

# General Terms of Service

## 1. Provider and Scope of Application of These General Terms of Service

- 1.1 The provider of the online service (hereinafter referred to as “the Service”) and thus contracting partner of the user of the Service (hereinafter referred to as “User”) is mokono GmbH, Oranienstr. 183, D-10999 Berlin (hereinafter referred to as “Operator”). The present General Terms of Service contain the conditions and regulations governing use of the Service as well as all legal transactions and similar activities thereby effected between Operator and User. However, fee-based service packages offered by Operator may be subject to additional Special Terms and Conditions applying in addition to the present General Terms of Service.
- 1.2 The following General Terms of Service apply exclusively. To the extent that any Terms and Conditions of users may contain provisions diverging from or contradictory to the present General Terms of Service, such General Terms and Conditions shall not apply to the contractual relationship between Operator and User.

## 2. Registration and Log-on Data

- 2.1 In order to actively participate in use of the Service, User must be at least thirteen years old. Other participation prerequisites may apply to fee-based offers.
- 2.2 User names violating the rights of others, in particular rights in names or other similar legally protected interests (e.g. trademarks) or otherwise unlawful or unethical user names are not permissible.
- 2.3 Operator in any case reserves the right to refuse to register a user without having to state reasons for doing so.
- 2.4 In any case, all statements made by User to Operator must be true and complete in so far as data is requested by Operator or provided voluntarily by User. Above all, User may not enter data applying to another person.
- 2.5 User name and password are User's log-on data. Log-on data must be kept confidential and not be made available to third parties. User must inform Operator if his log-on data is lost or if User believes that his log-on data has become known to third parties or that a third party is using the user profile. If any changes occur in User's data after registration, User shall adapt his user profile to the new circumstances without delay.

## 3. Services and Contract Period

- 3.1 A number of different service packages are offered. A description of the content and scope of these packages can be found in the pages offering them.
- 3.2 The duration of the agreement regarding the use of the Service depends on the service package selected by User. In the case of free service packages, however, the utilisation relationship is concluded for an indefinite period of time. Fee-based service packages may have specific duration.

## 4. Right of Withdrawal

If User is a consumer, he/she has a statutory right of withdrawal, with regard to which Operator renders the following information:

#### **Information on the Right of Withdrawal**

##### **Right of Withdrawal**

You may withdraw from this transaction within fourteen days. Withdrawal must be made in text format (e.g. letter, fax, e-mail) and need not include reasons for the withdrawal. The fourteen-day withdrawal period begins at the earliest on the day following the day on which you have received these instructions separately in text format. Withdrawal shall be considered timely if a notice of withdrawal is sent off within this period. The notice of withdrawal must be sent to:

mokono GmbH  
Oranienstr. 183  
D-10999 Berlin

Fax: +49-(0)30-322955-299  
E-mail: support@blog.co.uk

##### **Consequences of Withdrawal**

In the event of an effective withdrawal, the goods and/or services received by each party shall be returned and any benefit derived (e.g. interest) shall be surrendered. If you are completely or partly unable to return the goods and/or services you received, or able to return it only in a deteriorated condition, you may to that extent have to provide us with compensation for the lost value. Obligations to reimburse payments must be met within thirty days of sending your notice of withdrawal.

##### **Additional Notice**

Your right of withdrawal expires prematurely if your contracting partner, with your explicit permission, has begun performance of the service prior to the end of the withdrawal period, or if you yourself have arranged for this to occur (e.g. through download etc.).

#### **End of the Withdrawal Information**

## **5. Content**

- 5.1 "Content" in the sense of the present General Terms of Service refers to all content posted on the site and made available by User. This refers above all to text material (including comments on texts of other users), uploaded photos, videos, music files, graphics and other files (.doc, flash, etc.) as well as other picture elements and personal data, in so far as User makes such material visible for other users and for the general public.
- 5.2 Operator reserves the right to use other service providers for hosting content.
- 5.3 In other respects, Operator in any case reserves the right to refuse content and, if applicable, to delete content without statement of grounds and without notice. User has no claim to content being posted or to content remaining on the site. In particular, files whose copyrights and/or other IP rights are held by third parties may not be posted on the site unless User has obtained the corresponding authorisation to do so. Other inadmissible content is listed in clause 10.
- 5.4 Operator also reserves the right to block downloads by User and/or third parties.

