



General Terms and Conditions Datacenter One GmbH

A. General Stipulations

1 General

1.1 These General Terms and Conditions (hereinafter referred to as "GTC") apply to all datacenter and telecommunications services provided by Datacenter One GmbH or its associated companies in accordance with Sections 15 et seq. German Stock Corporation Act (*Aktiengesetz*) (hereinafter uniformly referred to as "Provider") provided to the Customer during the term of the contract. The Customer's general terms and conditions or other deviating terms and conditions of the parties are excluded, even if their validity is referred to in an order or the acceptance of an order.

1.2 The contractual relationship between the parties shall be governed by the following legal principles in the order of precedence stated below:

1.2.1 commissioning based on the offer

1.2.2 these GTC

1.2.3 product-specific service description(s)

1.2.4 product-specific Service Level Agreement(s) ("SLA")

1.2.5 legal regulations

In case of doubt or contradictions between the above mentioned legal bases, the document with the higher ranking shall prevail.

1.3 If the Customer is an entrepreneur, businessman, legal entity under public law or a public special fund, these GTC shall also apply to all future contracts in the above sense, even if they are not expressly included again.

1.4 The Provider has the right to change these GTC, as far as essential regulations of the contractual relationship are not affected and this is necessary to adapt to developments which were not foreseeable at the time of the conclusion of the contract and whose non-consideration would noticeably disturb the balance of the contractual relationship. Material provisions are in particular those concerning the type and scope of the contractually agreed services and the term including the provisions on termination. Furthermore, adjustments and amendments to these GTC may be made to the extent that this is necessary to eliminate difficulties in the execution of the contract due to gaps in the regulations that have arisen after the conclusion of the contract. This can be the case in particular if the jurisdiction changes and one or more clauses of these GTC are affected.

1.5 The Provider has the right to change the product-specific service descriptions and the product-specific SLA if this is necessary for good reason, if the Customer is objectively not in a worse position (e.g. retention or

improvement of functionalities) compared to the product-specific service description or the product-specific SLA included at the time of the conclusion of the contract and if the Customer does not deviate from it significantly. A valid reason exists, if there are technical innovations on the market for the services owed or if third parties from whom the Provider obtains the necessary preliminary services for the provision of their services change their range of services.

1.6 The Provider has the right to increase the agreed prices to compensate for increased costs in the non-regulated area. This is the case, for example, if third parties, from whom the Provider obtains necessary preliminary services for the provision of the service owed according to the respective product-specific service description, increase their prices.

1.7 The Customer shall be notified in writing of any intended changes to these GTC, the service descriptions and price increases in accordance with Sections 1.4, 1.5 and 1.6 at least six (6) weeks before they take effect. The Customer shall be entitled to a special right of termination at the time the changes take effect. If the Customer does not give written notice of termination within six (6) weeks after receipt of the notification of change, the changes shall become an integral part of the contract at the time they take effect. The Customer will be specifically informed of this consequence in the notification of change.

2 Conclusion of the Contract

2.1 Unless otherwise specified in these GTC, the contract for the respective service is concluded when a binding offer from the Customer has been accepted by the Provider by means of an order confirmation. The offer is considered accepted by the Provider at the latest when the services are made available by the Provider.

2.2 The Provider is not obliged to accept an offer. The Provider can make the acceptance of the offer in particular dependent on the achievement of a security.

3 Rights and Duties of the Provider

3.1 The services to be supplied by the Provider are specified in the contract as well as in the respectively agreed product-specific service descriptions and the respectively agreed product-specific SLAs.

3.2 The right to select the personnel entrusted with the execution of the services (including the Customer's contact persons) as well as the right to issue instructions to such personnel is exclusively reserved to the Provider. Unless otherwise stated in the respective applicable product-specific service description, the Provider shall be free to select the work equipment required for the performance of the contractual services.

3.3 The Provider is entitled to supply partial services, if and to the extent these can be used independently.



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3.4 Dates and deadlines are only binding if the Provider has expressly confirmed them in writing and the Customer has fulfilled all agreed cooperation obligations in a timely manner.

3.5 Unless otherwise agreed, all facilities supplied by the Provider remain the property of the Provider.

4 Cooperation of the Customer

The Customer is in particular obliged to provide the following cooperative services:

4.1 The Customer shall provide a contact person who is authorized to make decisions which are necessary within the scope of providing the respective agreed service.

4.2 If the Customer is authorized by the Provider to access servers or similar passwords by the Provider for access to servers or similar, these are to be kept secret and only passed on to a limited group of persons to the extent absolutely necessary. The Customer will change the standard passwords provided by the Provider immediately after their transmission and thereafter at regular intervals, provided that a change of these passwords by the Customer is possible. If the Customer becomes aware that unauthorized third parties know or could know the passwords, the Customer shall inform the Provider immediately.

