

# **netcup GmbH – General Terms & Conditions of Business ("T&Cs")**

## **1. Scope, amendments to T&Cs**

1. These T&Cs apply to all contracts for the provision of Internet services as agreed between netcup GmbH (hereinafter: netcup) and its customers. The Appendix lists special conditions for the provisioning and usage of software, for server management and for resellers: these conditions apply only insofar as the customer makes use of netcup's services as described therein.
2. These T&Cs apply to all agreements concluded between the parties (orders/purchase orders), even in situations where such orders do not make explicit reference to the T&Cs. Conflicting T&Cs on the part of the customer do not apply, even if netcup has not expressly rejected the validity of such T&Cs. Individual special agreements have precedence over these T&Cs; this does not apply to the customer's pre-formulated conditions of contract.
3. netcup reserves the right to amend these T&Cs at any time. The version current at the time of contract conclusion is authoritative for any new contracts agreed. For existing customers, such amended T&Cs apply only in the particular circumstances given in the following sections.
4. For existing customers, the agreed T&Cs may be amended if the following restrictions are observed. Circumstances justifying such an amendment are unforeseeable changes occurring at a subsequent point in time, which were not initiated by the company, and over which the company has no influence, and which have the effect of unilaterally burdening one party, as well as loopholes in the T&Cs constituting obstacles to contract fulfilment. netcup will notify the customer of the amended T&Cs four weeks before they enter into force and will also describe the circumstances justifying the amendment and the scope of such amendments. If the customer does not reject the amendment in writing or by fax before the date of entry into force, but gives his or her consent to the new T&Cs by continuing to make use of netcup's services, the amendment is considered to have been accepted; the T&Cs in their revised version then also apply to existing contracts from the specified point in time. If a formally correct rejection is made within the specified period, the parties' relationship continues to be governed by the earlier T&Cs; in this case, either the customer or netcup may terminate the contract with notice on the terms of section 6(3).

## **2. Contract conclusion, communications**

1. Unless otherwise indicated, any offer or over-the-phone information provided by netcup is non-binding. The offers and service specifications as published on the netcup website at [www.netcup.de](http://www.netcup.de) are authoritative in all cases.
2. Customer orders can be sent to netcup in writing or via fax. Although phone- or email-based order placement is not possible, netcup will respond to such enquiries by providing the customer with a written quotation.
3. Insofar as the customer does not expressly demand written notification on a case-by-case basis, it is assumed that s/he agrees to being provided with information about ongoing agreements via email. This also applies to confidential information, particularly in the case of login credentials for services ordered by the customer.
4. For credit checking, the company CRIF Bügel GmbH, Radlkofenstraße 2, 81373 München, Germany, will provide netcup with the customer's address and creditworthiness data as stored in its database (including data calculated by applying mathematical/statistical methods) in cases where netcup has provided credible proof of a justified interest in such data. To aid in decision-making about the initiation, fulfilment or termination of contractual relationships, netcup collects or applies probabilities, the calculation of which also takes postal address data into account.

## **3. Service scope**

1. In providing its services, netcup depends on infrastructure that is operated by third parties and which

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lies beyond the control of netcup itself. The origin of faults or service impairments that arise may therefore lie outside netcup's sphere of influence. This applies in particular to general Internet outages or cases of force majeure.

