



General Terms and Conditions of Business of green.ch AG



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

1.1 These General Conditions of Business (hereinafter referred to as the 'GCB') govern the reciprocal rights and obligations of green.ch AG, CH-5242 Lupfig (hereinafter referred to as 'Green') on the one hand and Green's customer (hereinafter referred to as the 'Customer') on the other hand. A contractual relationship in respect of the use of services provided by Green comes into effect on acceptance of a Customer order by Green.

1.2 If the Customer order is issued via the order mode on the Green homepage or by other electronic means this shall be deemed to be binding until accepted or rejected by Green.

1.3 These GCB 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 of the Customer are deemed to be inapplicable. Agreements which deviate from these GCB, including this clause relating to the written form, must be in writing.

1.4 Clauses worded otherwise in individual contracts between the parties have precedence over these GCB.

2. Green's scope of service and service obligations

2.1 Green offers services of all kind in the area of the Internet and telecommunications and renders these services within the framework of the contract with the Customer and the available operational resources.

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

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

2.4 Green is entitled to amend the services as well as these GCB insofar as Green deems this appropriate and expedient for technical reasons, or as a result of 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 in the GCB shall become applicable to the Customer immediately on notification or publication, unless the Customer lodges an objection in writing within seven calendar days. In this case, the Customer has the right to terminate the contracts with Green, giving the contractual period of notice.

2.5 Green will endeavour 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, Green can restrict the availability of or suspend the services for an unspecified period at any time and without prior notification.

2.6 Insofar as Green renders services free of charge these can be ceased at any time and without prior notification. This shall not constitute any claim for reduction, reimbursement or compensation.

2.7 Green 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 Green – in particular strikes, lockouts, official decrees, failure of communication networks and gateways of other operators, including if these occur with suppliers or subcontractors of Green or their subcontracted suppliers, subcontractors or operators of subnode computers authorised by Green – shall entitle Green 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, Green shall be entitled to terminate the contract without notice.

3. Obligations of the Customer

3.1 Close collaboration between Green and the Customer may be required depending upon the scope of the Green 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 fulfil these obligations with regard to cooperation and acceptance, Green shall be released from further service obligation. In addition, after issuing a reminder to the Customer, Green can

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 the Green Services properly. In particular, it has an obligation

- a) to provide Green with the necessary information on existing technical systems for the use of the Green Services or – where necessary – to enable Green 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 the Green Services;
- c) to notify Green immediately of identifiable 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 the fault clearance;
- d) to reimburse Green for the expenses incurred through the inspection of its infrastructure if and insofar as the inspection reveals that the Customer has caused the fault through wilful intent or gross negligence, or the fault lay within its area of responsibility and, as a result of gross negligence, the Customer had not recognised this;
- e) to notify Green within one month of any of the following circumstances:
 - any change in the Customer's personnel or company data;
 - for 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 Green.

3.3 In the event of a breach of sec. 3.1 and 3.2 and following an unsuccessful notice of warning to the Customer, Green 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. Green gives no guarantee that the Green Services will operate perfectly on Customer terminals containing defective technical equipment.

3.5 The Customer agrees that it will use the Green Services exclusively in compliance with Green's conditions of use. These are available at www.green.ch.

4. Responsibility for web content as well as data transmission or downloading

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

- a) neither to download or offer information entailing illegal or immoral content, nor to make reference in any other way nor to install links to such content which is offered by third parties;
- b) to comply with the applicable laws forbidding 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 content which is fit to corrupt 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 trade-marks;
- d) not to use the Green Services to cause harm or nuisance to third parties, in particular through unauthorised entry into third party systems (hacking), the spreading of viruses of any kind or through the unsolicited sending of e-mails (spamming, junk mail etc.);
- e) to ensure that its scripts and programs used on Green's server contain no faults or are not so large as to potentially interrupt the service provision by Green;
 - to refrain from:
 - searching 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 Green is under no obligation whatsoever to check that the content of customer offers complies with the legal requirements. If knowledge of such a situation comes to its attention, Green reserves the right to unilaterally terminate the contract without notice and prior notification and to immediately disconnect the corresponding services. The right is reserved to file claims for compensation, likewise to take corresponding legal action, including steps under criminal law.



