

GENERAL TERMS AND CONDITIONS OF BUSINESS

I. Subject matter and scope of application

1. The following General Terms and Conditions of Business (T&Cs) shall apply to all consultancy agreements concluded and any other services provided by ePrivacy. They shall also apply in cases in which ePrivacy assumes the role of an external data protection agent.
2. These T&Cs shall form a material part of any agreement concluded, unless such agreement specifically stipulates otherwise. They shall also apply to any future business relationships entered into with the Customer, without any renewed express incorporation thereof being necessary in this regard.
3. Any divergent terms and conditions of business of the Customer and any amendments or addenda to these T&Cs shall only be valid where they have been acknowledged in writing by ePrivacy. This shall also be the case where no objection to the application of the terms and conditions of business and/or delivery of the Customer has expressly been made.

II. Content of contract

1. ePrivacy shall be obligated to provide the services specified in the individual agreement and/or confirmation of the award of the contract. It shall not be obligated to bring about any particular outcome, in particular the realisation of any projections.
2. Where the performance of the consultancy services is to be effected in written form, the written statements in question shall be binding. Any oral statements made by employees of ePrivacy that are not in relation to the contract awarded shall be non-binding in all cases.
3. ePrivacy may avail itself of the services of third-party experts in fulfilling its obligations.
4. Should there be any change in actual circumstances following the performance of the consultancy services, and should ePrivacy become aware of such change, ePrivacy shall not be obligated to inform the Customer of such change or the consequences thereof.
5. Unless the Parties stipulate otherwise, ePrivacy shall be entitled to use the Customer's name and logo in the context of its own advertising endeavours (e.g. on its website, in sales materials and in other presentations).

III. Activities in the capacity of external data protection officer

1. Should ePrivacy be contracted to act in the capacity of an external data protection agent, ePrivacy shall provide the services specified pursuant to the statutory provisions contained art. 39 GDPR, section 7 of the German Federal Data Protection Act (*Bundesdatenschutzgesetz – BDSG*). ePrivacy warrants that it possesses the degree of expertise and reliability required by art. 39 of the GDPR in this regard. ePrivacy shall work, in the capacity of independent data protection officer, to ensure the protection of data and compliance with data protection legislation and other regulations relating to data protection. Furthermore, ePrivacy shall act as a point of contact for all matters relating to data protection and shall, upon request, assist the Customer in the implementation of measures in the data protection context. In particular, ePrivacy provides the following services:
 - a. to inform and advise the controller or the processor and the employees who carry out processing of their obligations pursuant to this regulation and to other Union or Member State data protection provisions;
 - b. to monitor compliance with this regulation, with other Union or Member State data protection provisions and with the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits;
 - c. to provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 35;
 - d. to cooperate with the supervisory authority;
 - e. to act as the contact point for the supervisory authority on issues relating to processing, including the prior consultation referred to in Article 36, and to consult, where appropriate, with regard to any other matter;
 - f. to carry out the tasks, the Data Protection Officer shall take due account of the risk posed by the processing operations, take into account the nature, extent, circumstances and purposes of the processing operation.
2. ePrivacy shall, upon its own initiative and on a regular basis, provide the Customer with information on current developments with regard to data protection legislation and the various national and international organisations.
3. ePrivacy shall prepare an annual audit upon request. Furthermore, ePrivacy shall, upon request, act in an advisory capacity with regard to the implementation of an optimised data protection management system. ePrivacy shall moreover provide consultancy and support services in the context of the coordination and monitoring of any data protection and data back-up measures undertaken pursuant to the BDSG and GDPR.
4. In addition, ePrivacy shall, upon request, conduct training sessions on data protection requirements for employees responsible for the processing of personal data.
5. ePrivacy shall draw up the Records of Processing Activities required pursuant to art. 30 of the GDPR and ensure that the Customer is able to provide the information on the responsible administrative body and Records of Processing Activities to be disclosed to the public pursuant to statute.
6. ePrivacy undertakes to place an employee who has been bound to secrecy and is in possession of the necessary expertise at the Customer's disposal in this regard. ePrivacy shall be entitled to replace this employee with another equally suitable individual at any time.

