

## General Terms and Conditions

### 1 Scope

- 1.1 These General Terms and Conditions ("GTC") shall apply to all contracts of EPAG Domainservices GmbH ("EPAG") that are being closed with a Customer. Services of the contract include domain names (e. g. the registration or administration of such names) and every other associated service delivered therewith.
- 1.2 These GTC apply, provided the Customer is a an entrepreneur, a merchant, a legal entity of public law or a public separate estate, also to all future contracts in the above sense, even though they are not once more explicitly included.
- 1.3 Deviations from these GTC shall apply only if they have been confirmed by EPAG in writing.
- 1.4 EPAG staff is not authorized to make verbal ancillary agreements or pledges which go beyond the content of the respective contract, including these GTC.
- 1.5 EPAG has the right to change these GTC, provided substantial regulations of the contract will hereby not be touched and provided this change is necessary to be able to adapt to developments which at the time of the contract could not have been foreseen and which would lead to an imbalance of this contract. Substantial regulations would specifically refer to the type and coverage of the contracted services and the duration including the regulations to withdraw from the contract.
- 1.6 The Customer makes a legally binding declaration to EPAG to be of age.

### 2 Conclusion of Contract and Right to Withdraw

- 2.1 The Customer applies to enter into the intended contract by completing the online order form and sending it to EPAG via e-mail. The contract shall be deemed to have been brought about once EPAG has expressly accepted it.
- 2.2 The cancellation of the contract cannot be accepted after EPAG has already received it.

### 3 Basic Conditions and Conditions for Registration

- 3.1 The rules and regulations laid down by the Internet Corporation for Assigned Names and Numbers (ICANN), visible on [www.icann.org](http://www.icann.org), and by the respective domain registry responsible shall become an explicit part of the contract. EPAG is contractually bound to pass on the conditions for registration of the individual domain registries to its Customer; if the Customer is a reseller, he shall be accordingly obliged to pass them on bindingly to its respective customers.
- 3.2 In case of registration of a .de domain, the Customer shall bindingly accept the rules laid down by DENIC, including the Domain Guidelines, the Domain Terms and Conditions and the DENIC Price List. The Customer is referred to [www.denic.de](http://www.denic.de) for further information. In this case all contracts that are necessary for the registration of domain names will directly come into effect between the Customer and DENIC. The customer entitles EPAG to make the necessary statements towards DENIC on his behalf. For the duration of the existing contract between EPAG and the Customer, EPAG indemnifies the Customer against the duty of payment of the prices stipulated with DENIC. In return the Customer pays the agreed fees to EPAG.
- 3.3 In case of a registration of a gTLD domain, the Customer bindingly accepts the rules laid down by ICANN as well as by the respective domain registry responsible. For .mobi registrations, the Customer additionally accepts the .mobi registration agreement available on [www.epag.de](http://www.epag.de).
- 3.4 The registration of .eu domain names will be done by EPAG through EURid, Brussels, Belgium ("EURid"). In this case no direct contract through the registration of the domain name will come into effect between the Customer and EURid. The Customer, however, accepts the guidelines laid down by EURid (available on [www.eurid.org](http://www.eurid.org)) as being a binding part of the contract between him and EPAG.
- 3.5 Any domain transfer from EPAG to another registrar shall not be possible within 60 days after the initial domain registration or the last transfer of the domain. In this respect, the Customer is referred to the relevant version of the Inter-Registrar Transfer Policy (available on [www.epag.de](http://www.epag.de)). In case of a domain transfer, the Customer undertakes to submit a written declaration of consent issued by the domain owner to EPAG before initiating the transfer.
- 3.6 The Customer shall make up for any damage done to EPAG and he shall indemnify EPAG against any claims and other legal injuries resulting from its non-compliance with the rules named above or from any non-compliance with its duty to cooperate. In case the Customer is a reseller, this provision shall also apply to possible claims of end customers against EPAG due to the reasons named above.
- 3.7 The Customer shall also be obliged to indemnify EPAG, ICANN and the domain registries, in particular VeriSign Inc., PIR and RegistryPRO as well as any other persons involved in the registration of domains, such as subcontractors, shareholders, managing directors, managers, members of staff, contractors and companies affiliated with them against any liability resulting from or arising in connection with possible infringements of the rights of third parties in the course of its domain registration. This indemnity against liability shall include any claim for damages, costs and expenses, including reasonable

lawyer's fees and costs for prosecution. It shall survive the termination of the service contract.

