



General Terms and Conditions of Business of Green Datacenter AG



1. Effective date, validity of the General Terms and Conditions of Business

1.1 These General Terms and Conditions of Business (hereinafter referred to as the 'GTC') govern the reciprocal rights and obligations of Green Datacenter AG, CH-5242 Lupfig (hereinafter referred to as 'GDC') on the one hand and GDC's customer (hereinafter referred to as the 'Customer') on the other hand. A contractual relationship governing the use of services provided by GDC shall enter into effect upon GDC's acceptance of a Customer order.

1.2 If the Customer order is issued using the order placement function on the GDC homepage or by any other means, this shall be deemed to be binding until accepted or rejected by GDC.

1.3 These GTC serve as a contractual basis and apply to all contracts between the parties, even in the absence of any express reference to same. Any conditions of business or purchase set out by the Customer are explicitly excluded. Agreements which deviate from these GTC, including this clause relating to the written form, must be in writing.

1.4 Clauses worded otherwise in individual contracts or specific service descriptions between the parties have precedence over these GTC.

2. GDC's scope of services and service obligations

2.1 GDC offers a wide range of different services related to data centers and the Internet and renders these services within the framework of the contract with the Customer.

2.2 GDC's service obligation (hereafter also referred to as the 'GDC Services') is derived from GDC's service descriptions as well as from the contracts with the Customer.

2.3 The Internet is a worldwide system of independent, integrated networks and computers. GDC can only exert influence over those systems which are contained in its network and therefore cannot guarantee error-free delivery of third-party services.

2.4 GDC is entitled to make amendments to GDC's services as well as these GTC insofar as GDC deems this appropriate and expedient for technical reasons, or in response to market developments, and insofar as this does not have an unreasonable detrimental effect on the interests of the Customer – in particular the appropriateness of service and consideration in return. Amendments to the GTC shall become applicable to the Customer immediately upon notification or publication, unless the Customer lodges an objection in writing within 30 calendar days. In this case, the Customer has the right to terminate the contracts with GDC, subject to the contractual period of notice.

2.5 GDC will endeavor to maintain the availability of its infrastructure (servers, Internet links etc.) at all times. For maintenance purposes and in the event of unexpected system failures, GDC may restrict the availability of or suspend the services at any time and without prior notification.

2.6 Insofar as GDC renders services free of charge these may be ceased at any time and without prior notification. This shall not constitute grounds for any claims to a reduction, reimbursement or compensation.

2.7 GDC may use the services of third-party providers and subcontractors for the purpose of performing the contract.

2.8 Delays in delivery and services as a result of force majeure and events which render the provision of the service significantly more difficult or impossible for GDC – in particular strikes, lockouts, official decrees, failure of communication networks and gateways of other operators, including if these occur with suppliers or subcontractors of GDC or their subcontracted suppliers, subcontractors or operators of subnode computers authorized by GDC – shall entitle GDC to extend the delivery period and/or service provision by the duration of the event plus an appropriate lead time. If such events continue uninterrupted for more than three weeks, GDC shall be entitled to terminate the contract without notice.

3. Obligations of the Customer

3.1 Close collaboration between GDC and the Customer may be required depending upon the scope of the GDC Services. In this case, interim objectives and reciprocal obligations with regard to cooperation and acceptance will be defined for

individual contracts. If the Customer fails to fulfill these obligations with regard to cooperation and acceptance, GDC shall be released from its further service obligations. In addition, after issuing a reminder to the Customer, GDC may bill the Customer for the costs it has incurred up to that point, payable on receipt of the invoice.

3.2 The Customer commits to use GDC Services properly. In particular, it has an obligation

- a) to provide GDC with the necessary information on existing technical systems for the use of GDC Services or – where necessary – to enable GDC to install the required technical systems on the Customer's site;
- b) to ensure compliance with the official regulations as well as to procure the official licenses insofar as these should be necessary, now or in the future, for the use of GDC Services;
- c) to notify GDC immediately of apparent faults or damage (error report) and, within the framework of what is reasonable to expect, to take all measures which allow for the identification of the faults and damage and their causes or which facilitate and speed up fault rectification;
- d) to reimburse GDC for any expenses incurred in connection with the inspection of its infrastructure if and insofar as the inspection reveals that the Customer caused the fault through willful intent or gross negligence, or the fault lay within its area of responsibility and the Customer failed to recognize this as a result of gross negligence;
- e) to notify GDC within one month of any of the following circumstances:
 - any change in the Customer's personnel or company data;
 - In the case of legal entities, additions of or departures of personnel;
 - any other actual or legal circumstance which has or might have a substantial impact on the contract with GDC.

