Terms and Conditions of WoltLab® GmbH

As of June 2014

§ 1 Provider Identification

Provider	WoltLab GmbH (hereafter: *WoltLab*) Nedlitzer Str. 27B D-14469 Potsdam Germany
CEO	Marcel Werk
E-mail	woltlab@woltlab.com
Phone	+49 331 96784338
Internet	woltlab.com, woltlab.de, woltlab.org, woltlab.info
VATIN	DE 231311649
Commercial Register	Local Court Potsdam HRB 26795 P

§ 2 Definitions

(1) **Customers**: Consumers and Entrepreneurs who buy Software Products, Adjustments thereto and Services from WoltLab.

(2) **Consumer**: every natural person who enters into a legal transaction for a purpose that is outside his or her trade, business or profession, § 13 German Civil Code (Bürgerliches Gesetzbuch, BGB).

(3) **Entrepreneur**: natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession.

(4) **Terms and Conditions**: these General Terms and Conditions of Trade.

(5) **Customer Account**: access authorisation to WoltLab's limited access Customer administration system through which the Customer may acquire Software Products or Services subject to a charge.

(6) **Software Products**: means WoltLab® Burning Board®, including any updates, extensions, plug-ins and styles for WoltLab® Burning Board® such as Community Framework, Community Calendar Plug-In, Community Blog Plug-In, developed by WoltLab and which are owned or licensed by WoltLab.

(7) **Adjustments**: means amendments to Software Products made upon the Customer's request.

(8) **Services**: means installations of Software Products, installations of updates, data base backups and support.

(9) **Third Party Software**: means operational systems, applications or any other software of a third party.

§ 3 Scope of these Terms and Conditions, Subject of the Contract

(1) These Terms and Conditions apply to any business relationship between WoltLab and the Customer as well as to statements or advertisements given or issued in this respect, whether aural, written or via internet.

(2) These Terms and Conditions govern the acquisition of Software Products to be downloaded, Adjustments thereto and Services of WoltLab.

(3) If not otherwise expressly agreed in written, other deviating general terms and conditions do not apply.

§ 4 Statements regarding Product Characteristics

By making statements regarding product characteristics or performance data or by providing any other information related to Software Products WoltLab gives no representation or warranty as to the characteristics of the Software Products (*"keine Garantie für die Beschaffenheit der Softwareprodukte"*).

§ 5 Customer Account

(1) In order for WoltLab to fulfill its contractual obligations and for the Customer to be able to receive Software Products, Adjustments thereto or Services, WoltLab provides the Customer with a personal Customer Account for an unlimited period of time. Registration for the personal Customer Account is free of charge. The Customer may download the Software purchased from WoltLab through the personal Customer Account. This requires registration, by providing the necessary personal data of the Customer (surname, name, company name, address, postal index, city/village, country, e-mail-address). Every Customer can open only one Customer Account in his own name with WoltLab. An e-mail-address which is already assigned to a specific Customer Account may not be used for a different Customer Account. A once used e-mail address may also remain blocked for a new registration for an unlimited period of time even after deletion of a Customer Account. Customers are required to provide correct and complete data and are required to inform WoltLab of any changes in the provided personal data. After the creation of a Customer Account, the Customer may purchase Software Products, Adjustments thereto and Services from WoltLab.

(2) The access data chosen by the Customer for registration (user name, password) are to be kept confidential and should be protected

from unauthorised access by third parties. Customers have to inform WoltLab immediately if they have reasons to believe that their Customer Account has been subject to misuse. Any person who knows the user name and password will, inter alia, be able to use the Software acquired by the Customer and the features of the Customer's Account. If the Customer learns that the user name or password has become available to a third party or if there is suspicion of improper use, the Customer has to change the password immediately. If this is not possible the Customer has to inform WoltLab immediately. In this case WoltLab will block the Customer Account. Customers may request WoltLab blocking the Customer Account using the contact data provided in § 1 above.

(3) The Customer Account may be terminated at any time without reason. The termination must be declared in written (letter, fax). A termination of the Customer Account by e-mail is not accepted. The Customer Account will not be accessible after two (2) weeks following the receipt of the termination notice. Security backups or other data, if any, can not be accessed after this date. WoltLab will delete all data only once these data are not required anymore for the performance of the contract. In case of termination the Customer should make sure to have a security backup of the Software.

