

General Terms and Conditions WoltLab Cloud

§ 1 Scope and Amendment of the General Terms and Conditions

(1). The following general terms and conditions in the version valid at the time of conclusion of the contract apply to all contracts between the customers and WoltLab GmbH (hereafter "Provider") regarding the use of the software WoltLab Suite in the managed WoltLab Cloud including all associated apps at www.woltlab.com (hereafter "Software").

(2). Any terms and conditions of the customer that deviate from or contradict these general terms and conditions will not be recognized by the provider, unless he has expressly agreed to them. The provision of the services cannot be regarded as such consent.

(3). In case of doubt, the service descriptions contained within the scope of the ordering process and on the aforementioned internet site shall take precedence over these general terms and conditions.

(4). The customer will be notified of any changes to these general terms and conditions in writing by email. If the customer does not object to these changes within 4 weeks after receipt of the notification, the changes are deemed to be accepted by the customer. The customer will be informed separately about the right of objection and the legal consequences of silence in case of changes to the general terms and conditions.

§ 2 Conclusion of the Contract, Correction of Input Errors, Contract Language

(1). When the customer orders via our online shop at www.woltlab.com, a contract is concluded as follows:

The ordering process begins by selecting one of our plans ("Select Plan") and continues via the following pages: domain, data, payment method, until the summary in the order overview. By selecting the button "order with obligation to pay" you submit a binding offer to the provider. Through an internet page that appears automatically after this, the customer receives confirmation of receipt of the order. However, a contract is only concluded when the provider expressly accepts the order by means of an email.

(2). The customer can recognize and correct input errors within the scope of the order by reviewing the input fields highlighted by color.

(3). The contract language is English.

(4). After the conclusion of the contract, the text of the contract is stored by the provider and can be retrieved from him.

§ 3 Subject of the Contract, Scope of Services

(1). For the duration of the contractual relationship, the provider shall make the software available to the customer for use via the internet in the respective current version in the scope of functions of the plan ordered by the customer. Access and use of the software by the customer are exclusively carried out using an internet browser. The software is accessible via a sub-domain set up especially for the customer.

(2). The software is hosted and operated on servers of the third-party provider 23media GmbH, which is contractually associated with the provider.

(3). The software is a web-based application for creating and managing an online community, with user administration, news system, content management, image gallery function, calendar and event functions, file management, blog tools and much more.

In detail, the services which can be used by the customer via the software result either from the offer of the provider on which the contract is based and the possible service descriptions included in the contract (for offline orders) or from the order overview in the online shop including the other online media provided

by us (for orders in the online shop) as well as from the technical functions available in the current version of the software.

(4). By signing the contract, the customer confirms that he/she has inspected the software extensively before signing the contract and has taken note of the available descriptions of the software and its function profile.

(5). The service obligations of the provider according to this agreement regarding the use of the software do not include any further services of the provider, as far as they go beyond the mere maintenance of the software, its possibility of use (e.g. removal of defects) and other contractual secondary obligations.

§ 4 Further Services of the Provider, Service Level

(1). The provider shall provide the customer with the computing capacity required for unrestricted use in accordance with the contract as well as the necessary storage space for the data generated by the customer and the authorized users through the use of the software and/or the data required for the use of the software. The provider shall not be subject to any safekeeping and custody obligations regarding this customer data, unless these have been agreed between the parties under other contracts.

(2). ATTENTION: Depending on the ordered plan, the storage space usage as well as the number of monthly requests to the server(s) processed by PHP are limited! For the concrete scope of the storage capacity as well as the permitted PHP requests, the provider refers to the respective service descriptions made available to the customer prior to the conclusion of the contract. If the capacities owed are exceeded, the provider is entitled to reduce the services in this respect technically at his own discretion.

(2). The provider shall only provide the software to be made available to the customer in the respective current version if this already corresponds to the proven state of the art.

(3). The transfer point for the software and application data is the router output of the provider's data center. Beyond the own communication network an influence on the data traffic is not possible for the provider and a forwarding of information is not owed. The provider assumes no responsibility for the success of the respective access to the software, unless the network operated by the provider including interfaces to third party networks is used exclusively. The provider is not responsible for the quality of the hardware and software required for use on the part of the customer or for the telecommunications connection between the customer and the provider up to the transfer point.

(4). The servers and thus the access to the software are available 24 hours a day, seven days a week with an availability of 99% on a monthly average. To be deducted from this are downtimes due to maintenance work and software updates as well as for disruptions to the availability of the servers via the Internet, which are due to technical or other problems that are not within the provider's sphere of influence (force majeure, network overload, fault of third parties, etc.).

