

Terms and Conditions of Business of Metaways Infosystems GmbH for Web-Site Creation

Dated: 12.08.2009

Note:

This is a translation of our German T&Cs. The validity of our original German T&Cs takes strict precedence.

§ 1 Basic Principles

These Terms and Conditions of Business (T&Cs) apply to the creation of web-sites commissioned by a customer from Metaways Infosystems GmbH (hereinafter: Metaways). Metaways shall provide its services based strictly on the following T&Cs, unless separate arrangements have been made by written agreement.

These shall also apply if Metaways is aware of other Terms and Conditions. An exception shall only be made to this provision if Metaways has expressly agreed to the other Terms and Conditions in writing.

Metaways has the right to expand on or amend the existing terms. Metaways customers shall be informed of such amendments via the homepage (www.metaways.de) six weeks in advance. The revised, amended terms shall become effective for the contractual relationship unless the customer appeals in writing within a period of four weeks of the notification or briefing. Should the customer appeal in due form within this period, Metaways may terminate the contract by the date on which the amended T&Cs would have become effective.

§ 2 Object of Agreement

1. The contract does not include the procurement of a domain name.
2. Continuous maintenance of the web-site is also not included in the contract.
3. In addition to the creation of the commissioned presence, Metaways guaranties that this shall function on two standard market browser/operating system combinations. Metaways shall make available a list of potential, supported browsers.
4. Should Metaways be commissioned with additional services over and above the creation of an Internet presence, the appropriate Metaways T&Cs shall apply.

§ 3 Offer, Conclusion of Contract and Prices

1. The definitive content of the contract shall be determined by the order acknowledgement of Metaways Infosystems GmbH (hereinafter: Metaways) and these Terms and Conditions of Business (T&Cs). Agreements deviating therefrom shall only be valid upon written confirmation from Metaways.
2. All offers made by Metaways are strictly subject to change without notice and non-binding. They are merely an invitation to submit an order.

3. A precondition for the creation of a web-site is the submission of an "initial concept design" by the customer. The "initial concept design" must contain, as a minimum, the development of a page layout (visual design on which all pages are based), a site map (which pages on the web-site contain which additional content) and a link plan (which pages are linked and how), whereupon Metaways may assign the customer with additional content as required. Based on this "initial concept design", Metaways shall create a "detailed design" at the usual hourly rate. Based on the detailed design approved by the customer, Metaways shall provide the customer with an offer for the creation of the web-site.
4. The final contract shall then be concluded when Metaways confirms the contract in writing.
5. Should the customer, after invitation, fail to submit a initial concept design, Metaways is entitled to end the business relationship if this has still not been provided within a period of 14 days after renewed invitation. Metaways has the right to demand payment for expenses incurred as a result of the precontractual work carried out prior to the termination of business.
6. This shall be determined by the prices provided by Metaways on delivery / installation / implementation plus the statutory VAT.

§ 4 Right of Revocation for Consumers of Distance Selling Contracts in accordance with § 312 c BGB (German Civil Code)

1. Should the contract between Metaways and the customer, who is a consumer in the sense of § 13 BGB, be concluded via remote means of communication (letter, telephone, fax, internet, etc.), the customer may revoke his declaration of agreement in writing within two weeks without stating a reason or, if delivery of goods has been performed by Metaways, by returning those goods.
The term begins 2 weeks from the date on which it is informed of the right of revocation and Metaways has fulfilled its other duties to inform in accordance with § 312 c para 2 BGB.
If Metaways has already delivered the goods, the revocation period begins on the date on which the goods were accepted by the customer, or in the case of recurring deliveries, with the receipt of the initial partial delivery.
The revocation period shall be deemed observed if the goods are returned or a notice of revocation is given within this period. The notice of revocation is to be addressed to:

Metaways Infosystems GmbH
Pickhuben 2
20457 Hamburg
2. An effective revocation shall evoke a return obligation, i.e. the reciprocal exchange of services and benefits received. This may mean that the customer must nevertheless fulfill the contractual payment obligations for the period prior to the revocation.
3. The right of revocation shall expire early if the contract is fulfilled in its entirety by both parties at the express request of the customer, before the customer exercises his right of revocation.

