

# General Terms and Conditions of Business of Stadtwerke Klagenfurt AG governing Telecommunications and IT Services to Corporate Customers

## I. Basic principles

### I.1. Validity of GTCs

These General Terms and Conditions of Business (hereinafter referred to as „GTCs“) shall apply to all goods and services rendered by Stadtwerke Klagenfurt AG, Telecommunications and Security Division (hereinafter referred to as „STW AG“) to the customer.

The reciprocal rights and duties of the contracting parties shall be determined exclusively according to the content of the instruction accepted by STW AG and its General Terms and Conditions of Business and any existing other (special) terms and conditions of business of STW AG.

General terms and conditions of business of the customer shall only apply if STW AG has expressly agreed in writing to abide by the same.

The Terms and Conditions of Business of STW AG shall also apply with regard to future transactions between the contracting parties even if, upon future conclusion of contract, no repeat reference is made thereto.

These GTCs are intended exclusively for business entrepreneurs (Unternehmer) within the meaning of the Austrian Consumer Protection Act (Konsumentenschutzgesetz, KSchG).

### I.2. First effective date of contract and commencement of contractual period

A contractual relationship between STW AG and the customer shall come into being once, following receipt of an order or instruction, STW AG has issued a written order confirmation, or has commenced actual rendering of service (e.g. providing internet access or placing requisite orders with third parties, etc.).

With regard to the calculation of contractual periods relating to minimum contractual term, the period of any termination waiver, and similar, in all instances where no express order confirmation has been issued, commencement of contract shall be deemed the first of the month following commencement of service rendering.

### I.3. Amendments to GTCs

Amendments to the GTCs may be made by STW AG and shall also be valid in respect of existing contractual relations. The current version may be accessed online at [www.stw.at](http://www.stw.at) or may be sent to the customer upon request.

In so far as the amendment does not exclusively benefit customers, an announcement of amendments shall be made at least two months prior to the validity of the new provisions. In such event, STW AG shall notify the customer at least one month prior to the first effective date of the amendment as to the material content thereof, whereby this shall be summarised and in the appropriate form. At the same time as the said notification, STW AG shall inform customers to the effect that they are entitled to terminate their contract free of charge up to the first effective date of the amendment.

### I.4. Assignment of rights and duties

Without prior written consent, the customers of STW AG shall not be entitled to assign the rights and duties under this contract to a third party. STW AG shall be empowered to impose its duties either wholly or in part, and thus also in respect of individual services or an entire contract, upon a third party, whereby this shall have debt-discharging effect; STW AG shall notify the customer accordingly. Use of contractual services by third parties, as well as transfer of such services for a consideration to third parties shall require the express written consent of STW AG. In so far as resale has been agreed, resellers shall in any event be under a duty to impose these Terms and Conditions of Business upon their contractual partners and to indemnify STW AG and hold STW AG harmless in this regard.

### I.5. Power of attorney not held by employees of STW AG

Sales partners or sales employees, as well as technical support workers of STW AG, hold no power of attorney permitting them to submit declarations on behalf of STW AG, to make commitments or receive payments.

## 2. Services rendered by STW AG

### 2.1. Services

The scope of the contractual services shall be based on the respective service specification and any related written agreements between the contracting parties (instruction/order/individual contract).

### 2.2. Contractual periods in respect of provision of services

The provision of telecommunications services shall take place, unless otherwise agreed on the respective instruction form or in the instruction confirmation, within 20 working days following acceptance of contract by STW AG, or 20 working days after the date on which the customer has established all technical and other preconditions incumbent upon it (clause 2.4) (hereinafter referred to as „the Availability Date“). If, for reasons attributable to STW AG, the Availability Date is not observed and exceeded by more than 40 working days, STW AG undertakes to grant to the customer a credit of 10% of the monthly fee payable (excluding VAT) for those services with which STW AG is in default for each week by which the Availability Date is exceeded. This shall not apply if failure to comply with the Availability Date is due to delays in services rendered by third parties acting as vicarious agents of STW AG. In any event, any further damages are excluded other than in the case of personal injury.

### 2.3. Remedy of faults

Faults in telecommunications services for which STW AG is responsible shall be remedied as swiftly as possible, but at the latest within a period of two weeks. In the event that the said period is exceeded, clause 2.2 shall apply by way of analogy. The customer shall support STW AG to the best of its ability in locating the source of the fault and error and grant the requisite access to STW AG or third parties instructed by the latter at any time in order to enable remedy of the fault. If STW AG or a third party instructed by the same shall be called upon to remedy a fault, and it is established that no fault is present in connection with provision of the contractually-agreed services or that the fault is attributable to the customer, the customer shall indemnify STW AG in respect of all and any expenses incurred by the latter in connection therewith.