(5). The minimum availability specified in no. 4 may change without the host provider being able to exert any influence and may fall below the minimum availability required by the prevailing legal opinion. The provider is objectively and technically prevented from guaranteeing the customer higher availability than the host provider. The customer acknowledges this circumstance and waives any claims and rights against the provider as a result of insufficient minimum availability, provided that the latter does not fall below the current minimum availability of the host provider.

(6). In order to carry out maintenance work and updates, the provider is entitled to interrupt the availability of the server for a total of max. 10 hours per calendar month. Should such interruptions of more than 4 hours in a row be foreseeable, the provider will inform the customer immediately.

(7). The software and application data are backed up regularly, at least on a calendar day basis. The data backups are kept for 14 days and then overwritten by current backups. In addition, a data backup is kept for the six previous weeks.

The customer is responsible for compliance with commercial and tax law retention obligations.

(8). The customer may at any time demand from the provider in writing the surrender of a complete copy of the data generated by the customer by means of the software or placed in it, at the choice of the provider on standard data carriers or by remote data transmission.

§ 5 Start, Duration and End of the Relationship

(1). The relationship shall commence on the day on which access to the software is set up for the customer and its authorized users.

(2). The minimum contract period is 1 month and will be extended by a further month if it is not duly terminated by one of the parties at the end of the term. The right of extraordinary termination for good cause or any special termination rights existing under this contract or under the law remain unaffected.

(3). If the customer continues to use the software after the end of the rental period, the rental relationship shall not be deemed extended. § 545 BGB is not applicable.

(4). A termination requires text form to be effective.

(5). The provider shall hand over to the customer the application data generated and stored by the customer immediately after termination of the contractual relationship if the customer requests it to do so. The publication is made by free download.

The application data is to be deleted by the provider at the latest 2 months after the end of the contract if the customer has not requested the release by then and the provider has offered the release to the customer at least twice in writing without success. The omission of the demand for surrender is considered under these conditions as agreement to the deletion of the data. The provider will again particularly point out to the customer the importance of his behavior at the end of the contract.

§ 6 Remuneration

(1). The monthly usage fee shall be paid monthly in advance within 14 days of receipt of the invoice.

(2). The provider reserves the right to increase the monthly usage fee after the expiry of two contractual years at his reasonable discretion (§ 315 BGB), but not by more than 10%. Further fee increases may only be made after two years at the earliest since the last increase. The customer shall be notified of the intended increase, observing a period of 2 months before it comes into effect. The above fee increase is only justified in the event of rising costs for the provision of services by the Provider, in particular if the costs are increased by the host provider.

(3). The customer shall be in default of payment without the need for an additional reminder upon expiry of 4 weeks from receipt of the invoice in accordance with § 286 no. 2 BGB. In this case, the provider is entitled to withhold the contractual services until the invoice has been settled. The regulation of § 320 para. 2 BGB as well as the assertion of further claims caused by default remain unaffected.

(4). The customer is only permitted to offset against undisputed or legally established counterclaims. The preceding sentence does not apply if a claim insisting on a defective performance of the provider is set off against this claim for remuneration. He can only assert a right of retention if it is based on the same contractual relationship.

§ 7 Obligations and Duties of the Customer

(1). The provider enables the customer to access the software via a suitable authentication method (e.g. username and password).

The access data provided to the customer and the authorized users must be changed immediately into names and passwords known only to the customer, kept secret and protected against unauthorized access by third parties. Access to the software may only be granted by the customer and the other users authorized under this contract. If it is to be feared that unauthorized third parties have obtained or will obtain knowledge of the access data, the provider must be informed immediately. The customer is liable for third-party use within the scope of the statutory provisions.

Insofar as the customer is also provided with access data for contractually permitted use by third parties, the customer must inform the users of the above obligations and ensure compliance with them with reasonable efforts.

(2). The customer is solely responsible for the content of the data entered into the software by him and/or the other authorized users or generated by them. In this respect, the provider does not check this data. The customer is liable for ensuring that the software is not used for purposes that are racist, discriminatory, endanger the protection of minors, politically extreme, violate the rights of third parties or otherwise illegal or violate official regulations or requirements, or that corresponding data, in particular application data, is created and/or stored on the server(s).

The customer shall oblige the users authorized by him to use the software (e.g. community members) to refrain from the actions described above.

(3). The customer will not retrieve or have retrieved any information or data without authorization or interfere or allow to interfere with programs operated by the provider or host provider or invade or promote such intrusion into data networks of the provider or host provider without authorization. The customer shall oblige the users authorized by him to use the software (e.g. community members) to refrain from the actions described above.

(4). Before feeding data and information into the software, the customer shall check it for viruses and use state-of-the-art virus protection programs. The customer shall oblige the users authorized by him to use the software (e.g. community members) to refrain from the actions described above.