3.3 In the event of a breach of clauses 3.1 and 3.2 and following an unsuccessful notice of warning to the Customer, GDC shall be entitled to terminate the contractual relationship without notice.

3.4 The Customer is responsible for the hardware and software components (including programs, licensing and configuration) on its terminals. GDC gives no guarantee that GDC Services will operate perfectly on Customer terminals containing defective technical equipment.

3.5 The Customer commits to provide GDC in writing with regular, detailed updates regarding any regulatory requirements incumbent on either it or its end customers and to formally present to GDC the relevant, applicable regulatory provisions or requirements.

4. Responsibility for content as well as data transmissions or downloads

4.1 The Customer is liable for the nature and manner of use of GDC Services, specifically for its own online content. In particular, it has an obligation

- a) neither to download or offer information entailing illegal content, nor to make reference in any other way nor to install links to content of this nature which is offered by third parties;
- b) to comply with the applicable laws prohibiting the distribution of illegal or immoral content or content harmful to minors and, amongst others, by the careful use of passwords and by taking other appropriate measures to ensure that unsuitable content, which could endanger the morals of children or young people or impair their welfare, does not come to the notice of the persons protected by these laws;
- c) not to infringe national and international copyrights or other intellectual property rights, such as third-party rights to the use of names and trademarks;
- d) not to use GDC Services to cause harm to or harass third parties, in particular through unauthorized entry into third party systems (hacking), the spreading of viruses of any kind or through the unsolicited sending of e-mails (spam, junk mail etc.);
- e) to ensure that its scripts and programs used on GDC's server contain no faults or are not so large as to potentially interrupt service provision by GDC;
- f) to refrain from:
 - scan networks for open ports (accesses) to third party computer systems;
 - causing the unintentional replication of data (duplicates, mail relaying) through the configuration of server services (e.g. proxy, news, mail and web server services);
 - falsifying mail and news headers or IP addresses.

4.2 GDC is under no obligation whatsoever to verify that the content of its customers' offers complies with the legal requirements. If knowledge of such a situation comes to its attention, GDC reserves the right to unilaterally terminate the contract without notice and prior notification and to immediately disconnect the



corresponding services. Likewise, it reserves the right to file claims for compensation and to take corresponding legal action, including steps under criminal law.

4.3 If the Customer is in breach of clause 4.1 above or in the event of a dispute as to whether the content of the website used by the Customer is in breach of the applicable law, GDC shall be entitled to block this site until the legal situation has been established in the courts, or until the Customer has supplied proof that the situation has been restored to reflect the terms and conditions of the contract. In addition – following an unsuccessful notice of warning to the Customer – GDC shall be entitled to terminate the contract without notice.

4.4 The Customer acknowledges that, in the event of the corresponding official or legal order, GDC is under an obligation to block the Customer's access to websites containing illegal content. This shall not constitute a claim by the Customer for reduction, reimbursement or compensation.

4.5 GDC may regulate the specifics of interactions between customers within the framework of a set of user rules. Breaches of these user rules – following an unsuccessful notice of warning to the Customer – shall entitle GDC to terminate the contractual relationship without notice.

5. Use of GDC Services by third parties

5.1 Direct or indirect use of GDC Services by third parties is not permitted unless GDC has given its prior written consent. In particular, the Customer is not entitled to reveal passwords for the use of GDC Services to third parties, or to allow access to same or enable use of the services in any other way.

5.2 If the use of GDC Services by third parties has been permitted by GDC, the Customer must instruct the third parties in the proper use of GDC Services in accordance with these GTC. In particular, the Customer commits to ensure that third parties comply with the provisions set forth in clause 4 of these GTC. The Customer is responsible for the culpable misconduct of the third party in the use of GDC Services and such misconduct will be attributed to the Customer. If use by third parties is not permitted by GDC, this shall not constitute any entitlement of the Customer to claim reduction, reimbursement or compensation.

5.3 In addition, the Customer shall be liable for the fees incurred in connection with the use of GDC Services by authorized or unauthorized third parties. The Customer is liable to GDC for all breaches of the provisions of these GTC and of the underlying Customer contract as a result of use of the services by authorized and unauthorized third parties.