### 2.4. Duties of corporation on the part of the customer

If necessary, the customer shall provide at its own expense all requisite hardware and software in its subscriber end equipment which shall enable smooth installation, as well as other requisite devices, unless the same are to be provided by STW AG based on a separate agreement. The customer shall further make available all further requisite technical preconditions (e.g. electricity supply, suitable rooms, etc.) at its own expense and shall obtain any requisite consents from third parties and provide all necessary information (including the course of electrical cables and water pipes) in order to enable smooth installation. STW assumes no warranty as to the functional performance of the telecommunications equipment installed by the customer, such as, in particular PCs and modems, radio equipment, etc.

### 2.5. Service quality

STW AG shall ensure that the agreed service quality is guaranteed. Compensation/Indemnification upon failure to comply with the service quality shall be based on the liability provisions contained at clause 6.

### 2.6. Provision or sale of goods or devices by STW AG

Goods or devices sold to the customer shall be subject to retention of title until full payment in respect thereof.

In so far as devices are provided by STW AG to the customer for use, these shall remain in the ownership of STW AG even if they have been installed, and must be returned immediately to STW AG at the end of the contract at the cost of the customer, failing which the full purchase price shall be invoiced unless otherwise agreed. The customer and the persons within the customer's area of responsibility must use such end devices or accessories with the greatest possible care, and in the event of damage, the customer shall not be released from its obligation to make payment. Service and maintenance of leased end devices as well as accessories shall be undertaken during the entire contractual term exclusively by STW AG or its authorized agents.

## 2.7. Service boundary

With regard to telecommunications services, unless otherwise contractually agreed, the CPE interface shall be deemed the boundary in respect of service.

## 3. Charges and charge amendments

### 3.1. Valid charges

The charges for the provision of telecommunications services shall be based on the respective valid price list/any derogating written agreements between the contracting parties (instruction/order/individual contract).

Prices for installation, maintenance and special services are also contained in the respective valid price lists or the respective written agreement (instruction/order/individual contract). The customer notes that the charges fixed for internet access only comprise „pure“ internet access (internet connectivity), but not, for instance, fees charged by third parties for the use of services on the internet, unless otherwise agreed in writing or indicated in the price list. Where goods are delivered by STW AG, the agreed prices shall be deemed ex-warehouse STW AG; any packaging and shipping costs shall be borne by the customer unless otherwise expressly agreed.

All prices shall be exclusive of statutory value added tax.

Unless otherwise expressly agreed in the respective individual contract (instruction/order), the prices listed shall not include the costs of use of transmission equipment up to the selected Point of Presence (POP), the costs arising at the customer's location, as well as the cost of equipment provided for exclusive use by the customer at the Point of Presence by STW AG. Any costs which may be charged by third parties for the use of the services accessed via the connection at the Point of Presence shall in any event not be included.

### 3.2. Breakdown of charges

There shall be a distinction between monthly fixed charges (e.g. basic fee for internet access/leased line, charges for use of dedicated internet line and for any rent of end equipment and accessories), variable charges (dependent on data transfer volume or connection time) and one-off charges (e.g. equipment and installation fees for internet access/leased lines and equipment charge for domain registration). The ratio between the said charges shall differ according to product, whereby the respective provisions concerning charges and relevant regulations contained in the individual contract/offer shall be determining.

### 3.3. Retrospective charging for exceeding fair use

In respect of „fair-use“ products of STW AG, the customer accepts the fair-use limit indicated in the respective service specification. Where the fair-use limit is exceeded by more than 50% in one month, STW AG reserves the right to charge therefor. Where the said limit is substantially exceeded over a considerable period, STW AG reserves the right to terminate the contract.

### 3.3. Amendment of charges

STW AG reserves the right to amend charges (either up or down) in the event of changes to the costs relevant to its own costing (e.g. staff costs, interconnection fees, electricity costs, telecommunication line costs).

This shall also apply in respect of a change to or new introduction of taxes and other public levies which impact upon calculation of charges. The right of termination on the part of the customer in the context of price changes pursuant to Section 25 (3) of the Austrian Telecommunications Act 2003 (Telekommunikationsgesetz 2003, TKG 2003) shall be excluded if a price reduction occurs or prices are adjusted pursuant to an index referred to in the price list or otherwise agreed. If discounts have been agreed with the customer, the customer shall not share in any price reductions unless otherwise expressly agreed.

## 4. Payments

### 4.1. Terms of payment, due date

Unless otherwise agreed in writing, payments shall be due promptly without deduction upon receipt of invoice. Invoicing dates shall be set out in the individual agreement (instruction/order/individual contract). In the event of doubt, one-off costs may be charged directly following conclusion of contract/delivery, ongoing consumption-independent costs may be charged monthly in advance, and ongoing consumption-dependent costs may be charged monthly in arrears.