2. Unless otherwise agreed, netcup guarantees a minimum average annual availability of 99.6% for all of its Internet-based services and other products. Availability is understood to mean the general operational readiness of servers and services. The following circumstances do not count as service disruptions:
  - Interruptions to availability due to a third-party fault lying outside netcup's sphere of influence
  - Interruptions due to force majeure
  - Temporary interruptions to service required in order to minimise or prevent (e.g. via installing updates) specific risks that result from potential abuse of the system by third parties ("exploits").
3. The guaranteed minimum availability can be increased by ordering optional "service level". The additional terms of "service level" will be mentioned in a separate product description. These terms and conditions shall apply in addition to the conditions mentioned in the General Terms and Conditions. If the "service level" is not met, netcup GmbH reimburse the customers ensuing damages. The reimbursement will be made in form of a credit note on the customer account. Reimbursement can only be made, if the customer has indicated the refunding of credit note in written request via letter or fax within 30 days of the end of the calendar month. Such credit note essentially only applied after the expiry of the concerned month, in which the non-compliance has occurred. For the timely receipt the date of postmark respectively incoming fax shall be decisive. Unless otherwise agreed, the maximum amount of credit note is 100% of the monthly rent of the ordered product by the customer at netcup GmbH for which the "service level" has not been respected.
4. netcup carries out regular maintenance and service work designed to ensure the continued capability of the systems deployed. If this type of work involves outages to the service provided, netcup will, where possible, schedule such work for periods of typically lower demand and notify the customer appropriately in advance.
5. Software updates are applied at regular intervals to maintain a high level of security. This may have the result of altering the scope and structure of the services as provided by netcup. Although unlikely, updates may also require changes to be made to content stored by the customer or applications installed by the customer. Wherever possible, netcup will notify the customer of this beforehand. If such a system update requires unacceptable changes to be made on the part of the customer, the latter may opt to terminate the contract without notice.
6. netcup is entitled to employ third parties to render in part or in full the services it has agreed to deliver.
7. During the contractual term, the customer may opt to switch to a package offering a greater level of performance (upgrade) at any time. netcup can provide customers with details of any fees charged for such an upgrade. Once the upgrade is complete, a new contract – potentially with a new minimum term – commences on the basis of the service specification and T&Cs applicable at the time of the upgrade. In the event of an upgrade to a higher-value package, any unused customer payments for the old package will be reimbursed.
8. Unless otherwise agreed in the customer-specific contract, netcup provides support services by replying to customer queries via emails, such as may be submitted using the contact form provided at [www.netcup.de/kontakt](http://www.netcup.de/kontakt).

### 4. Payment terms

1. Unless a different payment schedule has been agreed, all fixed-fee payments are to be made in advance for the billing period as stated in the service specification. Payments related to service/product usage are invoiced at the end of the billing period.
2. netcup supports direct debit payment – an easy way for customers to settle their outstanding bills. Customers wishing to use this option may set up a direct debit mandate when placing their order or at any time during the contractual term. This direct debit mandate also applies if customers update their bank account details and can be revoked at any time. netcup charges an administration fee of €8 for unauthorised direct debit reversals. The onus of proof is on customer to show that netcup has

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- in fact suffered no loss or a substantially smaller loss.
3. Invoices must be paid within 14 days of receipt.
  4. Should a customer fall into arrears, netcup may limit or cease to provide services after giving prior notification; this also applies to domains that have been registered for the customer. The customer incurs an administration fee of €25 for service stoppages unless s/he is able to prove, for each separate case, that netcup in fact suffered no loss or a substantially smaller loss.
  5. If the customer remains in arrears for the payment of a substantial part of the service fee for two consecutive months or for an amount equal to the monthly fee over a period lasting longer than two months, then netcup may choose to terminate the contractual agreement without notice for good cause.
  6. The customer may offset claims on the part of netcup only with counterclaims that are undisputed or recognised as legally binding.
  7. As with any type of service provided over a lengthy period of time, the costs for the services as provided by netcup may change as a result of changes in the legal and commercial environment (such as price increases in the costs for energy and telecommunications). netcup therefore reserves the right to change its prices at the beginning of a new billing period, having given six weeks' notice of these changes. The customer may terminate the agreement without notice at the point in time the price change comes into force. If the customer does not make use of this option within four weeks of receiving notice, acceptance of the new price is assumed; netcup will ensure the customer is informed of this fact.

