

**General Terms and Conditions R&M Webdesign GmbH and  
Webges Meeting Applications GmbH, 1090 Vienna, Nussdorferstrasse 20/22  
hereinafter referred to as "WEBGES"  
as per June 1, 2005**

## **1. Basis**

### **1.1. Scope of the General Terms and Conditions**

The General Terms and Conditions shall apply for all goods and services provided by WEBGES to its customer. The mutual rights and duties of the contracting parties shall – in this order – be solely determined by

- the content of the order accepted by WEBGES and/or the agreement concluded between WEBGES and the customer,
- these General Terms and Conditions,
- the relevant Austrian legal provisions (in particular the 2003 Austrian Telecommunication Act, TKG 2003)

General Terms and Conditions of the customer shall only apply upon explicit and written agreement by WEBGES, and in this case only insofar as these are not in contradiction to the concluded agreement or to the present General Terms and Conditions.

The General Terms and Conditions of WEBGES shall also apply for future business between the parties to the agreement, also if they are not again explicitly referred to - subject to the adoption of new General Terms and Conditions of WEBGES.

The services offered by WEBGES are exclusively directed to entrepreneurs. In case the customer is to be considered a consumer according to the Consumer Protection Act (Konsumentenschutzgesetz, KSchG), those provisions of the General Terms and Conditions that infringe obligatory provisions of the KSchG shall not apply - this, however, shall not affect the validity of the remaining provisions.

### **1.2. Bringing about of an agreement, beginning of a period**

An agreement between WEBGES and the customer shall be brought about if WEBGES has provided a written confirmation of the order, or started with the actual provision of services (e.g. activation of internet access, provision of login data and password, installation of web space or placing of orders with third parties etc.). In all cases where periods regarding the minimum duration of agreement, the period of a possible renouncement of termination of the agreement etc. are not explicitly laid down in the agreement, the agreement shall enter into force on the first day of the month following the beginning of the provision of services.

### **1.3. Amendments to the General Terms and Conditions**

WEBGES may amend the General Terms and Conditions; the amendments shall also apply for existing agreements. The applicable version is available at the website of WEBGES, [www.webges.com](http://www.webges.com) (and/or will be sent to the customer upon request).

Provided the amendment is not exclusively to the benefit of the customer, the amendment shall be notified at least two months before the new provisions take effect. Otherwise customers of WEBGES will be provided with a summary of the essential content in adequate format, e.g. by printing the information on a periodical invoice, at least one month before the new provisions take effect.

WEBGES will at the same time point out to the customer their right to terminate the agreement at no cost until the amendment enters into force. In case of termination of the agreement by the customer, WEBGES reserves the right to declare within two weeks after receipt of the notification of termination that it wishes to adhere to the previously applicable conditions. In this case, the termination of the agreement by the customer shall become void. WEBGES will inform the customer about this possibility.

### **1.4. Assignment of rights and duties**

Customers of WEBGES shall not be entitled to assign the rights and duties from this agreement to third parties without prior written consent.

WEBGES shall be entitled to assign its duties, in full or in part, in full satisfaction of the debt to an adequate and sufficiently qualified third party and shall notify this to the customer. The right to use vicarious agents shall remain unaffected.

The use of the services provided under this agreement by third parties as well as the passing on of these services against payment shall require prior written and explicit consent by WEBGES.

### **1.5. WEBGES staff has no power of attorney**

Sales partners and sales staff as well as technical staff of WEBGES have no power of attorney to make legally binding statements on behalf of WEBGES, to make commitments or to receive payments.

## **2. Services provided under this agreement**

### **2.1. Services provided by WEBGES**

The extent of the contractual services shall become evident from the relevant description of service and (if applicable) from the relevant written agreements of the contracting parties.

### **2.2. Period of the provision of services**

The services shall be provided at the date determined in the agreement, however at the earliest two weeks after the customer has met all the technical and other prerequisites (item 2.4.) of which he is in charge (referred to as "provision date"). This shall not apply if the non-observance of the provision date is due to delays of services by third parties that are not vicarious agents of WEBGES or if the responsibility for the delays lies with the customer. If applicable, compensation or refund in the event of non-observance of the provision date shall be according to the liability provisions laid down under item 6.

