

GENERAL TERMS AND CONDITIONS OF BUSINESS

of NETWAYS Managed Services GmbH

ARTICLE 1 AREA OF APPLICATION

1. Unless otherwise agreed in writing, deliveries and services of NETWAYS Managed Services GmbH (hereinafter referred to as "NETWAYS") take place exclusively according to the following Terms and Conditions of Business and the provisions of the relevant applicable price list.
2. General terms and conditions of business of the customer have no application even if the customer refers to the same in connection with its order or assignment and NETWAYS makes no objection to the same. Commitments, ancillary agreements, amendments or supplements of the General Terms and Conditions of Business must be made in writing. This also applies to any change in the requirement for the written form.

ARTICLE 2 DELIVERIES AND SERVICES

1. Quotations of NETWAYS are non-binding and without obligation. A contract comes into effect only with an order confirmation from NETWAYS, at the latest upon acceptance by the customer of the delivery and/or service.
2. Unless otherwise agreed in writing, the content and scope of the services owed by NETWAYS is defined in the order confirmation from NETWAYS.
3. Reasonable part-deliveries and/or part-services are admissible and can be invoiced separately.
4. NETWAYS reserves the right to make product modifications, especially in the course of further developments, provided that the agreed performance data are achieved and are reasonable for the customer.
5. Delivery dates are not binding unless they are expressly agreed as binding in writing. NETWAYS is in default only if NETWAYS is at fault for the delay, performance is due and the customer unsuccessfully sets NETWAYS a reasonable subsequent deadline in writing of at least 14 days.
6. Delivery dates are extended by a reasonable length of time in the event of disruptions due to force majeure and other occurrences for which NETWAYS is not responsible, such as disruptions of supply to NETWAYS by its own suppliers, strikes, lockouts, business disruptions etc. NETWAYS reserves the right to withdraw from the contract if the delay in performance caused by such occurrences lasts for longer than six weeks.

ARTICLE 3 EXAMINATION AND PASSING OF THE RISK

1. The customer must examine the delivered goods without delay after receipt for completeness, conformity with the delivery documents and freedom from defects. If a written complaint is not made within four days of the delivery date, the goods are deemed to have been delivered in full and in proper condition, unless the defect is of such a nature that it was not able to be detected during the examination.
2. The risk of damage or loss of the contractual product passes to the customer at the time of handover to the customer or to a transport company.
3. If goods delivered by a transport company exhibit visible damage or missing quantities, the customer must note the same in writing on the confirmation of receipt of the transport company at the time of delivery. The note must clearly and adequately describe the damage or missing quantity (notice of damage as per section 438 German Commercial Code (HGB)).

ARTICLE 4 PRICES AND TERMS OF PAYMENT

1. Prices are shown in the order confirmation from NETWAYS; otherwise, in the absence of any other written agreement, prices are based on the current price list at the time of acceptance of the order. The prices for the services provided by NETWAYS Web Services are based on the information at nws.netways.de.
2. The prices are subject to the statutory rate of value added tax at the registered office of NETWAYS. The prices include the usual trade packaging for the products to be delivered. Other services related to shipment, in particular flat rates for freight, environmental and handling charges, will be invoiced to the customer on the basis of the relevant applicable price list.
3. NETWAYS is entitled to increase the remuneration for contracts for the performance of recurring obligations for the services offered by it for the first time six months after conclusion of the contract. The increase is to be adapted to the increase in costs incurred by the supplier due to general price developments. The increase takes effect one month after its notification. The customer can give extraordinary notice of termination for the date of taking effect. NETWAYS draws the customer's attention to this right of termination.