4.3 The Customer shall supply the Provider with all information necessary for the provision of the agreed services immediately upon request. The Customer shall supply the Provider with information which the Customer recognizes or must recognize as being of importance for the provision of the services, even without being requested to do so. This applies in particular to changes made by the Customer to his technical systems, insofar as these can have an effect on the services to be provided.

4.4 The Customer shall inform the Provider immediately of any circumstances that are likely to impair the datacenter operation or other facilities of the Provider or other customers.

4.5 Further obligations to cooperate may result from the special conditions of Sections B and C as well as the product-specific service description and the product-specific SLA. The Customer provides all duties of cooperation for the Provider free of charge. Obligations to cooperate are primary contractual obligations (*Hauptleistungspflichten*) of the Customer.

5 Fees

5.1 The Customer is obliged to pay the fees agreed in the contract. All agreed fees are subject to the statutory VAT at the time of the provision of the services.

5.2 One-off, monthly and usage-based fees shall be charged upon acceptance or provision (see the applicable special conditions of Sections B and C) or, at the latest, upon first

use of the contractual services; this shall also apply to partial services.

5.3 Monthly fees independent of usage, minimum purchase obligations and any agreed advance payments for power consumption must be paid by the Customer in advance on a calendar month basis. For the timeliness of the payments it does not depend on the dispatch, but on the credit note of the money.

5.4 Unless a flat-rate remuneration has been agreed (in which case Section 5.3 applies), usage-dependent fees shall be calculated on the basis of the consumption values measured by the Provider and invoiced monthly in arrears. Invoices for use-dependent fees shall become due fourteen (14) days after receipt of the invoice.

5.5 The agreed remuneration for time and material applies to working days (Monday to Friday, except for German national holidays, "Working Days"), in each case between 8 a.m. and 6 p.m.; travel times to the Customer and back are charged at 50% as working time. If the Customer wishes the services to be performed outside of these times, the agreed fees shall be increased as follows:

5.5.1 on Working Days between 6 p.m. and 8 a.m. by 50%,

5.5.2 Saturdays, Sundays and public holidays by 100%.

Services in terms of time and material will be invoiced proportionately in 15-minute-increments and monthly in arrears. Invoices for services based on time and material are due fourteen (14) days after receipt of the invoice

6 Term and Termination

6.1 The respective contract has a minimum contract term of 24 months, unless otherwise agreed - in particular according offer sent to the Customer. If the respective Contract is not terminated with a notice period of three (3) months to the end of the minimum contract term, its term shall be extended by a further twelve (12) months. Unless the respective contract is terminated with a notice period of three (3) months to the end of this extension, it shall be extended by further twelve (12) month intervals unless it is terminated with the same notice period to the end of the respective twelve (12) month interval. The term shall commence on the first day of the month following the complete acceptance or provision (see the applicable special terms of Sections B and C) of all services ordered.

6.2 The right of the parties to extraordinary termination for good cause remains unaffected. A good cause for extraordinary termination by the Provider after the setting and unsuccessful expiration of a reasonable period of time determined for remedy shall exist in particular if the Customer is in default of payment with payment obligations for more than thirty (30) days.

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6.3 An important reason for extraordinary termination by the Provider without provision and unsuccessful expiration of a time limit set for remedy is in particular given,

6.3.1 if the Customer is in default of payment for two (2) consecutive months of the remuneration owed or of a not insignificant part thereof or, in a period extending over more than two (2) months, of a remuneration corresponding to the sum of two (2) average monthly invoices. The average amount of the invoices received by the Customer in the last six (6) months prior to the occurrence of the initial default or, if invoices have not yet been issued for a period of six (6) months, the average amount of the invoices issued prior to the occurrence of the initial default shall be decisive for the calculation of the average amount; or

6.3.2 if attacks are repeatedly carried out on the Customer's infrastructure with the aim of sabotage, impairment or interruption of this infrastructure (in particular so-called Denial of Service (DoS) attacks), the Provider has taken measures in accordance with Section 7 and further impairments of the Provider's network, its upstream suppliers or its Customers are to be feared.

6.4 Good cause for extraordinary termination by both parties without determination and unsuccessful expiration of a period of time set for remedy is in particular given,

6.4.1 if the respective other party is insolvent or over-indebted or

6.4.2 insolvency proceedings are opened against the assets of the other party, or are rejected or discontinued due to the lack of assets to cover the costs of these proceedings, or

6.4.3 the other party has, voluntarily or involuntarily, initiated proceedings for its dissolution, liquidation or winding up.

6.5 Terminations must be made in writing.

6.6 If the contractual relationship is terminated prematurely by extraordinary termination and if this termination is based on the Customer's conduct in breach of the contract, the Customer shall be obliged to pay 50% of the contractual remuneration which would have been payable by the Customer up to the time at which an ordinary termination would have terminated the contractual relationship. In this case, the total amount of the remuneration still to be paid shall become due with the effectiveness of the notice of termination. The parties are free to prove that the Provider has incurred lower or higher damages due to the premature termination.

