

**General Terms and Conditions of  
Contabo GmbH  
Aschauer Strasse 32a  
81549 Munich  
Germany**

**Effective as of October 2022**

## **Clause 1: Applicability, conclusion of contract**

(1) Contabo GmbH, doing business at Aschauer Strasse 32a, 81549 Munich, Germany, (referred to hereinbelow as “**Provider**”) offers services in particular via its Online Shop at <https://contabo.com> and via the customer portal integrated in the Online Shop (referred to as both the Online Shop and the customer portal hereinbelow as “**Online Shop**”).

(2) The present General Terms and Conditions (referred to hereinbelow as “**GTCs**”) apply to all contracts concluded between the Provider and the customer via the Online Shop as well as to all contracts for which the applicability of these GTCs has been agreed between the parties otherwise than via the Online Shop.

(3) Any deviating, contravening or supplemental terms and conditions of a customer will not become a component part of the contract unless this has been expressly agreed in writing. The same will apply even if service is rendered in the knowledge that this contravenes the corresponding GTCs in place with the customer.

(4) Individual Agreements made between the Provider and the Customer, e.g. during the order process, precede over these GTCs in the area of the respective individually agreed contractual condition (see § 305 BGB (German Civil Code – *Bürgerliches Gesetzbuch*)) and are supplemented by these GTCs.

(5) The range of services on offer in the Online Shop is intended for consumers and businesses, unless specified otherwise in the Online Shop. A “consumer” means every natural person who enters into a legal transaction for purposes that predominantly are outside his or her trade, business or profession (Section 13 of the Bürgerliches Gesetzbuch (BGB, German Civil Code). A “business“ means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession (Section 14 paragraph 1 of the German Civil Code (BGB)).

(6) If the customer is a business, the following applies: The present GTCs will also apply to any future contractual relations between the Provider and the customer, even if no separate, renewed reference to the GTCs has explicitly been made.

(7) By clicking on the button “Order & Pay” (“Bestellen & Bezahlen”) in the Online Shop, the customer makes a binding offer to purchase. Directly after having made said offer to purchase, the customer will receive an email confirming receipt of the order. The order confirmation does not yet constitute acceptance of the offer to purchase, however. Rather, the contract will not come into being until the customer receives another email containing access data for the service ordered.

(8) Contracts are concluded in the German or English language. In case of ambiguities, the German-language version of the contract will take precedence.

(9) The contractual provisions agreed will be stored by the Provider.

(10) The Provider reserves the right to amend the present GTCs insofar as required in order to adapt them to changed legal or technical framework conditions. The Provider will notify the customer of such amendments via email, whereby the amended passages will be highlighted. All amendments will be considered approved unless the

customer lodges an objection in text form within six weeks of receiving notice of the amendments. Along with the notification of amendments made, the Provider will also supply the customer with separate instructions on the right to lodge an objection and on the legal consequences of remaining silent.

## **Clause 2: Services of the Provider**

(1) The scope of the Provider's main service obligations results from the service description in the Online Shop.

(2) The customer may select among the server locations shown in the Online Shop or leave the selection up to the Provider. If the server location "European Union" is not the one selected, then the customer will have the option to agree EU Standard Contractual Clauses with the Provider, along with an agreement on data processing on behalf of a controller.

(3) Unless expressly agreed otherwise, the Provider is entitled to also have the services that it owes under the contract delivered by technically qualified in-house personnel and/or by third parties. Insofar as active cooperation by the customer is required – e.g. when a webspace package or other data stored on the Provider's servers is to be transferred onto a different server – the customer must cooperate in keeping with the Provider's instructions within a reasonable, pre-specified deadline.

(4) The Provider is free to duly adapt its services so as to reflect technical advances and/or a changed legal environment, which may occur at any time, provided this does not cause a shortfall in the agreed scope and quality of the contractually owed service. This includes outsourcing the services to another data center within the server location selected by the customer or – if the selection has been left up to the Provider – to some other server location operated by the Provider.