### 4.2. Payment default, default interest

In the event of payment default on the part of the customer, STW AG shall be entitled to charge default interest pursuant to Section 352 of the Austrian

Business Enterprise Code (Unternehmensgesetzbuch, UGB). Furthermore, the customer shall indemnify all costs, expenses and disbursements accruing for the purpose of relevant pursuit of claims.

### 4.3. Objections to invoice

Objections to the claims raised in invoices must be raised by the customer within 30 days of the invoice date, failing which claims shall be deemed acknowledged.

In the event that, following a review by STW AG, in the view of STW AG, the customer's objections should prove to be unjustified, then, in order to avoid losing the right to assert such objections, within one month from receipt of a response from STW AG (which shall contain reference to the one-month period as well as the legal consequences), the customer must institute arbitration proceedings before the regulatory authority (Rundfunk- und Telekom-Regulierungs GmbH), and, if the arbitration proceedings do not succeed, institute proceedings before the ordinary courts within a period of one further month. If the customer does not wish to embark upon arbitration proceedings, then within a period of 3 months from receipt of STW AG's response, in order to avoid losing the right to assert objections, the customer must institute proceedings before the ordinary courts.

### 4.4. Settlement of disputes

Notwithstanding the jurisdiction of the ordinary courts, customers may submit disputes or complaints (relating to quality of service, payment disputes which have not been satisfactorily resolved or any alleged breach of TKG 2003) to the regulatory authority.

STW AG shall be under a duty to cooperate in such proceedings and to provide all information required in order for the facts of the case to be adjudged as well as to submit requisite documents. The regulatory authority shall bring about a mutually-agreed resolution, or notify the parties of its opinion on the case submitted.

### 4.5. Due date for payment of invoice amounts in case of objections

Objections shall have no impact upon the due date for payment of an invoice amount. If, however, the competent regulatory authority (Rundfunk- und Telekom-Regulierungs GmbH) is called upon to settle the dispute, then as a result, the due date for payment of the sums at issue shall be postponed until settlement of the dispute. However, STW AG shall be entitled to demand immediate payment of a sum equivalent to the average of the last three undisputed invoice amounts.

### 4.6. Lump sum charging in the case of disputes over charge amounts

In the event that an error is identified which could have been prejudicial to the customer, and the correct charge cannot be established, then the customer shall pay a charge corresponding to the average of the last three invoice amounts or, if the business relationship has not yet lasted for a period of three months, the most recent invoice amount.

### 4.7. Offsetting

Offsetting against outstanding claims in relation to STW AG and the retention of payments on the basis of claims by the customer which are asserted but not acknowledged by STW AG shall not be permitted.

### 4.8. Exclusion of right of retention on the part of customers

Rights of the customer to refuse contractual performance pursuant to Section 1052 of the Austrian General Civil Code (Allgemeines Zivilgesetzbuch, ABGB) in order to obtain or secure counter-performance, as well as the customer's statutory rights of retention in general, shall be excluded.

### 4.9. Documentary evidence of charges

The customer invoice (documentary evidence of charges) shall contain the following indications: customer name, customer address, invoice date, customer number, calculation period, invoice number, charges for fixed monthly repeat services, for variable services, for one-off fixed services, total price excluding value added tax, value added tax, total price including value added tax, as well as any discounts granted.

The customer shall only be entitled to a list of its access data, log files, proxy evaluations, etc. (in so far as technically possible and legally admissible) if a separate written agreement has been concluded as to the storage and provision of such data.

## 5. Warranties

### 5.1. Warranty period

The warranty period shall be six months.

### 5.2. Remedy of defects

Defects covered by warranty shall be remedied at the discretion of STW AG either by way of rectification or replacement delivery. Any price reductions shall be excluded. Warranty claims shall require that the customer shall have notified the defects having arisen in writing and in detail within a reasonable period, and at most within 7 working days.

### 5.3. Exclusion of warranty

Excluded from the warranty shall be defects arising from layout and assembly not arranged by STW AG (this shall not apply in so far as self-assembly by the customer or third parties was agreed and was undertaken by a professional or in the event of admissible and professional substitute measures by the customer or third parties, on the basis that STW AG, despite notification of defects, has failed to comply with its duty of rectification within a reasonable period), inadequate equipment, failure to observe installation requirements and conditions of use, excessive utilisation of the capacity as indicated by STW AG, incorrect handling and use of unsuitable operating materials; this shall also apply in the case of defects due to material provided by the customer. STW AG shall not be liable for damage due to atmospheric discharge, electricity surges or the influence of chemicals. The warranty shall not cover the replacement of parts subject to natural wear and tear unless a defect was already present upon handover.