4.3 If the Customer is in breach of sec. 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, Green 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 – Green 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, Green is under an obligation to block the Customer's access to web-sites containing illegal or immoral content. This shall not constitute a claim by the Customer for reduction, reimbursement or compensation.

4.5 Green can regulate the specifics of the interaction 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 Green to terminate the contractual relationship without notice.

5. Use of the Green Services by third parties

5.1 Direct or indirect use of the Green Services by third parties is not permitted unless Green has given its prior written consent. In particular, the Customer is not entitled to reveal passwords for the use of the Green 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 the Green Services by third parties has been permitted by Green, the Customer must instruct the third parties in the proper use of the Green Services in accordance with these GCB. In particular, the Customer commits to ensure that third parties comply with the provisions under sec. 4 of these GCB. The Customer is responsible for the culpable misconduct of the third party in the use of the Green Services, respectively such misconduct will be attributed to the Customer. If use by third parties is not permitted by Green, 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 amounts which arise within the framework of the use of the Green Services by authorised or unauthorised third parties. The Customer is liable to Green for all breaches of the provisions of these GCB and of the underlying Customer contract as a result of use of the services by authorised and unauthorised third parties.

5.4 In any event, the Customer must exempt Green from all third party claims of whatever nature.

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

6. Warranty

6.1 If Green sells third party products to the Customer (in particular hardware and software), the Customer will benefit from the same warranty that is granted to Green by the manufacturer of the third party products. Costs incurred by Green arising from consequential losses due to defective hardware or software are not covered by the manufacturer's guarantee. Likewise, costs incurred by Green on the Customer's site following delivery of third party hardware and software are not covered by the manufacturer's guarantee. 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 will be fundamentally rendered by correspondingly trained specialist personnel during the normal business hours at Green's domiciliary address. Any necessary transport and/or travel costs incurred by Green for the purpose of rendering warranty services will be billed to the Customer.

6.3 Errors in the Green Services resulting from failure by the Customer to provide adequate instruction for its personnel, as well as through breach of the Green 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 Green warranty. In addition, any consumables (removable data carriers, colour cart-ridges, 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 identifier in respect of the services managed by Green: the Customer is granted a non-exclusive, unre-stricted 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 herewith included. The software shall not be made accessible to third parties. The license provisions of third parties apply to their standard products insofar as these contain further restrictions. The source code will only be handed over if this has been expressly agreed.

7.2 If, in deviation from sec. 7.1 above, it is agreed that rights of use to software can 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 contract item (software development or implementation of other projects), the Customer is obligated to notify Green in writing within five calendar days. The Customer may not conduct any legal proceedings without the prior consent of Green and must assign the defence of such claims to Green on request, in particular for conducting legal proceedings, including settlement proceedings.

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

- a) to modify the contract item 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 contract item;
- c) to replace the contract item by a contract item that does not infringe any intellectual property rights, and which either meets the requirements of the Customer or is equivalent to the replaced contract item;
- d) to take back the contract item 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 contract items for which the infringement of intellectual property rights is based on a concept created by the Customer, or on the fact that the contract item has been modified by the Customer or operated in conjunction with contract items not supplied by Green.

8. Goods deliveries, re-export

8.1 As a rule, information on delivery dates are deemed to be not binding. Delivery dates shall only be deemed as binding if they have been guaranteed by Green 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 Green. Costs of delivery and installation will be charged to the Customer.

8.2 Use and risk of the contract item 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 Green for the purpose of dispatch.

8.3 Green 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 the re-export, in particular of hardware, is prohibited, as a rule, due to statutory regulations, or permitted only after special approval has been obtained. In the event of any sale of a product by the Customer 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 the Green Services are in Swiss francs and, save where 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.

9.2 Green can demand an appropriate payment in advance from the Customer for orders related to products that are not stocked by Green or for orders entailing high hardware content.



9.3 The following payment terms and conditions apply to Customer orders in excess of CHF 5,000:

- the Customer shall pay 50 per cent of the order value on issue 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.