### **2.3. Fault repair**

Faults in telecommunication services within the responsibility of WEBGES shall be repaired at the latest within two weeks. Item 2.2 shall apply mutatis mutandis.

The customer shall assist WEBGES in locating the source of the fault or error as far as possible and shall grant WEBGES or a third party commissioned by WEBGES access to enable fault repair. If WEBGES or its commissioned third party are called to repair a fault and if it turns out that there is no fault in the provision of the contractual services or if the customer is responsible for the fault, the customer shall compensate WEBGES for any expenses incurred.

### **2.4. Customer's duty of co-operation**

If necessary, the customer shall, at his expenses, provide all hard- and software for his terminal equipment as well as any other equipment required for a smooth installation, insofar as these are not to be supplied by WEBGES due to some special arrangements. In addition, the customer shall provide any other technical requirements (e.g. power supply, adequate rooms etc.) at his expenses and, if applicable, shall seek permissions from third parties and provide all necessary information (including the course of electric lines and water pipes), in order to allow for a smooth installation.

WEBGES does not take over any warranty for the functioning of telecommunication equipment, such as in particular of stations, fax machines or telephones as well as PCs and modems, radio installations etc., insofar as not supplied and installed by WEBGES.

### **2.5. Quality of service**

WEBGES shall ensure the agreed quality of service. Compensation or refund in the event of non-observance of the quality of service shall be according to the liability provisions laid down under item 6.

### **2.6. Permission to use or sale of goods or equipment by WEBGES**

Goods or equipment sold to the customer shall remain the property of WEBGES until their full payment by the customer. If WEBGES permits the customer to use equipment, this shall remain the property of WEBGES, even if it was installed, and shall be returned to WEBGES immediately upon termination of the agreement at the expense of the customer, otherwise the full purchase price will be invoiced. The customer and the persons under his sphere of responsibility shall use the terminal or auxiliary equipment with utmost care; in the case of damage, the customer will not be released from his duty to pay. For the entire duration of the agreement, service and maintenance work of leased terminal and auxiliary equipment are to be exclusively performed by WEBGES or its subcontractors.

## **3. Service charges and changes of service charges**

### **3.1. Applicable service charges**

The charges for services provided by WEBGES are, unless separately agreed in individual cases, as laid down in the valid price list, which also contains information on the applicable index-linked price increase clause. Diverging agreements have to be in writing. Prices for installations, maintenance, special services and optional evaluations can also be found in the relevant applicable price lists. In the case of delivery by WEBGES, the agreed prices are ex stock; any packaging or shipment costs are – unless otherwise agreed – to be covered by the customer. Insurance coverage for shipped goods will only be provided at the explicit request and at the expense of the customer. The customer shall bear the transportation risk. The prices stated are exclusive of turnover tax, obligatory under Austrian law.

### **3.2. Categories of service charges**

Service charges are divided into three categories: monthly or yearly fixed charges (e.g. basic charge for internet access, leased line, charges for the use of permanent internet lines, for domain registration and for possible rental of terminal and auxiliary equipment; variable charges (depending on the data transfer volume or connection times) and single charges (e.g. set-up and installation fees for internet access or leased lines as well as charges for domain registration). The ratio between these categories will differ from product to product, and is determined by the terms of charges.

### **3.3. Change of service charges**

WEBGES reserves the right to modify (increase or decrease) its service charges in the case of changes in the costs relevant to their calculation (e.g. staff expenses, interconnection fees, electric power fees, telecommunication fees). The customer's right to terminate the agreement in the event of price changes according to §25 para 3 of the TKG 2003 shall be precluded if prices are reduced or if prices are adjusted according to an index stated in the price list or otherwise agreed. If discounts were agreed with the customer, the customer shall not benefit from possible price reductions, unless explicitly agreed otherwise.

### **3.4. Subsequent invoicing in case of exceeding fair-use rules**

In the case of fair-use products provided by WEBGES, the customer shall accept the fair-use limit laid down in the relevant service description, which is – unless otherwise stated in the service description – 3 gigabyte/month. If the fair-use limit is exceeded by more than 20% within one month, WEBGES reserves the right to invoice the customer according to the volume price per volume unit above the fair-use limit.

## **4. Payment**

### **4.1. Invoicing**

All charges will be invoiced on the first day of the month for the current month (in advance), unless otherwise stated in the General Terms and Conditions or otherwise agreed.