(5) If the agreed contractual service also includes the provision of dedicated servers, then the customer will only be entitled to use a device having the features listed in the product category ordered. The Provider will determine, at its free discretion, the specific hardware and the features of the product category ordered. Insofar as the customer is to be provided with one or more fixed IP addresses in this context, the Provider reserves the right to modify the IP address(es) made available to the customer if this becomes necessary for technical or legal reasons. The Provider will notify the customer about any such changes, and specifically about any modifications made to the IP address(es).

(6) The Provider is under obligation to back up data only if and insofar as this is expressly stipulated in the service description.

(7) If the Provider delivers additional services without charging a corresponding remuneration, then the customer has no claim to such services. The Provider is entitled to cease providing any such services previously provided at no charge, to modify them or to make them subject to charge following a reasonable period. The Provider will give the customer timely advance notice about any such cessation, modification or subjection to charge.

(8) The Provider's obligation to render technical support to the customer is limited to what has been contractually agreed. The Provider does not offer any further going, free-of-charge support services to the customer. The Provider does not provide any direct support to customers of the customer, unless specifically agreed otherwise in writing.

### **Clause 3: Duties of the customer**

(1) Upon conclusion of contract, the customer is to notify the Provider of the following data:

- Name and postal address, email address, and telephone number

of the customer, whether the customer qualifies as a consumer or a business; the VAT ID number (if existing); the name of the contact person (for a business).

- Name, postal address, email address, telephone and fax number of the technical contact person for each domain ordered.
- The name, postal address, email address, telephone and fax number of the administrative contact person for each domain ordered.
- Also, if the customer provides own name servers: the IP addresses of the primary and secondary name servers, including the names of said servers.

(2) The customer warrants that the data communicated to the Provider are correct and complete. This particularly applies to the declaration regarding the customer's status as a consumer or a business. The Provider hereby expressly advises that if this information is found to be incorrect, this could trigger legal consequences such as claims to compensation of damages and/or the exercise of special termination rights to which the Provider is entitled within the meaning of Clause 5 (3) of these GTCs.

(3) The customer enters into obligation to notify the Provider without undue delay of any changes in the data communicated, and to confirm said data within seven (7) days of receiving a legitimate and justified data-related enquiry from the Provider.

(4) The Provider reserves the right not to conclude contracts with Customers from the following countries and territories: North Korea, Syria, Sudan, Iran, Cuba, and the so called People's Republics of Donetsk and Luhansk and Crimea. The Customer undertakes not to use the Provider's services, neither directly nor indirectly, if the Customer is located in these countries or territories. Furthermore, the Customer undertakes not to distribute the Provider's services to third parties from the above-mentioned countries or territories.

The Provider expressly points out that a violation of this undertaking

could trigger legal consequences such as claims to compensation for damages and/or the exercise of special termination rights to which the Provider is entitled within the meaning of Clause 5 (3) of these GTCs.

The Provider reserves the right to adjust the list of countries and territories mentioned above at its own discretion as a result of changes in factual and political circumstances. The Provider will inform the affected customers of any adjustment with reasonable notice in advance. The Provider reserves the right for the subsequently included countries and territories not to conclude contracts with customers originating from there. The obligations and legal consequences stipulated in these GTCs, such as, in particular but not limited to, claims for compensation and the Provider's special termination rights, also apply to customers from countries and territories subsequently included.

(5) The Provider will perform an ongoing sanctions-list-screening based on the data communicated by the Customer to ensure that the Customer is not subject to applicable government sanctions. A Customer is affected by applicable government sanctions within the meaning of this provision if the Provider cannot reliably ensure that the Customer is not a natural person or company that is listed on so-called sanctions lists and is thus subject of applicable government sanctions.

In this context, the Provider reserves the right not to conclude contracts with customers affected by government sanctions.