### 5.4. Complaints as to defects

It shall be a precondition of all and any warranty claims that a detailed written complaint in specific terms shall be submitted on a timely basis (see clause 5.2) once the defect is identified.

## 6. Liability of STW AG; Exclusion of liability and limitations; Obligations of the customer

### 6.1. Terms of liability – Exclusion of liability

Unless otherwise stipulated, each contracting party shall be liable in relation to the other party according to the general rules of law relating to damages claims. In so far as, according thereto, there is a question of liability due to fault (Verschulden), then with the exception of personal injury, liability shall only exist in the case of intent or gross negligence. The liability of STW AG for consequential losses and loss of profit shall be generally excluded; this shall not however apply with regard to losses caused intentionally and unlawfully by STW AG.

With regard to all and any claims against STW AG, an immediate detailed written notice of loss in specific terms shall be required as soon as the loss having arisen becomes identifiable.

### 6.2. Exclusion of liability of STW AG in respect of availability of services; Impossibility of delivering e-mails

STW AG shall operate the services offered in a context of the greatest-possible diligence, reliability and availability. However, for technical reasons, it is not possible for the said services to be accessible without any interruption, for the required connections to always be capable of generation, or for stored data to be preserved under all circumstances.

In particular, for technical reasons, it is not possible to guarantee that e-mails will be delivered or that relevant error notifications will be transmitted. The delivery of e-mails may in particular be prevented on the basis of spam filters or virus filters, etc. (set up by STW AG or by the customer). STW AG assumes no liability whatsoever in this regard unless STW AG shall have acted with intent or gross negligence. This shall not affect the other exclusions of liability/limitations.

STW AG reserves the right to impose temporary restrictions in respect of its own capacity thresholds in so far as the customer can be reasonably expected to tolerate the same, in particular because such restrictions are minor and objectively justified, and are due to reasons outside the control of STW AG.

In the case of force majeure, strikes, restrictions on the services of other network operators or in the case of repair and maintenance work, restrictions or interruptions may arise in the provision of the telecommunications services. STW AG shall not be liable for such outages unless it bears fault therefor based on intent or gross negligence.

In the event of unreasonably long interruptions or unreasonable restrictions, the customer's right to terminate the contract for good cause shall not be affected. STW AG assumes no liability whatsoever for content transmitted, intended to be transmitted or accessible via the internet. No liability is assumed for loss of data.

### 6.3. Exclusion of liability of STW AG in respect of transmitted data; Losses due to viruses, hackers, etc.

Furthermore, STW AG shall not be liable for data retrieved by the customer from the internet or e-mails received by the customer (including viruses contained therein) as well as in respect of services of third-party service providers, even if the customer gains access to the same via a link from the website of STW AG or via information provided by STW AG. The customer notes that use of the internet is associated with uncertainties (e.g. viruses, Trojans, hacker attacks, intrusion into Wi-Fi systems, password phishing, etc.). STW AG assumes no liability in this regard; losses and expenses thereby arising shall be borne by the customer.

### 6.4. Exclusion of liability in the event of breaches of duty by the customer; duties of the customer

STW AG shall not be liable for losses caused by the customer due to failure to observe the terms of the contract and the integral parts thereof, in particular these General Terms and Conditions of Business, or due to improper use.

#### 6.4.1. Protection of access data

The customer shall be under a duty to maintain confidentiality in respect of its passwords. The customer shall be liable for any losses arising due to inadequate safekeeping of passwords by the customer or due to communication thereof to third parties.

The customer shall be liable for all charges due in connection with communications services as well as other claims arising in connection with communications services, which result from use of its connection or its access data (also by third parties), in so far as improper use is not attributable to STW AG. This shall not affect further damages claims or any other claims on the part of STW AG.

#### 6.4.2. Interference with third parties; Spam and spam protection

The customer undertakes not to use the contractual services in any manner which shall lead to any interference with third parties or which endangers the security or operations of STW AG or other computers. Accordingly, in particular, spamming (aggressive direct mailing via e-mail) or any use of the service in order to transmit threats, obscenities, to cause harassment or to cause prejudice to other internet users shall be prohibited.

The customer undertakes to use suitable and sufficiently-secure technical equipment and settings. In the event that difficulties arise for STW AG or for third parties due to insecure technical equipment of the customer (e.g. open e-mail relay), the customer shall be under a duty of indemnification; furthermore, STW AG shall be entitled to immediately block the customer or to take other suitable measures (e.g. blocking of individual ports). STW AG shall strive to use the respectively least severe means and shall inform the customer immediately as to the measure taken and the reason therefor.

