

## **General Terms and Conditions of Business and Delivery**

Version 1.6 from 24<sup>th</sup> July 2008

### **1 Scope**

- chillydomains is a product of the company Hanival Internet Services GmbH.
- These T&C are an integral part of the Delivery and Service Contract between Hanival and the Customer for a certain product. Should the Customer's T&C not correspond to these T&C, Hanival's T&C have priority.
- These T&C are subject to alteration at any time. New T&C are valid starting from their publication on the website and/or notification by email. The Customer is required to stay informed regularly through the website regarding any changes. If the Customer does not agree with changes to the T&C, he can terminate the Contract by letter or email. Termination of the Contract will take place when the new T&C come into effect. Payments made prior to this termination will not be refunded.

### **2 Services and Prices**

- Hanival offers storage location on a virtual server as well as additional services – according to particular provisions of this Contract – at the disposal of the Customer.
- Prices consist of server costs and related services, energy costs, rental fee, personnel expenditures, taxes and fees in particular, as well as costs of the registration of Domains with respective registration authorities. Given changes in basic costs, Hanival reserves its right to an appropriate price adjustment. However, a payment increase may not be charged to the Customer for services rendered up to two months after the Contract's completion.
- Hanival operates and maintains the servers as well as provides for the connection of the server to the Internet. To avoid interruptions, disturbances

and hardware losses, Hanival will provide once weekly a backup of server system data. However, Hanival takes no responsibility for lost data or other damages caused by any data loss.

- The Customer himself is obliged to regularly secure all accessed data and software settings.
- Traffic restrictions & rules: the Customer receives an automatic notification by email upon having reached the limit of agreed-upon traffic volumes. Beginning with this notification, the traffic will be charged monthly afterwards in the same way as the subscription fees, according to the product tariff. If the Customer reaches the general traffic limit, his website connection will be suspended until the beginning of the next month. The product PURE is unlimited; thus, no traffic tariff applies.

### **3 Contract Completion and Termination**

- When in offense of any of its provisions, Hanival shall inform the Customer in writing about the breach of Contract. If the Customer submits insufficient proof of not breaching the Contract within 30 days starting from the day of notice received, Hanival is authorized to delete the registration or reservation of Domains and all associated information.
- Final Contracts between Hanival and the Customer over the purchase of services or other continuous obligations are valid for at least 1 year, with alterations subject to special Contracts. The Contract can be terminated subject to explicit writing agreement by both Contracting parties within a 60-days term before the end of the contract year. The contract year start with the day of your order. If the Contract is not terminated in due time, the Contract shall be extended for another year. Terminations by company customers require a registered letter. A simple notice is sufficient for private Customers. The postmarked date is valid.
- Should payment not be received after having issued a reminder of payment, an additional extension will be issued in writing, informing the Customer of the Contract's cancellation in two weeks. If the Customer does not pay within this period, Hanival has the right to terminate the Contract's continuous obligations with immediate effect. The written reminder results in 5,- € incl. VAT (or 5,90 USD / 3,40 GBP) reminding expenses.

- Collection: If the customer has not paid after the written reminder, we hand the demand over to a debt collecting agency of our choice. The customer will bear the fees based on the legal framework.
- Hanival has the right to charge Customer a fee of 20,- € incl. VAT (or 23,50 USD / 13,60 GBP) for every traffic suspension as well as for the resumption of suspended services.
- Hanival is no longer obliged to offer the agreed services after the Contract's termination. Hanival has further the right to delete the content data stored. The Customer cannot therefore stake any claim to the ISP concerning content deletion.

### **3.1 Abuse of chillydomains Products for Spam**

Spam is sending emails on a massive scale without any relation to the recipient. Spam causes huge costs for Hanival. The use of chillydomains products to produce spam is a breach of contract.

In this case Hanival might terminate the contract immediately. Alternatively Hanival might interrupt the service towards the spamming customer until he gets into contact with Hanival.

In case of an interruption of service because of Spam, Hanival will charge a fee of 100,- € incl. VAT (or 117,50 USD / 68,00 GBP) even if the contract might be terminated immediately.

## **4 Non-liability, Guarantee, Compensation**

- Any liability of Hanival for services offered within this Contract is limited to the sum paid by Customer for the service. Hanival is not responsible for direct, indirect or consequential damages caused by the use or impossibility of use of services offered, or by use of alternative services. Since some states and regions do not permit such kind of non-liability concerning coincidence or consequential damages, a locally valid non-liability legal clause is to be applied.
- The liability limitations according to "General rules on liability and information obligations of Internet Service Providers" of the Austrian ISP Association ISPA ([www.ispa.at](http://www.ispa.at)) are valid for the contents stored on the webserver.
- The Customer will indemnify Hanival for all products and services offered, and be responsible for any attorney costs required.