7 Deactivation in Case of Imminent Danger

The Provider is entitled to temporarily deactivate a connection provided by the Provider to the Customer in the

event of danger to the infrastructure of the Provider, its upstream suppliers and/or its other Customers. A deactivation of the connection of the Customer by the Provider is especially allowed, if

- (a) attacks are carried out on the Customer's infrastructure with the aim of sabotaging, impairing or interrupting this infrastructure (in particular so-called Denial of Service (DoS) attacks) or
- (b) the Customer does not comply with agreed standards/parameters (in particular optical parameters, see the respective agreed product-specific service description) of the services provided

and this leads to impairments of the network of the Provider, his sub-suppliers or his customers. The Provider shall inform the Customer of such a measure without delay, whereby the Customer shall not be informed in advance if this is unreasonable for the Provider in view of the imminent danger. The Provider shall revoke the deactivation as soon as the danger is removed. The Customer is obliged to pay the agreed remuneration despite the temporary deactivation of his connection.

8 Default

8.1 The Provider shall remedy faults, to the extent that they are within his area of responsibility, in accordance with the provisions of the respective agreed product-specific SLA. If no SLA is applicable to a fault, the fault will be remedied within a reasonable period of time.

8.2 The Customer is obligated to immediately notify the Provider of any recognizable defects or malfunctions and to support the Provider to a reasonable extent in the removal of such defects or malfunctions. For all service requests, the Customer must describe the problem in as much detail and reproducibly as possible. In doing so, any aids provided by the Provider - such as checklists - shall be used.

8.3 All maintenance and repair work on the services and technical equipment provided to the Customer as well as on the Provider's own facilities may only be carried out by the Provider or by third parties commissioned by the Provider.

8.4 If the examination of a fault report shows that there was no fault in the Provider's technical systems, the Customer shall reimburse the Provider for the expenses incurred for the examination of the fault if the Customer could have reasonably recognized during the troubleshooting that the fault was not caused by the Provider or that there was no fault at all. The Provider is entitled to charge the Customer an additional hourly rate of EUR 150 plus expenses in case of such fault reports.



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9 Special Conditions for the Sale of Goods

- 9.1** Insofar as the parties agree on services which are subject to sales contracts, i.e. in particular the sale of hardware or software ("Goods"), the following provisions shall apply.
- 9.2** The product descriptions as well as the manufacturer's terms and conditions of use deposited with the manufacturers for the respective Goods are an integral part of the contract. If required, these can be provided by the Provider. The actual start of the term of any maintenance contracts that may be ordered is determined by the activation of manufacturer maintenance/software maintenance or in accordance with the conditions deposited with the manufacturer for the Goods. The agreed fees cover the provision of the ordered Goods as well as the possibly listed manufacturer's services (warranty and support). Unless otherwise agreed, no further operational services are provided by the Provider. Furthermore, it is pointed out that the manufacturer prohibits multiple use of the software and prohibits the transfer of the rights of use.
- 9.3** The Provider reserves the right of ownership of the Goods until the complete receipt of all payments from the purchase contract. In the event of the sale of software, the Provider also reserves the right to grant rights of use in accordance with the applicable manufacturer's terms and conditions of use until the agreed purchase price has been paid in full. Until payment of the purchase price, rights of use are only granted provisionally and freely revocable.
- 9.4** In the event of seizure or other interventions by third parties, the Customer must inform the third party of the property of the Provider and notify the Provider immediately in writing so that the Provider can take legal action in accordance with Section 771 German Code of Civil Procedure (ZPO). Insofar as the third party is not in a position to reimburse the Provider for the judicial and extrajudicial costs of an action pursuant to Section 771 German Code of Civil Procedure (ZPO), the Customer shall be liable for the loss incurred by the Provider.
- 9.5** The Customer is entitled to resell the Goods in the ordinary course of business, but hereby irrevocably assigns to the Provider all claims in the amount of the final invoice amount (including VAT) accruing to the Customer from the resale against his buyer or third parties, irrespective of whether the purchased Goods have been resold without or after processing. The Customer remains authorized to collect this claim even after the assignment. The authority of the Provider to collect the claim himself remains unaffected. However, the Provider undertakes not to collect the claim as long as the Customer meets his payment obligations from the proceeds received, does not default in payment and in particular no application for the opening of composition or insolvency proceedings has been made or payments have been suspended. However, if this is the case, the Provider can demand that the Customer informs the Provider of the assigned claims