#### 6.4.3. Duty of the customer to comply with statutory rules

The customer undertakes to observe all legal rules and to assume in relation to STW AG sole responsibility for compliance therewith. The customer undertakes to indemnify STW AG in full and hold STW AG fully harmless in the event that a justifiable claim is brought against the latter in respect of content circulated by the customer, whether under civil or criminal law, before the courts or extra-judicially. If a claim is brought against STW AG, the latter alone shall be entitled to decide on its response thereto (legal proceedings, settlement, etc.); in such event, other than in the case of gross fault (grobes Verschulden) on the part of STW AG, the customer may not raise a plea of inadequate legal defence.

#### 6.4.4. Duty on the part of the customer to report faults

The customer shall be under a duty to inform STW AG immediately of any fault or interruption to telecommunications services in order to enable STW AG to remedy the problem before it instructs other companies to do the same. If the customer breaches the said duty of notification, STW AG shall assume no liability for losses and expenses resulting from omitted notification (e.g. costs of a third-party company unnecessarily instructed by the customer).

### 6.5. Special provisions governing CITYFirewall (firewalls, intrusion prevention systems, anti-virus and anti-spam systems)

With regard to security systems and security filters set up, operated and/or checked by STW AG, STW AG shall as a matter of principle act with the greatest-possible diligence within the framework of the current state of technological developments. However, STW AG would point out that absolute security cannot be guaranteed through such security systems and security filters. As a result, STW AG's liability on the basis of warranty or damages for any prejudice suffered shall be excluded where the same shall arise on the basis that installed security systems and filters are circumvented or disabled; this shall not however

apply with regard to losses caused intentionally and unlawfully by STW AG. STW AG would point out that any liability for application errors on the part of the contracting partner or its vicarious agents and employees shall not be assumed; this shall also apply in the case of autonomous changes to software or configurations without the agreement of STW AG.

The liability of STW AG for prejudice suffered on the basis that security systems and filters installed, operated or checked at the customer are circumvented or disabled shall be excluded.

The terms of clause 6.5 shall apply by way of analogy with regard to other security systems provided by STW AG, such as, in particular, intrusion prevention systems (IPS).

#### **6.6. Exclusion of STW AG's liability in the event of infringements of rights of the customer by third parties**

If the customer holds damages claims as a result of infringement of its rights on the basis of information stored by STW AG for other customers of STW AG, STW AG shall in any event not be liable (notwithstanding all other limitations on and exclusions of liability), if it has no actual knowledge of the infringement of right or if reference to the infringement of right is not qualified within the meaning of the ISPA Code of Conduct – general rules on liability and duties of disclosure of internet service providers, available at [www.ispa.at](http://www.ispa.at).

### **7. Contractual term and termination; blocking**

#### **7.1. Contractual term and notice period**

Contracts concluded between the contracting parties relating to procurement of the contractual services shall be concluded for an indefinite period or the defined period agreed in the individual agreements (instruction/order).

If no agreement has been made as to waiver of termination, contracts concluded for an indefinite period may be terminated in writing observing a three-month notice period, with effect from a month-end.

#### **7.2. Service suspension and early termination of contract in the event of payment default**

Adherence to the agreed payment dates shall be a material condition of execution of services by STW AG.

In line with the terms of Section 70 of the Austrian Telecommunications Act 2003, STW AG shall be entitled in the event of payment default, at its discretion, to either suspend services or terminate the contract early. This shall however only apply if the customer, despite a prior reminder (which may be transmitted either in writing or electronically) setting an extension of time of at least two weeks, and threatening to suspend services/terminate the contract early, remains in default in respect of payment.

#### **7.3. Other grounds for early termination of contract and suspension of services; blocking/partial blocking**

In addition to payment default, institution of insolvency proceedings in respect of the customer or rejection of such proceedings due to lack of cost-covering assets shall also be deemed good cause for early termination of contract; the same shall also apply in the case of a petition for extrajudicial settlement negotiations, if two or more sets of enforcement proceedings by creditors of the customer are pending, in the case of institution of liquidation proceedings or suspected abuse of the communications service, a breach of statutory rules, official requirements or contractual terms, as well as if the customer, contrary to the terms expressly agreed in the individual contract (instruction/order) uses single-user accounts on a multiple-user basis or permits such use thereof, or if the customer causes disproportionate data transfer, breaches „netiquette“ or the generally accepted standards of network use, or in the case of spamming or the use of insecure technical equipment within the meaning of clause 6.4.2.

At its discretion, STW AG may also suspend services in place of declaring early contractual termination. Furthermore, where breaches are suspected, STW AG shall be entitled not only to effect a total block, but also a merely partial block. In particular, in the case of infringements of right, STW AG may remove the information stored on the hosted websites or block access thereto. STW AG shall strive to apply the respectively least severe means. STW AG shall immediately inform customers as to the measures taken and the reason therefor. In any event, the right of STW AG to effect extraordinary termination of contract for good cause shall remain unaffected.