§ 5 Delivery, Service

1. Quoted delivery times shall commence with the dispatch of the order acknowledgement and not before the receipt of all documentation required from the customer such as leasing agreements, licensing agreements, installation reports and the approval of the Metaways detailed design and agreed prepayment when indicated.
2. Should the service owing by Metaways be delayed through no fault of the company due to unforeseen circumstances (e.g. industrial action, disruption of operations, official measures), Metaways is entitled to withdraw from the contract entirely or in part or to elect to postpone the delivery for the duration of the obstruction. In such instances, the customer is not entitled to claim compensation for damages.
3. Partial deliveries shall be permissible.

§ 6 Acceptance of Delivery

1. The acceptance of the object of agreement is subject to a successful performance check which shall begin no later than three days after Metaways has informed the customer of functionality.
2. Following a successful performance check, the customer shall provide immediate written confirmation of acceptance. The performance check shall be deemed successful when the program fulfils all the key elements of the requirements of the contract.

The customer is obliged to inform Metaways immediately in writing if variations from the contractually agreed requirements come to light during the performance check. Any variations from the contractually agreed requirements which come to light during the performance check but which are not key elements of the program do not entitle the customer to reject the acceptance. Such non-essential variations shall be recorded as faults in the written acceptance certificate.

3. The acceptance may be effected by the express declaration of the customer or implied by action.

Should the customer not immediately declare acceptance, Metaways may set a deadline of two weeks for the submission of the declaration in writing. Acceptance shall be deemed to have taken place if the customer makes no specification in writing of any reasons for refusal during this period.

The customer shall also be deemed to have accepted the product if the customer requests Metaways to put the web-site in question online or to put it online through the customer or a third party.

4. The aforementioned statements shall also apply to partial deliveries. Metaways is always entitled to insist on a partial delivery if a self-contained development unit or development stage is finalised.

§ 7 Additional Obligations of the Customer

1. The payment obligations of the customer are arranged as follows:

- 40% of the agreed payment amount is to be paid immediately on transmission of the order acknowledgement.
- A further 40% of the agreed payment amount is to be paid immediately on finalisation of the web-site.
Metaways shall inform the customer of finalisation.
- The remaining 20% of the payment amount is to be paid immediately on acceptance of the service.

Should payment not be made within ten days of the specified payment deadline, Metaways shall claim statutory interest on arrears from the eleventh day.

2. Should the customer have additional requests for modification during the implementation phase of the detailed design, the additional expense incurred by Metaways during implementation shall be charged for separately. This concerns the additional expense involved in consultation, communication and implementation.
3. Additional expenses incurred by Metaways as a result of the customer supplying incomplete material shall be charged to the customer separately.

§ 8 Warranty

1. Metaways guaranties that the created web-site shall not be afflicted by errors which may limit its use. This excludes any negligible impairment. In this regard, Metaways endeavours to implement the detailed design and layout in accordance with current technical standards. Due to technical reasons, however, it is not possible to guaranty exact, pixel-perfect formatting. Metaways accepts no further warranty.
2. The warranty period is twelve months, commencing with the acceptance of the service or in the instance of partial acceptance, with the partial acceptance. It may be extended by the number of days for which a program cannot be used for more than twelve hours in accordance with its intended purpose as a result of faults, providing the customer informs Metaways of such periods of disruption immediately in writing.
3. Faults not already declared in the acceptance certificate shall be reported by the customer to Metaways in writing immediately on discovery; this report shall include a concrete error description. Such notice of defects should be performed according to the Metaways "Ticketsystem".
4. The customer is aware that his project shall be processed and then maintained by a specific Metaways specialist. Should the specific specialist be prevented in the short-term from working on a notice of defects, the rectification of the defect may be delayed. Should the delay be unacceptable in consideration of the interests of both parties, the customer shall be entitled to insist that another Metaways specialist deals with the notice of defects. The customer is aware a delay may be caused by engaging another specialist who is unfamiliar with the project.
5. Faults reported in due form before the warranty period expires shall be rectified by Metaways at its expense. Should an inspection fail to identify a fault, Metaways may request reimbursement of expenses in accordance with its standard hourly rates (plus necessary out-of-pocket expenses).