## **6. Rights of Utilisation**

- 6.1 User grants Operator transferable non-exclusive rights of use, unlimited in space and duration, in the content posted by him on the site to the extent necessary for the operation of the Service as well as under the terms of clause 6.3.
- 6.2 In particular, User grants Operator the right to put the content on the platform and to make the copies necessary for this purpose (storing on servers, etc.). Furthermore, User grants Operator the right to modify the content in order to better display it on the website. Operator also has the right to make the content available to the public, to transmit the content or otherwise to reproduce it publicly, encompassing in particular the right to make content available or transmit content by way of transfer to other users' stationary or mobile devices within the scope of automated subscription services (push services) or on-call services (pull services) (e.g. via podcasting, RSS feed, Atom feed, XML interface or other technologies). The right of public reproduction specifically also includes the right to stream content on the site, and it includes the option of designing the stream in such a manner that the transmitted data can be stored by the recipient.
- 6.3 Furthermore, User grants Operator a transferable non-exclusive right, unlimited in space and duration, to make the content posted by him available in full or in part on other websites run by Operator, specifically, for instance, to display photos or texts garnered from User's blog(s) separately from the remainder of the blog content. Moreover, User grants Operator the right to publish the content on the websites of third-party providers and/or have such content published on such sites, and to make the copies necessary for this purpose, as well as to transmit the content to the third party provider concerned and/or to grant these providers access to the content for the purposes described hereinabove as well as the right to reproduce the content for inclusion in their own websites (cf. clause 9, however). Operator may use any established technical procedures in order to achieve the purposes described in the present clause. User allows the relevant third-party provider to take and publish the respective content, i.e. to use such content in the same manner as intended in the Service. However, User has the option of blocking the use of his content as described in the present clause.
- 6.4 Subject to the condition laid down in clause 5.4, User himself decides whether he wishes to offer his content for download by other users – i.e. for permanent storage – in addition to direct reproduction on the screens of Internet users. If in doubt he must mark the file concerned accordingly. Operator himself grants third parties no rights, as Operator merely runs the Service as a technical platform for users to establish contacts to other users.
- 6.5 Operator shall pay User no remuneration for the rights of use granted, as Operator's Service already provides User with the forum to present his content to the general public. User agrees that this Service already constitutes adequate remuneration.

## **7. Advertising**

- 7.1 User agrees that Operator reserves the right to present advertising messages within the scope of access to the Service as well as in User's blogs.
- 7.2 User may not advertise third-party offers on his pages. This shall apply regardless of the form of advertising, be it a link, User's own text or photo contributions or insertion of free HTML codes. Advertising for one's own offers is generally authorised, however not in cases where the offer being advertised involves content or services and products falling within the categories described in clause 10 or content or services that are in any other manner illegal or subject to permission by the public authorities. Fee-based service packages may be subject to divergent provisions.
- 7.3 Operator also reserves the right to delete content of a general spam nature.

## **8. Acknowledgement Obligation**

8.1 User is obligated to render information about himself/herself as a service provider (a so-called "imprint" or "about" section) in and with regard to his blog(s). Such section must include at least the following information:

- User's name (first and last names) and address;
- an e-mail address and a telephone number where User can be reached; and,
- to the extent that the blog(s) consist of journalistic or editorial content, the name and address of a person responsible for the content of the offer.

If User is a merchant, the additional requirements applying to merchants/companies and in particular to legal persons pursuant to the pertinent statutory provisions must also be complied with.

8.2 This obligation to render information shall not apply if User does not operate his blog(s) as a business, in particular if User makes no advertising, either for himself or for third-party offers, and the blog(s) are only for personal or family purposes.

## **9. Restriction of Access to User Content**

9.1 User has the option of configuring his areas in such a manner as to restrict access to his content for third parties as well as for other users and in this manner, for instance, to allow only certain friends to read blog entries.

