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General Terms and Conditions of Trade

The following terms and conditions of trade are an integral part of each contract concluded between Artfiles New Media GmbH, Wendenstraße 408, 20537 Hamburg, represented by Harald Stache-Oltmanns and Tim Evers, offices at the aforementioned address (hereinafter: Artfiles) and the Customer and his/her legal successors.

§ 1 Scope of application

Artfiles provides services, performance and deliveries on the basis of these terms and conditions only.

§ 2 Contract/ performance under the contract

1. The presentation of services, particularly on the Internet, does not represent a binding offer by Artfiles.
2. The contract between Artfiles and the Customer on the utilisation of Artfiles services is concluded through the Customer's binding order and the subsequent written confirmation from Artfiles, whereby Artfiles may replace the confirmation by carrying out the first act to fulfil the contract, by charging the Customer's account via direct debit or by issuing an invoice.
3. Artfiles reserves the right to refuse a Customer's offer in individual cases. Offers issued by Customers may particularly be refused if the Customer is known to not be creditworthy.
4. If order or assignment forms are used, these forms shall become an integral part of the contract.
5. Artfiles may make the conclusion of the contract dependent on the presentation of a written authorisation, a prepayment or the guarantee declaration issued by a German bank.
6. Artfiles reserves the right to discontinue providing the offered free-of-charge services and performances. Artfiles shall inform the Customer of a discontinuation of the provision of a free service within an adequate period of time prior to the discontinuation.
7. The object and extent of Artfiles' services can be seen from the service description, the order form, or the product sheet.

§ 3 General content of the services

1. Artfiles provides its services according to acknowledged and customary state-of-the-art technology.
2. The type and extent of the services to be provided by Artfiles under the contract as well as the remuneration to be paid to Artfiles result from the service description and the order confirmation as well as the contracting parties' agreements, referring to them.

§ 4 Availability of services/ breakdowns/ maintenance work

1. Artfiles operates a continuously monitored server system for its services. If the system operates normally, availability of the Artfiles services is guaranteed at all times. Artfiles therefore insofar guarantees availability of its services for an annual average of 99%. This does not include any non-availability of the Artfiles services which is caused by force majeure or technical reasons, and which is beyond the influence of Artfiles.
2. With regard to capacity limitations, safety and integrity of

the servers, or in order to implement technical measures, Artfiles reserves the right to temporarily restrict its services. In this context, Artfiles undertakes to only restrict services if this is reasonable for the partner and the users, taking into consideration the various interests involved.

3. If the customer is a Colocation-customer Artfiles is entitled to change the location of the rackspace to another server rack or another data center without the consent of the customer. The change will be announced no later than four weeks in advance.
4. Artfiles reserves the right to modify or extend its service in as far as this is necessary in order to enhance the services and/or if technical improvements make this possible and/or necessary. Artfiles undertakes to only carry out such modifications if this is reasonable for the Customer, the interests of the Customer and of other information providers taking into consideration.
5. In case of a system breakdown, which is not caused by grossly negligent acts by Artfiles, its employees or vicarious agents, any claim for damages shall be limited with regard to its amount. The liability sum in case of a system breakdown is limited for each product to two monthly fees paid completely; the maximum sum shall, however, be the contract value for one year. Overall liability per Customer and case of damage shall in all cases be limited to 5,000.00 €.

§ 5 Customer's duties and obligations

1. Upon registration, the Customer shall be obligated to truthfully provide his/her key data (name, address, bank details etc.). Artfiles must be informed immediately of any changes.
2. The Customer shall be obligated to immediately inform Artfiles if the use of the Artfiles services is changing to an extent which would lead to the Customer falling into a different tariff stage, and would therefore lead to different costs.
3. The Customer shall be obligated to protect his/her personal passwords and login data against access by third parties.
4. Third parties may not use the Artfiles services instead of the Customer, neither directly nor indirectly, unless the third party is employed in the Customer's business or is a member of a permanent common household. In case of unauthorised access by third parties, the Customer shall be liable for any misuse up until the time when he/she requests Artfiles, either in writing or via telephone, to deactivate his/her access, unless the misuse is not within the Customer's scope of responsibility.
5. Commercial Customers are prohibited from pretending to be acting as private persons when using the Artfiles services.
6. The Customer is prohibited from violating third party rights or otherwise harassing third persons when using the Artfiles services. Misuse or illegal acts are prohibited. The Customer shall be obligated to act with utmost care when using the