4. Payments are due without deduction 10 days after issue of the invoice. The invoice is sent with the delivery or by post. If the customer exceeds the periods allowed for payment, interest is owed on the purchase price from the date of payment becoming due and without any further reminder being sent at a rate of 9% p.a. above the relevant applicable base rate of the European Central Bank. This does not affect the right to claim damages that exceed this amount.
5. The fee payable by the customer for hosting and managed-service contracts is payable net monthly without the deduction of discount. Exceptions to this are explicitly defined in the quotation or under nws.netways.de.
6. The fee payable by the customer for support contracts is payable net annually in advance without the deduction of discount. Exceptions to this are explicitly defined in the quotation.
7. The costs for services which are used in excess of agreed flat-rate services are based on the NETWAYS prices in application at the time of using the services.
8. NETWAYS is entitled, despite any provisions of the customer to the contrary, to set off payments initially against the latter's older debts. If costs and interest have been incurred due to default, NETWAYS is entitled to take payments in account firstly against the costs, then against the interest and lastly against the main services.
9. The customer can set-off only against undisputed or legally established claims. The customer may only exercise a right of retention for counter-claims concerning the same contractual relationship. In the event of continuing business relations, each individual purchase order is deemed to be a separate contractual relationship.
10. If the terms of payment are not adhered to without good reason, NETWAYS may, at its own discretion, require cash payment at each stage of delivery, payment in advance or security to be furnished. All outstanding receivables, including those for which different terms of payment were agreed, become due for payment immediately.
11. The customer may cancel dates agreed with NETWAYS no later than 1 week before the date.

ARTICLE 5 DATA PROCESSING

1. In general, we process the personal data of our users only to the extent necessary for providing our services. The processing of the personal data of our users is done on a regular basis only after consent of the user. An exception applies in cases in which prior obtainment of consent is not possible for factual reasons and the processing of data is permitted by legal provisions.
2. If a person's consent for the processing of personal data is obtained, article 6(1)(a) of the EU privacy regulation (GDPR) is applied as the legal basis. In the processing of personal data, which is necessary for the performance of a contract, of which the contracting party is the person concerned, article 6(1)(b) GDPR is applied as the legal basis. This also applies to processing measures that are required to perform pre-contractual measures. As far as the processing of personal data is required to fulfill a legal obligation our company is subject to, article 6(1)(c) GDPR is applied as the legal basis.
3. In the event that the essential interests of the person concerned or of another individual may require the processing of personal data, article 6(1)(d) GDPR serves as the legal basis. If the processing is necessary to protect a legitimate interest of our company or of a third party and if the interests, rights and freedoms of the person concerned do not outweigh the former interest, article 6(1)(f) GDPR serves as the legal basis for processing.

ARTICLE 6 CONTRACTUAL DURATION AND TERMINATION

1. Unless otherwise agreed contracts may be terminated by either party with a period of notice of 3 months to the end of a calendar quarter. Unless otherwise agreed, the minimum term of the contract is 1 year; for contracts for hosting and managed services 2 years. If the contract is not terminated with due notice, it is renewed by one further year.
2. The contract terms and notice periods for the services of the NETWAYS Web Services result from the respective information at nws.netways.de.
3. In the event of major breaches of contractual duties by a contractual party, the other contractual party is entitled to immediate termination. There is good cause giving both parties the right of termination in particular if insolvency proceedings are initiated for a contractual party or such proceedings are declined due to lack of assets or measures of compulsory execution are commended.
4. In the event of termination of the contract, both parties will return the documents handed over to the other party at the time of signing the contract or verify that these documents have duly been destroyed. Existing data stocks must be physically deleted.

5. Effects of Termination: (a) all rights and licenses granted to the Customer by NETWAYS shall cease and all end user accounts and stored data will be erased; (b) the customer may request a reasonable period of time prior to termination for exporting its stored data and NETWAYS may charge the customer for such period at the then applicable prices; and (c) NETWAYS will, upon receipt of an appropriate request by an administrator and within a reasonable commercial timeframe, erase all end user accounts and stored data related to the customer account.