9.4 The payment periods are governed by the contract with Green. On expiry 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 the Green Services are taken from the respective current price list. Price changes will be notified to the Customer as soon as possible. During the period of the contract, Green can amend prices to a reasonable extent if key cost factors have changed. Green has the same right in the event of use of the Green Services by the Customer to an extent that is unusually intensive or gives rise to special costs.

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

9.7 The supplied goods remain the property of Green until full and final payment of the purchase price. In accordance therewith, Green reserves the right to register a retention of ownership in the relevant register. Pledge or assignment as collateral of the goods by the Customer is prohibited. Intellectual property rights do not pass to the Customer. Processing or transformation is always carried out on behalf of Green as the owner or entitled party, but without any obligation on its part. If Green'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 Green – on a proportional basis, where Green's goods are combined with others.

9.8 At the request of the Customer, excess amounts paid for subscriptions will be reimbursed, less a handling fee of at least CHF 20 for domestic and at least CHF 50 for foreign customers – subject to sec. 12.1 below. In the absence of any express request for repayment, Green shall be entitled to retain excess amounts and credit these to the Customer as payment in advance for future claims. The Customer has no right to the payment of interest on the payment in advance.

10. Default

10.1 If the Customer is in default with payments, Green shall be entitled to cease or block its services. In this case, the Customer has no claim to performance of the service by Green and continues to be liable for payment of the amounts which become periodically due. A handling fee of at least CHF 50 will be charged for reconnection.

10.2 Green is also entitled to charge interest at the rate of eight per cent in the event of payment default.

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

10.4 Green reserves the right to file additional claims for payment default, in particular for costs incurred by Green as a result of reminder and enforcement proceedings. Green can charge reminder fees of at least CHF 20 per reminder.

10.5 Furthermore, Green is entitled to assign or sell the outstanding invoice amount, including any reminder fees and interest on default, to a third party for collection. When the claim is handed over to the debt collection agency, Green charges the Customer CHF 60 to cover the assignment costs.

11. Surety

11.1 In the event of repeated payment default, Green 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, Green can 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 Green, otherwise Green 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 Green. If the contract is terminated prior to expiry 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 Green is entitled to retain the said amount/fee.

12.2 At the end of the contractual relationship, the items and documents owned by Green and handed over to the Customer must be returned by the Customer to Green 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 Green. 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 Green can terminate the contract without notice if bankruptcy, insolvency, debt restructuring or similar proceedings are initiated against the Customer, or if an application for initiation of such proceedings has been made. In this event sec. 12.2 applies unconditionally. The Customer is obligated to immediately inform Green of such circumstances.

12.4 In the event of the contract being terminated prematurely on grounds for which the Customer is responsible, Green 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 Green can offset its claim against counterclaims of the Customer. The Customer is not entitled to offset any counterclaims against Green's claims.

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

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

13.4 Green 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 Green has direct or indirect control of the said company. Furthermore, Green 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 Green does not guarantee either the uninterrupted, error-free operation of its services or the error-free operation at any given point of time. Liability for service interruptions, the purpose of which is in particular to rectify faults, carry out maintenance or introduce new technologies, is herewith excluded.

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

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

14.4 Green shall not be liable in particular in the following cases:

- direct or indirect consequential losses in the event of function errors in the Green infrastructure, in particular faults occurring in the leased connections of Green's subcontracted suppliers;
- electronic messages which are incorrectly or illegally transmitted, or not transmitted at all, or intercepted by third persons;
- lack of or deficiencies in the confidentiality of encoded data, including in particular if Green acts as a certifying body or offers other encryption services;
- processing errors in the handling of business transactions via the Internet (electronic commerce), in particular not in the case of transmission errors involving credit card data or other payment information;
- lack of or incorrect hits with Internet search engines, including in the event of an express order issued by the Customer to Green to carry out search engine registrations;



k) legal disputes as a result of domain name registrations or deletions which Green has organised on behalf of the Customer.

14.5 Any liability of Green 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 Green 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.

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

15. Data protection declaration and consent

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

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

16. Confidentiality

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

16.2 Green is entitled to hand over Customer addresses to third parties, in particular criminal authorities, if legal or immoral actions are discovered.

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

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

17.2 Exclusive place of jurisdiction for any disputes arising from or based on these GCB 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 11 April 1980) does not apply.

17.4 Should provisions of these GCB 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.

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