

## General Terms and Conditions Continum AG

Last update: April 5<sup>th</sup>, 2018

### § 1 General, scope of application

(1) The Continum AG (hereafter referred to as Continum) provides its performances and services on the basis of these terms and conditions as well as on the basis of the regulations of the German Telemedia Act (Telemediengesetzes (TMG)) and of the regulations of the German Telecommunications Act (Telekommunikationsgesetz (TKG)). They also apply to all future business relationships, even if they are not separately agreed upon.

(2) Deviations of these General Terms and Conditions are only effective if confirmed in writing by Continum.

(3) Continum may transfer its rights and obligations of this contract to one or more third parties (transfer of agreement). In the event that the contract is transferred, the customer shall be entitled to terminate the contract without notice.

(4) Continum shall have the right, with consent of the customer, to modify the content of these terms and conditions, provided that the modification is reasonable for the customer after due consideration of the interests of Continum. The alteration shall be deemed to have been approved if the customer does not object to the alteration within one month after receipt of the notification of change. Continum shall be obliged to inform the customer with the notification of change about the consequences of a failure to object.

### § 2 Conclusion of the agreement, reservation of proprietary rights

(1) The contract governing the use of Continum services is deemed valid on the countersigning of the corresponding framework contract by Continum.

(2) As far as Continum uses the help of third parties to provide its offered services, these third parties shall not be considered contractual partners of the customer. Moreover, a contractual relationship between the customers of Continum does not exist based upon mutual use of services.

(3) If the parties do not require a formal acceptance or if the acceptance date required by one of the parties will not be met for reasons the customer is responsible the contractual performance of Continum is considered to be accepted once the customer uses it.

(4) Should the customer receive goods within the scope of the contractual relationship, the goods delivered shall remain the property of Continum until full payment. If the customer defaults on payment, Continum may, without prejudice to any other rights, recover the delivered goods in order to secure its rights if this has been announced to the customer and an appropriate respite has been set.

### § 3 Term of contract, termination

(1) Contracts become effective after signing the master contract and are concluded for a term of at least one year, beginning with the starting date of the contractual obligation.

(2) Contracts may be terminated upon expiry of the agreed term at the earliest. Written notice of termination by registered mail must be received by Continum at least three months before expiration of the term. Receipt at Continum determines the timeliness of the termination.

(3) Unless termination of the contract has been declared according to § (2) the contract is automatically renewed for another year.

(4) In case of a modification of list prices, Continum reserves the right to adjust the fees correspondingly. The price adjustment made

by Continum becomes effective three months following that during which the customer has been informed.

(5) If the customer objects to the increase of price within four weeks following the announcement and if no agreement can be reached, both parties are authorized to terminate the contract by giving six weeks written notice following the end of the month before the increase enters into force. Provided that the customer does not use the right to object or if notice is not given in due time, the announced price increase becomes effective.

(6) The right to immediate termination by cause remains unaffected. Important reasons authorizing Continum to immediate termination would be if

(a) the customer uses fraudulently the services of Continum, if the use of the services constitutes a breach of criminal law or if there is a reasonable cause for suspicion,

(b) the customer uses the infrastructure provided by Continum to distribute data or offers with pornographic or other contents endangering juveniles or the liberties of freedom of the Federal Republic of Germany or its Constitution,

(c) the customer violates the regulations of the German Telemedia Act (Telemediengesetz TMG) and the Broadcasting and Telemedia Agreement (Staatsvertrag für Rundfunk und Telemedien (RStV)) or other legal commitments or if the customer abuses the provided infrastructure in any other way,

(d) the customer offends against legal prohibitions, in particular in case of violation of copyrights, competition regulations, names or data protection,

(e) insolvency proceedings are initiated against the customer's assets or as the case may be against a personally liable partner or a corresponding application is filed or if such proceedings are dismissed for lack of assets or if the customer submitted an affidavit according to § 899 sqq. Code of Civil Procedure (ZPO).

