terms or are different therefrom.

### § 2 Obligations of the Provider

(1) (1) The obligations of the Provider are outlined in the service specification for the respective product. Other assurances, service commitments or supplementary agreements shall only become effective when they are confirmed in writing by the Provider.

(2) The Provider shall be entitled to expand the scope of his services, adapt and/or improve them to keep pace with technical progress. This shall apply in particular where the adaptation appears to be necessary in order to prevent misuse or if the Provider is required to adapt his services in order to comply with statutory regulations.

(3) Should the Provider deliver additional services without charging an additional fee, the Client shall have no right to claim performance. The Provider shall, within a reasonable period, be entitled to discontinue such services previously made available free of charge, to amend such services or to only offer such services against payment. In such cases the Provider shall inform the Client in good time thereof.

(4) The Provider shall only be under obligation to provide the Client with technical support in line with the contractually agreed services. Over and above this the Provider shall not provide the Client with any support services free of charge. The Provider shall not provide direct support for the Client's customers unless otherwise agreed in writing.

(5) Where the Client has been provided with fixed IP addresses the Provider reserves the right to change the IP address(es) allocated to the Client, should this become necessary for technical or legal reasons.

### § 3 Obligations of the Client

(1) The Client shall ensure that the information he provides is correct and complete. He undertakes to immediately inform the Provider of any and each change to the contact details he has given, and of any other data that is necessary for fulfilling the contract.

(2) The Client shall, on a daily basis, make/have made backup copies of all data he transfers to the Provider's server and that may not actually be stored on the server, in order to ensure the rapid and cost-effective recovery of the data in the event of a system failure. In the event of the loss of data the Client shall re-upload the affected data files to the Provider's server and restore the configurations free of charge.

(3) The Client may not infringe statutory prohibitions, moral standards or the rights of third parties (copyright law, trademark law, rights to the name and data protection law etc.) through his use of his website or the banners that appear on the website. The Client may not enter its website details into search engines when making such entries, if and insofar as the Client infringes statutory prohibitions, moral standards or the rights of third parties through his use of keywords and similar technologies. In the event of any infringement of one of the aforementioned obligations, the Provider shall be entitled to suspend the provision of his services with immediate effect or to block access to the Client's information.

(4) The Client undertakes to regularly change the passwords received from the Provider for the purpose of accessing his services and to keep them strictly confidential. The Client shall immediately inform the Provider as soon as he becomes aware that the password has become known to unauthorised third parties.

(5) When designing his website the Client undertakes not to use technologies that place excessive stress on the Provider's installations. The Provider shall be entitled to block websites that use such technologies so they cannot be accessed by third parties, until such time as the Client has removed/deactivated these technologies. This shall not apply where Clients have sole use of entire servers (dedicated hardware).

(6) The Client furthermore undertakes not to use the resources made available by the Provider for purposes that infringe statutory prohibitions, moral standards or the rights of third parties. Such purposes shall include the following in particular:

(a) Unauthorised access to third party computer systems (e.g. hacking);

(b) Disablement of third party computer systems by sending/forwarding of data streams and/or e-mails (e.g. DoS/DDoS attacks/spam/mail-bombing);

(c) Searching for open ports (access) to third party computer systems (e.g. port scanning);

(d) Sending of unwanted commercial e-mails (junk mails), unless the express permission of the recipient has been obtained or permission therefor has been otherwise granted;

(e) The falsification of IP addresses, mail and news headers or the dissemination of malicious software. In the event that the Client infringes one or more of the aforementioned obligations, the Provider shall be entitled to suspend the provision of all services with immediate effect. We expressly reserve the right to assert claims for damages.

(7) Where the transmission of a certain volume of data during an invoicing period has been agreed with the Client, the Client shall monitor this limit. Should the volume of data transferred (traffic) exceed the upper limit agreed with the Client for the respective time period the Provider shall invoice the Client for the corresponding amount for the excessive data traffic at the prices agreed therefor.

(8) Where the Client independently administers, installs or distributes the licences installed on the servers, he undertakes to only ensure correct licensing.

## § 4 Conclusion of the contract, contract term, termination

(1) The contract shall become effective upon acceptance by the Provider of the Client's offer to enter into a contract. The contract shall either be expressly accepted or shall be deemed to be accepted as a result of the Provider commencing performance of the service.

(2) Unless otherwise agreed, the minimum contract term shall be 12 months and the period of notice for ordinary termination of the contract shall be six weeks to the end of the contract term. Unless agreed to the contrary and in the event that no notice of termination is given, the contract shall be automatically extended by the minimum contract term. However, if this is longer than one year the extension shall only be for one year.