#### **7.4. Claim to payment of charges and damages in the event of early termination/blocking**

Any case of immediate contractual termination, service suspension or removal of service for any reason attributable to the customer or the customer's domain shall not affect STW AG's entitlement to payment of charges for the contractually-provided contractual term until the next termination date or to assert claims for damages. In the event of blocking of services for a reason attributable to the customer, STW AG shall charge a lump sum of EUR 150.00; STW AG reserves the right to assert further damages claims.

It shall always be the case that, if timely payment of STW AG's charges shall appear at risk, further rendering of services may be rendered dependent on a reasonable security payment or advance payment; this shall in particular also be the case if it has already been necessary to block the customer's connection due to payment default, as well as in all instances which would entitle STW AG to effect early termination of contract pursuant to clauses 7.2 and 7.3.

#### **7.5. Termination of contract and content data**

The customer is expressly informed that, upon the end of the contractual relationship, whatever the grounds therefor, STW AG shall no longer be under a duty to continue providing the agreed service. It is therefore entitled to delete stored or retrievable content data. The timely retrieval, storage and securing of such content data prior to termination of the contractual relationship shall therefore lie within the sole sphere of responsibility of the customer. The customer may therefore not derive any claims whatsoever against STW AG as a result of deletion.

### **8. Data protection**

#### **8.1. Secrecy of communications and duty of confidentiality**

STW AG and its employees shall be subject to the duty to maintain secrecy in respect of communications pursuant to Section 93 of the Austrian Telecommunications Act 2003 and the confidentiality obligations of the Austrian Data Protection Act (Datenschutzgesetz), also following the end of the activity which gave rise to the duty of confidentiality. Personal data and data of users shall not be inspected. In addition, the mere fact of a message exchange having taken place shall be subject to the duty of confidentiality, as well as unsuccessful connection attempts.

The customer may refuse to allow the processing of personal data. This shall not prevent technical storage or access if the sole purpose thereof is the conduct or facilitation of transmission of a message via the communications network of STW AG, or in order to provide a customer with the service which it has ordered. Routing and domain information must be passed on accordingly.

#### **8.2. Information pursuant to Section 96 (3) of the Austrian Telecommunications Act 2003 relating to processed data, master data**

On the basis of the Austrian Data Protection Act and the Austrian Telecommunications Act 2003, the contracting parties undertake to store, process and pass on master data only within the framework of service rendering and only for the purposes agreed in the contract. Such purposes are: the conclusion, execution, amendment or termination of the contract with the customer, invoicing of charges, generation of subscriber directories, provision of information to emergency-service-call providers pursuant to Section 98 of the Austrian Telecommunications Act 2003. In so far as, pursuant to the current valid version of the said Act, STW AG is under a duty to pass on such data, it shall comply with its statutory obligation. On the basis of Section 92 (3) clause 3 and Section 97 (1) of the Austrian Telecommunications Act 2003, STW AG is authorized to determine and process the following personal master data of the customer and subscriber:

Forename, surname, academic qualification, residential address, date of birth, company name, e-mail address, telephone and fax numbers, other contact information, credit rating, information as to the nature and content of the contractual relationship, terms of payment, as well as incoming payments in evidence of the contractual relationship.

Pursuant to Section 97 (2) of the Austrian Telecommunications Act 2003, master data shall be deleted by STW AG at the latest following termination of the contractual relations with the customer, unless such data is still required in order to invoice or correct charges, process complaints or in order to fulfil other statutory obligations.

### 8.3. Traffic data

STW AG shall store access data and other personal traffic data required in order to generate connections and invoice charges or for technical reasons as well as in order to check the functional performance of services and equipment, in particular source and destination IP as well as all other log files based on its statutory obligation pursuant to Section 99 (2) of the Austrian Telecommunications Act 2003 until the expiry of such period within which an invoice may be legally contested or a claim to payment asserted, or for as long as shall be required for the said technical reasons or to check functional performance. In the event of a dispute, STW AG shall make such data available to the ruling institution. Until the time of a final decision, STW AG shall not delete the data. Otherwise, STW AG shall immediately delete or anonymize traffic data once the connection has been terminated.

### 8.4. Content data

STW AG shall not store content data. In so far as, for technical reasons, short-term storage shall be necessary, STW AG shall immediately delete stored data once such reasons no longer apply. If the storage of content is a feature of the services provided, STW AG shall delete the data immediately following rendering of the service.