(7) The notice of termination must be given in writing. The notice of termination can be limited to single service the customer made use of.

(8) If applicable, the customer shall return transferred equipment or have it collected by Continum on termination of the contract. The customer allows Continum to remove all equipment and devices belonging to Continum from all sites.

### § 4 Subject-matter of the contract, scope of services

(1) Continum commits to supply the services defined by the master contract.

(2) Continum is authorized to engage the services of third parties.

(3) If other suppliers are necessary to provide customers with services, the provision of these services will significantly be influenced by the delivery times of the other suppliers. Insofar as this preliminary work is not rendered properly, Continum is authorized to extend delivery times correspondingly or to withdraw from the contract. Continum will immediately inform the customer as far as possible and reasonable under the circumstances.

(4) In case of disruptions caused by incorrect use of services by the customer and/or by unauthorized use, Continuum is entitled to exclude the customer from using the services until the malfunction will be corrected.

(5) Continuum reserves the right to extend services and implement improvements if they serve technical progress, seem necessary to prevent abuse or if Continuum is obligated to do this due to legal regulations.

6) Continuum will only be responsible for the accessibility of the services insofar as the inability to use the services can be traced back to the part of the system provided by Continuum or to the web server itself. In particular, this will not apply to cases where errors occur in technical operations provoked by malfunctions or reasons that have not been caused by Continuum and/or cannot be influenced by Continuum. Continuum will make every effort to restore the smooth running of the technical processes as far as possible.

7) Access failures within the normal range that are within the contractually agreed availability do not violate the contractual obligation of Continuum. Continuum will make every effort to immediately eliminate faults of its technical equipment within the existing technical and operational possibilities. If service interruptions are necessary for preventive and necessary maintenance work, the customer will be informed as soon as they are known.

## **§ 5 Obligations of the customer**

(1) The customer immediately informs Continuum of any modification of name (entity), residence or business location, billing address, bank details or legal form.

(2) The customer is obliged to use the services of Continuum appropriately and in accordance with the contract. In particular, the obligations of the customer are as follows:

(a) the customer shall refrain from abusing the access facilities of the services of Continuum and from all unlawful acts;

(b) when disseminating or offering data of any kind via the Continuum infrastructure, the customer shall observe morals, refrain from disparaging third parties as well as from distributing data with pornographic or other contents endangering juveniles or the liberties of freedom of the Federal Republic of Germany or its Constitution;

(c) when disseminating or offering data of any kind via the Continuum infrastructure, the customer shall not violate any law, in particular in case of violation of copyrights, competition regulations, names or data protection;

(d) the customer shall accommodate and follow the data security;

(e) the customer shall inform Continuum immediately about obvious deficiencies and damages (fault report) and take measures to allow to determine deficiencies or damages and their causes or to make it easier to solve the problem and hasten the process;

(f) after a fault report, the customer shall reimburse Continuum for the expenses incurred by checking the malfunction and insofar as the inspection reveals that the customer has caused the malfunction;

(g) the customer will make the agreed payments in due time according to the currently valid price list plus VAT;

(h) the customer will compensate Continuum for material and staff costs as well as for expenses incurred in case of a contractual infringement.

(3) If the customer violates the obligations set in the paragraphs 2 (a) and (b) of these terms and conditions, Continuum is authorized to terminate the contractual relationship with immediate effect. This also applies for all other cases except paragraph 2 (f) of these

terms and conditions after an ineffective warning. For the cases of paragraph 2 (f) § 9 of these terms and conditions will be valid.

(4) In the context of necessary cooperation, the customer agrees to support Continuum in such a way that the contractual performance can be provided completely, in due time and in the necessary quality. For this purpose, the customer will give the appropriate assistance as follows:

(a) The customer shall support Continuum in obtaining all required permissions that have to be obtained and are necessary for the provision of the performance by guaranteeing the compliance with conditions and obligations attached to these permissions, as far as the customer is affected.

(b) The customer will provide Continuum with all information necessary for the service provision.