5.4 In any event, the Customer must exempt GDC upon initial request from all third-party claims of whatever nature.

5.5 If the Customer acquires knowledge that GDC Services are being used illegally by third parties, or acquires knowledge of facts that give rise to concerns that services are being used illegally by third parties, it must immediately notify GDC of this in writing. Furthermore, in such cases the Customer must immediately change the access data to GDC Services or arrange for these to be changed.

6. Warranty

6.1 If GDC sells third-party products to the Customer (in particular hardware and software), the Customer will benefit from the same warranty that is granted to GDC by the manufacturer of the third-party products. Expenses incurred by GDC arising from consequential losses due to defective hardware or software are not covered by the manufacturer's warranty. Likewise, expenses incurred by GDC at the Customer's premises following delivery of third-party hardware and software are not covered by the manufacturer's warranty. These include, in particular, the reinstallation of programs, the configuration of hardware components and other costs incurred in connection with the supply of the hardware and software.

6.2 Warranty services must always be rendered by correspondingly trained specialist personnel during normal business hours at GDC's domiciliary address. Any necessary transport and/or travel costs incurred by GDC for the purpose of rendering warranty services will be billed to the Customer.

6.3 Errors in GDC Services resulting from failure by the Customer to provide adequate instruction for its personnel, as well as through the Customer's breach of GDC guidelines or those of the hardware and software manufacturers, as well as interruptions to or failure of the power supply, are not covered by the GDC warranty.

In addition, in the absence of a special warranty in individual cases, any consumables (removable data carriers, color ribbons, toners etc.) are excluded from the warranty services.

7. Rights of use to software and product or service identifiers as well as managed services

7.1 Unless expressly agreed otherwise, the following provision applies with regard to rights of use to software and product or service identifiers in respect of the services managed by GDC: the Customer is granted a non-exclusive, indefinite and non-transferable right of use to software as well as to product or service logos for its own internal use. Supplementary provisions on the use of software are hereby included. The software shall not be made accessible to third parties. The licensing provisions of third parties shall apply to their standard products insofar as these contain wider-reaching restrictions. The source code will only be handed over if this has been expressly agreed.

7.2 If, in deviation from clause 7.1 above, it is agreed that rights of use to software may be transferred to third parties, all copies must bear the original copyright notice as well as all other references to intellectual property rights.

7.3 If claims are filed for breach of intellectual property rights in connection with the object of the contract (software development or implementation of other projects), the Customer is obligated to notify GDC in writing within five calendar days. The Customer may not conduct any legal proceedings without the prior consent of GDC and must assign the defense of such claims to GDC on request, in particular for conducting legal proceedings, including settlement proceedings.

7.4 If the use of the contractual object or parts thereof by the Customer is prohibited by a court decision, or if, in the opinion of GDC, there is a threat of a lawsuit for breach of intellectual property rights, GDC has the right to choose between the following courses of action:

- a) to modify the object of the contract in such a way that it no longer infringes any intellectual property rights;
- b) to procure the right for the Customer to continue using the object of the contract;
- c) to replace the object of the contract by a contractual object that does not infringe any intellectual property rights, and which either meets the requirements of the Customer or is equivalent to the replaced contractual object;
- d) to take back the object of the contract and refund the Customer the amount of the consideration paid, less an appropriate amount for use and depreciation.

7.5 The above obligation does not apply to contractual objects for which the infringement of intellectual property rights is based on a concept created by the Customer, or on the fact that the contractual object has been modified by the Customer or operated in conjunction with contractual objects not supplied by GDC.

8. Deliveries of goods, re-export

8.1 As a rule, information on delivery dates is deemed to be not binding. Delivery dates shall only be deemed binding if they have been guaranteed by GDC in writing as 'binding'. The Customer will be notified in writing of any delays in delivery. The Customer is not entitled to withdraw from the contract due to delay in delivery and waives all claims for compensation against GDC. Costs of delivery and installation will be charged to the Customer.

8.2 Use and risk of the object of the contract pass to the Customer as soon as the consignment has been handed over to the person undertaking the transportation or has left the business premises of GDC for the purpose of dispatch.

8.3 GDC is entitled to make partial deliveries. The right is reserved for the parties to conclude deviating agreements in writing.

8.4 The Customer acknowledges that re-exports, in particular of hardware, are prohibited as a rule due to statutory regulations, or permitted only after special approval has been obtained. In the event of any sale by the Customer of a product which is covered by the above-mentioned re-export ban, the Customer will impose this export ban on the new owner.



9. Prices, payments, payment terms and conditions, retention of title

9.1 All agreed prices for GDC Services are in Swiss francs and, unless otherwise indicated, are understood as excluding value added tax and other official duties. The agreed prices neither include costs for delivery, packaging nor other additional product costs unless otherwise defined in the offer.