### 8.5. Use of data for marketing purposes, consent to receipt of e-mail advertising

The customer grants its consent, revocable at any time, to the effect that traffic data may be used for the purposes of marketing of telecommunications services of STW AG, in particular for the further development, needs analysis, planning of network expansion and the improvement of proposed solutions and offers of telecommunications services of STW AG, as well as for the purpose of providing services with additional benefit.

The customer declares itself in agreement to receiving from STW AG advertising and information relating to products and services of STW AG as well as business partners of STW AG to a reasonable extent via e-mail. In this context, the customer's data, including its name and e-mail address, shall be held exclusively by STW AG. The customer may at any time revoke this declaration of consent. STW AG shall give the customer the opportunity to decline receipt of further messages in each advertising e-mail.

### 9. Data security

STW AG shall take all measures such as are technically possible and reasonable in order to protect the data which it stores. In the event that a third party should succeed in an unlawful manner to gain control over data stored at STW AG or to use such data, STW AG shall be liable in relation to the customer only in the event of intentional or grossly negligent conduct.

## 10. Special terms governing the delivery and generation of software

### 10.1. Scope of performance

With regard to software generated individually by STW AG, the scope of performance shall be determined by way of service specification (system analysis) countersigned by both contracting parties. Delivery shall encompass the program code executable on the designated systems and a program description. Rights in the programs and documentation shall be retained in full by STW AG unless otherwise expressly agreed.

### 10.2. Rights in software supplied

With regard to the delivery of software, unless otherwise expressly agreed, STW AG shall grant to the customer a non-transferable, non-exclusive right of use in the software, whereby the customer accepts the respectively valid licence terms and conditions applying to the software, even if the software in question is that of third parties. In the event of breaches, the customer shall indemnify STW AG and hold STW AG harmless. To the best of its ability, the customer must in any event strive to ensure avoidance of damage or loss.

With regard to the use of licensed software of third parties, the customer shall be under a duty, prior to use of such software, to inspect the licence terms and to comply fully with the same. With regard to software retrieved by the customer qualified as „public domain“ or „shareware“ and which was not generated by STW AG, no warranty is assumed. With regard to such software, the customer must observe the terms of use stated by the author and any licence provisions and refrain from any transfer of the software to third parties, even for short-term use. In any event, the customer shall indemnify STW AG in full and hold STW AG fully harmless in respect of claims associated with an infringement of the above obligations.

### 10.3. Warranty

STW AG assumes no warranty to the effect that the software delivered meets with all requirements of the customer; unless this is expressly incorporated into the content of the contract, or that the software delivered works with other programs of the customer; or that the programs shall run without interruption and free of errors (unless a defect shall exist within the meaning of the warranty right), or that all software errors are capable of remedy. The warranty shall in any event be limited to reproducible (consistently repeatable) defects in program function.

In addition, the warranty terms at clause 5 shall apply.

### 10.4. Cancellation in the event of software defects

If STW AG supplies hardware and software at the same time, any defects in the software shall not entitle the customer also to cancel the contract underlying use or supply of the hardware. The same shall apply with regard to agreed services. In particular, defects in the hardware or software supplied shall not give rise to entitlement to cancel the contract relating to rendering of internet services. All of the above shall not apply if indivisible services within the meaning of Section 918 (2) of the Austrian General Civil Code are rendered.

## 11. Special terms applying to domain registration

### 11.1. Procurement and administration of domain; Contractual relations

In the event that the procurement and administration of a domain by STW AG shall take place, the latter shall procure and reserve the requested domain on behalf and for the account of the customer provided the required domain is still available. For all top-level domains, the domains shall be set up with the respective competent registration agent.

Unless otherwise agreed in an individual contract (instruction/order), STW AG shall act in respect of the domains administered by registration agents as an invoicing agent for the term of this contract; however, in any event, the contractual relationship as regards setting up and managing the domain shall exist between the customer and the registration agent direct. The registration fee paid to the registration agent shall be comprised in the amounts charged by STW AG to the customer in so far as not otherwise agreed in an individual contract (instruction/order). In such circumstances, STW AG shall invoice the customer the charge for initial registration, the technical equipment used and an administration fee.

### 11.2. End of contract with registration agent

The customer notes that the contract of the customer with the registration agent shall not automatically end when the contract with STW AG is terminated, but rather that the customer must independently give notice of termination of the same to the registration agent. With effect from the date of termination of the contract with STW AG, the customer alone shall bear responsibility for all requisite operations in connection with „domain administration“ (extension/termination of contract existing with the domain registration agent, payment of registration fees, etc.).

### 11.3. Application of registration agent's general terms and conditions of business

In respect of the domain, the General Terms and Conditions of Contract of nic.at (at [www.nic.at](http://www.nic.at)) / the relevant competent registration agent shall therefore apply; these may be sent to the customer of STW AG upon request.