ARTICLE 7 RESERVATION OF TITLE

1. The products delivered remain in the ownership of NETWAYS until the fulfilment of all, including future, receivables under the contract and beyond arising from the overall business relations with the customer.
2. The customer is entitled to resell the reserved-title goods with reservation of title in the due course of business. The customer hereby assigns as security to NETWAYS its future receivables arising from the resale of the reserved-title goods until the payment in full of all claims. NETWAYS may disclose this assignment to secure its claims to payment at all times. If NETWAYS so requires, the customer will notify NETWAYS of the names and addresses of the purchasers concerned and the type and scope of its claims against them.
3. The customer may not pledge or transfer the reserved-title goods as security. In the event of the reserved-title goods being attached by third parties, the customer will draw the attention of the latter to the ownership of NETWAYS and notify NETWAYS without delay in writing.
4. Any linking, mixing, processing or recomposition of the reserved-title goods takes place exclusively for NETWAYS. In this case, NETWAYS acquires a co-ownership share in the finished goods or new thing produced which is equal to the value of the reserved-title goods in relation to the value of the finished goods or new product.
5. In the event of default in payment, also arising from different and future deliveries or services of NETWAYS to the customer, or in the event of indications of a deterioration of the financial position of the customer, NETWAYS may enter the business premises of the customer to assert its reserved title and take the reserved-title goods into its possession or require the customer to assign its claims to surrender against its purchasers.
6. The repossession or attachment of the reserved-title goods by NETWAYS is not deemed to be withdrawal from the contract if the customer is a registered merchant.
7. At the request of the customer, NETWAYS will release securities to the extent to which their value exceeds the value of the receivables to be secured by more than 10%.
8. Items delivered for test and demonstration purposes remain in the ownership of NETWAYS. The customer is obliged to ensure proper storage and may use the items for more than just test and demonstration purposes only on the basis of a separate agreement with NETWAYS. Any costs for use during and after termination of the test period will be shown separately in the quotation.

ARTICLE 8 RIGHT OF LIEN

1. If the customer brings items in its ownership into the business premises of NETWAYS, NETWAYS has a right of lien to such items for receivables of NETWAYS against the customer. The right of lien is not extinguished until all receivables arising from this contract have been satisfied in full at the date of termination of the contractual relations.
2. If the customer has any other kind of right to a thing that is brought into the premises of NETWAYS, in particular an expectant right, then it assigns this right already now to NETWAYS as security for receivables due from the customer to NETWAYS.

ARTICLE 9 WARRANTY

1. NETWAYS guarantees that the contractual products have no major defects and are suitable for the purpose required under the contract or are suitable for the usual purpose. The parties to the contract are aware that, according to the state of the art, it is impossible to exclude errors in the software under all application conditions.
2. NETWAYS gives no guarantee that the software functions meet the requirements of the customer or that the contractual products in the selection made by the customer properly interact.

3. Claims based on material defects are not available in the event of a merely slight deviation from the agreed characteristic or a merely slight impairment of serviceability or if the product is modified by the customer or third parties, is installed, maintained, repaired or used in improper manner or is exposed to environmental conditions which do not meet the installation requirements of the manufacturer. Liability for material defects exists only if the cause of the material defect was present already at the time of passing of the risk.
4. Unless otherwise agreed in the individual case, claims based on material defects become time-barred after 12 months and the limitation period begins with the time of delivery. Claims based on material defects may be transferred only with the consent of NETWAYS. NETWAYS passes on extended guarantee and warranty undertakings of the manufacturer in full to the customer without accepting any liability of its own.
5. In the event of a material defect, NETWAYS initially makes subsequent improvement or replacement delivery at its discretion. Replaced parts pass into the ownership of NETWAYS. If NETWAYS is unable to undertake subsequent improvement or replacement delivery or if this is associated with disproportionately high costs or if NETWAYS does not eliminate defects within a reasonable extended period of time set in writing, the customer is entitled to reduce the purchase price or to withdraw from the contract of sale. If NETWAYS delivers a replacement product as subsequent performance, the customer must surrender the defective product and pay compensation for use benefits. In the event of withdrawal, the customer is credited with an amount which results from the purchase price less the value of the use benefits. To calculate the use advantages, the period of use of the item by the purchaser in relation to the probable total use period is used.
6. If examination based on a notification of defects shows that there is no material defect, the costs for the examination and repair will be charged at the relevant applicable charge rates of NETWAYS.
7. For a claim against the warranty, repair orders subject to charge and returns of all kind, the relevant applicable handling guidelines and the relevant latest price list apply.

ARTICLE 10 RIGHTS OF USE FOR SOFTWARE DEVELOPMENTS

NETWAYS grants the customer an unlimited, irrevocable right to use software developments, including documentation and user instructions. The right of use applies to all known types of use, including editing and duplication. All components of the software covered by open source licenses are subject to the respective license and the resulting rights.