### **4.2. Time of payment**

Unless otherwise agreed, payments are to be made immediately upon receipt of invoice without deductions. The invoicing dates are determined by the order.

When in doubt, single costs can be invoiced immediately after conclusion of the agreement or upon delivery, running costs independent of consumption can be invoiced in advance on a monthly basis and running costs dependent on consumption on a monthly basis after consumption.

In the case of purchase, the agreed price will be invoiced after installation or shipment of the equipment and shall be payable within 10 days after receipt of delivery without deductions.

The timeliness of the payment shall depend upon the receipt of payment by WEBGES.

### **4.3. Delay in payment, interest on payments in arrears**

In case of delays in payment, WEBGES shall be entitled to charge the customer all costs of bringing an action as well as interests on payments in arrears of 12% per year.

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**4.4. Objections against invoices (only applicable for communication services according to §3 line 9 of the TKG 2003)**

The customer shall raise any objections against the amount of the invoice within 30 days of invoice date, otherwise the invoice shall be deemed approved. In case that, after review by WEBGES, the customer's objections are found unjustified, the customer has to start dispute settlement proceedings with the regulatory authority (Rundfunk- und Telekom-Regulierungs GmbH) within one month after receipt of the statement of WEBGES and to take legal action within another month after failure of the dispute settlement proceedings, otherwise the customer will lose the right to raise objections. If the customer does not wish to start dispute settlement proceedings, he has the right to take legal action within three months after receipt of the statement of WEBGES, otherwise he will lose the right to raise objections.

**4.5. Settlement of disputes (only applicable for communication services according to §3 line 9 of the TKG 2003)**

Notwithstanding the jurisdiction of courts of law, customers may submit cases of dispute or complaint (with regard to the quality of services, payment disputes that could not be solved to the satisfaction of the customer, or a claimed violation of the TKG 2003) to the regulatory authority. WEBGES shall be obliged to co-operate in such proceedings and to provide all information as well as all documents necessary to evaluate the state of affairs. The regulatory authority is to bring about a settlement by common consent or to inform the parties about its opinion on the case at hand.

**4.6. Due date of the invoice amount in case of objections (only applicable for communication services according to §3 line 9 of the TKG 2003)**

Objections shall not affect the due date of the invoice amount. However, if the dispute is brought before the competent regulatory authority (Rundfunk- und Telekom-Regulierungs GmbH) for settlement, the due date of the disputed charges for telecommunication services shall be deferred until the settlement of the dispute. However, an amount corresponding to the average of the last three undisputed invoice amounts shall be due immediately also in this case.

**4.7. Lump sum amount in the case of service charge disputes (only applicable for communication services according to §3 line 9 of the TKG 2003)**

If an error is found that could have been detrimental to the customer, and if the accurate charges cannot be determined, the customer shall pay charges that correspond to the average of the last three invoice amounts or, if the business relations have not been in place for three months, to the last invoice amount.

**4.8. Set-off**

The customer may not offset claims against WEBGES claims and may not refuse payments due to customer's claims unaccepted by WEBGES.

**4.9. Exclusion of the customer's right to refuse performance**

The customer shall not have the right to refuse his contractual performance according to § 1052 of the General Civil Code (ABGB) to obtain or secure counter-performance, and his rights to refuse performance are generally excluded.

**4.10. Payment record**

The customer invoice (payment record) for telecommunication services (according to §3 line 21 of the TKG 2003) contains the following information: customer name, customer address, invoice date, customer id, period of calculation, invoice number, charges for monthly recurring fixed services, for variable services, for single fixed services, total amount exclusive of VAT, VAT, total amount inclusive of VAT, as well as granted discounts, if applicable. Apart from a possible individual payment record, the customer shall only be entitled to an itemised list of access data, log files, proxy sever records etc (if technically feasible and legally possible), if a separate written agreement has been made on the storage and provision of such data (against payment).

**5. Warranty**

**5.1. Warranty period**

The warranty period for all services provided and goods delivered by WEBGES shall be 6 months.

**5.2. Elimination of defects**

WEBGES shall remedy defects falling under warranty at its discretion either by making improvements or by providing replacement goods/services. Price reductions are excluded by common consent. Warranty claims require that the customer notifies WEBGES of the defects within two working days in writing and in detail. The right of recourse according to § 933b ABGB shall be excluded.