- The Customer is obliged to keep Login and Password of his accounts secret and protect them from unauthorized use. In case of unauthorized use, the provider is to be informed immediately. Hanival is neither liable for Customer data received or intercepted by Third Parties via Telnet, ftp, etc., nor for this data being copied, changed or deleted. The provider is liable neither for direct or consequential damages, nor for missing profits, except in case of intention or negligence of Hanival.

## **5 Data Protection Regulations and Communications Confidentiality**

- Hanival has the right to store and automatically process Customer data in the context of business relations and according to business conditions. The Customer explicitly agrees to data storage and processing. Hanival has the right to store and evaluate impersonal connecting data and other logs to protect its own and others' computers, as well as for technical recovery.
- Hanival will pass these data nor other contents to Third Parties outside of the framework of legal requirements or the necessity for operation of Internet nodes, unless the Customer has agreed to let his data be passed onto others upon ordering the product.
- Hanival takes all technically possible and known measures to protect the data stored.
- Hanival reserves itself the right to block Internet access physically and/or logically and without prior warning to Customers under justified suspicion of using their Internet connection for activities which endanger the security or business operations of Hanival or Third Parties, or for illegal activities or harassment (in accordance with 107 TKG (Telecommunications Act). The costs of detection and pursuit of such activities as well as the blocking of the connection and/or any repairs will be charged according to hourly rates set by Hanival and its Contracted Parties. Hanival is not liable for damages caused to Contracted Party or Third Parties from Internet blocking.
- Customer data will be stored for maximum 5 years after Contract fulfilled for purposes of planning, marketing, cost calculation and in-house statistics. The passing on of personal Customer data requires a legal basis only.

## **6 Customer Responsibility**

- The Customer is obliged to keep all personal data up to date and make changes available to the system immediately. If Customer does not publicize these data changes, applicable documents are nevertheless assumed as legally received if they have been sent to the last known address of Contract Party.
- The Customer explains himself agreed with the fact that all correspondence will take place by email. If Hanival for any reason doubts the identity of the Contract Party, the Customer is obliged to prove his identity in suitable form (e.g. by transmitting of a copy of an official photo document of identification by fax).
- The Customer is obliged to inform himself about the T&C of the registration authority responsible for the assignment of Domains the Customer would like to acquire prior to the ordering from Hanival. The Customer understands that Hanival is solely a data intermediary to the registration authority, and that the Contract concerning the appropriate Domains is concluded between the Contract Party and the respective registration authority. In case of Domain disputes the Customer will indemnify Hanival against any and all liability.

## **7 Domain Transfer**

If the Customer wishes to have the Domains managed by Hanival to be further administered by himself or another provider, he must inform Hanival in a documentary form signed by an authorized person.

## **8 Special regulations for products, which require the registration and administration of .de Domains**

Hanival registers .de Domains on behalf of the Customer with the DENIC eG. Hanival makes all necessary declarations for the Customer.

- The DENIC Domain Terms and Conditions are the basis for Domain Contract. The DENIC Domain Terms and Conditions secure the subsidiary usage of DENIC price lists as well as permanent Domain Ownership in case Hanival is not available as a service provider anymore.

- The DENIC Domain Terms and Conditions as well as the DENIC price lists are available on the Internet under the following addresses:  
<http://www.denic.de/de/richtlinien.html>,  
<http://www.denic.de/de/bedingungen.html>  
 and <http://www.denic.de/de/preisliste.html>.
- If the Customer wants the data additional to § 8 Sentence 1 of DENIC Domain Terms and Conditions published in DENIC WHOIS inquiry, a written request must be submitted.

## **9 Trust Contract for Customers with .de Domain having no German postal address**

If the Domain Holder registered .de Domain with DENIC.eG over Hanival is not domiciled in Germany, he shall be required to appoint an Administrative Contact (Admin C) domiciled in Germany in accordance with § 3 paragraph 1 of DENIC Domain Terms and Conditions. This Administrative Contact shall also be the Domain Holder's authorized representative (Trustee) for receiving the service of official or court documents for the purposes of § 174 ff. of the German Code of Civil Procedure (ZPO). The Trustee must agree to perform tasks for the Domain Holder in accordance with the following conditions:

### **9.1 Customer Obligations**

- The Customer guarantees that his Domain neither offends the rights of Third Parties (trademarks, laws relating to the use of names and copyrights, etc.) nor violates legal prohibitions or good morals.
- The Customer is obliged to inform the Trustee immediately in writing pertaining to any registration- related procedures concerning the Domain, in particular a Domain Holder change, or the consequence or initiation of legal measures.
- The Customer is obliged to answer all inquiries of the Trustee concerning the Domain registration immediately; i.e., not later than within 48 hours. This period will be abridged if the Third Party (claimant, court etc.) has set a shorter deadline.
- The Customer is obliged to keep his contact data with Hanival up-to-date and authorizes Hanival expressly to make these contact data available to the

Trustee at his disposal. The information sent to the Customer by the Trustee on basis of the aforementioned contact data is considered duly delivered.

