

## GENERAL TERMS AND CONDITIONS

### 1. Scope, right to amend, definitions

- 1.1. memail is a service provided by MeMail AG, Friedrichstr. 90, 10117 Berlin (hereinafter: “memail”).
- 1.2. For all agreements concluded between memail and memail’s customers (hereinafter: “Users”) which refer to these General Terms and Conditions (T&Cs) in relation to the use of the memail services, the following provisions apply exclusively. Any conflicting terms of business of the User shall not form part of the contractual agreement unless memail has expressly agreed to them in writing. This applies equally to services provided by memail for payment and those provided free of charge.
- 1.3. memail is entitled to alter or amend these T&Cs to the extent this seems necessary and provided the users involved are not consequently disadvantaged in a manner contrary to the principles of good faith. These T&Cs can also be amended as a reaction to new technical developments, changes to case law, the legal situation or other equivalent reasons. Users will be notified in text form in advance of any amendments to the T&Cs. Any amendments which considerably disrupt the contractual balance between the parties require the express consent of the User. Otherwise, such amendments will be deemed to have been accepted if the User does not object in text form within six weeks of receipt of the notification. memail will expressly advise the User of this consequence and the consequences mentioned below within the notification of the changes. In the event of an objection, memail is entitled to restrict the use of the account while allowing access to the already existing data (restricted to access to emails sent and received up to that point) and to terminate any agreements concerning services provided free-of-charge services concluded with application of the T&Cs prior to their amendment, by giving two weeks’ notice. In the event of an objection to the new T&Cs, memail will be entitled to an extraordinary right of termination to the extent that memail cannot reasonably be expected to remain a party to the agreement, taking into account the interests of memail and of the User, in particular if memail or the User would, were the contractual relationship to be continued under the previous T&Cs, be in violation of applicable statutory provisions.
- 1.4. The User is a “consumer”, to the extent the purpose of the use of memail’s services cannot be attributed predominantly to the User’s commercial or self-employed activities. A “Business Entity” on the other hand is a natural or legal person or a private company with legal capacity, which is acting, when concluding the agreement,

in the scope of carrying on its commercial or self-employed activities.

## **2. Subject matter**

- 2.1. memail is a provider of email services (email addresses and email storage). Details on the various services and their scope can be found in the respective product and service specifications.
- 2.2. Agreements relate to individual services, unless several services are expressly offered as a package. Where services are added to already existing services (e.g. additional email storage) there will generally be independent agreements to cover those additional services.
- 2.3. These T&Cs apply to all contractual agreements concluded between memail and the User, including the registration and use of memail without the conclusion of any agreements subject to payment, which have to be accepted in the course of the respective registration or order process.

## **3. Requirements for using memail; adding signatures to emails**

- 3.1. memail services may be used by persons who are at least 16 years of age. For minors, who have not yet reached 18 years of age, prior consent is required from a parent or legal guardian.
- 3.2. The offer of free of charge email services (email address and/or email storage space) is limited to one free of charge package per natural person.
- 3.3. With regard to free of charge email services, memail is entitled to add an automated reference to memail to the User's incoming and outgoing emails within a signature.

## **4. Registration, verification and login details**

- 4.1. Use of the service requires prior registration, in which the user sets a username and password (login details). Registering with memail is possible without verification, however the use of the services requires additional verification (double opt-in process via email or mobile phone number). A password reset ("Forgot password?") is only possible where the user has provided verification details beforehand, hence verification is generally recommended.
- 4.2. Passwords for the account and for individual services must not be shared with third parties. The User undertakes to keep them strictly confidential and protect them from third parties. The User must immediately change any passwords as soon as there is any indication that unauthorized third parties have or could have obtained knowledge

of login details. All passwords should be changed regularly.

- 4.3. The use of chargeable services requires the User's contractually relevant information (first name and surname, address, payment details etc.). The User undertakes to provide truthful information and warrants that all contractually relevant information (in particular first name and surname, address and payment information) is correct. In addition, the User is obliged to keep this information up to date in their memail "Dashboard".