- Artfiles services. Furthermore, the Customer must ensure the compliance with statutory requirements and official orders, if such are necessary at present or in the future for the participation in the Artfiles network.
7. The Customer is responsible for the material published and sent via Artfiles. The Customer is obligated to produce back-up copies, and to mark the content published on his/her internet pages as his/her own material.
 8. The Customer is obligated to include a proper Impressum (legal notice) in compliance with the provisions of the TDG (German Teleservices Act) or the MDStV (German State Treaty on Media Services), insofar as he/she operates teleservices or media services.
 9. The Customer is prohibited from publishing or sending material which violates applicable laws, particularly copyright law and criminal law, or is otherwise immoral. The Customer is also prohibited from referring to such material and to contents which violate laws or are immoral in the meaning of sentence 1, for instance by means of a link. It is particularly prohibited to use, disseminate, publish or otherwise make accessible the following content and material: material or content which illegally glorifies violence, is seditious or racist, propaganda material, emblems of unconstitutional parties or their substitute organisations or instructions for criminal acts, pornographic material or content, the object of which is the sexual abuse of minors or sexual practices involving animals.
 10. The Customer is prohibited from sending e-mails to third parties who have not approved of this. An exception shall apply if such e-mails are sent within the framework of existing customer relations, assumed that the other legal requirements have been properly complied with. The aforesaid shall also apply for the sending of e-mails, particularly mass e-mails, in chats and internet forums.
 11. The Customer must ensure that his/her presence (including all programmes, data banks etc.) does not impair other customers' presences or offers, the functionality of the Artfiles server, nor the stability, performance or availability of the server in any way. Particularly, a misuse of the Artfiles services is prohibited.
 12. The Customer undertakes to immediately report to Artfiles breakdowns, defects and damages to the system, and to take all measures, which allow the determination of the defects or damages and their causes, or which facilitate and accelerate the elimination of the breakdown.
 13. The Customer is obligated to immediately inform Artfiles in writing if claims are asserted against the Customer based on the violation of third party rights in connection with the utilisation of the Artfiles services.
 14. Artfiles will issue its invoices only in electronic versions unless otherwise agreed.

§ 6 Damages

1. The Customer shall be obligated to reimburse Artfiles for all costs incurred for the examination, determination and elimination of such breakdowns, defects and damages for which the Customer is responsible.
2. The Customer shall be obligated to reimburse Artfiles for all expenses for material and personnel and for all other costs incurred by Artfiles due to the culpable violation of a duty as defined in § 5 above, as well as due to other culpable violations of the contract or other culpable acts.
3. The Customer shall furthermore be liable for all damages which Artfiles incurs due to a culpable violation of duties as defined in § 5 above, or due to other abusive or illegal utilisation of the Artfiles services, or which are caused by the Customer culpably failing to properly fulfil his/her obligations.

§ 7 Breakdowns/ maintenance work

1. For the purposes of internet access and the internet presences, Artfiles operates a server system which is continuously monitored. Assumed the system operates properly, the Customer will have access at all times to the areas designated for him/her.
2. With regard to capacity limitations, the safety and integrity

of the servers, or in order to carry out technical measures, Artfiles reserves the right to temporarily restrict its services. Artfiles undertakes to only carry out service restrictions if this is reasonable for the Customer, the interests of the Customer and of other information providers taking into consideration.

3. The Customer will be notified in adequate time prior to the discontinuation of operation of any foreseeable discontinuations of operation which are necessary in order to carry out preventive maintenance work or technical modifications.

§ 8 Revocation right

1. If the Customer is a consumer, as defined in section 13 BGB (Bürgerliches Gesetzbuch – German Civil Code), he/she may revoke the contractual declaration in text form (e.g. letter, fax, e-mail), within two weeks without having to state reasons for this. The deadline for the revocation declaration shall commence at the earliest upon receipt of this information on the Customer's rights. In order to meet the deadline, it is sufficient to dispatch the revocation declaration in adequate time. The revocation declaration is to be directed to: Artfiles New Media GmbH, Wendenstraße 408, D-20537 Hamburg, or via e-mail to: info@artfiles.de or via telefax to: 040 – 32 02 72 95. The Customer's revocation right shall expire prematurely if Artfiles has started to render the service before expiry of the deadline, with the Customer's expressed approval, or if the Customer himself/herself has arranged for the commencement of the rendering of the service prior to this date (e.g. by applying for a domain, using the services, etc.).
2. In case of a valid revocation, the performances assumed mutually shall be returned, and any usufruct which may have been obtained (e.g. interest) shall be restituted. If the Customer is unable to return the performance received from Artfiles, whether entirely or in part, or can only return it in a deteriorated condition, he/she shall be obligated to compensate Artfiles for the loss in value. The Customer shall be obligated to fulfil any duties to reimburse payments within 30 days from dispatch of his/her revocation declaration.