(4) WoltLab reserves the right to terminate or shut down the Customer Account for good cause. A good cause is in particular considered to apply in case of infringement of copyrights or any other actions in breach of the rights of use granted by the agreement with the Customer. WoltLab further reserves the right to shut down or delete unused Customer Accounts, provided an e-mail notice of the intended shut down has been given beforehand.

(5) Customers are basically liable for any activities carried out through their Customer Account. This does not apply if the Customers have observed their duty of care.

§ 6 Prices, Payment Conditions

(1) The price to be paid by the Customer for Software Products, Adjustments thereto and/or Services of WoltLab is indicated in the order confirmation and/or in the invoice of WoltLab. If not agreed otherwise, payments will have to be made in advance or by credit card. Any and all bank or other charges incurred as a result of any monetary transfer or currency conversion will be the sole responsibility of the Customer. In case of a payment delay, WoltLab reserves a retention right for Software Products and/or Services until the full invoiced amount has been paid. WoltLab also reserves the right to claim default interest and to claim the reimbursement of damages incurred by the payment delay.

(2) All indicated prices are including VAT. Without a reminder, Consumers are in default if they do not pay the invoiced amount within 30 days after the invoice has been issued (see invoice date) and only if WoltLab has expressly indicated these consequences in the invoice.

(3) WoltLab retains title and right to the Software Products and Adjustments thereto until full payment of the invoiced amount. In case of payment default, WoltLab may rescind from the agreement, may prohibit the Customer to use the Software Product and may demand from the Customer to return all copies, or if this is not possible, to delete such copies. In case that before payment of the full invoiced amount a third party tries to take possession of Software Products or Adjustments thereto, to which WoltLab has retained right and title, Customers are obligated to inform this third party about the retention of right and title by WoltLab. In addition, Customers must inform WoltLab immediately in written of such action of a third party.

§ 7 Process of Entering into an Agreement

(1) All product information given on WoltLab's website is without engagement. In particular, the presentation in WoltLab's online-shop of Software Products, Adjustments thereto and Services does not constitute a legally binding offer. Rather, this is only a request to make an offer (order). Errors excepted.

(2) When ordering, Customers may choose between the following languages: German, English.

(3) If Customers want to purchase Software Products of WoltLab including related Services in the online-shop, they should select the desired product in the purchasing routine on WoltLab's website and then click the button "Selected Articles in Basket". By clicking the red button "Remove Product", Customers may at any time remove products from the basket. The order is always shown in the order overview ("Receipt"). If all information is true and complete, Customers should click on the button "To the Cash Register". Customers may at any time return to the order page to make corrections to the order information.

(4) Customers may only effect a binding order to purchase Software Products and/or Services from WoltLab, if the Customer is logged into his personal Customer Account. If Customers at this moment do not yet have created a personal Customer Account, they will be requested to do so. Before sending a binding order to WoltLab, Customers will be presented a summary of their order. The order process may be disrupted at any time. Customers may also return to a previous page or amend the order. By clicking the button "Sending Order", the Customer will effect a binding order.

(5) By clicking the button "save", the binding order together with these General Terms and Conditions and the license terms of WoltLab may be saved as document on a data carrier of the Customer's choice. By clicking on the button "print", Customers may print out the binding order together with the aforementioned Terms and Conditions.

(6) WoltLab collects and uses personal data stored in the Customer Account solely to the extent necessary to fulfill its contractual obligations. In particular, WoltLab to the extent necessary for payment, transfers data to the mentioned financial institution. For the rest, please also see § 15 of these Terms and Conditions.

(7) If WoltLab receives a binding order, it will confirm this order immediately. If not agreed otherwise, the contract regarding the purchase of Software Products, Adjustments thereto and Services is deemed to be concluded with delivery of the order confirmation, but at the latest once WoltLab has provided the Software Products, Adjustments thereto or Services to the Customer. The order confirmation will be sent to the e-mail address indicated in the Customer Account. The order confirmation again will mention all essential contractual provisions. Together with the order confirmation Customers will also receive a copy of these Terms and Conditions including an instruction regarding the right for withdrawal as well as the license terms.