and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

- 9.6** The Provider undertakes to release the securities to which the Provider is entitled at the request of the Customer to the extent that the realizable value of the securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released is incumbent on the Provider.
- 9.7** If hardware was defective at the time of the transfer of risk, the Provider may, at its own discretion, satisfy the Customer's claim for subsequent performance by repairing the hardware ("Remedy of Defects") or by delivering defect-free hardware ("Subsequent Delivery"). The Customer shall grant the Provider the necessary time and opportunity to carry out the supplementary performance. In the event of Subsequent Delivery, Customer shall ensure that the defective hardware is surrendered to the Provider upon delivery of the defect-free hardware by Customer.
- 9.8** If software was defective at the time of the transfer of risk, the Provider may, at its own discretion, fulfill the claim for subsequent performance by eliminating the defect or providing new, defect-free software. In the case of software, the Remedy of Defects may also consist of the Provider showing the Customer reasonable possibilities of avoiding the effects of the defect (workaround). The Customer shall grant the Provider the necessary time and opportunity to carry out the subsequent performance.
- 9.9** There are no claims for insignificant defects.
- 9.10** Warranty claims shall become statute-barred twelve (12) months after the passing of risk. The claims under Section 10 shall remain unaffected.
- 9.11** Unless otherwise regulated above, the Customer is entitled to claims for defects in accordance with the statutory provisions.

10 Liability

- 10.1** The Provider is liable without limitation in cases of explicit and written assumption of a guarantee or a procurement risk, in the case of property damage or financial losses caused intentionally or by gross negligence, as well as for intentional or negligent injury to life, body or health.
- 10.2** Liability under the Product Liability Act (*Produkthaftungsgesetz*) remains unaffected.
- 10.3** In the event of a slightly negligent breach of duty, the Provider shall only be liable for such essential contractual obligations whose fulfilment is essential for the proper execution of the contract, whose breach endangers the achievement of the purpose of the contract and on whose compliance the Customer regularly relies (so-called cardinal obligations, e.g. the culpable breach of the availabilities regulated in the respective agreed product-specific SLA). In this case, however, the Provider's liability is



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limited to the damage foreseeable at the time of conclusion of the contract and typical for the contract.

10.4 In the event of liability pursuant to Section 10.3, the Provider's liability shall also be limited to EUR 30,000 per case of damage. For several cases of damage in one contractual year, liability is limited to a total of EUR 60,000.

10.5 If the preparation of data backups is not a service which the Provider has expressly assumed, the Provider shall be liable for the loss of or damage to data and programs and their restoration only to the extent that such loss could not have been avoided by appropriate precautionary measures, in particular the preparation of backup copies of all data and programs at an appropriate distance and to an extent appropriate to the risk.

10.6 The strict liability of the Provider for defects that already exist at the time of the conclusion of the contract (Section 536a German Civil Code (*BGB*)) is excluded. The liability regulations according to Sections 10.1 to 10.4 remain unaffected.

10.7 Insofar as liability is effectively excluded or limited in accordance with the above paragraphs, this also applies to the personal liability of the employees, other staff, organs, representatives and vicarious agents of the Provider.

11 Liability under the Telecommunications Act

If and to the extent that the Provider provides publicly available telecommunication services within the meaning of the German Telecommunications Act (*TKG*), the Provider shall be liable, in deviation from Section 10, for financial losses in the event of a negligent or grossly negligent breach of duty in the provision of such telecommunication services, limited in amount to a maximum of EUR 12,500 per Customer, whereby liability shall be limited to a maximum of EUR 10 million per damaging event, irrespective of the type of damage to the entirety of the injured parties. If the amounts to be paid to several Customers due to the same event and due to a breach of duty in the provision of publicly available telecommunications services within the meaning of the German Telecommunications Act (*TKG*) exceed the maximum limit, the damages shall be reduced in the ratio of the sum of all claims for damages to the maximum limit. This limitation of liability shall not apply to claims for compensation for damages resulting from delay in the payment of compensation.

12 Limitation of Actions

Customer's claims shall become statute-barred twelve (12) months after knowledge, but no later than 36 months after the date on which the relevant service was provided or the relevant breach of duty was committed. The statutory limitation rules for intentional and grossly negligent acts, for claims based on intentional or negligent injury to life, body or health, based on fraudulent

misrepresentation and for claims under the Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.

13 Force Majeure

13.1 Neither of the parties is responsible for delays in delivery and performance due to force majeure events.

13.2 Events of force majeure are in particular strikes, lawful internal company industrial action, war, terrorist attacks, riots, forces of nature, fire, sabotage attacks by third parties (such as denial of service attacks) or the loss of permits through no fault of the respective party. The parties shall inform each other about the occurrence of force majeure events.

14 Non-solicitation

Employees of the Provider who have been working for the Customer may only be actively enticed away by the Customer with the Provider's consent until six (6) months after completion of this activity. Decisive for the beginning of the six (6) month period is the actual completion of the activity (i.e. after full completion) or the termination of the contract, whichever is later. For each case of violation of this provision, a contractual penalty to be determined at the Provider's reasonable discretion, up to a maximum of EUR 50,000, shall be due, which in case of dispute shall be reviewed by the competent court.