9.2 If User configures his areas in this manner, Operator shall refrain from asserting its rights vis-à-vis User as granted by clause 6.3 with regard to restricted-access content. In other words, Operator shall refrain from displaying the pertinent content on other websites or from letting third party provides use the content for publication purposes.

## **10. Inadmissible Content and Behaviour**

10.1 User undertakes vis-à-vis Operator not to post illegal content or content which has been declared to be inadmissible within the scope of the present clause or in other clauses of the present General Terms of Service.

10.2 In particular, the following shall constitute inadmissible content:

- any content violating applicable criminal laws;
- content propagating trade with or use of illegal drugs and medication as well as weapons, including explosives;
- content propagating illegal computer-aided activities such as hacking and cracking and explaining how to perform such activities;
- content constituting propaganda for or symbols of totalitarian or racist organisations and/or organisations promoting violence;
- content glorifying war, content constituting racism or other forms of discrimination, and content encouraging violence for whatever reason;
- content describing cruel or otherwise inhuman violent acts vis-à-vis persons in such a manner as to glorify or play down such violent acts or in a manner presenting the cruelty

or inhumanity of the action in a manner offending human dignity; this shall also apply to virtual representations;

- content violating human dignity, in particular by presenting persons who are or were in the process of dying or being subjected to severe physical or mental suffering and where an actual event is being shown without a justifiable interest for this form of presentation or reporting; the fact that consent may have been granted is irrelevant;
- content showing children or young people in unnatural and blatantly sexual positions; this shall also apply to virtual representations;
- content of a pornographic nature, in particular if such content involves violence, sexual abuse of children or young people or sexual acts of people with animals; this shall also apply to virtual representations; or
- content violating laws for the protection of minors for whatever other reasons;
- content of a slanderous or defamatory nature;
- content violating the rights of others to the protection of their privacy or other privacy rights, in particular legal positions protecting against the publication of one's own image;
- content violating copyrights, ancillary copyrights or trademark, trade name or similar rights of others;
- content constituting games of chance subject to state licensing or other games of a similar nature, e.g. chain letter campaigns, pyramid schemes, lotteries, betting games, etc.;
- content that can otherwise be subject to court action under civil or criminal law;
- content consisting of nothing more than links to other pages, advertising, the repetition of texts and/or lists of excessive numbers of obvious tags (spam).

10.3 Although User may as a rule include links to other Internet sites on his blog(s), such links may not lead to content of the nature described in the above list.

10.4 User may not apply any process to read out, store, process, change, pass on or otherwise misuse data from the Service. It is immaterial in this respect whether the processes used are manually operated or automated. One exception to this provision are so-called feed readers that read service content within the scope of the functions intended for this use.

10.5 User may not insert viruses, trojans, or similar scripts and programs in the Service, nor any other malware of a similar nature. Sending spam e-mails is also forbidden. This behaviour is not only illegal: it may also be punishable as a misdemeanour or criminal offence. It is also explicitly forbidden to hack the profiles of other users.

## **11. Warranty and Indemnification**

11.1 User warrants vis-à-vis Operator that he is entitled and able to grant the rights (cf. clause 6) to the content posted by him. He also warrants above all that he shall refrain from posting content with which he would violate copyrights, trademark or trade name rights or other intellectual or industrial property rights of third parties. User is obligated to obtain information in this respect and, if he has doubts regarding his entitlement, to solicit permission from the owner of the rights. The following specific situations give rise to doubts:

- if the content concerned is protected by copyright or by ancillary copyright, for instance third-party videos, photos, music, graphics and texts. In this context it must be noted that as a rule works of third parties may also not be posted on the site in an alienated or otherwise modified manner without authorisation from the owner of the rights. Generally speaking, extracts from city maps serving to give directions to a particular location and similar map material are also copyright-protected;
- if videos contain presentations protected by copyright or ancillary copyright, for instance concert recordings, theatre productions, etc. or parts thereof, or include unaltered versions of other copyright-protected material, for instance television programs, program moderation extracts, etc., including parts thereof;
- if third parties have contributed to the production of the content in such a manner that they may have acquired ancillary copyrights, for instance with regard to photography, directing, editing, sound, camera, etc., and their consent to exploitation of the content has not been explicitly declared;
- if the content involves personal or other sensitive information on individual persons or groups of persons, unless the requisite authorisations and/or rights of utilisation have been granted;
- if third parties are shown in photos and videos in such a manner that from the viewer's point of view they are not only part of the background in terms of their relevance for the photograph/video, unless User has their explicit consent.