IV. Representative according to Article 27 GDPR

1. In the event that ePrivacy is assigned the task of acting as a Representative according to Article 27 GDPR of the responsible persons or processors not established in the Union, ePrivacy assumes the obligations laid down in Article 27 GDPR.
2. In particular, ePrivacy assumes the legal duty of the representative to represent the responsible party or processor in relation to all their obligations under the GDPR. ePrivacy is therefore the contact and point of contact for the supervisory authorities and the data subject, in particular with regard to data protection issues (cf. Art. 27 para. 4 GDPR).
3. The parties agree that in this case ePrivacy will only act as a contact point in addition to the respective responsible party or processor. The respective client of ePrivacy therefore undertakes to communicate its own contact points to third parties without change.
4. All ePrivacy activities are invoiced on an hourly basis, unless the parties have agreed otherwise.
5. The represented party, i.e. the responsible party or the respective processor, undertakes to respond immediately in writing to any enquiries from ePrivacy.

V. ePrivacyaudit

1. If the subject of the assignment of ePrivacy is the use of the ePrivacyaudit, ePrivacy shall make the ePrivacyaudit available at www.eprivacyaudit.eu in accordance with the general license terms for the use, which can be downloaded from www.eprivacyaudit.eu.
2. The use of the ePrivacyaudit is subject to a fee. The respective user license is agreed individually.

VI. Stipulated dates; warranty

1. Unless they have expressly been confirmed in writing, any stipulated dates shall generally be non-binding and shall merely indicate an approximate period of time for the performance of the services in question. Should the performance by ePrivacy of a service that has been confirmed in writing be subject to delay extending beyond said period for performance, any rights arising as a result of such delay shall only become enforceable upon the expiration of a grace period, stipulated in writing, of at least three weeks and the issuance of a warning of non-acceptance of performance.
2. Should ePrivacy perform work in the context of the fulfilment of its contractual obligations, the Customer must inspect the items in question immediately upon the delivery/commissioning thereof and notify ePrivacy in writing of the existence of any obvious defects within 14 days and of any hidden defects without delay upon discovery. In such a case, ePrivacy's warranty obligations shall be governed by the relevant statutory provisions.
3. ePrivacy shall be entitled to rely upon the Customer's depiction of the factual circumstances as being complete and accurate. It shall only verify such depiction where it is obvious that inaccuracies exist.
4. The performance by ePrivacy of the consultancy services shall not give rise to any protective effect for the benefit of third parties. Should a third party nevertheless bring a claim for damages against ePrivacy, Section IX shall apply.
5. ePrivacy shall be obligated to maintain the confidentiality of all business secrets of the Customer of which it becomes aware in the context of its collaboration with the latter.

VII. Copyright and rights of use, ownership

1. All drafts, concepts and works prepared by ePrivacy shall be deemed to be works protected by copyright within the meaning of Section 2 of the German Copyright Act (*Urheberrechtsgesetz – UrhG*), even where these do not meet the requirements imposed by Section 2 of the UrhG. Therefore, none of the work performed by ePrivacy may be used or processed for any purpose other than the contractual purpose without ePrivacy's consent.
2. In the event of a transfer of title, the scope of such transfer in geographical, temporal and substantive terms shall be governed exclusively by the contractual stipulations or the contractual purpose, as the case may be; Section 31(5) of the UrhG shall apply correspondingly. Title shall only pass to the Customer once the total amount of remuneration payable for the performance of the contract has been paid in full.
3. ePrivacy shall be identified as creator/developer in the customary manner in any publications, in particular in the context of Internet domains.
4. Ownership of the work product generated by ePrivacy shall only pass to the Customer once the amount of remuneration payable for the performance of the contract has been paid in full.

VIII. Non-competition undertaking; confidentiality

1. ePrivacy undertakes to inform the Customer of any potential conflicts of a competitive nature with other companies and shall, upon request, agree to a non-competition undertaking in favour of ePrivacy with regard to product and service ranges to be determined on an individual basis.
2. ePrivacy undertakes to maintain the secrecy of all confidential data of which it becomes aware in the context of its implementation of the agreement.
3. The Customer shall be obligated to refrain from taking any action that could compromise the independence of the employees of ePrivacy. The Customer therefore undertakes not to recruit or otherwise employ any employees of ePrivacy entrusted with the development of the project forming the subject matter of the consultancy agreement concluded with ePrivacy, or make any corresponding offers of employment to such employees, for the duration of the term of said agreement and for a period of 24 months thereafter.

IX. Invoices; setting off

1. The stipulated prices shall be subject to the statutory rate of VAT.
2. Invoices shall be payable in full immediately upon receipt. Interest in the amount stipulated by statute shall be charged after 14 days from the invoice date.
3. The offsetting of any counterclaims or the enforcement of any right of retention shall only be permissible where the Customer's claims are uncontested or have been established in a legally binding manner.