- 3.8 The Customer agrees that a domain registration can be deleted, cancelled or transferred in order to correct mistakes by EPAG or the Registry Operator or to resolve disputes concerning the registered name.

### 4 Scope of Service

- 4.1 EPAG provides domain services and thus particularly acts as an agent for the Customer with regard to the registration or administration of domain names. A registration on the basis of these GTC is the application for a domain name with the respective registry (registration) or the transfer of a domain name from another registrar to EPAG (transfer). Administration shall mean the provision and change of data entries to domains (e. g. contacts or name server), the renewal of the domain registration period, the deletion of a domain or the like. In the context of acting as an agent EPAG applies for the registration of a domain name with the responsible registry or respectively with an accredited registrar to register the contracted domain name according to the details of the Customer. EPAG also pays the necessary fees for these operations.
- 4.2 If it is the Customer's wish, EPAG will provide two domain name servers for the technical operation (domain name resolution) of domains managed at EPAG without additional charges. Accessibility of the domain thereby depends on the services of third parties and thus is beyond the sphere of influence of EPAG. EPAG reserves the right to cancel the provision of the above-mentioned services for specific domains in reasonable cases and in its sole discretion. EPAG also reserves the right to change the registration of respective domains, particularly in case of a conjectural breach of trademark, copy or any other proprietary rights of third parties resulting from the domain name and the usage of the domain.
- 4.3 If the Customer has not entered into a separate reseller contract with EPAG, he shall not provide EPAG services to third parties, unless EPAG has agreed to it in writing.
- 4.4 When registering and/or maintaining domains, EPAG shall act only as an agent between the Customer and the respective domain registry.
- 4.5 EPAG has no influence on whether or when a domain name is registered.
- 4.6 Furthermore, EPAG does not guarantee that the domain names applied for on behalf of the Customer will be registered at all and/or that the domain names registered will be unencumbered with the rights of third parties or will continue to exist in the future.
- 4.7 EPAG shall undertake to process the registration as quickly as possible. EPAG, however, shall be unable to guarantee that the domain name applied for will not be registered for another applicant during the processing period. EPAG shall not accept any liability for delays caused by other parties involved in the registration process.
- 4.8 If the Customer applies for the registration of several domain names and if the registration of all of them is not possible due to a lack of availability, EPAG shall be entitled to register those domains which are available (partial performance).
- 4.9 EPAG shall be entitled to place content (e. g. advertisements for third parties) on the Customer's domain if and as long as the Customer has not filled the domain with his own content.

### 5 Obligations of the Customer

- 5.1 The Customer shall be obliged to use the EPAG services only for the intended purpose. In particular, he shall be obliged:
  - a. to ensure that the network infrastructure or parts thereof are not overburdened by excessive use;
  - b. not to abuse access to EPAG services and to refrain from any unlawful activities;
  - c. not to send any commercial e-mails to persons who do not want to receive such e-mails. The dispatch of any kind of unsolicited "bulk mail" (also referred to as „junk mail“ or "spam mail") is expressly prohibited;
  - d. to accommodate the recognized principles of data security, in particular to keep passwords secret and to change them or to have them changed without undue delay if there is reason to believe that unauthorized third parties have gained knowledge of them. The Customer shall ensure confidentiality of all login data received from EPAG. In case of loss of such data, the Customer shall notify EPAG without undue delay. If the Customer violates the recognized principles of data security or passes data on to unauthorized third parties, he shall be liable to EPAG or third parties for the damage resulting from this abuse;
  - e. to correctly and completely provide all required data upon application. Any changes shall be communicated to EPAG without undue delay and shall be confirmed in writing within 15 days on request. In particular, this shall apply to:
    - name, address, phone number, e-mail address and address of domain owner

- if the domain owner is an organisation, additionally the name of a natural person that is authorised to represent the domain owner
  - name, address, phone number and e-mail address of the administrative and the technical contacts
  - if necessary, IP addresses of the primary and secondary name servers including their server names;
- f. to ascertain himself and procure that the registration and the possible use of the domain name by himself or third parties shall not interfere with the rights of other parties. Furthermore, the Customer shall make sure that the chosen domain names are available and do not offend common decency;
- g. to instruct EPAG with changing the owner of a domain to another person or organisation only if the current as well as the prospective owner have explicitly agreed to the change of ownership before the start of the transaction, and if Customer has provided EPAG with a written declaration of consent. EPAG reserves the right not to execute orders to change the domain owner in cases of justified disbelief, or to cancel orders that have already been executed if this is possible;
- h. to be responsible for all duties of the domain owner, in particular for the provision of complete contact information according to 5.1e, even in case the customer or domain owner leaves the right to use the domain to third parties. He shall as well be liable for all damages resulting from the usage of the domain.
- i. in case of domain disputes to comply with the Uniform Domain Name Dispute Resolution Policy (UDRP; [www.icann.org/udrp](http://www.icann.org/udrp)) and to submit to the decisions of an arbitration board specified in the context of UDRP proceedings.
- 5.2 A breach of the contractual obligations mentioned under 5.1 will entitle EPAG to extraordinarily terminate the contract without notice and to cancel the domain registration. In this case, EPAG is also entitled to lock the domain so that it is not accessible from the internet as long as the breach of contract by the Customer or the third party dispute over the breach persists. This right applies as soon as a third party can plausibly demonstrate an infringement brought about by the registration or usage of a domain name.