15 Data Protection

Information on the processing of personal data as well as the duties to inform according to Art. 13, 14 General Data Protection Regulation can be found at www.dc1.com/datenschutz.

16 Assignment, Set-off, Right of Retention

16.1 The Customer is not entitled to assign to third parties claims to which he is entitled against the Provider. Section 354a German Commercial Code (*HGB*) remains unaffected.

16.2 The Provider is entitled to terminate the contract with the Customer in accordance with Sections 15 et seq. German Stock Corporation Act (*Aktiengesetz*) to affiliated companies.

16.3 The respective other party may only offset claims of one party against claims of the other party with undisputed or legally established claims. The parties shall only be entitled to assert a right of retention due to counterclaims arising from the contract concluded.

17 Confidentiality

17.1 "Confidential Information" shall mean the content of the concluded contract including the legal basis pursuant to Section 1.2 as well as all information, in whatever form



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- (in particular in writing, orally or in the form of electronic data), which the parties transmit to each other in the course of the performance of the contract. This also includes all documents, data carriers and other media created by the other party itself.
- 17.2** The parties shall treat Confidential Information as strictly confidential and shall use it only for the purpose of the execution of the contract.
- 17.3** All Confidential Information shall be kept secret by the respective other Party, protected from access by third parties and not used for any other purpose than that stated in Section 17.2. Confidential Information shall only be disclosed to employees of the other Party and employees of affiliated companies if such employees must have knowledge of such information in order to fulfill the purpose of the agreement. Employees shall be bound to observe confidentiality in an appropriate form. Disclosure to third parties is only permitted with the consent of the disclosing party. In this case, the third parties are to be bound to observe confidentiality in accordance with this provision.
- 17.4** Excluded from the obligation of secrecy is such information that
- 17.4.1** are already publicly known at the time of their acquisition,
- 17.4.2** must be passed on by the Provider to his subcontractors for the purpose of proper performance of the service,
- 17.4.3** must be disclosed due to legal provisions, legal orders, official regulations or legally binding decisions (the parties must inform each other about the corresponding decisions of the authorities or the court immediately and - as far as this is legally permissible - before the disclosure of the corresponding information)
- 17.4.4** be passed on to members of professional groups who are legally bound to secrecy or
- 17.4.5** which the other party has demonstrably developed independently of the disclosure of confidential information by the disclosing party.
- 17.5** This provision shall continue to apply for a period of two (2) years after any termination of the contract.
- 18 Final provisions**
- 18.1** The Customer agrees to be named as a reference customer of the Provider.
- 18.2** The contract is subject to German law. UN sales law is excluded. The place of jurisdiction is Stuttgart or, at the Provider's discretion, the competent court at the Customer's registered office or at the location of any datacenter space provided.
- 18.3** The contract does not create a company between the parties. In particular, Sections 705 et seq. German Civil Code (*BGB*) and Sections 105 et seq. German Commercial Code (*HGB*) are not applicable.
- 18.4** The contract - including all legal bases according to Section 1.2 - represents the complete agreement of the parties with regard to the subject matter of the contract. Oral collateral agreements have not been made. Unless otherwise agreed in these GTC, changes and additions to the contract must be made in writing. This shall also apply to any change to this written form requirement.
- 18.5** If any provision of these terms and conditions should be invalid or unenforceable in part or in full or contain a loophole, all other provisions shall remain unaffected. The invalid clause shall be replaced by a valid and enforceable provision which comes closest to the economic and legal purpose of the invalid clause. A gap in the contract is to be closed according to this standard.
- B. Special Conditions for Datacenter Services (Colocation)**
- 1 Scope**
- 1.1** Insofar as the parties agree to the provision of rooms, cages or racks in accordance with the colocation service description as well as services associated therewith in accordance with the colocation service description (hereinafter referred to collectively as "Datacenter Space"), the following special conditions shall apply. Otherwise the general conditions under Section A of these GTC apply.
- 1.2** The parties agree that the building in which the Datacenter Space is located is not available for exclusive use by the Customer. Rather, parts of the building are used by the Provider or other customers of the Provider.
- 1.3** The Provider can enter the Datacenter Space at any time of day or night. The Provider must always take the Customer's business into account when entering the Datacenter Space and avoid disturbances to the Customer as far as possible.
- 1.4** The Provider may carry out repairs and structural changes that are necessary to maintain the building and the facilities operated by the Provider or to avert imminent danger or to repair damage, even without the consent of the Customer. The Customer must keep the affected parts of the building accessible and may not hinder or delay the execution of the work. If necessary, the Customer must cooperate in the execution of the work.
- 1.5** Unless otherwise agreed, the Provider is not obliged in any way to maintain or monitor the equipment set up by the Customer within the scope of the Datacenter Space.
- 2 Cooperation of the customer**
- 2.1** The Customer is obliged to properly lock the equipment he has brought into the premises and to secure it against unauthorized access. The Customer is obliged to protect



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his own technical equipment and systems against misuse by third parties with the help of appropriate security measures. In particular, the keys or keycards for the Datacenter Space are to be kept in safe custody.