(c) Insofar as this is necessary for the execution of the contract, the customer allows the employees or vicarious agents of Continuum to access the power system equipment provided by Continuum.

(d) The customer provides - free of charge - the room areas in its buildings in which Continuum systems will be installed and set up as well as all supplementary services including electricity supply. The customer ensures the constant operational availability of these rooms and agrees to only provide suitable premises for the systems.

(e) When using all offered services, the customer shall accommodate the principles underlying the security of a system. The customer is responsible for the responsible and safe storage of its user ID and password. Insofar as co-users are granted access, the customer is responsible for the compliance with applicable rules or laws and regulations.

(f) In case of a suspected misuse of its user ID/password, the customer will promptly inform Continuum correspondingly. The customer shall immediately change the password upon request of Continuum.

(g) Furthermore, the customer shall – namely by ensuring approved technical standards – make sure that the network infrastructure or parts thereof are not overburdened by excessive use.

(5) The customer will grant the reproduction rights and other authorizations concerning its data and contents that are necessary for Continuum to implement the contractual relationship.

## **§ 6 Use by third parties**

(1) The customer shall only pass on or resell the services to be rendered by Continuum to third parties with the express written consent of Continuum. Enterprises that are affiliated with the customer according to § 15 AktG (stock corporation act) are not regarded as third parties.

(2) The customer shall only be allowed to transfer the rights and obligations of this contract to third parties following the prior written consent of Continuum. As defined in paragraph 1 an exception is made for affiliated companies.

(3) If the utilization by third parties is authorized, the customer has to duly instruct them for the utilization of the services. If the utilization by third parties is not authorized, this shall not constitute a claim by the customer for reduction, reimbursement or compensation.

(4) The customer will also have to pay the fees that are payable within the framework of the access and usage facilities through authorized or unauthorized usage of Continuum services by third parties.

(5) Continuum services that require a password are generally excluded from the use by third parties.

## § 7 Terms of payment

(1) Continum will invoice the customer for services agreed upon in the framework contract and annex(es) according to the fees and conditions named in the annex(es) plus VAT. Invoices are issued monthly, every six months or annually at the start of the accounting period.

(2) The agreed fixed fees have to be paid in advance and will be due after receiving the invoice.

(3) Other fees, in particular usage-based, variable fees (transport charges) shall be due after performance of the service.

(4) Continum will provide the customer with the corresponding utilization certificates in a suitable – and if available – electronic form.

(5) The invoice amount has to be credited at least 10 days after the receipt of the invoice to the bank account given in the invoice. If payment is delayed Continum is entitled to levy a handling charge.

(6) As far as provided for a received service, billing data as well as information on settling will be available online to the customer. The customer accepts this type of invoicing as sufficient.

(7) Any objections against the rendering of invoice by Continum have to be submitted in writing to Continum within 6 weeks after the amount has been debited. Statutory entitlements of the customer in the event of justified objections following expiry of the deadline shall remain unaffected, insofar as Continum will be able to verify the objections on the basis of applicable data protection legislation.

## § 8 Force majeure

Insofar as Continum guarantees availabilities of its services or enters service level agreements, Continum will be exempted from these obligations in case of catastrophes ("force majeure"). All conditions that are independent of the will and influence of the contractual parties are regarded as force majeure, such as war and other military conflicts, mobilization, civil unrest, terror attacks, natural catastrophes, strikes, lock-outs and other labor unrests, government measures, decisions on the part of the authorities, blockades, confiscation, embargos and other similar circumstances that are unforeseeable, serious and not the fault of the contractual parties and that occur after entering the service agreement with the customer.

## § 9 Right of set-off and retention, delay in performance

(1) The customer may set off against claims of Continum only with claims that are uncontested or recognized by a court of law as well as with counterclaims. The parties may only assert a right of retention for counterclaims of a concluded contract.