The Provider expressly points out the Customer's obligation according to Clause 3 (2), (3) of these GTCs to communicate data completely and correctly as well as to update that data constantly. Furthermore, the Provider expressly points out that a violation of these undertakings could trigger legal consequences such as claims to compensation and/or the exercise of special termination rights to which the Provider is entitled within the meaning of Clause 5 (3) of these GTCs.

(6) The customer is under obligation to properly back up the relevant data on a regular basis. This also applies if the customer has agreed

special backup measures with the Provider.

## **Clause 4: Payment terms**

(1) The due dates for remuneration amounts will depend on the service in question and on the respective contractual term. If the customer selects a contractual term of one month for server services, then the total price will fall due immediately. If a contractual term of three, six or twelve months is selected, then the payments will follow an installment schedule specified during the ordering process. The first installment payment will fall due immediately. Each of the subsequent installment payments will fall due on the first of the respective month. In the case of domain and webspace packages, the total price will fall due immediately. If the customer's place of regular abode is located outside Germany, then payment for all the services of the Provider will fall due immediately.

(2) The customer may elect to render payment via bank transfer, credit card, PayPal or Skrill. For payments within the European Union, the customer may also make use of the SEPA direct-debit procedure. However, the direct-debit procedure may not be used for the first payment by a customer who has not previously ordered services via the Online Shop.

(3) Payment may be made in any of the currencies indicated in the Online Shop. The customer is not entitled to change the currency selected at commencement of contract during the contractual term.

(4) Except in the case of bank transfers, the amount owed will be debited against the selected means of payment on the applicable due date.

(5) The Provider will credit any monetary reimbursements owed towards the same account or means of payment that was used by the customer. if repayments of money would

violate applicable law, repayment is excluded. This is particularly the case if the customer originates from one of the countries and territories defined in § 3 (4) or if the customer is subject to applicable government sanctions as defined in § 3 (5).

(6) For purposes of SEPA direct-debit procedures, the customer consents to having the pre-notification period shortened to one day.

(7) The Provider may make its contractual service contingent on payment in full of the total price or, if instalment payments have been agreed, on payment of the first instalment.

(8) Insofar as the Provider has been commissioned by the customer to render services that go beyond the tasks and duties set out in the present GTCs and in the service description (e.g. software configurations, correction of bugs or problems not caused by the Provider, etc.) the Provider will be entitled to appropriate remuneration in keeping with its respectively current price list.

(9) The Provider is free to adapt its prices to market developments at any time. Any price increase will require consent from the customer. Such consent will be considered granted if the customer fails to lodge an objection against the price increase within four weeks of receiving notice of the change. The Provider undertakes to include a notice in the change notification that advises the customer on the legal consequences of failing to lodge an objection.

(10) In the event of a change in the statutory sales tax, respectively in its method of calculation, the Provider will be entitled to adjust its remuneration amounts accordingly.

(11) In the event of rejected direct debits or payment chargebacks for which the customer is responsible, the Provider will charge a penalty fee in accordance with its respectively current price list, unless the customer can demonstrate that the actual damage incurred was either non-existent or significantly lower than claimed.



(12) If the customer defaults on a payment, the Provider will have the right to suspend the contract for services until the amount in arrears has been paid. The suspension will also entitle the Provider to re-allocate any services that are cost-intensive for the Provider and that were in use up to that point by the defaulting customer. In this event, a loss of data cannot be ruled out, for example when a server is re-assigned to new customers. If a server, respectively webspace package, is re-activated, one-time fees pursuant to the respectively current price list will fall due.