## 6 Duration and Termination of Contract

- 6.1 Unless otherwise stipulated, the minimum duration of the contract shall be one year, starting from the registration date of the respective domain. Unless the contract is terminated with one month's notice before the end of its minimum contract period, it shall be extended for another year, or for the minimum extension period specified by the relevant domain registry, respectively. In this case, the contract shall be terminable with the same period of notice effective to the end of its respective duration.
- 6.2 Upon termination of the contract coming into effect, the Customer shall lose the right to the domain name. After the termination of the contract has come into effect, EPAG is entitled to return the domain name to the registry or to transfer it to EPAG itself or to any other owner, provided it does not infringe on the respective terms of the registry, trademark rights or any other proprietary rights of the Customer.
- 6.3 Should the Customer be interested in using his domain name even after termination of the contract with EPAG, the Customer, in due time, shall be obliged to close a contract with a third party on the usage of the domain name as well as to instruct the third party to ensure that the domain name usage can be maintained. The Customer shall inform EPAG in writing about the transfer in due time before the expiry of the contract. If the Customer is not interested in using the domain name after the contract has expired, he is obliged to provide EPAG with his written consent to delete the domain name. If the Customer does not agree to the domain name being deleted, and does not initiate a transfer of the domain to a third party, EPAG will not renew the domain name to the benefit of the Customer. With regard to domain names registered by DENIC, EPAG shall not instruct DENIC to delete a domain if the Customer does not agree to the deletion or the transfer of a domain name to a third party. In this case, however, the client is obliged to pay domain management fees directly to DENIC after the contract with EPAG has been ended.
- 6.4 The right of extraordinary termination for cause shall not be affected, particularly in the cases named under no. 5.1.
- 6.5 An extraordinary termination for cause by EPAG is indicated in particular if the Customer is in delay of payment for one or more domain names by two (2) weeks.
- 6.6 Furthermore, an extraordinary termination for cause through EPAG without granting of an extension shall be:
- if insolvency proceedings on the assets of the Customer have been opened;
  - if such proceedings will be refused or dismissed for lack of assets that could cover the costs of the proceedings;
  - if the Customer has voluntarily or involuntarily opened proceedings for their cancellation, liquidation or execution, or

- the Customer has discontinued business activities or if he is insolvent.

- 6.7 There shall be no reimbursement of the fee already paid during the contract period, unless the Customer has extraordinarily terminated the contract for a cause EPAG is responsible for. In particular in the event of an extraordinary termination due to the opening of insolvency proceedings, EPAG shall be entitled to directly contact the domain owner with the intention to enter into a direct contract with him, or if this does not happen, return the domain to the registry.
- 6.8 Any termination of contract must be declared in writing to become effective. Sending an e-mail shall not fulfil this requirement.