§ 9 Payment terms/ default

1. Artfiles shall invoice the Customer for the services agreed in the relevant contract plus annex(es), at the tariffs, fees and conditions specified in the corresponding annex(es). Invoices shall be issued once per month, at the beginning of each month.
2. All agreed prices are to be paid once per month in advance, unless explicitly agreed otherwise in writing, and shall become due for payment upon receipt of the invoice. Used services which do not comprise a full settlement period shall be invoiced on the basis of calendar days. Other remuneration, particularly variable fees which depend on consumption, are to be paid after the service has been rendered, and shall become due for payment upon receipt of the invoice.
3. Artfiles shall provide the Customer with the corresponding proof of use in a suitable form and – if available – in electronic form.
4. Artfiles shall have the right to collect invoice amounts and recurring sums which have fallen due from the Customer's account by means of direct debit procedures.
5. For the participation in the direct debit procedures, the invoice amount must be credited to the account specified in the invoice on the fourteenth day after receipt of the invoice at the latest. In case of delays, Artfiles shall have the right to request an adequate handling fee, assumed that the Customer is responsible for the delay.
6. If the Customer participates in the direct debit procedure, he/she shall ensure that sufficient funds are on the specified account, and shall immediately inform the operator of any changes of his/her personal data which are essential for the contract (name, address, e-mail address, bank details). The Customer is aware that it is not sufficient to provide an address outside Germany or a post-box address. If a direct debit by Artfiles is refused by the Customer's bank (Lastschriftrückgabe), or if the debit is objected to, Artfiles shall have the right to invoice the Customer for the costs incurred,

- and to request an adequate handling fee. The Customer shall continue to be obligated to pay the remuneration. The pre-notification period under the SEPA direct debit is 3 days
7. Prices in the invoice are always customer prices inclusive of statutory value added tax, unless explicitly stated otherwise.
 8. In case of the Customer's default in payment, the Customer shall be obligated to pay default interest to Artfiles, amounting to 5% above the basic interest rate, assumed that he/she is a consumer as defined in section 13 BGB. If the Customer is a business as defined in section 14 BGB, default interest shall be 8% above the basic interest rate.
 9. Notwithstanding the regulation in subsection 8, Artfiles shall have the right to provide proof of higher default damages.
 10. If the Customer is in default with payment for an amount of at least 75.00 €, Artfiles shall have the right to inactivate the account in accordance with the detailed provisions in section 19 TKV (Telecommunications Decree), assumed that a paid security deposit has been used up. In such cases, the Customer shall continue to be obligated to pay the monthly basic fee, if such has been agreed. Two weeks prior to the inactivation of an account, Artfiles shall send the Customer a reminder, notifying him/her of the inactivation and of the possibility of obtaining judicial relief. An inactivation without prior notification and period of grace shall particularly be possible in the cases specified in section 19 subsection 2 TKV, if the remuneration sum falling due increases substantially, and if facts justify the assumption that, if the account is inactivated at a later date, the Customer will not pay the services rendered in the meantime, will not pay them in full or in due time, assumed that any paid security deposits have been used up and the inactivation is not disproportionate. Artfiles will restrict the inactivation to the service concerned, within the framework of the technical possibilities, and the inactivation will be immediately lifted, once the reasons for the inactivation cease to apply. A complete inactivation of the general network access will only be carried out after a prior inactivation of output for a minimum of one week. The remuneration specified in the price list will be charged for the inactivation of the account and, if applicable, for the re-connection.
 11. Objections against the calculation and settlement of the remuneration are to be submitted to Artfiles in writing.
 12. If the Customer is a business, the execution of retention rights against claims by Artfiles is only permitted if Artfiles does not contest the claim asserted by the Customer, or if such claim has been bindingly determined. Such Customers shall only have the right to assert retention rights based on the counter-claims from the concluded contract.
 13. Used services, not comprising a full settlement period, shall be invoiced on the basis of calendar days.