ARTICLE 11 LIABILITY

1. NETWAYS is liable for intent and gross negligence in accordance with the statutory regulations. NETWAYS is liable for slight negligence only in the event of breach of an essential contractual duty (cardinal duty) and for damages arising from harm to life, physical injury or harm to health. NETWAYS is liable only for foreseeable damages which can typically be expected. This does not affect the area of application of section 44a Telecommunications Act (Telekommunikationsgesetz (TKG)).
2. To the extent to which the liability of NETWAYS is excluded or limited, this also applies in respect of the personal liability of its employees, representatives and agents.
3. The liability for any loss of data or programs for which NETWAYS is responsible is limited to the damages which have or would have occurred if the customer has or had backed up its data within reasonable periods of time.
6. Liability in the event of slight negligence is limited to the cover amounts of the third-party liability and product-liability insurance taken out by NETWAYS. NETWAYS is prepared to notify the customer of the relevant cover sum in the individual case.

ARTICLE 12 DATA BACKUP

1. Unless expressly included in the service by NETWAYS, the customer itself is responsible for making backup copies of its own data. This includes, in particular, the backup of the data stocks to be maintained by NETWAYS. If NETWAYS makes a data backup for its own safeguard, this does not give rise to any guarantee declaration or legal right of the customer to proper performance. Such a backup prepared by ourselves will be deleted without delay after completion of the work.
2. Unless NETWAYS performs administration services for the customer, the customer must perform a data backup before each access operation on the systems of the customer notified by NETWAYS. The customer is responsible for damage caused by the lack of such data backup. This can be avoided only if data backup is included in the duties of NETWAYS.

ARTICLE 13 EU VAT ON IMPORTS

A customer with registered office outside Germany must comply with VAT rules for imports of the European Union, in particular notify NETWAYS of the VAT ID no. without necessitating a request and willingly provide all necessary information. In the event of failure to comply, the customer must refund the expenses incurred by NETWAYS as a result.

ARTICLE 14 GENERAL PROVISIONS

1. The customer is not entitled to assign its claims under the contract.
2. Unless otherwise agreed, NETWAYS may refer to the business relations with the customer within the framework of references and use these for advertising purposes.
3. The parties mutually undertake not to poach, employ or otherwise use the services as employee or under a contract for work and services of any permanent employees or freelance staff members of the other contractual party and also not to do so for a period of up to 2 years after termination of the contractual relations. In the event of contravention, each contractual party undertakes to pay a contractual penalty to the other contractual party in the amount of EUR 15,000 for each case of contravention. The contractual penalty does not become payable if the other party to the contract consents in writing to such a contractual relationship.
4. Exclusive place of jurisdiction for all disputes arising from this contract, if the customer is a registered merchant or legal entity under public law or public-law special fund or has no place of jurisdiction within Germany, is Nuremberg. NETWAYS is also entitled to bring an action against the customer at the general place of jurisdiction of the latter. The contracts concluded by NETWAYS on the basis of these General Terms and Conditions of Business, and any claims derived from the same regardless of their type, are governed exclusively by the law of the Federal Republic of Germany to the exclusion of the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).
5. According to the provisions of the GDPR, the attention of the customer is drawn to the fact that its company data or personal data are processed using EDP for the handling of the business relations.
6. Should any provisions of these General Terms and Conditions and/or of the contract be or become invalid, this does not affect the validity of the remaining provisions. Instead of any invalid provision, a substitute provision applies that corresponds or at least comes closest to the purpose of the agreement such as the parties would have agreed to achieve the same economic purpose if they had been aware of the invalidity of the provision. The same applies to any omissions.
7. NETWAYS reserves the right to review these provisions at regular intervals and, if required by statute, to adapt the same.

SPECIAL TERMS AND CONDITIONS FOR NWS, HOSTING AND MANAGED SERVICES

ARTICLE 1 GENERAL PROVISIONS

These Special Terms and Conditions apply in addition to the General Terms and Conditions of Business of NETWAYS and, in case of doubt, take precedence over the same.

ARTICLE 2 AVAILABILITY

1. NETWAYS ensures connection to the next Internet node by means of a bandwidth corresponding to the state of the art so that the highest possible data transfer speed for users is achieved.
2. Availability and response times are regulated separately in a service level agreement. Individual agreements are excluded from this.