## 5. Conclusion of agreement

- 5.1. The information presented on memail's website regarding the services does not constitute a legally binding offer for the conclusion of an agreement. Instead, these are non-binding invitations to the User to submit a binding offer to conclude an agreement.
- 5.2. The User can place the services they want to conclude a contract for in the virtual shopping cart. In that shopping cart, the user can change and correct the selection at any time prior to placing a binding order by using the editing tools provided and explained in the order process.
- 5.3. By clicking on "Place order" (or similar), the user submits a binding offer to conclude an agreement regarding the service or services which are in their shopping cart at that time. The User will subsequently receive a confirmation of receipt from memail, in which the User is provided with the details on their order, the T&Cs, notice on right of cancellation/revocation and data protection policy in text form. This confirmation of receipt does not yet constitute a declaration of acceptance from memail, unless the confirmation of receipt is expressly linked with such a declaration.
- 5.4. The agreement is only deemed to have been confirmed with an express declaration of acceptance from memail, with the first act of fulfillment by memail, i.e. with the provision of the ordered service for use by the User or with the collection of the fees for the ordered services.
- 5.5. The text of the agreement will be communicated to the User during the order process in text form and will be stored by memail. Furthermore, the user can find information as to the details of the agreement concluded (services ordered, term, notice periods etc.) in the "Dashboard".

## 6. Right of cancellation/revocation and cancellation/revocation form

- 6.1. If the User is a consumer, they have a statutory right of cancellation/revocation. Details on the right of cancellation/revocation and the consequences of cancellation/revocation, as well as a template cancellation/revocation form can be found [here](#). The user will be advised of this option in text form during the ordering process as well as again following the placement of an order.

## 7. Selection of email addresses (preferred names) and use of email services

- 7.1. The User may use the email address provided to them by memail to send and receive emails, provided the email address and the use thereof is in accordance with sections 7.2 to 7.4 below. The User shall, for the duration of the agreement, be the exclusive authorized user of the email address.
- 7.2. The User undertakes not to register and/or use any preferred names/aliases, as part of any email addresses, which contain discriminatory, racist, sexist, offensive or defamatory elements or elements which glorify violence or otherwise violate good morals. In addition, the desired names/aliases may not violate any third-party rights (e.g. moral rights, name rights, trade mark rights). The name/alias may not contain terms which are typically used as email addresses for internet sites (e.g. support@, service@, info@ etc.). memail reserves the right to reject individual names/aliases and to request that the user chooses a different name/alias.
- 7.3. The User undertakes not to send any content which violates statutory provisions, good morals and/or third-party rights via email accounts provided by memail. In particular, the User is prohibited from sending content which is discriminatory, racist, sexist, offensive or defamatory or which glorifies violence. Similarly, the User is prohibited from using the email accounts provided by memail to illegally harass others.
- 7.4. The User is obliged not to use memail accounts to send unlawful, unsolicited marketing emails in violation of provisions under competition law and/or data protection law.
- 7.5. The User releases memail from all third-party claims which may be brought against memail in relation to breaches of the preceding sections. In addition, memail is entitled, in the event of breaches of sections 7.2 to 7.4 above, to block the services in question and terminate the agreement without notice.

## 8. Prices, due dates, payment and arrears

- 8.1. Details concerning amounts to be paid and payment conditions can be found on the respective, current offer pages or, in the case of renewals, from the price information provided. The amounts to be paid are subject to currency fluctuations; the relevant date shall be the date of booking on the offer pages or, in the case of renewals, the price information provided.
- 8.2. The prices stated are, for users within the European Union, gross prices including the respectively applicable value added tax. For users outside of the EU, the prices are stated exclusive of value added tax. Value added tax will be applied as per the stated country in the billing address which must correspond to the User's actual location.
- 8.3. Any discounts will always initially be applied to the respective net amount and value added tax applied thereafter.
- 8.4. Payments shall be due on the day of provision of the ordered service to be used by the User. Payments shall be made using the payment method selected by the User. The same applies for payments to renew agreements.
- 8.5. If the payment of fees for newly created services (not for renewals; for renewals see section 10) via the selected payment method fails ("Payment Failure"), the order shall be deemed cancelled. The User may then resubmit the order.
- 8.6. If, following a successful payment, the User reverses/recalls the payment at a later date, after memail has already begun providing the service in accordance with section 9.2 ("Payment Recall"), the agreement shall remain in force and the user shall remain obliged to pay the amount due. In such an event, memail shall be entitled to block the service until such time as the amount due has been paid.
- 8.7. The User shall automatically be deemed to be in arrears, irrespective of any reminder sent, if the collection of the amount due, using the payment method specified by the User, fails and the amount is not paid within 14 days of the User being informed thereof. In the event of the User falling into arrears, memail is entitled to charge interest at the level of 5 percentage points above the base rate applicable at the time. If the User is not a consumer, memail is entitled to charge interest at the level of 9 percentage points above the base rate. memail reserves the right to assert claims for damages in addition.