(8) WoltLab will make offers for the Adjustment of Software Products and Services outside the order routine only in writing. If not indicated otherwise by WoltLab, offers are valid for a period of ten (10) days. After examination of the Customer's order, in order to enter into an agreement WoltLab will send the Customer an order confirmation according to paragraph 7 above.

§ 8 Jurisdiction

The license terms are governed by and shall be construed in accordance with the laws of Germany. The terms of the agreement of the United Nations on contracts concerning international purchase of articles (UN- Sales Law) do not apply.

§ 9 Right of Withdrawal

(1) For the period of fourteen days, Consumers have a right to withdraw from the contract.

Instructions on withdrawal

Right of withdrawal

You have the right to withdraw from this contract within 14 days without giving any reason.

The withdrawal period will expire after 14 days from the day of the conclusion of the contract.

To exercise the right of withdrawal, you must inform us (WoltLab GmbH, Nedlitzer Str. 27B, D-14469 Potsdam, Tel.: +49 331 96784338, Email: woltlab@woltlab.com) of your decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post, fax or e-mail). You may use the attached model withdrawal form, but it is not obligatory.

To meet the withdrawal deadline, it is sufficient for you to send your communication concerning your exercise of the right of withdrawal before the withdrawal period has expired.

Effects of withdrawal

If you withdraw from this contract, we shall reimburse to you all payments received from you, including the costs of delivery (with the exception of the supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us), without undue delay and in any event not later than 14 days from the day on which we are informed about your decision to withdraw from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement.

Model withdrawal form

(complete and return this form only if you wish to withdraw from the contract)

To
WoltLab GmbH
Nedlitzer Str. 27B
D-14469 Potsdam

Email: woltlab@woltlab.com

I/We (*) hereby give notice that I/We (*) withdraw from my/our (*) contract of sale of the following goods (*)/for the provision of the following service (*),

Ordered on (*)/received on (*),

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper),

Date

_____
(*) Delete as appropriate.

§ 10 Subject and Form of Delivery

(1) Customers will receive from WoltLab the agreed Software Products and Adjustments thereto in work form (object code), together with the documentation released by WoltLab. The documentation essentially consists of electronic support parts and is integrated into the Software.

(2) The Software has the functionality as indicated in the documentation.

(3) Delivery is usually effected by making the Software Products available for download in the Customer Account. Once the Software is available Customers will receive an e-mail, which WoltLab will send to the e-mail-address indicated in the Customer Account.

(4) If the delivery of updates is agreed (update agreement), such updates will be delivered in the same way as the first Software Product, i.e. by making the update available for download in the Customer Account. An update may also be delivered by providing a new version of the WoltLab's Software Products.

(5) WoltLab may inform Customers about updates only if Customers have indicated their current e-mail-address in the Customer Account.

(6) A hard copy of the documentation is not available.

§ 11 Provision of Services

(1) When WoltLab provides Services, Customers are responsible for the following circumstances: costs of communication with WoltLab, choice of software- and hardware products as well as their appropriateness for a specific purpose, licenses and, if not agreed otherwise, data back-up.

(2) Customers agree to provide WoltLab with all information, necessary for WoltLab to provide the Services. Customers also agree to grant WoltLab access to their IT-systems and to actively support WoltLab whenever necessary.

(3) WoltLab usually provides Services by logging onto the Customer's server via remote access. Customers therefore are obligated to provide WoltLab with all necessary technical information, such as description of hardware and/or operational system, software already in use und and organizational diagrams.

(4) WoltLab will assess, whether the provision of Services is feasible, and if yes, will provide the Services. If WoltLab determines, that the configuration of the IT-systems needs to be changed, Customers will have to implement these changes at their own cost and risk before WoltLab provides its Services. If the provision of Services is technically not feasible, WoltLab has no further obligations.

§ 12 Rights of Use

(1) The respective provisions of the license terms apply to Software Products purchased from WoltLab.

(2) For Adjustments to Software Products, e.g. the creation of styles, extensions or plug-ins, WoltLab grants the Customers a non-exclusive, unlimited right of use of the Adjustments for an unlimited period of time. The Customer's transfer or reselling rights are governed by the provisions of the license terms mentioned in paragraph 1. Any further rights remain with WoltLab.