User also warrants vis-à-vis Operator that he shall refrain from posting content on the site that otherwise affects the rights of third parties or is illegal or has been declared inadmissible by Operator.

- 11.2 User shall bear sole responsibility for all the content posted by him, including comments on content of other users. He is also responsible for content posted on his blog(s) by co-authors or other users, if applicable. Operator does not monitor the content posted by User or content posted on User's blog(s).

In this context, User undertakes to indemnify Operator and hold him harmless from any liability and all costs including potential court costs if Operator is claimed on by third parties because User has culpably (i.e. intentionally or negligently) violated their rights (for instance copyrights and trademark rights, the general right to privacy, the right to one's own image, etc.). Operator shall inform User of any such claims and, to the extent that this is legally necessary and/or possible, give him the opportunity of defending himself.

## **12. Liability of Operator**

Operator shall be liable under statutory provisions, but with two restrictions: If User suffers damage resulting from loss of data, Operator shall not be liable in so far as the damage could have been avoided by due and proper, regular and complete back-up of important data. Moreover, Operator shall not be liable for damages of an unforeseeable nature or untypical for contractual situations, to the extent that the damage does not affect life, the body or health.

## **13. Violations of the Present General Terms of Service**

In the event of violations of the present General Terms of Service, Operator shall be entitled – as a milder measure than termination of the agreement regarding the use of the Service – to exclude the user concerned for shorter or longer periods of time by blocking access to the

user account and removing the user profile, together with the content, from the network for this time. This is intended to encourage User to comply with the pertinent terms and conditions in future. However, Operator reserves the right to also give notice for immediate cancellation of the agreement regarding the use of the Service, which can lead to an immediate and irrevocable deletion of all data and content.

#### **14. Termination of the Utilisation Agreement**

- 14.1 For free service packages, the agreement regarding the use of the Service may be terminated at any time by either User or Operator. Other provisions may apply to fee-based service packages.
- 14.2 Both Operator and User may terminate the agreement without notice for good cause.
- 14.3 If Operator blocks User's account or if User declares extraordinary termination, User may not re-register with Operator without Operator's consent.

#### **15. Data Protection**

Protection of users' personal data is very important to Operator. Information on our data protection activities can be found in the data protection declaration.

#### **16. Amendments of the General Terms of Service**

- 16.1 Operator reserves the right to amend the General Terms of Service at any time and without the need to state reasons. The new General Terms of Service shall be sent to User by e-mail.
- 16.2 The new General Terms of Service shall be deemed agreed unless User objects to their application within fourteen days of receipt of the e-mail. Any objection must be made in text format. Operator shall inform User with regard to the right of objection, the deadline and the consequences of lack of action by User in a separate section of the e-mail. If User objects, each party shall have the right to terminate the agreement; such termination must be made by e-mail or in writing and within the period applying to ordinary termination. This shall also apply to fee-based service packages under the terms of the notice period applicable to the relevant service package.
- 16.3 The General Terms of Service cannot be amended pursuant to the above provisions if the proposed amendment affects the content and scope of the utilisation rights granted by User with regard to content, nor in the case of amendments to content and scope of the free service packages, nor with regard to introducing new obligations of User not hitherto laid out in the General Terms of Service.

#### **17. Choice of Law**

The present General Terms of Service and the contractual relationship being concluded between Operator and User shall be governed exclusively by the laws of the Federal Republic of Germany. Application of German International Private Law and of the UN Convention on Contracts for the International Sale of Goods is excluded.