## 5. Obligations on the part of the customer

1. The customer undertakes to provide a full and correct set of personal data when registering, and a full and correct set of bank details when setting up a direct debit mandate, and to notify netcup immediately of any changes to such data.
2. The registration, transfer or cancellation of a domain at the responsible NIC (Network Information Centre) requires the written consent of the current domain owner. For any and all orders placed by the customer that necessitate a change in the status of a domain, the customer agrees to provide his or her consent without delay and in the applicable format.
3. The customer must change login credentials immediately on receipt and keep them secret from third parties. The customer is responsible for any and all culpable abuse of these login credentials by third parties.
4. The customer is responsible for preparing and retaining adequate backup copies of all content stored by the customer. Unless otherwise agreed, netcup does not perform backups of customer content.
5. In using the services as provided by netcup, the customer undertakes to maintain compliance with the applicable provisions of the law and to refrain from activities that could result in service disruptions affecting servers operated by netcup. The following activities are expressly prohibited:
  - Bulk mailing
  - Actions intended to store and provide access to material of a pornographic or commercially erotic character and any material protected by copyright for whose dissemination the user is not authorised (e.g. hosting of Warez sites, illegal MP3 downloads, etc.).
  - Operation of mining-services such as "Bitcoin", "Ethereum", "OneCoin" or "Monero".
  - Actions intended to store and provide access to files and material concerning left- or right-wing radicalism, with offensive content or encouraging terrorism or acts of violence
  - Running server services that cause a particularly high CPU load; this does not apply in the case of dedicated and root servers
6. The customer is advised that netcup conducts no checks on the content stored by the customer: accordingly, the latter bears sole responsibility for the legality of such content.
7. If the customer breaches the code of conduct as set out above or if there is a well-founded suspicion of the same, netcup is entitled to temporarily block the provision of services normally provided to the customer. This applies particularly if a cease-and-desist order is brought against the customer by third parties for certain specified reasons that are not manifestly unfounded, or in the event of an

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investigation being conducted by state authorities. If possible, netcup will grant the customer a hearing before withdrawing services; if the urgency of the situation makes this impossible, netcup will inform the customer after the event and offer the latter an opportunity to make a statement. Services are resumed as soon as the suspicion proves groundless or infringements are identified that entitle netcup to terminate the contract without notice.

8. Despite all reasonable care on our part, technical equipment may nonetheless malfunction. If a customer discovers such a malfunction in the netcup equipment s/he uses, the customer shall inform netcup about this malfunction in a timely fashion and by providing as many details as possible.

### **6. Contractual term, notice of termination**

1. Unless otherwise agreed, contracts are concluded for an indefinite term. Such contracts can be terminated by either party on giving one month's notice to the end of a month, but no earlier than the expiry of the agreed minimum contractual term.
2. Contracts with an agreed term of 24 months are automatically extended by a further 12 months if they are not terminated by either party on giving one month's notice before the end of the agreed contractual term.
3. In cases where these T&Cs grant either party a special right of ordinary termination, the contract may be terminated on giving one month's notice to the end of the month, regardless of any agreed minimum contractual term.
4. A notice of termination may be done in text format (§ 126 b BGB) e.g. by e-mail. The text format requires the name of the declaring person. For us it has to be clearly recognizable who issued the notice of termination. To avoid misunderstandings we are asking for additional information, e.g. customer ID or further information suitable for identification, to ensure that the notice of termination is from the right person. Therefore it would be best if we receive the notice of termination in writing by letter, fax or in the secured online management area (CCP) as far as this possibility is available. For a clear identification it would also be helpful if the notice of termination is sent by the e-mail address which is stored in the customer account and/or the e-mail contains a digitalised/scanned letter in PDF format that clearly announces the intention of giving notice and has been signed in person by the customer. If there should be any justified doubts regarding the identity of the person responsible for the notice of termination we reserve us the right to ensure the identity by asking suitable queries.
5. If notice of termination is served by the customer, s/he must provide instructions about the handling of his/her registered domains. If the customer fails to provide instructions in good time and as requested to do so by netcup, the latter is entitled to delete (close) the domains. If notice of termination is served by netcup, the above applies as appropriate with the distinction that netcup must request instructions from the customer as part of the notice.
6. This does not affect the right of either party to terminate the contract without notice for good cause. For terminations on the part of netcup, good cause is established by the following cases in particular:
  - The customer is in arrears after having missed two consecutive payment dates for the applicable agreed fee or for a substantial part of this fee, or the customer is in arrears after having failed to make payments for a period extending beyond two payment dates and for an amount equal to the fee that is charged for two months of service to the customer.
  - The customer is unable to render payment or has filed for insolvency or the opening of insolvency proceedings has been refused due to a lack of assets.
  - The customer is guilty of a fundamental breach of the contract and has not immediately rectified this breach despite receiving a warning or being notified by netcup that content has been blocked.

### **7. Gurantees, disclaimer**

1. netcup can accept no liability for losses, consequential losses or lost profits that result from faults and technical problems in technical systems that lie beyond our control. Nor does netcup bear any liability for losses arising from the breaching of contractual obligations on the part of the customer and the customer's duty to back up stored data in particular.
2. Strict liability is excluded for defects affecting the storage space provided in cases where such defects were present before contract conclusion.