ARTICLE 3 DUTIES OF THE CUSTOMER

1. If faults should occur during the use of the server and the services, the customer will notify NETWAYS of these faults without delay.
2. The customer is obliged to keep the access data secret from unauthorised third parties. In particular, user name and password should be stored in such a way that access to these data by unauthorised third parties is impossible so as to exclude abuse of the access by third parties. The customer undertakes to notify NETWAYS without delay as soon as it becomes aware that the password is known to unauthorised third parties.
3. Persons who use the storage space that is the subject matter of this contract with the knowledge and intention of the customer are not deemed to be unauthorised third parties.
4. The customer gives an assurance that it will not store any content in the contractual storage space or upload content to the Internet whose provision, publication or use breaches criminal law, copyrights, trademark and other denomination rights or privacy rights. The customer promises to pay a contractual penalty of EUR 5,000.01 for each case of contravention of the aforesaid obligation. Moreover, a breach by the customer of the aforesaid obligations entitles NETWAYS to terminate extraordinarily for cause.
5. If the customer breaches this duty, it is obliged to refrain from all further breaches, to compensate for the damages incurred and still to be incurred and to hold NETWAYS harmless and indemnify NETWAYS against claims for damages of third parties resulting from the breach. The obligation to indemnify includes the obligation to indemnify NETWAYS in full for legal defence fees (court and legal expenses, etc.). This does not affect other claims of NETWAYS, in particular for the disabling of the contents and for extraordinary termination.

ARTICLE 4 TEMPORARY DISABLING

1. NETWAYS is entitled to temporarily interrupt the connection of the website to the Internet (disabling the website) if there is probable cause to suspect illegal contents of the website as defined in Article 3, para .4 by reason of a warning from the alleged injured party or investigations by State authorities, unless the warning is obviously unfounded.
2. Disabling must, where technically possible and reasonable, be limited to the allegedly infringing contents. The customer must be notified of the disablement giving the reasons without delay and be asked to remove the allegedly illegal contents or to show and, if necessary prove, their lawfulness.
3. The disablement must be lifted as soon as the suspicion is rebutted or, however, NETWAYS had the possibility of terminating the contract extraordinarily for cause by reason of the conduct of the customer.

ARTICLE 5 GRANTING OF RIGHTS

1. The contents of the website are protected for the customer in Germany under Copyright Law (Urheberrechtsgesetz (UrhRG)) (as work, collection, database work, computer program, photograph, database, via linked neighbouring rights or as rights derived from the rights mentioned), Art Copyright Law (Kunsturhebergesetz (KUG)), Trademark Act (Markengesetz (MarkG)) or other protected rights ("protected contents").
2. The customer grants NETWAYS the non-transferable and non-exclusive right limited to the term of the contract and limited to the location of the relevant server (for back-up copies: the place of their storage) to reproduce the protected contents for the purpose of this contract on the server, on another server used for mirroring and on a sufficient number of back-up copies.
3. The customer grants NETWAYS the non-transferable and non-exclusive worldwide right limited to the term of the contract to make the protected contents accessible to the public via the network maintained by NETWAY and the Internet connected to the same in such a way that members of the public have access to the website from a place and at a time that they select individually in each case and can store these data by downloading them from the NETWAYS server. If, after termination of this contract, protected contents of third parties are kept in cache memories, this storage is no longer attributed to NETWAYS.

ARTICLE 6 LIABILITY FOR DEFECTS

In the event of providing storage space on servers and storage systems, NETWAYS excludes all no-fault liability for defects ab initio. Later objections based on obvious or concealed defects are therefore excluded

ARTICLE 7 SUPPORT SERVICES

1. If support services were agreed, NETWAYS is obliged to respond to a support enquiry of the customer within the contractually agreed response time by telephone or by e-mail and to process the same ("Service"). The scope of the services to be performed by NETWAYS in individual cases is exhaustively agreed in the Terms and Conditions of Contract for Support Services and Outsourcing.
2. Exceptions to this are explicitly defined in the quotation.

TERMS AND CONDITIONS OF CONTRACT FOR MYENGINEER, SUPPORT SERVICES AND OUTSOURCING

ARTICLE 1 GENERAL PROVISIONS

These Special Terms and Conditions apply in addition to the General Terms and Conditions of Business of NETWAYS and, in case of doubt, take precedence over the same.