(2) Delays in delivery and performance caused by force majeure are not the responsibility of Continum even if binding dates and deadlines have been agreed on. They entitle Continum to postpone the delivery or performance by the duration of such disruption plus a reasonable start-up period.

(3) Continum is obligated to eliminate disruptions within the framework of technical and operational possibilities and according to the regulations of the performance descriptions.

(4) Apart from that, claims of the customer due to delays in performance are limited to the extent of liability defined in § 11 of these terms and conditions.

## § 10 Delay of payment

(1) If the customer defaults on payment, while reserving the right to enforce higher claims for compensation, Continum is entitled to demand default interest in the amount of 5 percent above the respective basic interest rate of the European Central Bank. Every

reminder will be charged with an amount of 20 EUR. The customer is entitled to prove that actual damage is lower.

(2) Continum can terminate the contractual relationship without notice and is entitled to withdraw services in case the default of payment extends over more than two months and Continum sent a reminder and made reference to the legal consequences. In this case, the customer shall still be required to pay the monthly fees until the termination date.

(3) Continum reserves the right to enforce further claims arising due to default in payment.

## § 11 Confidentiality, data protection

(1) Unless otherwise expressly agreed in writing, the information provided to Continum shall not be deemed to be confidential.

(2) Pursuant to the Federal Data Protection Act (Bundesdatenschutzgesetz (BDSG)) and the German Telemedia Act (Telemediengesetz (TMG)) the customer is hereby informed that Continum collects its address data in a machine-readable form and processes electronically all necessary tasks arising from the contract.

(3) Insofar as Continum uses third parties to provide the contractually agreed services, Continum shall be entitled to disclose the subscriber data if this is necessary to render the service.

(4) Continum guarantees that all persons commissioned by Continum to handle this agreement know and observe the current version of the relevant data protection regulations. The customer is not entitled to provide certain data and information that is not destined for it or third parties by using the services of Continum.

(5) Insofar as this is provided in internationally approved technical standards and the customer does not disagree, information about the customer will be made accessible to third parties.

## § 12 Liability and limits of liability

(1) Unless agreed otherwise, Continum shall be liable for the breach of obligations of the contractual relationships concluded on the basis of these general terms and conditions, in case of intent and culpable negligence as well as for damages caused by Continum arising from injury to life, body or health, without restrictions. In the event of slight negligence, Continum shall only be liable insofar as an obligation is violated, the observance of which is of particular importance for achieving the object of the contract (cardinal duty). But in this case limited to typical contractual and foreseeable damages. Beyond that, Continum is liable for claims under the Product Liability Act or other mandatory legal liability.

(2) Continum is not liable for the information provided by its services, nor for its completeness, correctness or being up-to-date, nor that it is exempt from the rights of third parties or the customer acts unlawfully by transmitting the information or providing it for transmission.

(3) The customer is liable for all consequences and disadvantages for Continum or third parties that are the result of abusive or illegal use of the services provided by Continum or as a result of the customer failing to fulfill its other obligations, in particular communication duties.

(4) The contractual partners cannot be held responsible for the nonperformance of contractual obligations if this nonperformance is caused by events beyond the control of the contractual partners.

(5) Continum runs the technical infrastructure in compliance with the latest technical standards. Claims against Continum in case the guarantees and response times defined in the Service Level Agreements are not observed will only arise if Continum is exclusively responsible for them. This will not be the case if the cause is beyond the control of Continum: e.g. DDOS attacks (Distributed Denial of Service), virus attacks, external routing problems of other carriers or disruptions in the international data networks as well as

blackouts resulting from incorrect installation, use or modification of systems and/or software by the customer and/or its agents.

### § 13 Responsibility of the contract parties for contents

(1) Insofar as Continuum organizes the access for the use of the Internet for the customer, the submitted contents and data will not be checked by Continuum, in particular not as to whether they suggest illegal activity or contain malware (e.g. viruses). Unless expressly identified, all contents that are retrieved by the customer via this access represent third-party contents as defined by the Telemedia Act (TMG). The customer is solely responsible to ensure that third-party trademark rights and the rights to a name (in particular in case of registration and domain names) will not be violated. The customer indemnifies Continuum from all related third-party claims.