**5.3. Exclusion of warranty**

Defects resulting from installations, placements and mountings not performed by WEBGES (unless mounting by the customer or third parties was agreed and professional or authorised replacement procedures were carried out professionally by the customer or third parties due to WEBGES' failure to remedy the defect within the applicable period despite receipt of notification), from insufficient set-up, non-observance of installation requirements and terms of use, exceeding of the limits given by WEBGES, incorrect treatment and use of inappropriate operating material shall be excluded from warranty. This shall also apply for defects caused by material provided by the customer. WEBGES shall not be held liable for damages due to lightning, power surges and chemical influence. Warranty shall not refer to the replacement of naturally worn out parts, except if the defect has already existed at the time of delivery.

**5.4. Notice of defect**

Any warranty claims shall require a written, detailed and precise notice of defect submitted immediately after the defect has become recognisable.

**6. Liability of WEBGES; Exclusion of liability and limitations on liability; Customer's duties**

**6.1. Exclusion of liability**

In general, WEBGES shall not be held liable for minor negligence (except for damage to persons) nor for consequential damage and loss of profit. The liability of WEBGES for severe negligence shall also be limited to one annual service charge – in the case of individual projects to the agreed charges. Any claims against WEBGES shall require written and detailed notification of the damage immediately after the onset of the damage has become recognisable.

**6.2. Exclusion of liability of WEBGES with regard to the availability of services, undeliverability of email messages**

WEBGES operates the services it offers according to the principles of utmost diligence, reliability and availability. For technical reasons it is, however, impossible to ensure uninterrupted access to these services, to always establish the desired connections or to ensure the availability of stored data under any circumstances.

For technical reasons, WEBGES can in particular not guarantee that emails are received or that relevant error messages are sent. The delivery of email messages may be prevented in particular by spam filters, virus scan programs etc. (installed by WEBGES or the customer), for which WEBGES does not accept any liability.

WEBGES reserves the right to temporary restrictions due to limited capacity, as far as these are reasonable for the customer, in particular as these are only minor and technically justified or based on reasons out of the sphere of influence of WEBGES.

The accessibility of internet services may be limited or interrupted in the event of force majeure, strike, restriction of services by other network operators or repair and maintenance activities. WEBGES shall not be held liable for such losses, as far as not caused by it on purpose or out of severe negligence.

In the case of unreasonably long interruptions or unreasonably long limitations, the customer's right to terminate the contract for major reasons shall remain unaffected. WEBGES does not assume liability of any kind for content that is or should be transmitted via the Internet or that is accessible via the Internet. No liability is assumed for lost data. Unless explicitly otherwise agreed, the customer shall solely be responsible for regular back-up copies of saved data.

**6.3. Exclusion of liability of WEBGES with regard to transferred data, damage by viruses, hackers etc.**

Moreover, WEBGES shall not be held liable for data downloaded from the Internet by the customer or for emails received by the customer (also in the case of the receipt of virus-infected messages) as well as for services provided by third party service providers, not even if the customer obtains access to these via a link from the homepage of WEBGES or through information provided by WEBGES. The customer takes note of the fact that the use of the Internet is connected with uncertainties (e.g. viruses, Trojan horses, attacks by hackers, intrusion into WLAN systems etc.), for which WEBGES does not assume liability. Any resulting damage or expenses shall exclusively be borne by the customer. Nor shall WEBGES be held liable for damage caused by other users/customers of the services provided by WEBGES.

**6.4. Exclusion of liability in the event of violation of duties by the customer; Duties of the customer**

WEBGES shall not be held liable for damage caused by the customer's violation of the agreement and its individual parts, in particular these General Terms and Conditions, or by the use of the services for purposes other than those defined in the agreement.

**6.4.1. Protection of Internet access**

The customer shall be obliged to keep his passwords secret. He shall be liable for damage caused by insufficient protection of the passwords by the customer or by passing them on to third parties.

The customer shall be held liable for any charge claims as well as other claims resulting from the use of his connection and/or access data (also by third parties), provided WEBGES is not responsible for this abusive use.