6. The warranty shall not apply should the customer modify the program or have it modified by a third party without the consent of Metaways if this is not a result of default by Metaways and the unfruitful expiry of a deadline set by the customer or necessary due to other significant reasons in order to enable use of the program in line with the terms of the contract.
7. Should Metaways fail to resolve or find a suitable temporary solution to significant faults within four weeks of receipt of the notice of defects in due form, the customer may set Metaways a suitable deadline by which date he may reject the rectification of the defect. The customer may withdraw from the contract with immediate effect upon expiry of this deadline; this excludes the assertion of claims for compensation for damages.

§ 9 Open Source Software, Right of Use, Documentation

1. The customer is aware that Metaways works to a considerable extent with so-called "open source software". The customer is also aware that this "open source software" is subject to its own usage, licensing and copyright laws.
2. Metaways is at liberty to also declare the software which it develops as part of a project as "open source software" at its own discretion and - with the exception of any of the customer's data - to make it accessible to the public or use it as part of other projects.
3. All obligations of Metaways and rights of the customer therefore only apply subject to the limitations arising from the use and declaration of its own software as "open source software".
4. Metaways grants the customer an unlimited but non-transferable right of use to the software and/or licensed products.
5. Source codes and corresponding documentation are strictly not provided to the customer unless this has been agreed in writing before conclusion of contract.

§ 10 Liability

1. Metaways is only liable - from whatever legal perspective - if the damage:
 - a) has been caused by a culpable breach of a contractual obligation in a way which would damage the purpose of the contract, or
 - b) can be attributed to gross negligence or willful intent by Metaways.
- 2). The extent of the liability of Metaways is in either case limited to the damages which Metaways could typically expect to incur on conclusion of contract based on the circumstances known at the time. Metaways is not liable for indirect damages, consequential damages or lost profit. In any case, the maximum amount the customer may claim for damages is limited to the compensation for each of the contracts underlying the claim.
3. The liability limitations logically also apply in favour of Metaways employees and authorised representatives.

§ 11 Return Obligation of the Customer

1. In the event of a premature termination of a contract, whether due to withdrawal from the contract or due to ordinary or exceptional reasons, the customer is obliged to return all data storage media provided to him for the fulfillment of the contract along with the user documentation. Furthermore, in the event of a termination of contract, the customer is obliged to delete entirely the software which forms the object of the agreement. At the request of Metaways, the customer is obliged to provide a sworn guarantee regarding the complete fulfillment of the aforementioned obligations to return and delete.

§ 12 Final provisions

1. The sole place of all payment and deliveries is the registered office of Metaways.
2. If both contractual parties are registered traders, the exclusive jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Hamburg. However, Metaways has the right to bring action against the customer in its general place of jurisdiction.
3. The customer is aware that personal data shall be stored and processed by Metaways in relation to the contractual negotiations and business transactions. The customer renounces notification in accordance with BDSG (German Data Protection Act).
4. Amendments or additions to contracts concluded between Metaways and the customer must be made in writing. This also applies to any waiver of the requirement of the written form.
5. Should any provisions of these T&Cs be ineffective, the effectiveness of all other provisions remains unaffected. The contractual partners shall work together to replace such regulations with ones which would correspond as closely as possible to the ineffective provisions. Should an ineffective clause contain an effective, reasonable part, this should be retained. The parties are already obliged to find a replacement regulation which would come as close as possible to producing the same commercial results as the omitted clause.