(2) If Continuum provides the customer with storage space, the customer will be responsible for the data and content stored on it. All contents represent third-party contents as defined by the Telemedia Act (TMG). The customer indemnifies Continuum from all related third-party claims.

(3) The customer shall be obliged to supply a provider identification as defined in the TMG (Telemedia Act) for services it is providing for use or to which it is providing the access to use.

(4) The customer shall be obliged to clearly refer to the defined rights of use and property rights. The corresponding indications must be obvious for other customers and must be disclosed before the access to proprietary information of that kind.

(5) Continuum shall not accept responsibility arising from contractual relationships between the customer and its contractual partners resulting from the use of Continuum products.

(6) If claims are made on Continuum by third parties or government agencies due to illegal actions or actions contrary to the contract, the customer shall be obliged to release Continuum from all claims and to bear the costs caused by this illegal activity and the corresponding remedial action. In particular, this includes the necessary legal defense costs of Continuum.

### § 14 Domain registration, SSL certificates

(1) On procuring and/or maintaining domains Continuum is only active as a mediator between the customer and the organization that is responsible for the registration of domains. Only the customer is entitled and bound by contracts with such organizations. Continuum has no influence on the registration of domains. Continuum does not guarantee that the domains applied for by the customer will be allocated and/or that allocated domains are free of third-party rights or will exist forever. The termination of the contract with Continuum does not affect the contractual relationship between the customer and the respective organization for the registration of domains.

(2) The rule in § 13 paragraph 1 of these general terms and conditions also applies, if the customer receives a SSL certificate from Continuum.

(3) The customer guarantees the domain it applied for will not infringe the rights of third parties. The customer releases Continuum, its employees and agents, the corresponding organization of domain assignment as well as any other persons involved in the registration process from claims for damages of third parties as well as from all expenditures that are based on the unlawful use of an Internet domain by the customer or with approval of the customer.

(4) Continuum is authorized to freely offer the domain after the effective contract termination. Consequently, the customer loses all rights of the domain.

(5) If claims against Continuum are asserted by third parties because of actual or alleged law violation according to § 5 paragraph 2 (a) and (b) of these general terms and conditions, Continuum is entitled to immediately transfer the domain of the customer into the custody of the domain registrar and to disable the Internet presences of the customer.

### § 15 Court of jurisdiction, place of fulfillment

(1) Contracts concluded on the basis of these general terms and conditions are exclusively subject to the laws of the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sales of Goods (CISG).

(2) Exclusive place of jurisdiction for all claims based on and due to contracts concluded on the basis of these general terms and conditions, including non-payment of checks and bills as well as all conflicts between the parties regarding the completion, handling and termination of the contract is the registered office of the Continuum AG insofar as the customer is a merchant or a legal person under public law or a special asset under public law or if the customer has no general legal venue in Germany or if its residence or habitual residence is not known at the time the action is filed. The place of performance for all liabilities from and on the basis of agreements based on these general terms and conditions is exclusively Freiburg im Breisgau.

### § 16 Final provisions

(1) The legal successors of the customers shall also be bound to the obligations from contracts concluded on the basis of these general terms and conditions.

(2) For business correspondence in technical and contractual matters the customer is obliged to contact the address given below insofar as no other or additional contact has been defined in the contract for technical questions:

Continuum AG  
Bismarckallee 7b-d  
D-79098 Freiburg  
Tel.: +49 761 217111 0  
Fax: +49 761 217111 99  
E-mail: info@continuum.net

(3) If a provision of this agreement is or will become ineffective, the validity of the remaining provisions will not be affected. A substitute provision will rather take effect instead of the invalid provision which corresponds or at least comes close to the purpose of the agreement, which the parties would have agreed upon to achieve the same economic result if they had known the invalidity of the provision. The same applies for incompleteness of regulations.

(1)