(3) Third Party Software provided by WoltLab to the Customers is governed by the license terms of the respective third party. WoltLab will enclose all necessary licenses to Software Products. Customers have to accept the license terms for the Third Party Software.

§ 13 Defect in Title and Quality (Warranty)

(1) WoltLab will cure any defects in the delivered Software Products and Adjustments thereto (defects in title and quality) including the documentation within a warranty period of two (2) years, beginning with the delivery (of which Customers are informed by e-mail). At the Customer's discretion WoltLab may cure the defect by either eliminating the defect free of charge (remedy) or by delivering a failure-free new version of the Software (replacement delivery). In case of a replacement delivery WoltLab may also deliver a new version of the Software with at least equal functionality, unless this is unacceptable for the Customer; that is, for example, if this requires a new operating system or an improved hardware. The replacement delivery is effected the same way as the delivery of the initial product.

(2) If the defect cannot be cured within a reasonable time or if the remedy or replacement delivery for any other reason must be considered as failed, Customers at their own discretion may choose to either reduce the purchase price (reduction), withdraw from the agreement, or may claim damages or the reimbursement of unavailing expenses. The latter claims are governed by § 14 of these Terms and Conditions. A withdrawal from the agreement does not preclude the right to claim damages.

(3) A remedy or replacement delivery may only be considered as failed, if (i) WoltLab had a sufficient possibility remedy or replacement delivery and these measures did not prove to be successful, (ii) if a remedy or replacement delivery is not feasible, (iii) if WoltLab refuses to or unreasonably delays the elimination of the defect free of charge or the delivery of a failure-free new version of the Software, (iv) if there is reason to believe that there are no prospects of success of remedy or replacement delivery or (v) if remedy or replacement delivery for any other reason is unacceptable for the Customer.

(4) If it turns out that a claimed malfunction is not caused by a defect, WoltLab is entitled to demand from Customers compensation for work incurred to analyse and eliminate the problem according to WoltLab's price list for services, provided that the Customers knew or reasonably could have known that there is no defect.

(5) WoltLab assues no warranty, if there have been made changes or amendments to the Software Products or Adjustments thereto without WoltLab's explicit written consent, or if the Software is used in any other way than its intended use or in any other than the intended environment, unless Customers can prove that these circumstances have no relationship to the appeared malfunction.

§ 14 Limitation of Liability of Damages

(1) WoltLab's liability for damages for any reason is limited by this § 14.

(2) WoltLab's liability for damages incurred by WoltLab or its representatives or vicarious agents as a result of gross negligence or willful misconduct is not limited.

(3) WoltLab's liability for damages resulting in life, body or health injury is not limited even if such damages have been incurred by WoltLab or its representatives or vicarious agents as a result of simple negligence.

(4) WoltLab's liability for damages incurred as a result of gross organizational negligence is also not limited. The same applies for damages resulting from the absence of a warranted product characteristic (*"garantierte Beschaffenheit"*).

(5) Save for the exceptions mentioned in paragraphs 2-4 above, if WoltLab directly or through its representatives or vicarious agents breaches a material contractual obligation, WoltLab's liability is limited to damages typically predictable for the given kind of contract.

(6) The liability for the loss of data is limited to a typical recovery effort required if security backups had regularly and appropriately been created.

(7) WoltLab assumes no liability for any further damages.

(8) A potential liability under the German Product Liability Act (*"Produkthaftungsgesetz"*) remains unaffected.

§ 15 Data Protection

According to the data protection declaration, personal data which are disclosed by the Customer to WoltLab for the purchase of Software Products, Adjustments thereto and Services, will be collected, processed and transferred. When using personal data WoltLab will observe all applicable data protection provisions (in particular the Federal Data Protection Act (BDSG) and the Telemedia Act (TMG)) as well as WoltLab's data protection declaration. You may find the data protection declaration under http://www.woltlab.com/privacy-policy.html.

§ 16 Confidentiality

Customers and WoltLab agree to keep confidential all proprietary information and trade secrets disclosed to the respective other party. This obligation shall survive the termination of the business relationship between WoltLab and the Customer.

§ 17 Final Provisions

(1) Customers may set-off counterclaims against WoltLab only if these claims are undisputed or subject of final court judgement.

(2) Changes or amendments to this agreement, including this provision, shall be made in writing.