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3. netcup is liable for its actions or those of its vicarious agents only in cases of gross negligence or wilful intent. This does not apply in the event of breaches of obligations whose fulfilment is fundamental to the proper performance of the contract and on the fulfilment of which the contractual partner regularly relies and may rely (fundamental contractual obligation). Unless otherwise agreed, netcup shall be liable for non-compliance of minimum availability up to the amount of the monthly rent, which complied with the affected non-compliance of services. In the event of a material breach of contract due to simple negligence, netcup bears liability for its own actions or those of a vicarious agent only for such typical losses foreseeable at the time of contract conclusion.
4. The customer is liable for all direct and indirect losses (including lost profits) incurred by netcup due to a breach of contractual obligations arising from section 5 of these T&Cs.
5. The customer undertakes to indemnify netcup against all third-party claims of whatsoever nature resulting from the illegality of content the customer has stored on the storage space provided to the latter. This declaration of indemnity also covers any legal defence costs incurred by netcup (e.g. court and lawyer fees).

### ***8. Final provisions, place of jurisdiction, applicable law***

1. This contract shall be governed by German law.
2. The place of performance and jurisdiction for all disputes the parties is Karlsruhe. This applies only if the customer is a merchant, a public sector legal entity or a public sector special funds corporation or has no place of general jurisdiction in Germany.
3. All changes to the contractual provisions agreed must be made in writing.

### **Special provisions governing domain registration**

If the customer requests netcup to register domains on his or her behalf, the following provisions also apply:

1. netcup forwards the customer's registration request to the designated network information centre (NIC). The customer bears responsibility for the legitimacy, comprehensiveness and accuracy of his or her request and the details therein; no verification (even of plausibility) is made on the part of netcup. netcup is unable to influence the registration process and bears no liability for its outcome.
2. The customer should not assume that registration of the chosen domain name has been successful until s/he has been entered as the owner of the domain by the designated NIC.
3. The registration of a domain results in the conclusion of a contract between the NIC and the customer, in accordance with the terms of the domain name registry. Acquiring knowledge of domain name issuing rules and the NIC's general terms and conditions is incumbent on the customer, who agrees to be governed by such provisions.
4. If a handling fee for forwarding the domain registration is specified in the service specification, this fee is levied independently of the application outcome.

### **Special provisions governing web Hosting**

If the subject of the contract concluded between netcup and the customer involves the provisioning of storage space with connectivity to the Internet (web hosting), the following provisions also apply:

1. netcup provides the customer with a volume of storage space as stated in the service specification on an unspecified storage medium with connectivity to the Internet. The customer's usage of this space is governed by these T&Cs.
2. For technical reasons, the IP addresses allocated to the customer can change at any time. The customer is not entitled to the allocation or retention of a specific IP address.
3. If agreed on the terms of the contract, netcup will provide the customer with the facility to analyse visitor numbers and visitor behaviour on the customer's websites to the extent permitted by law. Statistics can be accessed by the customer in the web server management system (Confixx). netcup reserves the right to limit or withdraw this facility in the event of this being necessary to comply with the letter of the law. netcup will inform the customer well in advance before taking such actions. In the event of a material change, the customer is entitled to terminate the contract with due notice

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pursuant to section 6(3).

4. Each and every access to the data stored by the customer over the Internet involves the transfer of data ("traffic"). If the customer exceeds his/her inclusive traffic volume granted on the terms of the contract, each additional gigabyte of traffic will incur a fee, whose amount is stated in the service specification.

### **Special provisions governing software provisioning and usage**

Insofar as netcup provides the customer with software for the latter's use on the terms of the contract, the following provisions also apply:

1. The customer is entitled to use the software developed by netcup in accordance with the applicable licensing and usage conditions. To this end, netcup grants the customer a limited, non-exclusive license to use the software for the term of the relevant contract.
2. All software and manuals provisioned remain the property of netcup until full payment has been rendered by the customer.
3. Where third-party software (including open source software) is provided, the customer shall observe the manufacturer's licensing and usage conditions.