## 9. Term, Renewal, Termination

- 9.1. Agreements subject to payment are concluded on an indefinite basis, for the term stated on the offer pages followed by automatic renewals for the duration in each case of the term last selected by the User. Agreements with a time limit will end

automatically at the end of the term unless renewed by the User.

- 9.2. The relevant date for the commencement of an agreement is the date on which memail makes the ordered service available for use by the User.
- 9.3. Agreements concerning free of charge services will, unless otherwise agreed or agreed during the term thereof, be concluded for the term stated on the offer pages and will end automatically upon expiry thereof, without there being any need for express termination. The user can, however, transfer the account to a paid service, under the terms and conditions applicable at the time of booking this paid service.
- 9.4. memail is entitled to terminate an agreement for free of charge provision of email services after a period of 90 days of inactivity of the User. Inactivity means that the User has not logged in to their account using the login details. memail will notify the User of such termination by email prior to the expiry of that 90-day time period. The User will be advised of the consequences of the termination of the agreement (section 10).
- 9.5. Agreements concerning chargeable services with a minimum term will renew automatically for a period equal to that minimum term (but no more than one year) unless the agreement is terminated giving one month's notice prior to expiry of the minimum term.
- 9.6. Notwithstanding the right of termination in text form, the User can activate and deactivate automatic renewal of the agreement in their "Dashboard". A deactivation of a previously activated automatic renewal will be deemed termination effective the end of the current contractual term where the deactivation occurs within the notice period and the automatic renewal remains deactivated beyond the respective end of the period. If deactivation occurs after expiry of the notice period, the agreement will end at the expiry of the following term, unless automatic renewal is reactivated before then.
- 9.7. The right of the User and of memail to terminate the agreement without notice for good cause remains unaffected. memail is, in particular, entitled to termination without notice if
  - the User breaches their obligations under sections 7.2 to 7.4;
  - the contractually relevant information is false, in violation of section 4.3;
  - the User falls into arrears with payments of the due amounts by more than 60 days;
  - memail is no longer able to provide the service in relation to the domain in question on factual or legal grounds.

- 9.8. The User can delete their user account in the “Dashboard”. Where paid services attached to a user account are still active, these will end upon deletion of that account; the User remains obliged, however, to pay the relevant price for the previously booked services until the date on which they are contractually due to expire. Upon deletion of the account, the data stored in relation to that account will be deleted in accordance with section 10.4.

## 10. Consequences of Termination, Payment Failure or Payment Recall

- 10.1. In the case of an active termination of a service by the User (i.e. in text form or in the “Dashboard” area) or by memail, any data of the User stored in relation to the terminated service (emails, contact details, address books etc.) will be deleted unless a statutory obligation for continued retention thereof exists. In the event of the termination of email storage space, this means, in particular, that all emails will also be deleted. In the event of the termination of the entire email account, the deletion will include all contact details, address books etc. Terminated email addresses can be reissued by memail to third parties after a period for consideration of 14 days subsequent to the termination coming into effect.

- 10.2. If the agreement ends in regard to a service as a result of a renewal not occurring, i.e. without active termination on the part of the User within the meaning of section 10.1 above (“Expiry”), or

- in the case of Payment Failure (section 8.5) concerning a renewal or
- in the case of Payment Recall (section 8.6),

memail will initially block the User’s access to the respective service. The User will be given an opportunity, within 60 days of Expiry of the agreement or the date of Payment Failure or Payment Recall respectively (“Grace Period”), to subsequently renew the agreement or effect payment of the amount due (“Corrective Action”), and thereby retain the data stored in relation to the service (e.g. emails, address books etc.). 30 days after the start of the Grace Period, memail is entitled to charge an additional fee, the amount of which is stated in the recovery process. If in the case of Expiry the subsequent renewal or in the case of Payment Failure or Payment Recall the payment of the amount due is not effected within the Grace Period, memail will delete the data related to the expired service as set out in section 10.1, unless a statutory obligation for continued retention thereof exists. Memail is then entitled to reissue the email addresses belonging to the expired service to third parties.