**6.4.2. Impairment of third parties; Spam and spam protection**

The customer shall bind himself not to use the services laid down in the agreement in a way that impairs third parties or that jeopardises the security or operation of machines of WEBGES or third parties. Spamming (aggressive direct mailing via email) or any use of the services to transmit threats, obscene material, harassing material or to harm other people in the Internet are thus prohibited.

The customer shall oblige himself to use adequate and sufficiently secure technical installations and settings. In case insecure technical installations of the customer (e.g. open mail relays) lead to difficulties for WEBGES or third parties, the customer shall be obliged to indemnify and hold WEBGES harmless, and WEBGES shall have the right to immediately block the customer's access or to take any other adequate measures (e.g. blocking of individual ports). WEBGES will try to use the mildest means. WEBGES will immediately inform its customer on the measure it has taken as well as on the reason for taking it.

**6.4.3. Customer's duty to observe legal provisions**

The customer binds himself to observe all legal provisions and to take over the sole responsibility against WEBGES to observe these provisions. The customer binds himself to indemnify and hold WEBGES harmless in case a claim is put on WEBGES under civil or criminal law, before court or out of court due to content circulated by the customer. If an action is brought against WEBGES, it shall decide on its own how to act (to enter an appearance, settlement etc.); the customer shall – except in the event of severe negligence by WEBGES – not be entitled to raise the objection of insufficient defence.

**6.4.4. Customer's duty to notify faults**

The customer shall be obliged to notify WEBGES immediately of any fault or interruption of telecommunication services, in order to allow WEBGES to eliminate the problem, before commissioning other companies with its repair.

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If the customer violates this duty of notification, WEBGES does not assume liability for damage and expenses resulting from the failure to inform WEBGES (e.g. expenses for a third company unnecessarily contacted).

#### **6.4.5 Liability of the customer for third parties**

If the customer allows third parties – such as his own customers, members, staff etc. – to use the services provided by WEBGES under the agreement, he shall be held liable for their acts or failures as well as for his own. The customer has to assign all duties resulting from the agreement with WEBGES – including those resulting from these General Terms and Conditions – as far as they do by their nature not only concern the customer, to these third parties in adequate form and to check their observance by adequate means.

#### **6.5 Special provisions for firewalls**

As with firewalls installed, operated and/or checked by WEBGES, WEBGES, in principle, ensures utmost diligence within the framework of the relevant state-of-the-art in technology. However, WEBGES points out that firewall systems cannot guarantee absolute security. Therefore, the liability of WEBGES with regard to warranty or compensation for any damages shall be excluded, if these result from the fact that installed firewall systems are circumnavigated or shut down. WEBGES points out that it shall not be held liable for wrong use by the contracting partner or his vicarious agents and staff or for software or configuration changes performed by the customer without prior approval by WEBGES.

#### **6.6 Exclusion of liability of WEBGES in the event of violation of customer's rights by third parties**

If the customer is entitled to damages, because his rights were infringed due to information stored by WEBGES for other customers of WEBGES, WEBGES shall not be held liable (notwithstanding all other limitations and exclusions of liability) if he has no actual knowledge about this infringement or if the hint to this infringement is not qualified according to the ISPA Code of Conduct (General rules regarding liability and disclosure duty of Internet Service Providers, available at [www.ispa.at](http://www.ispa.at)).

### **7 Term of agreement and termination; Disconnection**

#### **7.1 Term of agreement and period of notice**

Agreements concluded between the contracting parties on the provision of services or on other continuing obligations shall be concluded for an unlimited period of time or an agreed limited period. If the latter is the case, the contractual relationship shall automatically be renewed by the original term of the agreement, insofar as the agreement is not terminated by one party in writing in observance of a two-month period of notice. This automatic renewal shall, however, not apply if the agreement has been concluded for a precise, single event limited in time.

If no agreement has been made on a waiver of termination, agreements concluded for an unlimited period of time can be terminated in writing on the last day of every month in observance of a two-month period of notice.

#### **7.2 Interruption of services and dissolution of agreement in the event of delay in payment**

The observance of the agreed payment dates is a major prerequisite for the provision of services by WEBGES.

In the event of delay in payment and an unsuccessful written or electronic reminder, WEBGES shall, after granting an extended deadline of two weeks and under threat of an interruption of services or the dissolution of the agreement, be entitled to interrupt its services or dissolve the continuing obligation with immediate effect at its own discretion according to the provisions of § 70 TKG 2003.