(5). The customer is obliged to notify the provider immediately of any infringements of rights by him or third-party users that are reported to him in connection with the use of the software. This obligation also applies if concrete, objective evidence should give rise to the suspicion of legal infringements in accordance with sentence 1 for the customer.

The customer will obligate the users (e.g. community members) authorized by him to use the software to the same extent and under the same conditions.

(6). The customer shall indemnify the provider against claims of third parties which are based on an illegal use of the software in the sense of § 7.1-7.4 by the customer or which result from other disputes caused by the customer which are connected with the use of the software. This also includes the indemnification or reimbursement of the costs of a necessary legal defense of the provider against the claims of third parties.

(7). If the customer violates obligations according to § 7.1-7.4, the provider can block the customer's access to the software or the application data if the violation can be demonstrably remedied by this.

(8). The customer shall notify the provider immediately of any defects in the services owed by the provider under this contract.

Insofar as the provider was not able to remedy the situation as a result of the omission or delay in notification, the customer is not entitled to reduce the rental fees in whole or in part, to demand compensation for the damage caused by the defect or to terminate the contract extraordinarily without notice due to the defect.

The customer must demonstrate that he is not responsible for the failure to notify.

(9). The customer must regularly back up the data stored in the software by downloading or otherwise using his own backup copies.

(10). If the customer unlawfully violates § 7.2, the provider is entitled to delete the data or application data affected by this. In the case of an unlawful violation by other users, the customer must immediately provide the provider, upon request, with information for the assertion of claims against the user, in particular his name and address.

(11). The right to extraordinary termination due to possible breaches of duty by the customer remains unaffected by the above.

(12). The customer is not entitled to an assignment of claims and/or transfer of rights from this contract, unless the provider has expressly agreed to the assignment or transfer in writing.

§ 8 Rights to Use the Software, Rights of the Application Data and Media Content

(1). The customer receives a simple (non-sublicensable and non-transferable) right to use the software, limited to the term of this contract, in accordance with the following provisions. A physical transfer of the software does not take place.

(2). The customer may only use the software within the scope of the application purpose resulting from its functions for his own business or private activities.

The customer is not entitled to any rights that are not expressly granted to the customer here. In particular, the customer is not entitled to use the software beyond the agreed use or to have it used by third parties or to make the software accessible. In particular, it is not permitted to duplicate, sell, imitate or make the software available for a limited period of time, in particular not to rent or lend it out.

(3). For each case in which the customer culpably enables the use of the software by unauthorized third parties, the customer shall pay an immediately due contractual penalty in the amount of the monthly usage fee for each month of third-party use commenced. We reserve the right to claim damages; in this case the contractual penalty will be offset against the claim for damages.

(4). The customer grants the provider the right to reproduce the data to be stored for the customer as far as this is necessary for the provision of the services owed according to this contract. He is also entitled to keep the data in an additional data center. In order to eliminate faults, the provider is also entitled to make changes to the structure of the data or the data format.

(5). The customer grants the provider the rights of use necessary for the fulfilment of the contract for other contents and media placed in the software or connected with it, as far as these are subject to a legal protection right. This applies both to own contents and to those of third parties entitled to use the software. In this respect, the customer assures that he is authorized to grant the right of use on the basis of his own rights. If claims are made against the provider by third parties due to alleged infringements of property rights to this content, the customer shall indemnify the provider from these claims including the necessary legal costs.

(6). If and insofar as a database, databases, a database work or database works are created on the manufacturer's server(s) during the term of this contract, in particular through the compilation of application data, through activities of the customer permitted under this contract, the customer shall be entitled to all rights thereto.

The customer remains the owner of the databases or database works even after the end of the contract.

§ 9 Liability for Defects, Liability for Customer Content

(1). The provider shall provide the software to the customer in a condition suitable for use in accordance with the contract and shall maintain the software in this condition during the duration of the contract. Defects shall be remedied by means of free rectification of defects by the provider.

(2). The customer must notify the provider of defects without delay. The claims for defects become time-barred after one year.

(3). The strict liability of the provider according to § 536a para. 1 1st alternative BGB due to defects which already exist at the time of the conclusion of the contract is excluded. This also applies to defects in subsequent patches, upgrades and updates of the software if these were already present at the time of installation.

(4). A termination of the customer according to § 543 para. 2 sentence 1 no. 1 BGB because of not granting the contractual use is only allowed if the provider has been given adequate opportunity to correct the defect and this has failed. A failure of the removal of defects is only to be assumed if it is refused or unreasonably delayed by the Provider, if there are justified doubts about the prospects of success or if it is unreasonable for the Customer for other reasons.

(5). The provider is not responsible for the content and data entered into the software by the customer or other third parties entitled to use the software or generated by them. In particular, the provider is not obliged to check the contents for possible legal violations without reason.