(13) The Provider is entitled to request a SCHUFA report on the customer's address if and for as long as the customer defaults on a greater than negligible amount and if the customer has failed to notify the Provider of a change in address in breach of the customer's obligations to cooperate pursuant to Clause 3 of the present GTCs, or if justified doubts arise as to the customer's creditworthiness. In such cases, the customer will be charged the costs which the Provider incurs for each justifiably requested SCHUFA report on the customer's address. However, the customer will not be responsible for these costs, respectively for their full amount, if the customer can demonstrate that the actual damage incurred by the provider was non-existent or significantly lower than the cost amount claimed.

(14) Insofar as a contract concluded with the customer does not entail any obligation to make advance payment or insofar as the Provider renders other, for-charge services not covered by the foregoing provisions, then all remuneration amounts (plus sales tax at the statutory rate) will fall due without deduction fourteen (14) days after the invoice date.

## **Clause 5: Contractual term, withdrawal and termination**

(1) Insofar as no deviating provisions have been agreed, all contracts concluded between the customer and the Provider will have an initial term of either one, three, six or twelve months, depending on

which term the customer selects. Notwithstanding the foregoing, the initial term for the order of a domain or webspace package invariably will be 12 months. The initial term will commence once the access data for the selected service are made available. The contractual term will be extended by an additional period equivalent to the one selected for the initial term (“Extension Period”), so long as neither party has declared termination observing a notice period of four weeks until the end of the initial term or of an Extension Period. In the current month, notice of termination can be given at the end of the month at the earliest.

(2) The customer must declare termination by way of the customer-account login (<https://my.contabo.com>) or by means of a text-form declaration (e.g. via fax or email).

(3) Each party reserves the right to terminate for good cause (without having to observe a notice period). Good cause particularly is considered given if the customer, despite having received a payment reminder, remains in default of a cardinal payment obligation or in culpable breach of the provisions of these terms and conditions, especially but not limited to the obligations mentioned under Clauses 3, 4, 6, 7 and/or 9.

The Provider reserves the right of termination (without notice period) for cause, in particular for the following violations of Clause 3 of these GTCs:

- The Provider becomes aware or has reasonable suspicion that the Customer originates from one of the countries or territories mentioned in Clause 3 (3) of these GTCs and uses services of the Provider directly or indirectly;
- The Provider becomes aware or has reasonable suspicion that the Customer is reselling the Provider’s services to the countries and territories listed in Clause 3 (3) of these GTCs;
- The Provider becomes aware of or has reasonable suspicion that the Customer is subject to government sanctions as defined in

Clause 3 (4) of these GTCs. For the avoidance of doubt, the Parties agree that the Provider shall have the right to terminate the Agreement for cause in cases where the Customer (a) is already affected by governmental sanctions within the meaning of Clause 3 (4) of these GTCs at the time of the conclusion of the agreement but the Provider becomes aware of this later on or (b) gets affected by governmental sanctions within the meaning of Clause 3 (4) of these GTCs after the conclusion of the Agreement due to a change in the Customer's status or due to a change in the applicable governmental sanctions.

(4) Termination of the contracts concluded between the Provider and the customer will not have any effect on the registration of an internet domain or on the corresponding agreement concluded with the registration organization. Insofar as the customer wishes to terminate the registration agreement, the customer must make an express declaration to this effect vis-à-vis the Provider (see Clause 8).

(5) Consumers have the right to withdraw from their declared intention to enter into a contract within fourteen (14) days without having to state grounds. You will find additional details on your right of withdrawal here: <https://contabo.com/en/legal/right-of-withdrawal/>. The right of withdrawal does not apply for businesses.

## **Clause 6: Rights of third parties**

(1) The customer expressly warrants that the provision or publication of the contents which the customer uploads and/or of the websites which are created on the customer's behalf by the Provider in accordance with the customer's instructions do not contravene German law or any potentially deviating laws of the country in which the customer's registered seat is located, particularly including copyright laws, data protection laws, and the laws governing unfair competition. The customer furthermore warrants that the content provided or published does not violate public morals, does not

contain any pornographic or obscene materials, does not incite racial hatred, does not infringe upon human dignity, does not endanger children or adolescents, and is not insulting or discriminatory. This also applies to third party websites to which the customer installs a link, has a link installed or tolerates a link.