#### **7.3 Other reasons for a dissolution of the agreement or an interruption of services; Disconnection or partial disconnection**

Apart from delayed payment, other major reasons for the dissolution of an agreement shall be the opening of insolvency proceedings against the customer or the rejection of insolvency proceedings due to insufficient assets to cover the costs; the request of an out-of-court settlement; a minimum of two pending execution proceedings of the customer's creditors; the opening of winding-up proceedings or suspected abuse of the communication services; the infringement of legal provisions, of obligations set forth by authorities or of provisions of the agreement; furthermore, if the customer violates the "netiquette" and the generally accepted standards of usage of the Internet; in the case of spamming or in case of use of insecure technical installations as laid down under item 6.4.2. At its own discretion, WEBGES cannot only dissolve the agreement but instead also interrupt the provision of services. In addition, WEBGES shall, on suspicion of infringements, not only be entitled to totally but also to partially block the services. In case of infringements of rights, WEBGES can in particular remove information stored on hosted websites or close the access to these sites. WEBGES will try to use the mildest means. WEBGES will immediately inform its customer on the measures it has taken as well as on the reason for taking them. The right to extraordinary termination of the agreement by WEBGES for major reasons shall in any case remain unaffected.

#### **7.4 Charge claims and damages in the event of early dissolution or disconnection**

All cases of immediate dissolution of the agreement, of interruption of services or disconnection of services, for reasons attributable to the sphere of the customer, shall leave unaffected the claim of WEBGES to service charges for the term of the agreement until the next possible termination date as well as to the assertion of claims for damages. In general, if the timely payment of service charges claimed by WEBGES appears threatened, the continuation of the services can be made dependent upon an adequate provision of security or advance payment, in particular if the customer's connection already had to be closed due to delayed payment as well as in all cases that would entitle WEBGES to an early dissolution of the agreement according to item 7.2.

#### **7.5 Termination of agreement and content data**

The customer is explicitly informed that upon termination of the agreement, for whatever reason, WEBGES shall no longer be obliged to continue the

provision of the agreed services. WEBGES shall thus be entitled to delete content data that were saved or kept available. The customer shall thus solely be responsible for the timely retrieval, saving and securing of such content data prior to the termination of the agreement. The customer cannot derive any claims against WEBGES from the deletion of data.

### **8 Data protection**

#### **8.1 Secrecy of communication and duty of secrecy**

WEBGES and its staff shall be subject to the secrecy of communication according to § 93 TKG 2003 as well as to the duties of secrecy as laid down in the Data Protection Act, also after the end of the activity having required the duty of secrecy.

The customer may object to the processing of person-related data. However, this shall not conflict with the technical saving or access to these data, if the sole purpose is to transmit or facilitate the transmission of a message via the communication network of WEBGES or to provide a service the customer has ordered. Routing and domain information has to be passed on accordingly.

#### **8.2 Information according to § 96 section 3 TKG 2003 with regard to processed data, master data**

Based on the Data Protection Act and on the 2003 Telecommunication Act, the contracting parties shall oblige themselves to save, process and pass on master data only within the framework of the provision of services and only for the purposes laid down in the agreement.

According to § 92 section 3 line 3 and § 97 (1) TKG 2003, WEBGES shall be authorised to investigate and process the following person-related master data of its customers and subscribers: first name, last name, academic title, private address, birth date, company, email address, phone and fax numbers, other contact information, financial soundness, information on the type and content of the agreement, methods of payment, as well as receipts of payment in order to keep the contractual relationship updated.

#### **8.3 Traffic data**

In line with its legal obligation according to § 99 (2) TKG 2003, WEBGES will save access data and other person-related traffic data, required to establish connections or to bill service charges or for technical reasons as well as to check the functioning of services and installations, in particular source and destination IPs as well as any other log files until the expiry of the deadline, by which the invoice can be legally objected to or payment can be claimed or as long as this is necessary for the above mentioned technical reasons or to check the functioning. In case of disputes, WEBGES shall make these data available to the competent authority. WEBGES will not delete these data until a final decision has been reached. Otherwise WEBGES will delete or make anonymous traffic data immediately upon termination of the connection.