(3) The right of both parties to give extraordinary notice of termination for good cause shall remain unaffected. Good cause shall be deemed to exist for the Provider in particular if:

(a) If the Client is in default with payment of the charges by an amount equivalent to two monthly basic rates;

(b) In the event that the Client negligently violates a material contractual obligation and does not remedy the situation within a reasonable period of time.

(4) Notice of termination shall be made in writing in order to become effective. You may also give notice of termination by e-mail provided this complies with the electronic form requirements pursuant to § 126 (a) BGB (German Civil Code) (the so-called qualified electronic signature). Where the Provider makes a corresponding termination function available, the contract can also be effectively terminated from within the Customer Management System (CMS). Notwithstanding the previous regulations, consumers (acc. to §13 BGB) can always give notice of termination in text form.

(5) For the purpose of domain registration, deviating provisions sometimes apply in relation to termination and these are set forth in § 13 of these general terms and conditions of business.

## § 5 Prices and payment

(1) Usage-independent charges are due and payable in advance for the corresponding contract term, provided that a differing invoicing period has not been agreed with the Client. Usage-dependent charges become due and shall be paid at the end of the corresponding invoicing period. All charges shall be based upon the prices respectively agreed with the Client.

(2) The Client shall be deemed to be in payment arrears, even without being sent a reminder notice, if he does not pay within 14 days of receipt of the invoice or of being informed that the invoice has been entered onto the Customer Management System (CMS).

(3) For payments made using PayPal the corresponding PayPal terms and conditions shall apply in addition to these terms and conditions. The Client authorises the Provider to collect the corresponding invoice amount from his PayPal account.

(4) In the event of payment default the Provider shall be entitled to demand interest amounting to 10% per annum. The Client shall on the other hand be entitled to provide evidence that no interest – or significantly lower interest costs were incurred.

(5) The Provider shall enter an electronic invoice onto the Customer Management System (CMS) for each payment. The Client states his agreement to this. Should the Client request that an invoice be sent by post, the Provider shall be entitled to demand an appropriate fee for each invoice sent.

(6) In the event of the temporary blocking of services, the Client's obligation to pay shall not be affected.

(7) The Client may offset claims against the Provider only against undisputed or legally enforceable counterclaims. This shall not apply to the Client's warranty claims, where these have been set off against the Provider's claims for payment.

(8) Private customers will be charged the statutory rate of value added tax applicable in their respective EU country.

## § 6 Warranty

(1) The Client shall notify the Provider immediately of any defects and assist the Provider in the event of possible defect rectification work by making every effort to assist, in particular by taking all reasonable measures in terms of ensuring data security.

(2) The Provider points out that, given the current state of the art, it is not possible to create hardware and software that functions flawlessly for all combinations of applications or that can be protected against any and all forms of manipulation by third parties. The Provider gives no guarantee that the hardware and software it provides will meet the requirements of the Client or that it is suitable for certain applications and furthermore that the hardware and software will function without crashing, is free of defects and free of malicious software. The sole warranty given to the Client by the Provider is that at the time the hardware and software is either used or provided, it will function essentially in accordance with the manufacturer's specification under normal operating conditions and with normal maintenance.

## § 7 Liability

(1) Irrespective of the legal basis, the Provider shall only be held liable in accordance with the following provisions.

(2) The Provider shall be liable in cases of intent and gross negligence in accordance with the statutory provisions.

(3) In the case of simple negligence, the Provider shall only be held liable in the event of a breach of a material contractual obligation, the proper fulfillment of which constitutes a condition sine qua non and on the fulfillment of which the customer regularly relies and may rely (cardinal obligation). In such cases the Provider's liability shall be limited to the loss or damage that is foreseeable and typical for the type of contract.

(4) In the case of simple negligence, liability for all other damages shall be excluded, in particular for consequential losses, indirect losses and lost profits.

(5) The aforesaid limitations shall not apply in the case of death, physical injury or damage to health or in the event of liability claims in accordance with the Product Liability Act

(6) Where the Provider's liability is excluded or limited the same exclusions and limitations shall also apply to the Provider's employees, other staff, representatives and vicarious agents.

(7) Within the scope of application of the German Telecommunications Act (TKG) the provisions regarding liability set forth in § 44a of the Act shall remain unaffected in any case.

## § 8 Data protection

The Provider collects, processes and uses the Client's personal data in accordance with the statutory data protection provisions. Supplementary information on this issue can be found in the data protection declaration of Vps-forex.net.