(2) If the Provider receives a complaint from a third party alleging that content on a customer's website infringes on the rights of said third party, and if the complaint is sufficiently specific to allow the alleged infringement to be confirmed solely on the basis of the third party's allegations— i.e. without a thorough legal and factual evaluation – then the Provider will forward the third-party complaint without undue delay to the customer, who is to provide a statement of position. The Provider will grant the customer a reasonable deadline for stating such position. If no statement of position is made within this deadline, the Provider will be entitled to assume that the third-party complaint has merit and will be entitled to delete the content giving rise to the complaint, block web space packages or server or to exclude them from access in any other appropriate way. If the customer calls the merits of the complaint into question in substantiated manner and if this gives rise to justified doubts, then the Provider will inform the third party accordingly and, if the Provider considers this appropriate, will request evidence to prove the alleged infringement of rights. If the third party fails to take a position in response or if the third party fails to produce any required evidence, then the Provider will assume that the third-party complaint is without merit. If the third party issues a statement of position which shows an infringement of its rights or if the third party provides evidence to such infringement, also taking account any exculpatory statements of the customer, then the Provider will be entitled to delete the content giving rise to the complaint, block web space packages or server or to exclude them from access in any other appropriate way. The customer's payment obligations remain unaffected in this case.

(3) The foregoing paragraphs apply accordingly to all other services offered by the Provider and that enable the customer to publish

data of whatever kind.

## **Clause 7: Industrial property rights; copyrights**

(1) It is expressly agreed that all rights to the services of the Provider rendered during the contractual term, namely software, know-how, trademarks or other protected rights will be retained in full by the Provider. In the course of the contractual term, the customer enjoys a non-exclusive, non-transferrable, non-sublicensable usage right to the contractually agreed services. This also applies in the event that customer-specific customizations have been made.

(2) Insofar as contractually agreed services can be used only subject to the industrial property rights or copyrights of third parties, the relevant third-party terms and conditions will invariably have supplemental effect. This also applies to open-source software, whose terms and conditions will be communicated to the customer by the Provider upon request.

## **Clause 8: Internet domains**

(1) Insofar the scope of the services of the Provider encompasses the procurement or administration of an internet domain, the Provider merely serves as intermediary vis-à-vis the respective organization responsible for issuing the domain (“Registration Organization”). From such contracts between the customer and the Registration Organization only the customer is entitled and obliged. In such case, all terms & conditions in place with the respective Registration Organization likewise will become a component part of the contract without the need to conclude a separate agreement.

(2) The Provider has no influence on the domain-issuing process. Thus, the Provider in no way is able to warrant that the domains requested on behalf of the customer and delegated to the customer will be free of third-party rights, that they will be unique, or

that they will exist in a sustained fashion. This also applies to subdomains issued under the Provider's domain.

(3) If the customer is called upon to surrender an internet domain by a third party because it allegedly infringes third-party rights, then the customer must notify the Provider without undue delay. In such case, the Provider will be entitled to surrender the internet domain on behalf of the customer if the demand for surrender is justified.

(4) If the customer wishes to terminate the registration agreement for a domain, the customer must notify the Provider in text form at least three months before the registration agreement's expiry. Failure to so give notice will mean that the registration agreement continues in effect in keeping with the regulations of the Registration Organization.

(5) If the contractual relationship with the Provider is terminated on whatever grounds, the customer will be under obligation to effect a domain changeover in a timely manner. If this is not done, the Provider will be free to transfer administration of the domain to the Registration Organization, assuming it agrees; alternatively, the Provider may ask the customer for a statement of position on the matter and, if no such statement is received, may release the domain.