### **Special provisions governing server management**

Insofar as the subject of the contract concluded between the parties constitutes the leasing of a (virtual or physical) server that includes netcup's server management service, the following provisions also apply:

1. In contrast to standard web hosting, netcup here provides the customer with sole use of a server. This server is either a physical server (supplied as actual hardware) or a virtual server (the server functionality is emulated by software).
2. netcup undertakes to keep the server's operating system up-to-date and to install any updates and patches as and when these are made available. Notwithstanding the above, security holes for which no patches are yet available ("exploits") may result from configuration or programming errors. netcup bears no liability for faults and losses arising from third-party exploitation of security holes for which no remedy is yet known.
3. The customer is not given root access to the server if netcup has assumed responsibility for the management and administration of the server provided.

### **Special provisions for reseller**

Insofar as the customer does not make personal use of the services provided but charges a third party (third-party customer) for their use (as a reseller), the following provisions also apply:

1. The reseller is entitled to grant third parties contractual usage rights to the Internet presence instances as provided by netcup. This right of sale is non-exclusive. The reseller is not entitled to claim for compensation on the terms of section 89b of the German Commercial Code (HGB).
2. The reseller remains the sole party to the contract with netcup. The reseller undertakes to inform third-party customers of his/her material contractual obligations pursuant to section 5 of these T&Cs and ensure customer compliance with the same.
3. Insofar as the cooperation of the third-party customer is required for changes to contracts or domain reservations, the reseller shall ensure that these obligations to cooperate are honoured by the due date.
4. The reseller is liable to netcup for all losses arising from a breach of contractual obligations pursuant to these T&Cs on the part of a third-party customer.

### **Special provisions governing colocation**

Insofar as the subject of the contract concluded between the parties constitutes the leasing of space in a

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data centre for the purposes of colocation (the housing of technical equipment such as servers, switches and routers), the following provisions also apply:

1. netcup provides the customer with rack units that facilitate the installation of technical equipment for telecommunication purposes. The customer may order power and network connectivity for these rack units. Such connectivity is intended for the exclusive use of the technical equipment housed in the rack units. netcup provides data communications solely between the transfer point of netcup's own data communications network to the Internet and the IT system provided to the customer. netcup has no influence on data traffic outside its own data communications network.
2. netcup or netcup's service providers monitor physical access to the data centre and grant access only to authorised persons. The customer must be accompanied by a netcup employee when visiting his/her colocation facility; such visits must be arranged in advance. The data centre is monitored by a video surveillance system.
3. The customer has the following duties of cooperation:
  - The customer bears sole responsibility for the technical operation and maintenance of his/her equipment; no duty of care is incumbent on netcup. Should circumstances arise that are likely to cause damage to the customer's technical equipment, netcup will inform the customer without delay.
  - To ensure adequate air conditioning, the customer shall make exclusive use of equipment that can be installed in a 19" rack.
  - The customer shall use the equipment installed in the rack units only as permitted by the letter of the law.
  - The equipment installed by the customer in the rack units may be used only for the contractually-agreed purpose.
  - The customer shall take out a policy providing electrical replacement cost coverage for the installed technical equipment. This insurance policy must be presented to netcup on request. netcup assumes no liability for damage to the customer's technical equipment. The customer indemnifies netcup against claims for compensation related to the technical equipment.
  - Insofar as the customer uses the rack units to house third-party equipment, s/he takes full responsibility for this equipment vis-à-vis netcup, just as if s/he were the actual owner of this equipment.
4. The customer bears all responsibility and costs for the installation of his/her technical equipment. netcup coordinates the initial installation of the technical equipment, ensuring the successful completion of the equipment housing process. On payment of a fee to be arranged in advance, the customer may commission netcup with the installation of the technical equipment. To this end, the customer, bearing all associated costs and risks, delivers or ships the technical equipment to a place of installation as specified by netcup.
5. If requested by the customer, netcup can offer "remote hands" services for the customer's technical equipment. Such services will be billed according to a previously-agreed price list. This price list also forms the basis for billing if the customer visits the data centre in the presence of a netcup employee.
6. netcup is entitled to relocate the data centre to another site at any time. The customer will be informed well in advance of such relocation. The removal of the technical equipment from the old data centre and its subsequent installation in the new data centre will be carried out by netcup.
7. If the colocation agreement is terminated, netcup will remove the technical equipment for the customer by the date of termination. The customer can then pick up the hardware from netcup or request shipment of the hardware. The customer bears the costs of packing and insured freight shipment. The customer may request the return of the technical equipment housed by netcup at any time. This does not alter the status of the contractual relationship, however: in particular, the customer's obligation to render payment of fees remains in force until the contract is terminated.