9.2 GDC may demand an appropriate payment in advance from the Customer for orders related to products that are not stocked by GDC or for orders with a high hardware content.

9.3 Unless otherwise agreed in individual cases, the following payment terms and conditions apply to Customer orders in excess of CHF 5,000.00:

- the Customer shall pay 50 percent of the order value upon placement of the order;
 - the balance will be invoiced upon completion of the work, or in separate invoices according to the progress of work at the end of each respective month.
- In the case of recurring orders, GDC is entitled to demand partial or advance payments.

9.4 The payment periods are governed by the GDC offer. On expiration of the payment period, the Customer is automatically in default, without any prior reminder. Any objections to invoices must be lodged by the Customer in writing within the payment period. If no objections are received within this period, the invoice shall be deemed to have been accepted by the Customer as correct.

9.5 The prices for GDC Services are defined in the service agreement. Price changes will be notified to the Customer as soon as possible. During the period of the contract, GDC may amend prices to a reasonable extent if key cost factors have changed (i.e. new regulatory requirements). GDC has the same right in the event that the use of GDC Services by the Customer is unusually intensive or gives rise to special costs.

9.6 The Customer must reimburse GDC for incurred collection expenses (fees for unredeemed checks, returned direct debits, etc.).

9.7 The delivered goods remain the property of GDC until full and final payment of the purchase price. In accordance therewith, GDC reserves the right to register a retention of ownership in the relevant register. The pledging or assignment as collateral of the goods by the Customer is prohibited. Intellectual property rights do not pass to the Customer. Processing or transformation of the object of the contract is always carried out on behalf of GDC as the owner or entitled party, but without any obligation on its part. If GDC's (co-)ownership expires as the result of combination or sale, it shall be deemed to have been agreed that the claims of the Customer arising thereof shall be transferred to GDC – on a proportional basis, where GDC's goods are combined with others.

10. Default

10.1 If the Customer is in default with payments, GDC shall be entitled to cease or block its services. In this case, the Customer has no claim to performance of the service by GDC and continues to be liable for payment of the amounts which become periodically due. A handling fee will be charged for reconnection.

10.2 GDC is also entitled to charge interest at the rate of 5 percent in the event of payment default.

10.3 If the Customer is in default for payment of the fees, or a part thereof, for two consecutive accounting periods, GDC may terminate the contractual relationship without notice.

10.4 GDC reserves the right to file additional claims for payment default, in particular for costs incurred by GDC as a result of reminder and enforcement proceedings. GDC may charge reminder fees.

11. Surety

11.1 In the event of repeated payment default, GDC shall be entitled to demand a surety from the Customer (bank guarantee, bond etc.) in the sum of the total invoice amounts of the last two months prior to the occurrence of the repeated delay or, at

its discretion, based on the average future anticipated sales. In addition, GDC may demand the provision of a surety from the Customer, if this appears justified on the basis of other exceptional circumstances.

11.2 The Customer commits to immediately lodge the surety requested by GDC, otherwise GDC shall be entitled to terminate the contract without notice.

12. Termination of the contract

12.1 The minimum period, the period of notice and the date of notice are determined by the respective type of contract which has been concluded with GDC. If the contract is terminated prior to expiration of the agreed minimum period or with effect from a date which has not been agreed, reimbursement of the amount/fee on a pro rata basis is excluded and GDC is entitled to retain the said amount/fee.

12.2 At the end of the contractual relationship, the items and documents owned by GDC and handed over to the Customer must be returned by the Customer to GDC without delay, no later however than 14 calendar days after the end of the contract, with the costs and risk being borne by the Customer until the said items are received by GDC. If the Customer fails to comply with the obligation to return the said items, it shall be liable for payment of compensation in the amount of the replacement value of the items and documents, provided that a higher amount of damages cannot be proved.

12.3 GDC may terminate the contract without notice if bankruptcy, insolvency, debt restructuring or similar proceedings are initiated against the Customer, or if a request for initiation of such proceedings has been made. In this event, clause 12.2 applies unconditionally. The Customer is obligated to immediately inform GDC of such circumstances.

12.4 In the event of the contract being terminated prematurely on grounds for which the Customer is responsible, GDC shall be entitled to demand compensation in the amount of the fees that would have been due for the remaining contract period. The right to lodge additional claims remains reserved.

12.5 The termination must be submitted in accordance with the stipulated period of notice by registered letter or by fax.