## **Clause 9: Unauthorized forms of use**

(1) Unless otherwise agreed, the following types of content or the performance of the following actions are expressly prohibited:

- Spamming mails or webpages that are associated with any type of spamming;
- IRCd, the service for Internet Relay Chat,
- Any scripts and programs that could potentially impair and/or disrupt the function of the server or other services located within the Provider's network or on the internet.
- Any scripts and programs that could potentially extensively wear

and/or tear Provider's hardware or bandwidth.

The Provider is entitled, at its own discretion, to define certain regulations and limit values, the violation or exceeding of which generally assumes to be a violation of the above-mentioned principles. It is up to the customer to provide corresponding proof that a violation of the above mentioned principles does not exist despite the violation of certain regulations or exceeding of certain limit values.

(2) The following applies to webspace packages in particular: The customer will be under obligation to structure the internet website so as to prevent overloading of the server, e.g. by CGI scripts/PHPs scripts, which require extensive computing power and a disproportionate volume of working memory. "Overloading" means usage of the aforementioned resources that is so intensive as to cause a noticeable and significant disruption, or even breakdown, in the operations of a server of the Provider. The Provider will be entitled to limit correspondingly the resources for websites that do not fulfill the aforementioned requirements.

(3) If the customer breaches a provision of paragraphs 1 and/or 2 the Provider will be entitled to restrict the webspace package/the server in its use and/or immediately impose a block on the webspace package / the server, until the breach of paragraph 1 and/or 2 is remedied. This will also be possible if the webpages/servers of the customer clearly impair the functionality or accessibility of other webpages on the server (in the case of webspace packages) or of other servers within the Provider's network. The customer will be notified of the imposition of such a block.

(4) The Provider is entitled to immediately block any webspace packages and servers that are being used to operate the "TOR" service, insofar as the Provider has become aware that the server or package is being used unlawfully.

(5) In the event a justified block is imposed, responsibility for any

resulting breach of contractual obligations will lie not with the Provider but exclusively with the customer. The Provider's claim to receive remuneration will invariably continue in effect during the full remainder of the contractual term.

## **Clause 10: Server administration**

(1) The Provider grants the customer full and exclusive administration rights for the server made available to the customer. Only the customer has access to the server's individual administration password. The Provider has no access to the password and thus is unable to administer the customer's server. This means that the customer is solely and exclusively responsible for administering and securing the server at the customer's own risk and expense. It is incumbent on the customer to install the required security software and to remain regularly updated on newly discovered security gaps and to independently close such gaps. Installing the maintenance programs or other software that the Provider recommends or makes available will not release the customer from this obligation. The customer also is under obligation to configure the programs used by the customer such that they boot up automatically whenever the hardware or the operating system is started. Clause 2 paragraph 5 applies correspondingly.

(2) Insofar as necessary and reasonable, the customer will assist with configuration modifications, e.g. by re-inputting access data or through simple adaptations of the customer's systems.

## **Clause 11: Performance undertakings**

(1) The Provider will ensure that the physical connectivity of the object storage infrastructure, webspace packages, dedicated servers, virtual dedicated server and VPS is available at an annual average rate of 95%. This will not include periods in which the servers are unavailable online due to technical reasons or other problems that lie outside the



Provider's sphere of influence (force majeure, culpable conduct on the part of third parties or the customer, etc.), nor periods in which the Provider performs necessary maintenance work after giving timely advance notice.

(2) The servers and storage infrastructure located in the Provider's data centers are connected to the internet via a complex network infrastructure. The data traffic is channeled through various active and passive network components (e.g. routers, switches), each of which permit only a fixed maximum data-throughput rate. This means that data-traffic capacities for individual servers or parts of the storage infrastructure may be limited at certain points and may not conform to the notional maximum bandwidth at the switch port. Unless expressly agreed otherwise, the Provider cannot guarantee the level/volume of the bandwidth that will actually be available for an individual server or parts of the storage infrastructure, but will instead make bandwidth available in accordance with the technical performance capacity of the data center while making due allowance for the performance obligations owed to other customers.