ARTICLE 2 OBLIGATIONS OF THE CLIENT

1. As far as necessary, the customer must provide NETWAYS with all access data for the system to be maintained. These data must be stipulated in accordance with the details in the order form or the quotation.
2. The customer must always perform a data backup before the start of maintenance work by NETWAYS as the customer is aware that a loss of data must be expected because of the maintenance work. NETWAYS will not undertake any data backup via remote maintenance of its own accord.

ARTICLE 3 SUPPORT/OUTSOURCING INQUIRY

The customer can send an inquiry to NETWAYS by e-mail to service@netways.de. No other communications channels are provided under these terms and conditions or are included in the service under a NETWAYS support contract, in particular the agreed response times, time frames or fees. Exceptions to this are explicitly defined in the quotation.

ARTICLE 4 SCOPE OF THE CONTRACTUAL SERVICE WITH SUPPORT CONTRACTS

1. NETWAYS is obliged to respond to an enquiry of the customer within the contractually agreed response time by telephone or by e-mail and to process the same ("Service"). The scope of the service to be performed by NETWAYS in individual cases is exhaustively agreed below.
2. Inquiries must always be sent by e-mail to service@netways.de. Exceptions to this are explicitly defined in the quotation.
3. After sending an inquiry by e-mail, the customer receives confirmation of receipt by e-mail with the ticket number sent to the sender address given in the inquiry e-mail.
4. Within the agreed response time, NETWAYS will contact the customer under the e-mail address given in order to confirm the start of processing, to obtain other details of relevance for support or to suggest a solution.
5. No guarantee is given or responsibility assumed for the solvability of a problem.
6. The notification of a solution or the notification that the support inquiry is not able to be solved need not take place within the contractually agreed response time. The customer has no right to adherence to a period for solution or restoration.
7. The service of NETWAYS is limited to support in the event of specific problems which arise during maintenance of the serviceability of the software supported and the systems indicated by the customer.
8. The contractual services of NETWAYS are further limited to the support for specific problems with the services, programs and packages which arise from the performance specifications of the support contract.
9. Also excepted from the service of NETWAYS is all programming work which goes beyond the degree necessary for processing the problem and system maintenance and also the development of complex IT concepts, feasibility studies and similar (consulting). Also excluded is the exclusive development and provision of specific software adjustments (patches) for the customer.
10. NETWAYS is entitled to provide the support services for the customer directly using its own employees or indirectly using persons assigned by NETWAYS.

ARTICLE 5 SUPPORT LEVEL AND RESPONSE TIME

Support levels and response times are regulated separately in a service level agreement. Individual agreements are excluded from this.

ARTICLE 6 SUPPORT/OUTSOURCING CONTINGENT

If a support or outsourcing contingent is agreed in the contract, the following provisions apply:

1. For the processing of the inquiries of the customer, a contingent for a calendar period to which the maximum processing period is limited is defined in the specifications of the contract.
2. If the contingent for the current period has been used up, further services during this period will be charged additionally at the agreed hourly rate.
3. Unused units of time are forfeited without compensation at the end of the current period and cannot be transferred to the next period or refunded or set-off.
4. Inquiries within the framework of contingents are not subject to any response times.

ARTICLE 7 PERFORMANCE DEADLINE

1. Adherence to the agreed response time presupposes the timely receipt of all documents to be supplied by the customer and adherence by the customer to the agreed terms of payment and other obligations. If these requirements are not met in good time, the periods are reasonably extended; this does not apply if NETWAYS is responsible for the delay.
2. If the non-adherence to periods is due to force majeure, e.g. mobilisation, war, riot or similar events, e.g. strike, lockout, official intervention, scarcity of energy and raw materials, transport bottlenecks, obstructions to business without fault e.g. by failure of the electricity supply, disruption of the Internet, damage by fire or water or electronic damage, failure of telecommunications networks/computers or damage to machinery, the periods are extended accordingly.

ARTICLE 8 SHUTDOWN IN AN EMERGENCY

In the event of an impairment of the security of the infrastructure in the NETWAYS network by e.g. increased volumes of spam or viruses or through disproportionately high traffic on a customer system, NETWAYS can temporarily disconnect the customer system affected from the network even without prior notice. The customer will be informed of this measure without delay. In collaboration with the customer, NETWAYS will attempt to eliminate this fault as soon as possible. If the customer has caused the fault, the customer must pay the costs of eliminating the fault and the downtimes will not be taken into account against the agreed availability.