X. Remuneration

1. Where the Parties have not agreed upon a fixed amount of remuneration, invoices shall be calculated on the basis of the ePrivacy's daily rates and according to the amount of work actually performed. The daily rate shall be calculated on the basis of a man-day of 8 working hours. Each hour or part of an hour shall be invoiced at 1/8th of the daily rate. Each hour of overtime shall be subject to a surcharge of 25% or, from the 11th hour per day upwards, 50%.

2. Any and all expenditure incurred in connection with the performance of the contract shall be borne by the Customer, provided it was approved by the latter in advance. ePrivacy shall, where possible, avail itself of the most favourably priced means of transportation.

XI. Third-party costs

1. Where the Parties do not agree upon the payment of a lump-sum amount in this regard, ePrivacy shall be reimbursed for any third-party and ancillary costs, such as costs relating to the commissioning of the services of third-party experts and telephone-, fax- and courier-related expenditure, etc. on a separate basis.
2. ePrivacy shall also be entitled to contract out the provision of all services that are necessary for the performance of the contract to third parties on behalf and for the account of the Customer. However, any such outsourcing shall be subject to the prior consent of the Customer.

XII. Liability and consignment

1. In the event of damage resulting from ordinary negligence, ePrivacy shall only be liable for an amount representing the total value of the contract. An event of damage shall be deemed to comprise the sum of all of the claims of all claimants arising out of the performance of one and the same service. ePrivacy shall not be liable for any damage, resulting from ordinary negligence, which was neither foreseeable nor typical for the type of contractual agreement concerned. Should the Customer wish more extensive insurance coverage to be obtained from a third-party liability insurer, it must notify ePrivacy accordingly. In such a case, the Customer shall bear the costs relating to the more extensive insurance coverage, to the extent that any such coverage can be obtained.
2. The Customer shall bear the risk involved in any consignment of original documents. This shall also be the case where the consignment is effected within the same area in which ePrivacy is located, or by employees or vehicles of the latter. ePrivacy shall be entitled, but not obligated, to obtain insurance coverage for any deliveries effected on behalf and for the account of the Customer.
3. All claims for damages shall become time-barred after a period of 2 years from the date on which knowledge of the damage in question is attained.
4. Should ePrivacy draw up any legal opinions or award or assist in the award of any seals of approval in the data protection context on behalf of the Customer, the Customer hereby expressly acknowledges that, while the views expressed in those legal opinions reflect ePrivacy's professional opinion, they do not constitute any warranty to the effect that a court called upon to address the legal matter in question, or a (data protection) agency or comparable institution would come to the same conclusions. Rather, the possibility cannot be ruled out that, given the scope of the discretion conferred upon such institutions, these could come to different conclusions. Should this prove to be the case, ePrivacy shall not bear any liability in this regard, in particular not for any financial loss incurred by the Customer as a result.

XIII. Contractual term, termination

1. The duration of the contractual term shall be governed by the stipulations contained in the individual agreement and/or confirmation of the award of the contract.
2. Any termination must be effected in writing.
3. Should the Parties agree upon a fixed contractual term, termination of the agreement on ordinary grounds prior to the expiration of said contractual term shall be excluded. The possibility of terminating an agreement for good cause shall remain unaffected hereby. To the extent legally possible, the application of Sections 627 and 628 shall be excluded.

XIV. Final provisions

1. The place of performance for the purposes of delivery and payment and the place of jurisdiction for any and all disputes between the contractual Parties shall be Hamburg, Germany, insofar as the contractor is a businessperson, a legal entity under public law or a special fund under public law. The place of jurisdiction shall also apply in the case of persons other than those specified in the foregoing where the Customer does not have any place of general jurisdiction within Germany, moves his domicile and/or place of business abroad immediately following the conclusion of the agreement, or his domicile and/or place of business or usual place of residence is unknown at the date of the bringing of the action in question.
2. The invalidity of individual provisions shall not affect the validity of the rest of the agreement. An invalid clause shall, to the extent possible and by way of supplementary contractual interpretation, be replaced with a provision that most closely reflects its original purpose.
3. Unless the parties stipulate otherwise, any contractual relationships entered into with foreign contractors shall also be subject to German law.

Hamburg, Germany, August 2018