- 10.3. In the case of a Corrective Action in the meaning of section 10.2, the term of agreement commences:
- in the case of Expiry: the day following the date of expiry of the original agreement;
  - in case of Payment Failure (section 8.3) concerning a renewal or a Payment Recall (section 8.4): the original date of the commencement of the services, which the Payment Failure or Payment Recall related to.
- 10.4. Notwithstanding the aforementioned subsections of section 10, the User may request the immediate deletion of the entire service including any data stored in relation to it, whereupon the account and all data stored in it will be deleted. This shall not apply where memail has a statutory obligation to retain data. An immediate deletion of the data, subject to any aforementioned statutory duty of retention, will also be undertaken in the event of a deletion of the user account by the User.
- 10.5. If the ending of the agreement concerns storage space for storing emails and if the ending of the agreement with the retention of the email account results in a reduction of the storage space available to the User (“downgrade”), the User will still be able to read the stored emails for a period of 30 days, however will not be able to send or receive any new emails until they have deleted sufficient data to be within the new email storage volume. If the reduction in the volume of stored data is not effected within 30 days, memail is entitled to terminate the agreement concerning the email account.
- 10.6. If the User effects a termination without notice, sections 10.1 shall apply accordingly. If memail effects a termination without notice, memail will not delete the stored data of the User related to the terminated service (emails, contact details, address books etc.) for a period of 30 days or, in the event of a dispute with the User concerning the ending of the agreement, until such time as the dispute has been finally resolved, unless the User insists that memail immediately delete the data. memail shall, however, not delete the data where memail has a statutory obligation to retain data.

## 11. Liability

- 11.1. memail has unlimited liability towards the User in the case of intent and gross negligence, in the case of a lack of a guaranteed feature as well as in the case of injury to life, limb or health.
- 11.2. In the case of simple negligence, memail shall be liable, provided there has been no injury to life, limb or health, only in respect of damage or loss resulting from a not insignificant breach of a material contractual obligation. A material contractual obligation is an obligation which must be fulfilled to enable the due and proper



performance of the contractual agreement, the violation of which jeopardizes the achievement of the purpose of the agreement and the observance of which the User is normally entitled to rely on. In this case, the liability is limited, however, to compensation for damage or loss which can typically be foreseen in this type of agreement.

- 11.3. The limitations of liability which follow from the preceding sections also apply to breaches of obligations by or to the benefit of persons, for whose actions memail bears responsibility under the relevant statutory provisions. They do not apply in cases where memail has maliciously concealed a defect or has provided a guarantee for the quality of the services, and also not to claims according to the German Product Liability Act (Produkthaftungsgesetz, ProdHaftG).
- 11.4. Otherwise, liability for all other damage or loss is excluded.
- 11.5. The User is responsible for creating, at regular intervals, local backups of incoming and outgoing email correspondence on their own system. A liability on the part of memail for loss of data will be limited to the cost and effort required to recover data lost by memail from the User's backups on the User's own system.

## **12. Data Protection**

- 12.1. Detailed information on data protection can be found at:  
<https://www.memail.com/privacy>

## **13. Availability of the services; protection against viruses, spam, malware etc.**

- 13.1. memail guarantees an average annual availability of the service of 99%. Outages for which memail is not responsible, in particular those due to technical disruptions caused by third parties or force majeure, are excluded. The same applies if memail has to restrict the services in defense against third-party interference (e.g. hacker attacks).
- 13.2. memail uses technological measures to protect users against viruses, trojans, spam, malware, etc. However, we would note that no protection software available on the market can provide 100% security. It therefore cannot be ruled out that even emails which have been checked by memail may contain malicious content or attachments. It is therefore the User's responsibility to check emails and attachments in particular, despite memail's use of the protection programs.

## 14. Online dispute resolution and consumer arbitration board

- 14.1. The European Commission platform for online dispute resolution (ODR), can be found here: <http://ec.europa.eu/consumers/odr>.
- 14.2. memail is neither obliged under the law nor willing to participate in a dispute resolution procedure before a consumer arbitration board.

## 15. Final Provisions

- 15.1. The contractual language is English.
- 15.2. The User may only transfer the rights and obligations under this agreement to third parties after prior consent from memail in text form.
- 15.3. The legal relationship between the contracting partners is governed exclusively by German law with the exclusion of the UN Convention on Contracts for the International Sale of Goods. The statutory provisions on the limitation of the choice of law and on the applicability of mandatory provisions, in particular of the country in which the User, as a consumer, has their usual residence, remain unaffected.
- 15.4. Insofar as the User is a businessperson, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes based on the contractual relationships between memail and the User is Berlin.
- 15.5. Even in the event of individual points in this agreement being legally invalid, the remaining parts of the agreement shall remain binding. The invalid points shall be replaced by the relevant statutory provisions. Insofar as this would represent an unreasonable hardship for one of the contracting parties, the agreement shall be deemed invalid in full.

Berlin, 19 February 2020