### 11.4. Legal admissibility of domain

STW AG shall not be under any duty to verify the admissibility of the domain, for instance in terms of trademark or name rights. The customer declares that it shall comply with the relevant statutory provisions and shall in particular not infringe the labelling rights of any person and shall in this regard indemnify STW AG in full and hold STW AG fully harmless.

## 12. Special terms relating to internet services via the infrastructure of third parties

With regard to customers who procure the contractual services (in particular internet services) via the infrastructure of third parties (e.g. cable, TV networks, leased connections), STW AG assumes no liability for losses suffered by the customer as a result of outage, switching off by third parties or generally as a result of any fault of such infrastructure. The customer is informed that a functioning infrastructure is necessary in order for the services to be rendered.

Express reference is made to the terms of clause 3.1.

### 13. Special terms relating to the rendering of web-design or web-consulting services

#### 13.1. Duty of cooperation on the part of the customer

The customer shall be under a duty to cooperate as required. Said duty of cooperation comprises in particular provision of the requisite information as well as, as appropriate, hardware, on which any installation is to be undertaken.

During requisite test runs, the customer shall be present in person or shall provide competent employees for such purpose who shall be authorized to adjudge and decide in respect of defects, functional expansions, functional curtailment and program-structure changes. As appropriate, the customer shall also provide requisite test data as well as all texts and other content (e.g. logos) which are to be deployed.

In so far as STW AG presents the customer with drafts, program test versions, a finished version or similar; these shall be carefully scrutinized by the customer. Any complaints or change requests must be notified at such point in time, failing which all claims against STW AG shall be forfeited.

#### 13.2. Liability for elements provided by the customer

Elements provided by the customer such as logos, texts, elements of the corporate design, etc., shall remain in the ownership of the customer; STW AG shall acquire no rights whatsoever therein. The customer warrants that it holds all requisite rights and must indemnify STW AG in full and hold STW AG fully harmless in respect of all consequences of any infringements of right (e.g. infringement of third-party copyright) in respect of elements provided by the customer.

#### 13.3 No duty of verification on the part of STW AG

STW AG shall not be under any duty to verify elements provided, including in particular content of the customer; to ensure that they comply with legal provisions. STW AG may however refuse to distribute such content if infringements are suspected.

#### 13.4. Granting of rights by STW AG

Unless otherwise expressly agreed in writing, upon payment of the agreed charge, STW AG grants to the customer an exclusive and indefinite right to use the concept and/or design developed by STW AG and/or the contractual software applications exclusively in the context of the internet and for its own purposes. Any other use, even merely in part, for instance in the realm of other electronic media or for print products, shall require a separate written agreement. The same applies with regard to the granting of authorization (even merely in part) to third parties.

### 14. Other provisions

#### 14.1. Applicable law

Unless excluded by statute, the statutory rules applicable between entrepreneurs within the meaning of the Austrian Consumer Protection Act/within the meaning of the Austrian Business Enterprise Code shall apply. Austrian law shall apply, with the exception of UN sales law and non-mandatory conflict-of-law rules.

#### 14.2. Place of jurisdiction

With regard to any disputes under the present contract, the territorial jurisdiction of the court having subject-matter competence at the registered office of STW AG shall be deemed agreed.

#### 14.3 Written form for amendments and additions to these GTCs

Amendments and additions to these GTCs as well as to an instruction or other integral part of the contract shall only be valid when in writing (whereby a signed fax shall also fulfil the written-form requirement); no subsidiary oral agreements exist.

#### 14.4. Written form for notifications of the customer

All notifications and declarations of the customer relating to this contractual relationship must be submitted in writing.

#### 14.5. Changes of address; Receipt of electronic declarations

The customer shall notify STW AG immediately in writing of any changes to its name or address. If no change notification is made, documents shall be deemed served upon the customer if they have been sent to the address most recently notified by the customer. If, in the event of name changes not promptly notified, the customer wishes for a new invoice to be issued, STW AG shall strive to fulfil such request; this shall not however impact upon the payment requirement in respect of the original invoice.

Electronic declarations shall be deemed served when sent to the e-mail address most recently notified by the customer.

#### 14.6. No normative or interpretive significance of titles

Titles in these Terms and Conditions of Business shall serve merely the purposes of clarity and shall have no normative significance; neither shall they limit or extend the scope of application of these Terms and Conditions of Business or serve interpretation hereof.

#### 14.7. Severance clause

Any invalidity of individual terms shall not affect the validity of the other General Terms and Conditions of Business. Any invalid term shall be replaced by a valid provision which comes as close as possible in economic intent to the invalid term which it replaces.

### Contact details

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