- If the customer is not attainable per the contact information provided or if he does not answer an inquiry of the Trustee within the given set period, the Trustee is entitled as in the cases 2 b) and c) to make all necessary decisions – in particular to give up the position as Admin C, as well as to release the Domain due to actual or stated illegal activity performed, or to put it under the administration of DENIC eG.

## **9.2 Trustee Obligations**

The Trustee is obliged to fulfill for the Customer all tasks as an Administrative Contact in good faith. He shall carry out appropriate instructions of the Customer, given they are not illegal or contrary to the Contracts of the Parties.

## **9.3 Handling of Disputes with Third Parties**

Should the Trustee be called upon either as a representative of the Customer or directly from the Third Party because of asserted legal offences, the Customer has to explain in writing according to Section 1.3 within the time limits whether he agrees to release the Domain or wants to defend it.

- If the Customer agrees to release the Domain, the Trustee will declare the removal of the Domain to the DENIC eG and inform the Third Party or Claimant. With this explanation, the contractual relationship between Trustee and Customer will end without further notice.
- If the Customer does not make a declaration within the set period, the Trustee is entitled to release the Domain, put it under administration of DENIC eG (transit) or give up his position as Admin C towards the DENIC eG.

## **9.4 Violations of Law**

If the Trustee determines the Domain – or offers accessible through the Domain – offend applicable law, in particular criminal regulations, he is entitled to remove the Domain without notice and/or to terminate the present Contract with immediate effect as well as to give up his position as Admin C. A general examination of the offers by the Trustee is not required.

## **9.5 Remuneration**

The remuneration owed for the services of the Trustee will be paid by Hanival. The Customer will be herewith charged no additional costs.

## **9.6 Term of Contract**

- The Contract shall be concluded for an indefinite period; however, its validity is inseparable from the Domain registration through Hanival as a Provider. The Trust Contract shall be terminated irrespective of existing Contract with Hanival, should the Hanival Domain be transferred to another Provider (Domain Transfer/Transit) or removed.
- Both Trustee and Customer forego a right to due notice of dismissal. In fulfilling this Contract for the Third Party, Hanival is authorized to change the Domain Trustee at anytime. The Customer hereby agrees to such Contract modification.
- The right for notice of dismissal due to important reasons remains as unaffected as the other reasons for termination or grounds for dismissal as mentioned in the present Contract.
- The Trustee is entitled both to transfer all rights and obligations from the present Contract to another Trustee without further agreement with the Customer and to register this new Trustee as an administrative partner with the DENIC eG, as long as the Customer experiences no disadvantages thereby.

## **9.7 Trustee Liability**

- The Trustee is liable for damages only in the case of a breach of a substantial Contract obligation (cardinal obligation) in a way which endangers the Contract's purpose, or if this damage occurs on account of his rough negligence or intent.
- Should the culpable breach of substantial Contract obligation (Cardinal obligation) have taken place without rough or deliberate negligence, the liability is limited to damage reasonably predictable for the Trustee at the Contract's conclusion.
- Liability for promised features, in the case of personal injuries as well as for compelling legal regulations remains unaffected.

## **9.8 Customer Liability/Exemption**

The Customer shall indemnify the Trustee from all costs, damages and disadvantages for Domain registration being contested by the Third Party – whether entitled or unauthorized, extrajudicial or judicial – as a claimant of both Trustee and Domain Holder or Trustee alone. The claim exists irrespective of intention. The Trustee is obliged to cede all claims against unauthorized proceedings of the Third Parties to the Customer prior to the compensation.

## **10 Fair Use**

In case your traffic consumption exceeds the average customer traffic by more than 20 times we will contact you. We will advise to switch to another products than. Should there be no mutual agreement, we might terminate the contract regularly effective with the end of the running contract period.

## **11 Special regulations for products, which require the registration and administration of .pl Domains**

Hanival registers .pl Domains on behalf of the Customer with the Naukowa i Akademicka Siec' Komputerowa (NASK). Hanival makes all necessary declarations for the Customer.

- The NASK Domain Terms and Conditions are the basis for Domain Contract.
- The NASK Domain Terms and Conditions are available on the Internet under the following addresses:

<http://www.dns.pl/english/nprinciples.html> (english)

<http://www.dns.pl/zasady.html> (polisch)

## **12 Disputes: Applicable Law and Place of Jurisdiction**

Given the absence of a legally compelling place of jurisdiction, all disputes arising from contractual relations between Hanival and the Contract Party are the responsibility of the court for the 7th municipal district of Vienna. The Austrian substantive law is to be applied. Place of performance is Vienna.

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