## 7 Terms of Payment and Default in Payment

- 7.1 The fee for registrations or renewals shall be paid in advance for at least one year or for the relevant duration of the contract. Any other payments are due following the provision of the service. The Customer shall receive an online invoice via e-mail. On demand, the Customer shall receive a postal invoice for which a fee of 1.95 EUR each will be charged. Payments shall be due on receipt of the invoice.
- 7.2 In the event of changes to pricing or billing models imposed by the relevant domain registry, EPAG shall be entitled to adjust fees in the proportional scope. The same shall apply if purchase prices have changed due to fluctuations in the exchange rate of five per cent or more since the conclusion of the contract or since its latest adjustment. The Customer will be notified about the intended increase in prices in writing at least 6 weeks before the changed prices become effective. The Customer shall have an extraordinary right to terminate the contract being affected by the price increase. If the Customer does not terminate the contract within 6 weeks after receipt of the notification of change in writing, the changes will become an integral part of the contract at the time the price changes will be effective. The Customer will be advised accordingly in the notification of change.
- 7.3 The Customer has to cover at least 20 EUR for fees and handling charges resulting from return debits of a bank collection of due fees, provided the Customer is responsible for the return debit. EPAG shall provide evidence for higher costs, the Customer shall furnish proof for lower costs.
- 7.4 The Customer shall be obliged to allow EPAG to collect due fees through direct debiting procedure. In case the Customer cancels EPAG's direct debit authorization, EPAG shall be entitled to charge an adequate handling fee for the administrative process.
- 7.5 In case of default in payment, EPAG shall be entitled to exclude the Customer from using their services in accordance with § 45k of the German "Telekommunikationsgesetz" (Telecommunications Act, "TKG"). In this case, the Customer will, along with the reminder, receive notice of the fact that he might be excluded from the service and has the option to recourse to legal relief. EPAG can furthermore terminate the contract and return the domain to the domain registry or, if necessary, directly contact the domain owner. This shall not affect any claims for damages.

## 8 Right to Set-Off and Right of Retention

- 8.1 The Customer may only set off claims against claims of EPAG if his claims are uncontested or have been recognized by a court of law. The Customer shall be entitled to assert a right of retention only as a consequence of counter-claims resulting from the contract.

## 9 Liability

- 9.1 Regarding the provision of telecommunication services for the public in the sense of the TKG, in case of deliberate breach of duty EPAG will be liable for financial losses without limit, and in case of slight negligence or gross negligence, EPAG will be liable to a maximum of 12,500 EUR per customer, while total liability shall be limited to a maximum of 10 million EUR to the entirety of all damaged parties per event causing a damage independent of the type of damage. If the amounts which are to be paid to several customers due to the same incident exceed the maximum limit, compensation will be cut according to the proportion between the sum of all claims and the maximum compensation limit. This limitation of liability does not apply to the claims for damages which result from a delayed payment of compensations.
- 9.2 In so far as paragraph 9.1 is not to be applied, EPAG has unlimited liability in cases of an explicit and written assumption of a guarantee or a procurement risk, in case of material damage or financial loss resulting from intent gross negligence, or in case of injuries of life, body or health resulting from intent, gross negligence or slight negligence.
- 9.3 EPAG is liable according to the German Product Liability Act.
- 9.4 In so far as paragraph 9.1 to 9.3 are not to be applied, EPAG shall only be liable in case of a slightly negligent breach of duty for those duties essential to the contract that facilitate the proper accomplishment of the contract, where breach of the duty puts the fulfilment of the purpose of the contract at risk, and that the Customer regularly trusts EPAG to be in compliance with. However, the liability is limited to typical damage foreseeable at the time the contract was signed.

- 9.5 In case of a liability according to paragraph 9.4, EPAG's liability shall be limited to an amount of 15,000 EUR per case of damage. In case of several damages within a single contractual year, liability shall be limited to a total amount of 30,000 EUR.
- 9.6 In case of loss or deterioration of data and programs and their restoration, EPAG shall be liable only in so far as this loss could not have been avoided by appropriate precautionary measures by the customer, in particular by creating daily backups of all data and programs.
- 9.7 In so far as liability is effectively excluded, this exclusion shall also apply to the personal liability of employees, other staff members, committees, representatives and vicarious agents of EPAG.

#### **10 Confidentiality and Data Protection**

- 10.1 In accordance with § 33 of the Federal Data Protection Act, EPAG points to the fact that in line with the registration process personal data will be stored and forwarded to third parties involved in the registration, in particular to the responsible registry (e. g. DENIC, EURid, ICANN). In case of gTLD domains this applies to the entire duration of the contract on a regular basis. This also implies the publication of such data in databases which are available on the internet without restrictions, so-called "whois" databases.
- 10.2 If EPAG makes use of third parties to provide its services, EPAG shall be entitled to disclose the Customer's data if this is necessary to ensure the function of operations.
- 10.3 EPAG shall guarantee that all the persons involved in the performance of the contract are aware of and adhere to the relevant provisions on data protection.

#### **11 Final Provisions**

- 11.1 Venue for all disputes arising from this contract is Bonn, Germany. The contract shall be governed exclusively by the law of the Federal Republic of Germany.
- 11.2 If any provision of these GTC is or becomes invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall instead be replaced by a provision which corresponds to or at least approaches the purpose of the contract and which the contracting Parties would have agreed upon to achieve the same commercial result if they had known about the invalidity of the original provision. The same shall apply in case the provisions are incomplete.

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