13. Right of offsetting and retention, assignment, transfer

13.1 The netting or offsetting of claims by the Customer shall require the written consent GDC.

13.2 The Customer commits to waive the assertion of any rights of retention against GDC.

13.3 No contractual rights and obligations are transferable or can be assigned to third parties – subject to any deviating agreements.

13.4 GDC is entitled to transfer the Customer contract, or any rights and obligations arising therefrom, to another Group company in Switzerland without the Customer's consent if GDC has direct or indirect control of the said company. Furthermore, GDC is entitled to transfer or assign any contracts or claims arising from said contracts to a third party without the Customer's consent for the purpose of collection or obtaining financing.

14. Liability exclusion and restriction

14.1 GDC does not guarantee either the uninterrupted, error-free operation of its services or error-free operation at any given point of time. Liability for service interruptions, specifically for the purpose of troubleshooting, carrying out maintenance or rolling out new technologies, is herewith excluded.

A specific arrangement in the GDC offer or specific service descriptions shall take precedence over clause 14.1 (1).



14.2 GDC gives no guarantee regarding the integrity of the stored data or data transmitted via its system or the Internet. Any guarantee regarding the accidental disclosure or corruption or deletion of data which is transmitted and received via or stored on its system is excluded.

14.3 GDC shall not be liable either for direct or indirect, proximate or consequential losses resulting from the use or failures of the services supplied/rendered by GDC.

14.4 GDC shall not be liable in the following cases, in particular:

- a) direct or indirect consequential losses in the event of malfunctions in the GDC infrastructure, in particular with respect to faults occurring in the leased connections of GDC's subcontracted suppliers;
- b) electronic messages which are incorrectly or illegally transmitted, or not transmitted at all, or intercepted by third persons;
- c) lack of or deficiencies in the confidentiality of encoded data, including in particular if GDC acts as a certifying body or offers other encryption services;
- d) processing errors in the handling of business transactions via the Internet (electronic commerce), particularly in the case of transmission errors involving credit card data or other payment information;
- e) lack of or incorrect hits with Internet search engines, including in the event of an express order issued by the Customer to GDC to carry out search engine registrations;
- f) legal disputes as a result of domain name registrations or deletions which GDC has organized on behalf of the Customer.

14.5 Any liability of GDC and its vicarious agents for a specific technical or commercial outcome, for indirect losses such as lost profits, claims by third parties as well as for consequential losses arising from lost production, data loss and liability for minor negligence are expressly excluded, subject to further, compulsory statutory liability provisions.

14.6 GDC shall not be liable if it is prevented from fulfilling the obligations under the contract on time or properly on grounds for which it is not responsible (example: force majeure).

14.7 The liability under the federal legislation dated June 18, 1993, relating to product liability (Product Liability Act, PLA) is not affected in any case.

15. Data protection declaration and consent

GDC's privacy policy is available at <https://www.green.ch/en/legal-aspects/data-privacy> and forms an integral part of these GTC and of the Customer agreement.

The Customer, as contract owner, undertakes to make all data available to GDC, which is necessary for proper fulfillment of the contract and, in turn, to observe the data protection regulations and to inform all its users of GDC's services, i.e. that traffic and usage data are recorded.

16. Confidentiality

16.1 The parties commit to keep confidential all information of the other contracting party which is either confidential or designated as confidential and, in particular, to not make it accessible to unauthorized third parties. In particular, the content of contracts, including attachments, is considered confidential.

The parties shall also treat the business relationship as confidential. Mentions in references or press releases must be agreed in writing between the parties.

16.2 GDC is entitled to hand over Customer addresses to third parties, in particular criminal authorities, in the case of justified suspicion of criminal acts.

17. Place of performance, jurisdiction, applicable law, miscellaneous

17.1 The place of performance is CH-5242 Lupfig, canton of Aargau, Switzerland.

17.2 Exclusive place of jurisdiction for any disputes arising from or based on these GTC or the Customer contract is CH-5242 Lupfig.

17.3 The contractual relationships between the parties are subject exclusively to Swiss substantive law. The "Vienna Convention" (UN Convention on Contracts for the International Sale of Goods dated April 11, 1980) does not apply.

17.4 Should provisions of these GTC be unenforceable or legally invalid, this shall not affect the validity of the remaining provisions. In this event, unenforceable or legally invalid provisions will be replaced by valid provisions which as closely as possible reflect the invalid provisions in terms of their commercial outcome to the extent legally permissible.

Issued September 2019