2.2 The Customer is obliged to insure all objects brought into the Datacenter Space by him at his own expense. In addition, the Customer is obliged to take out and maintain comprehensive general liability insurance for personal injury and property damage in the amount of at least EUR 1 million per claim.

2.3 The Customer shall ensure that its equipment is suitable for operation in a datacenter (i.e. compliance with the CE marking obligations and the provisions of the German Electrical and Electronic Equipment Act (*ElektroG*) and other relevant regulations) and that the maximum permissible power consumption agreed in the colocation service description is not exceeded by its use. The operation of the Customer's own UPS equipment (uninterruptible power supply), in particular the Customer's battery systems, is not permitted. IT systems with integrated batteries (e.g. battery backup units on RAID controllers) are permitted.

2.4 Exits, emergency exits, escape doors etc. must not be locked. The Customer undertakes not to interfere with the function of structural facilities and equipment used for fire protection. This applies in particular to extinguishing systems, escape routes etc. The Customer is not entitled to use supply lines (water, wastewater, electricity) beyond the permissible load limit.

2.5 The proper disposal of waste that is not subject to household waste disposal (especially special waste and hazardous substances as well as bulky waste such as packaging) is the sole responsibility of the Customer.

3 Installations

Structural changes to the Datacenter Space require the written permission of the Provider. The Provider already now gives his consent for installations of the Customer which serve the operation as datacenter (e.g. racks), provided that they do not interfere with the statics of the building and provided that the Customer bears the costs for these installations. The Customer is also responsible for obtaining all necessary permits. The Customer is not authorized to affix lettering or identification marks to fixtures installed by the Customer or to the Datacenter Space and buildings of the Provider that allow the identity of the Customer to be inferred.

4 Compensation

4.1 The agreed kWh fees as well as the monthly minimum power consumption based thereon or (if agreed) a flat-rate power consumption shall be deemed to be fixed for a term of 24 months from the date of acceptance or provision. The following fees depend on the price development on the electricity market and cannot be quantified at the time of the conclusion of the contract. The Provider

will negotiate with the Customer in good time before the end of the above-mentioned term about an adjustment of the above-mentioned fees. If no agreement is reached, the previously agreed fees shall continue to apply. The Provider is then entitled to terminate this framework agreement with a notice period of six (6) weeks to the end of the month.

4.2 In the event of changes or the introduction of new state levies, apportionments, fees or taxes on the electricity price (e.g. electricity tax, eco-tax, *EEG*, *KWKG*), the Provider passes these on to the Customer. This does not apply to the VAT, which the Provider separately shows on the invoice at the current rate.

4.3 For Sections 4.1 and 4.2, it applies equally that the Provider is entitled to multiply the respective power price change by the PUE (power usage effectiveness, i.e. in particular costs of air conditioning and power losses of the electrical systems in the datacenter) applicable to the Customer's datacenter. In the case of a power consumption with flat-rate billing, 730 kWh per kVA/kW per month shall be taken as the basis.

5 Acceptance and Delivery (Rooms)

The following acceptance regulations apply to the provision of rooms by the Provider (please refer to the contract).

5.1 The Provider shall be obliged to notify the Customer at least in text form of its readiness to accept and hand over the agreed Datacenter Space. Unless otherwise agreed, the Customer shall commence with the acceptance at the latest five (5) Working Days after notification of the readiness for acceptance and handover and shall carry out the acceptance together with the Provider. The agreed upon Datacenter Space is considered as accepted, if the Customer uses it as intended or if the Customer does not communicate in writing defects of the error class 1 to the Provider within four (4) weeks starting from the date, on which the Customer received the announcement of the Provider over its readiness for the acceptance, in writing.

5.1.1 Error class 1: the appropriate use of the agreed Datacenter Space by the Customer is impossible or severely restricted;

5.1.2 Error class 2: the appropriate use of the agreed Datacenter Space by the Customer is not impossible or severely restricted, but the usage restriction is nevertheless not insignificant;

5.1.3 Error class 3: all defects that cannot be assigned to error classes 1 and 2.

The final allocation to one of the above error classes is made by mutual agreement between the parties. Section 640 paragraph (1) sentence 2 German Civil Code (*BGB*) remains unaffected. Any defects shall be recorded in a joint acceptance report.



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5.2 If the Datacenter Space was defective at the time of the transfer of risk, the Provider shall, at its option, either remedy these defects or produce a new work ("Subsequent Performance"); the enabling of a reasonable bypass (workaround) of the defect shall constitute sufficient Subsequent Performance. If the Provider fails to provide Subsequent Performance twice within a reasonable period of grace to be set by the Customer in writing, the Customer may assert his claims in accordance with the statutory provisions, whereby the right of the Customer to remedy the defect himself is excluded under Section 637 German Civil Code (*BGB*). Insignificant defects do not entitle the Customer to withdraw from the contract; the Customer's right to a reduction in price remains unaffected.