#### **8.4 Use of data for marketing purposes, agreement to receive email advertising**

The customer gives his agreement, which may be revoked at any time, that WEBGES may use traffic data for the further development, need analysis, planning of network extensions and the improvements of proposals and offers of telecommunication services as well as for the provision of services of additional benefit to the customer.

The customer agrees to receive advertising material and information on new products and services of WEBGES and its business partners from WEBGES to an adequate extent via email. The customer's data including his name and email address solely remain with WEBGES. The customer may revoke this agreement at any time.

### **9 Data security**

WEBGES will undertake all possible and reasonable measures to protect the data saved on its equipment. If a third party unlawfully obtains power of disposal of data or reuses data saved with the Internet Service Provider, WEBGES shall only be held liable to the customer in the case of deliberate or severely negligent behaviour. The liability of WEBGES for severe negligence shall also be limited to one annual service charge - in the case of individual projects to the agreed charges.

### **10 Special provisions regarding the supply and development of software**

#### **10.1 Scope of performance**

In the case of software individually developed by WEBGES, the scope of performance shall be determined by a service description signed by both contracting parties. The performance shall comprise the program code to be executed on the designated equipment as well as a program description. The rights on the programs and the documentation shall entirely remain with WEBGES, unless explicitly agreed otherwise. The source code is, insofar as not explicitly otherwise agreed in writing, not handed over and remains with WEBGES. Reverse engineering of the program by the customer is explicitly prohibited.

#### **10.2 Rights on supplied software**

When supplying or permitting the use of software and unless explicitly agreed otherwise, WEBGES shall grant the customer the non-transferable, nonexclusive right to use the software, limited in time by the term of the agreement, and the customer accepts the licence conditions applicable for the software, even if the software is provided by third parties. The customer shall indemnify and hold WEBGES harmless in case of infringements.

WEBGES does not assume liability or warranty for possible damage resulting from software made available to the customer for implementation. In any case the customer shall contribute to avoid damage as far as possible.

The termination of the agreement shall also end the customer's right to use the software. The customer shall not be entitled to use software (components) supplied or made available by WEBGES as a template to develop or have third parties develop similar software (components).

If licensed software of third parties is used, the customer shall be obliged to read the licence provisions before its use and to strictly observe them. WEBGES does not assume warranty for software qualifying as "public

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domain" or "shareware" downloaded by the customer and not developed by WEBGES. The customer has to observe the terms of use and, if applicable, the licence provisions indicated by the author of such software and shall not pass on this software to third parties, not even for short-time use. In any case the customer shall entirely indemnify and hold WEBGES harmless against any claims with regard to the violation of the duties described above.

### **10.3 Warranty**

WEBGES does not warrant that the software supplied meets all requirements of the customer (unless explicitly laid down in the agreement), that it is compatible with other programs used by the customer, that the programs run without interruptions and errors nor that all software errors can be corrected. For software supplied to entrepreneurs, the warranty shall be limited to reproducible (permanently repeatable) errors in the program. Otherwise, the warranty provisions of item 5 shall apply.

### **10.4 Withdrawal in the case of software errors**

If WEBGES supplies hardware and software at the same time, any errors in the software shall not entitle the customer to also withdraw from the agreement laying down the use or supply of the hardware. The same shall apply with regard to agreed provisions of services. In particular, errors in the supplied hard or software shall not entitle the customer to withdraw from the agreement on the provision of Internet services. However, this shall not apply in the case of undividable services according to § 918 section 2 ABGB.

### **10.5. Labelling of software products**

The client grants Webges the right to use its name in connection with the used software services in connection with all advertising, marketing and promotional material related thereto. Additionally Webges is entitled to label its software products with a Webges or a brand logo of max. 150x75 pix whereas the logo might be a link to the website [www.webges.com](http://www.webges.com).

## **11 Special provisions for domain name registration**

### **11.1 Procurement and administration of the domain; contractual relationship**

WEBGES procures and reserves the requested domain in the name and on the account of the customer, insofar as the desired domain has not been assigned yet. For .at, .co.at and .or.at addresses, the domain is installed by the Austrian registration authority nic.at, for any other addresses by the competent registration body.