(6). The provider only gives guarantees for his services beyond the legal liability for defects in the sense of § 443 BGB if he expressly assures the customer of this in his advertising or through other declarations.

(7). The provider takes any complaints from customers very seriously. These can be submitted via our customer service department via the email address woltlab@woltlab.com.

§ 10 Limitation of Liability

(1). In accordance with the statutory provisions, the provider is liable without limitation for damages resulting from injury to life, body or health caused by an intentional or negligent breach of duty or an intentional or negligent breach of duty by its vicarious agents.

(2). In addition, the provider is liable without limitation in accordance with the statutory provisions for other damages if these are based on the violation of an essential contractual obligation. This is the case if the breach of duty refers to a duty, the fulfilment of which makes the proper execution of the contract possible in the first place, the breach of which endangers the achievement of the purpose of the contract and on the fulfilment of which the customer could usually rely. In the event of a breach of a material contractual obligation, however, liability shall be limited to the foreseeable, typically occurring damage.

(3). The provider also has limited liability for the absence or omission of a warranted quality or for the non-compliance with a guarantee, as well as for claims under the Product Liability Act.

(4). For all other breaches of duty, the provider is only liable without limitation in the case of intent and gross negligence. This applies without exception to all claims for damages, regardless of their legal nature, as well as to claims for reimbursement of expenses, which are asserted instead of a claim for damages.

(5). The provider is not liable for the loss of data and/or programs insofar as the damage is due to the fact that the customer has failed to carry out data backups and thereby ensure that lost data can be restored with reasonable effort.

(6). Insofar as the provider's liability for damages is excluded or limited according to the above provisions, this shall also apply with regard to the personal liability for damages of its employees, workers, staff, representatives and vicarious agents.

§ 11 Data Security, Data Protection, Order Data Processing, Confidentiality

(1). The parties shall comply with the respective applicable data protection regulations, in particular those valid in Germany and the EU, and oblige their employees deployed in connection with the contract and its implementation to maintain data secrecy, unless they are already generally obliged to do so.

(2). The provider collects, processes and uses personal data of third parties only on behalf of the customer if the customer enters this data into the software and IT systems of the provider. As the client, the customer is responsible for compliance with data protection regulations in accordance with § 28 GDPR. The customer issues the provider with a separate written order for commissioned data processing in accordance with the requirements of § 28 para. 3 GDPR. In the event of contradictions between this contract and the agreement on commissioned data processing, the latter shall take precedence over the contract.

(3). The customer indemnifies the provider from claims of third parties, if these are based on a violation of data protection regulations, for the observance of which the customer as client is responsible in the sense of the above regulation.

(4). Insofar as instructions issued by the customer within the scope of commissioned data processing collide with the main or secondary obligations of the parties under this contract and the provider is unable to provide his services or can only provide them to a limited extent or if this results in economic disadvantages for the provider, this shall be at the expense of the customer.

(5). The contracting parties shall maintain secrecy about all information to be treated confidentially which has come to their knowledge within the scope of this contractual relationship, or shall only use this information with the prior written agreement of the other party vis-à-vis third parties, regardless of the purpose. The information to be treated as confidential shall include not only information expressly designated as confidential but also such information whose confidentiality results from the circumstances.

In particular, the application data entered by the customer is considered confidential in this sense.

§ 12 Reference Advertising

The provider is allowed to refer to his customers in an appropriate form in word, writing and picture for purposes of self-promotion, as far as they have used the software in public.

§ 13 Online Dispute Resolution, Consumer Arbitration Proceedings Under the VSBG

(1). Information on online dispute resolution: The EU Commission has created an internet platform for the online settlement of disputes (so-called "OS platform"). The OS platform serves as a contact point for out-of-court settlement of disputes concerning contractual obligations arising from online sales contracts. The customer can reach the OS platform under the following link: <http://ec.europa.eu/consumers/odr/>

(2). Notwithstanding our obligation to provide information pursuant to paragraph 1, we are not obliged or willing to participate in dispute resolution proceedings before a consumer arbitration board.

§ 14 Other Agreements

(1). It is agreed that the law of the Federal Republic of Germany shall apply to the exclusion of the UN Sales Convention.

(2). Exclusive place of jurisdiction and place of performance is the registered office of the provider in Potsdam, Germany, if the contracting parties are merchants, legal entities under public law or special funds under public law.

(3). The provider is not subject to any special code of conduct outside legal or contractual regulations.

(3). There are no ancillary provisions outside the contract, its annexes and these general terms and conditions. Changes or amendments, the assurance of characteristics as well as guarantees always require text form to be effective. This also applies to the cancellation of the text form requirement.

(4). Should a provision of the contract and/or these rental conditions be or become invalid in whole or in part or should the contract contain a loophole, the legal validity of the remaining contractual provisions shall remain unaffected.

End of the General Terms and Conditions