(3) Customers are able to use the Provider's products and services for a large and non-determinable number of different applications while deploying various software programs for this purpose at their free discretion. This gives rise to many millions of possible configurations for the servers. The multiplicity of these possibilities makes it impossible for the Provider to guarantee the product's and service's serviceability or compatibility for specific forms of usage.

## **Clause 12: Data protection**

(1) The Provider renders its services in compliance with EU Regulation 2016/679 (General Data Protection Regulation), the German Federal Data Protection Act (*Bundesdatenschutzgesetz, BDSG*), the data-protection laws of the German Federal States as well as the German Telemedia Act (*Telemediengesetz, TMG*) and the German

Telecommunications-Telemedia-Data-Protection Act (*Telekommunikations-Telemedien-Datenschutz-Gesetz, TTDSG*).

(2) The Provider is free to process personal data relating to the customer without any further-reaching consent, insofar as this is required to establish and implement the contract or for billing purposes. For additional details, please see the Provider's Data Privacy Policy: <https://contabo.com/en/legal/privacy/>

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(3) Insofar as the customer also wishes to process personal data in conjunction with the services of the Provider, the customer will remain the sole "controller" within the meaning of data-protection law. The Provider will process the personal data as a "processor" acting for a controller within the meaning of Article 28 of the General Data Protection Regulation (GDPR), insofar as an agreement on data processing on behalf a controller is concluded. The customer is hereby advised that the Provider essentially has no way of determining whether or not the customer is even processing the personal data of third parties, or which categories of personal data of data subjects, if any, are being processed, or the manner or purpose of such processing. Thus, the customer is under obligation to give the Provider the required information regarding such data processing. The Provider will offer the customer the opportunity, via the customer portal, to conclude an "agreement on data processing on behalf of a controller," if appropriate supplemented by EU Standard Contractual Clauses, if the server location selected is in a state that is not a member of the European Union. So long as the customer has not sent the Provider, via the customer portal, an "agreement on data processing on behalf of a controller" containing the necessary information, the Provider will assume that the customer is not processing any third-party personal data in conjunction with the Provider's services. In such case, the Provider will not take any measures on the basis of data protection law.

(4) The Provider hereby expressly advises the customer that, given the current state of technology, it is impossible to fully guarantee data

protection for data transfers performed via open networks like the internet. The customer is hereby advised that, depending on the ordered hosting service, the Provider has the technical means to at any time inspect the data that the customer has stored on the server, insofar as the customer does not use a secure data-encryption system. Other users of the internet may also be able, under certain circumstances, to circumvent network security in unauthorized fashion and to control message traffic, insofar as the customer does not transfer data in a securely encrypted manner.

### **Clause 13: Liability, limitation of liability, force majeure**

(1) The Provider will be liable in keeping with the applicable statutory provisions for any damage caused by willful or grossly negligent conduct on the part of the Provider or of its vicarious agents.

(2) In cases of simple negligence, the Provider will be liable for the following:

(a) Injury to life, limb or health; and

(b) Damage resulting from a breach of a cardinal contractual obligation, but only in an amount limited to the damage that was foreseeable and typical for the type of contract involved. Cardinal contractual obligations are ones the fulfillment of which is indispensable to the proper fulfillment of a contract and which can normally be expected in good faith by the customer.

(3) The limitations of liability set forth under paragraph 2 above will not apply insofar as the Provider has fraudulently concealed a defect or has assumed a guarantee for claims under the Produkthaftungsgesetz (ProdHaftG, Product Liability Act) or for breaches against the General Data Protection Regulation (GDPR, Article 82).

(4) The regulations of Section 44a of the Telekommunikationsgesetz (TKG, German Telemedia Act) will remain unaffected, insofar as the matter falls within the Act's scope of application.