For the term of this agreement, WEBGES shall be the invoice recipient and the technical contact (unless otherwise agreed); the contractual relationship for the installation and administration of the domain, however, shall in any case be directly between the customer and the registration body. The registration fee, transferred to the registration body, is included in the amount invoiced to the customer by WEBGES (unless otherwise agreed).

### **11.2 Termination of the agreement with the registration body**

The customer notes that the agreement between the customer and the registration body does not end automatically upon dissolution of the agreement with WEBGES, but that the customer has to terminate it separately with the registration body.

### **11.3 Applicability of the General Terms and Conditions of the registration body**

With regard to the domain, the General Terms and Conditions of nic.at (available at [www.nic.at](http://www.nic.at)) or any other competent registration body shall apply; upon request these will be sent to the customer by WEBGES.

### **11.4 Legal admissibility of the domain**

WEBGES shall not be obliged to examine the admissibility of the domain such as with regard to protected trademarks or names. The customer agrees to heed the relevant legal provisions and, in particular, not to infringe anybody's rights to a name, trade mark or other rights and will indemnify and hold WEBGES harmless in this respect.

## **12 Special provisions for web design or web consulting services**

### **12.1 Customer's duty of co-operation**

The customer shall be obliged to co-operate accordingly. This duty of cooperation shall in particular include the provision of all required information as well as, if necessary, the hardware on which installations are to be made. During necessary test runs, the customer shall be present in person or provide competent staff, having the power to judge and decide with regard to errors, expansion of features, reduction of features as well as with regard to changes in the program structure. In addition, the customer shall – if applicable – provide required test data as well as any texts and other content (e.g. logos) that is to be used.

As far as WEBGES provides the customer with drafts, test versions of programs, final versions or similar material, these shall be thoroughly checked by the customer. Any complaints or requests for changes are to be brought forward at this stage – otherwise the customer loses all claims against WEBGES.

### **12.2 Liability for elements provided by the customer**

Elements provided by the customer such as logos, texts, corporate design elements etc. shall remain the property of the customer; WEBGES shall not acquire any rights on these elements. When passing these elements on to WEBGES, the customer guarantees to dispose of all required rights, and shall entirely indemnify and hold WEBGES harmless against any consequences due to possible infringements of rights (e.g. infringement of the copyright of third parties).

### **12.3 WEBGES has no duty to check elements provided by customer**

WEBGES shall not be obliged to check elements provided by the customer, in particular also contents, with regard to their compliance with legal

provisions, but may, however, refuse the distribution of these contents on suspicion of infringements.

### **12.4 Granting of rights by WEBGES**

Upon payment of the agreed charges, WEBGES shall grant the customer, unless explicitly otherwise agreed in writing, the exclusive and, in principle, unlimited right to use the concept and/or design and/or texts and/or the software applications of the agreement developed by WEBGES exclusively within the framework of the Internet for his own purposes. Any other use, also only in part, such as in the field of other electronic media or for print products, shall require specific written (except for consumers) agreement. The same shall apply for granting powers, also only in part, to third parties. Unless explicitly agreed otherwise, the rights granted by WEBGES shall end with the termination of the agreement between WEBGES and the customer.

## **13 Other provisions**

### **13.1 Applicable law**

All claims from this agreement shall be governed by Austrian law with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and non-obligatory referral rules.

### **13.2 Place of jurisdiction**

All disputes arising from this agreement shall be settled by the competent court of Wien Innere Stadt.

### **13.3 Written form for amendments and supplements to these General Terms and Conditions**

Amendments and supplements to these General Terms and Conditions as well as to the order or other parts of the agreement shall require a written form (a signed fax or an email also meet this requirement).

### **13.4 Written form for notifications by the customer**

All notifications and declarations by the customer referring to this contractual relationship, have to be in writing.

### **13.5 Address changes; receipt of electronic notifications**

The customer shall notify WEBGES immediately in writing in the case of name or address changes. If no changes are notified, written documents are considered received by the customer, if they were sent to the address last notified by the customer. Electronic notifications are considered received, if sent to the email address last notified by the customer.

### **13.6 Severability clause**

Invalidity of individual provisions of these General Business Terms and Conditions does not affect the validity of the remainder. A provision which achieves equivalent economic results shall replace any invalid provision.

### **13.7 Single European emergency call number**

WEBGES points out the existence of the single European emergency call number 112.