## § 9 Proprietary rights, licensing agreements

(1) The Provider grants the Client the non-exclusive (simple) right to use the Provider's software and third party software. This right of use shall be limited to the term of the contract. Transferring the right to use the software, other than with the agreement of the Provider for the purpose of contract transfer, or granting sub-licences for the software to third parties is not permitted. Continued use of the software following termination of the contract term is not permitted. The Client shall delete any copies of all software provided following termination of the contract term.

(2) For open source programs the respective currently applicable license agreements of the software provider shall apply in addition. The Provider shall make these license agreements available to the Client upon request. Where the terms and conditions of the software provider contradict these terms and conditions the terms and conditions of the software provider shall take precedence.

(3) Furthermore, the license agreements of the respective software manufacturer and, where appropriate, the manufacturer's or software-specific additional terms and conditions of the Provider shall also apply.

## § 10 Indemnity

The Client undertakes to indemnify the Provider internally against any and all third-party claims that arise from unlawful or illegal activities of the Client and against material errors in the information provided by the Client. This shall apply in particular to infringements of copyright law, trademark law, data protection law and competition law and to breaches of §3 (8) of this contract.

## § 11 Applicable law, place of jurisdiction

(1) The laws of the Federal Republic of Germany shall apply with the exception of the unified United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) Provided the Client is a registered trader, a corporate body under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship shall be Berlin. The Provider shall furthermore be entitled to bring legal action against the Client at the Provider's general place of jurisdiction.

(3) The provider does not take part on a dispute resolution in front of a consumer arbitration board.

## § 12 Other provisions

(1) With the exception of notices of termination, all information and notices issued by the Provider can be addressed to the Client through electronic communication channels, in particular via the CMS or by e-mail to the e-mail address stipulated by the Client. The limitation set forth in § 4 par. 4 shall however apply in the case of notices of termination.

(2) Should a provision of this contract be or become invalid or unenforceable or should it contain a loophole that must be closed, the validity of the remaining provisions shall remain unaffected. In place of the invalid or unenforceable provision the parties shall agree upon a new provision which comes as close as possible to the commercial purpose of the invalid or unenforceable provision. The same shall apply in the case of a loophole.

## § 13 Special conditions applicable to hosting products, dedicated and virtual servers

(1) The Client provides explicit assurance that the provision and publishing of his websites' contents or data neither infringes German law nor other relevant national legislation, in particular copyright law, trademark law, rights to the name, data protection law and competition law. The Provider reserves the right to temporarily block content that appears to be dubious in this respect. The same shall apply if the Provider is requested by a third party to modify or delete content on hosted websites, because it apparently infringes upon third party rights.

(2) In the event that the Client provides evidence that there is no risk of infringing third party rights or any other infringement of the law, the Provider shall make the websites in question available again to third parties. The Client herewith indemnifies the Provider against all third party claims for compensation resulting from impermissible content on one of the Client's websites.

(3) The Client shall be prohibited from providing the following services:

- Anonymisation services
- P2P online exchange.

(4) When the Client has sole administration rights the Provider cannot manage the server. The Client therefore has sole responsibility for its content and the security of the server. He is responsible for installing security software, informing himself regularly about security vulnerabilities that become known and for removing such vulnerabilities. If the Provider makes security or maintenance software available this shall not release the Client from his responsibilities in this respect.

(5) The Client undertakes to set-up and manage his server such that security, integrity, network availability, other servers and the software and data of third parties and of the Provider are not put at risk.

(6) Should, as a result of his server security, a Client put at risk the integrity, network availability, other servers and the software and data of third parties and of the Provider or if the Client is under such a suspicion based upon objective circumstances, the Provider shall be entitled to temporarily block the server. This shall apply in particular to so-called denial of service attacks (DoS attacks) that the Client carries out via his server and also in the event that the Client is not responsible for the detrimental act or circumstances, e.g. if the Client's server is manipulated and used by third parties. A wilful act carried out by the Client shall entitle the Provider to terminate the contractual relationship without notice and without first issuing a warning.

(7) If spam e-mails are sent via the server (see the section "Special conditions applicable to e-mail services") the Provider shall again be entitled to temporarily block the server.

(8) Unless otherwise agreed, the Provider shall be under no obligation to back-up client data. If the Client instructs the Provider to provide a data backup service the Client shall, promptly and at regular intervals, check the data backed up by the Provider for completeness and its suitability for data reconstruction. The Client shall immediately inform the Provider of any irregularities discovered.

(9) The Provider shall be entitled to perform audits in order to check the Client's server for compliance with the contractual agreements and provisions, in particular the licensing provisions. In line with this audit the Provider is in particular entitled to examine whether the Client has obtained a sufficient number of software licenses. The Client shall be obliged to cooperate during the performance of these audits.