6 Relocation of the Datacenter Space

6.1 The Provider is entitled to request the Customer to move his equipment from the Datacenter Space used by the Customer to other datacenters, provided there are good reasons for doing so, in particular

- 6.1.1** if the building or parts of the building in which the Customer's Datacenter Space is located are damaged or destroyed in such a way that the Provider can no longer provide the Datacenter Space under the agreed or otherwise legally required conditions;
- 6.1.2** if the Provider's right to rent or use the building or part of the building in which the Datacenter Space is located is terminated or substantially deteriorated;
- 6.1.3** if the move is necessary to maintain or improve datacenter efficiency;
- 6.1.4** if this is necessary in an emergency situation to eliminate major problems in the provision of services to the Customer or to other customers of the Provider;
- 6.1.5** if this is necessary to prevent equipment from interfering with other customers' equipment or the Provider's infrastructure;
- 6.1.6** if ordered by a court or administrative or regulatory authority, or as required by law or regulation.

The Provider is only entitled to make a request if the Customer is not placed in a worse position with regard to the services used by him (e.g. retention or improvement of functionalities, retention or reduction of the agreed fees) and does not deviate significantly from the services ordered by the Customer.

6.2 In the event of a relocation pursuant to Section 6.1, the Customer shall have a special right of termination to terminate the affected Datacenter Space subject to a notice period of three (3) months. The special right of termination must be exercised in writing within four (4) weeks of

receipt of the request to relocate; otherwise the Customer shall be obliged to relocate. The Provider shall specifically draw the Customer's attention to this consequence in its request.

6.3 The Customer shall be responsible for carrying out the relocation of his equipment within the reasonable period of time to be set by the Provider in the request for relocation. If the Customer does not carry out the relocation after a corresponding request and expiration of the deadline set by the Provider, the Provider can carry out the relocation at the Customer's expense and risk.

7 Deployment (Racks and Cages)

The following acceptance regulations apply to the provision of racks or cages by the Provider (please refer to the contract).

Immediately after the provision, the Provider will send the Customer at least in text form a corresponding notice of provision ("Ready for Service"). The provision is deemed to be completed on the day of the provision date stated by the Provider in the Ready for Service, unless the Customer informs the Provider within five (5) working days after receipt of the Ready for Service that the provision was not or incorrectly executed. In this case the Provider will arrange a new date. In the Ready for Service, the Provider shall once again expressly draw the Customer's attention to the effect of any failure to notify the Customer with regard to a non-executed or unsuccessful provision.

8 Term and Termination

In addition to the termination rights agreed in Section A, the Provider is also entitled to extraordinary termination for good cause if

- 8.1.1** the Provider's lease agreement for use of the datacenter building is terminated, or
- 8.1.2** the permission to use the rented building as a datacenter is revoked or otherwise ends

and the Provider is not responsible for this. Claims of the Customer because of such a termination are excluded.

9 Duties upon Termination of Contract

The Customer is obligated to hand over the Datacenter Space to the Provider on the termination date of the contract, cleared and cleaned, and to return all keys and access cards, etc. Structural changes of the Customer as well as installations of the Customer etc. have to be rebuilt or removed by the Customer. The original condition is to be restored. The Customer bears the costs for this. If the Customer does not remove his equipment in time, the Provider is entitled to remove the equipment himself at the Customer's expense after setting and unsuccessful expiration of a reasonable period of time determined for remedy. In this case, the Provider is entitled to assert a right of retention with regard to the removed Customer's



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equipment until the Customer reimburses any outstanding fees (plus any fees for use by the Customer beyond the termination of the contract) and all expenses incurred by the Provider in connection with the removal.

C. Special Conditions for Telecommunication Services (Colo Connect)

1 Scope

If the parties agree on telecommunication services according to the Colo Connect service description, the following special conditions apply. In all other respects, the general conditions under Section A of these GTC apply.

2 Cooperation of the Customer

2.1 If on-site operations are required at the Customer's location, the Customer must ensure that trained staff are available to support the Provider's employees and, if necessary, to carry out maintenance and troubleshooting work themselves in accordance with instructions. All hardware and software products covered by the on-site deployment shall be made available to the Provider's employees in such a way that they can immediately begin their work, in particular, cabling and attachments shall be removed and hidden connections exposed. The Customer shall grant the Provider access to his premises to the extent necessary for the provision of the contractual services.