(5) If the Provider is prevented from rendering its contractual services due to force majeure (i.e. events that lie beyond the control of either party, such as wars, uprisings, (terrorist) attacks, epidemics, natural disasters or strikes), then the Provider will be released from its service obligations for the duration of the force majeure and the customer will be released from the obligation to render counter-performance. The contractual term will be extended by the period of interruption caused by the force majeure. If the force majeure is expected to last longer than three months, then either party may terminate the contract. /

## **Clause 14: Release from liability**

For purposes of the relationship with the Provider, the customer undertakes to release the Provider from liability of any third-party claims resulting from unlawful actions by the customer or due to substantive errors in the information provided by the customer. This applies particularly, but not limited to, to violations of copyright law, data-protection law, and competition law as well as to violations of the obligations set forth in Clauses 3, 6, 7, and 8 of the present GTCs. The Provider has no obligation to review the customer's internet sites for potential violations of the law.

## **Clause 15: Applicable law, place of jurisdiction**

(1) The laws of the Federal Republic of Germany apply; the UN Convention on the International Sale of Goods (CISG) expressly is precluded. If the customer is a consumer with a place of regular abode in a Member State of the European Union, then any mandatorily applicable regulations of that Member State will remain unaffected.

(2) If the customer is a merchant within the meaning of the Handelsgesetzbuch (HGB, German Commercial Code), if the customer is a legal entity under public law or if the customer is a Sondervermögen (special assets under public law), then the exclusive place of jurisdiction for any disputes arising from the contractual relationship will be the Provider's registered seat. The same applies accordingly if the customer is a business. Any statutory provisions that take precedence, particularly those governing exclusive spheres of responsibility, will remain unaffected.

## **Clause 16: Final provisions**

(1) All declarations on the part of the Provider may be forwarded to the customer electronically. This also applies to statements of account relevant to the contractual relationship.

(2) The customer may not offset own claims against the Provider unless these have been acknowledged or finally and conclusively affirmed by a court of law.

(3) The Provider has the right to name the customer as a reference customer and to list the customer as such, whereby this will not entail any obligation to pay remuneration to the customer.

(4) If one or more provisions of the present GTCs should be or become ineffective or unenforceable, then this will not affect the enforceability of the remaining provisions. In such case, the parties will agree on an amendment that corresponds to the purpose that was actually intended, also in economic terms. The same applies in the event of the present GTCs having remained silent on any given matter.

(5) The European Commission offers a platform for the out-of-court dispute resolution (ODR platform), which is available under <https://www.ec.europa.eu/consumers/odr>. We are neither obligated nor willing to participate in the dispute-resolution procedure.

## **Clause 17: License terms for Microsoft products**

(1) Insofar as the customer has selected a software product of the Microsoft company (e.g. Windows servers, SQL servers etc.) for installation on the customer's server, the provisions of the so-called "Microsoft Service Provider Use Rights" (SPUR) as well as the so-called "End User License Terms" (EULT) – which apply to the Provider as part of the Microsoft "Service Provider License Agreement" – will have supplemental applicability insofar as the customer could influence their application, respectively could violate them by the use of the software. The customer agrees to comply with the corresponding provisions and will be responsible for ensuring their correct application. These provisions may restrict or prevent the serviceability on the Provider's servers of Microsoft product licenses that the customer has obtained elsewhere.

(2) If a software product from the Microsoft company is ordered by the customer, then the Provider will make a corresponding license available on the basis of a Service Provider License Agreement so as to permit the customer to use the product on a monthly basis. This will restrict the permission to use the installed product, e.g. a delivered operating system, in certain aspects. In particular, it will prohibit the use of Microsoft products for which additional or other licenses are required pursuant to the SPUR or EULT. The customer enters into obligation to comply with these restrictions independently and assumes liability towards both the Provider and Microsoft for any wrongful usage.

Here you will find the relevant terms: <https://contabo.com/en/legal/microsoft-terms/>