2.2 The Customer shall ensure that all locations at which technical equipment of the Provider is to be installed have the necessary floor space and sufficient electricity, that they are adequately air-conditioned, and that the technical equipment is permanently located in a safe working environment and is adequately secured against fire, theft and vandalism. The Customer shall provide the Provider with the necessary technical equipment for operation and maintenance as well as suitable cable routes, electricity and earthing free of charge and shall keep these in a functional and proper condition for the duration of the contract. The Customer shall ensure that any necessary approvals are obtained, in particular any necessary property owner's declaration in accordance with Section 45a German Telecommunications Act (TKG).

2.3 The Customer undertakes to connect telecommunication terminal equipment (PBXs, telephones, fax machines etc.) to the designated interfaces of the network termination device provided by the Provider (customer premises equipment, "CPE") in a professional manner. The Customer may only operate telecommunication terminal equipment on a CPE that complies with the applicable electrical and telecommunication standards and approval regulations, in particular CE, IEEE, ITU.

2.4 The Provider is entitled to exchange site connections that are realized via third-party infrastructure for connections based on the Provider's infrastructure, provided that the performance characteristics of the connection (e.g. bandwidth, service level) are not impaired as a result. The

Customer is obliged to support the Provider in this respect to an appropriate extent. The agreed fees remain unchanged by such an exchange.

2.5 The Customer undertakes to return the provided hardware (e.g. CPE) to the Provider at the end of the contract term within ten (10) days.

3 Feasibility of Connections

3.1 All agreed remuneration for telecommunications services assumes that existing lines at the Customer's location can be used for the connection and that no construction measures, in particular no earthworks, are required. Therefore, the following necessary prerequisites for the provision of the connection to the Customer's location ("Last Mile") exist when implementing the commissioned telecommunication services:

3.1.1 For the realization based on copper lines, the following is a necessary prerequisite

(i) between the Customer's location and the nearest main distribution frame the number of free, usable subscriber lines ("Local Loops") required for the respective connection is available, and

(ii) that the termination point line technology (so called "APL") at the Customer's site is not yet completely occupied, so that the required Local Loops can be connected.

3.1.2 In the case of implementation based on fiber optic lines at the Customer's location, it is a necessary prerequisite that a suitable fiber optic connection of the Provider or one of the Provider's suppliers exists between the network termination point at the Customer's location and a connection point in the Provider's backbone.

3.2 If a connection cannot be implemented as commissioned for the reasons stated in Section 3.1, the parties shall negotiate the possibility of a different type of connection. In this case, the Provider shall prepare a separate offer for the development of the site via fiber optic connection, if required. If the parties do not reach an agreement within four (4) weeks after the Customer has become aware of the unfeasibility, the parties may terminate the affected connection. In the event of termination by either party, claims for damages and claims for reimbursement of useless expenses are excluded.

3.3 With copper-based connections, the realizable bandwidth can only be determined after the respective connection has been put into operation. In addition, even after successful commissioning, it may turn out in the further course of time, through the provision of further, also foreign, Local Loops at the Customer's location, that the initially realized bandwidth or the initially given possibility

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of implementing several services (e.g. Internet and voice) cannot be maintained on one connection. The connection ordered by the Customer will be provided in the case of SDSL with at least 75% of the respective ordered bandwidth or in the case of ADSL/VDSL with at least 50% (upstream or downstream) of the respective ordered bandwidth. It is the Customer's responsibility to measure the actually realizable bandwidth and to complain to the Provider if the bandwidth is below the above-mentioned limits. In this case the parties will negotiate about the possibility of another type of connection. If the parties do not reach an agreement within four (4) weeks after the Customer has complained about a bandwidth below the above-mentioned limits, the parties may terminate the affected connection free of charge. In the event of termination by the Customer, claims for damages and claims for reimbursement of useless expenses are excluded. If the Customer does not complain to the Provider about a bandwidth below the above-mentioned limits or has not or not yet exercised the above-mentioned right of termination, the bandwidth achieved shall be deemed to have been agreed without any change in the consideration.

4 Provision

- 4.1** The Provider provides commissioned telecommunication services at the network termination regulated in the Colo Connect service description per connection variant.
- 4.2** The Customer undertakes to support the Provider appropriately in the provision of telecommunication services. In particular, the Customer must grant the Provider access to the Customer's premises and to the network demarcation point or APL to the extent necessary for the activation process. The Customer shall ensure that installation dates communicated at short notice are met.
- 4.3** Immediately after the provision, the Provider will send the Customer at least in text form a corresponding notice of provision ("Ready for Service"). The provision is deemed to be completed on the day of the provision date stated by the Provider in the Ready for Service, unless the Customer informs the Provider within five (5) working days after receipt of the Ready for Service that the provision was not or incorrectly executed. In this case, the Provider will arrange a new date and, if necessary, charge for an additional installation. In the Ready for Service, the Provider shall once again expressly draw the Customer's attention to the effect of any failure to notify the Customer about a non-executed or unsuccessful provision.
- 4.4** If an installation date is not successfully carried out, the Customer shall notify this circumstance immediately. The Provider will then attempt to arrange a new installation date with the Customer within five (5) days.