§ 10 Price changes

1. Artfiles reserves the right, particularly with regard to changes in the market situation and/or the tariff structure, to change the remuneration to be paid by the Customer as of the beginning of a new settlement period, particularly to increase this remuneration. Artfiles shall inform the Customer of such changes within an adequate period of time prior to the change taking effect, by e-mail or letter. The Customer shall have the right to object in writing to the price increase within 14 days from the time of notification of the price increase. If the Customer objects to the price increase, Artfiles shall have the right to terminate the contract extraordinarily. Remuneration changes already known at the time the order is placed are not liable to notification, and thus do not lead to an extraordinary termination right for the Customer.
2. If the customer is a business as defined in section 14 BGB and if a prize for electricity is part of the agreement the following shall apply: The electricity price is only valid as long as it is not increased through the electricity provider of Artfiles or any other reason (eg. legal fees). In such a case the price of electricity is increased accordingly.

§ 11 Force majeure/ delays in performance

1. Artfiles shall not be liable for delays in delivery and performance caused by force majeure and by events which substantially impede the services for Artfiles or make the performance impossible – including, without limitation, strikes, lock-outs, official orders, breakdown of communication networks and gateways of other operators, disruptions in the area of the services assumed by the German postal service, Telekom etc., even if they occur with Artfiles' suppliers or sub-contractors or their sub-suppliers or sub-contractors. Such events entitle Artfiles to postpone the delivery or the service for the period of the hindrance, plus an adequate re-start time.
2. Should a hindrance, which is deemed to be substantial, continue to exist for a period of time, which is to be regarded as unreasonable, the Customer's and Artfiles' interests taking into consideration, the Customer shall have the right to either correspondingly reduce the monthly remuneration and fees which trace back to the advance booking of services which are dependent on the amount of data traffic (contingents), from the time the hindrance started, up until the next possible date for a termination, or to terminate the contract extraordinarily. A hindrance shall be deemed to be substantial:
3. if the Customer, for reasons beyond his/her responsibility, can no longer access the Artfiles infrastructure, and is thus unable to use the services listed in the contract
4. if, for reasons beyond the Customer's responsibility, the utilisation of the Artfiles service as a whole is severely impeded, or if the utilisation of individual services listed in the contract becomes impossible, or if similar restrictions exist.

§ 12 Disclaimer and release from liability

1. For damages other than death, bodily injuries or the impairment of health, Artfiles shall be liable only insofar as such damages are caused by intentional or grossly negligent acts, or by a culpable violation of essential contractual obligations by Artfiles, its employees or vicarious agents. This shall also apply for damages, resulting from the violations of duties during contract negotiations and from tort. Claims for damages exceeding the aforesaid shall be excluded.
2. Liability towards businesses, legal entities under public law or public law special funds, with the exception of damages due to death, bodily injuries or the impairment of health or intentional or grossly negligent acts by Artfiles, its employees or vicarious agents, shall be limited to such damages which are typically foreseeable at the time of the conclusion of the contract, and shall also be limited to the average damage which is typical for the type of contract. This shall also apply to indirect damages, particularly loss of profit.
3. Liability towards consumers, with the exception of intentional or grossly negligent acts, the violation of cardinal duties or damages due to death, bodily injuries and impairments of health by Artfiles, its employees or vicarious agents shall be limited to such damages which are typically foreseeable at the time of the conclusion of the contract, and shall also be limited to the average damage which is typical for the type of contract. This shall also apply to indirect damages, particularly loss of profit.
4. Artfiles shall not be liable for damages, irrespective of their nature, caused by the loss of data on the servers, except for cases of grossly negligent or intentional culpable acts by Artfiles, its employees or vicarious agents. The Customer's stored content shall be "third-party information" for Artfiles, as defined in section 11 Teledienstgesetz (German Teleservices Act).
5. The provisions of the Produkthaftungsgesetz (German Product Liability Act) shall not be affected.
6. The Customer as a business shall fully indemnify and hold Artfiles harmless against any and all claims asserted by third parties in case of the Customer violating one of his/her obligations under § 5 subsections 6 to 11 above, or any other violations by the Customer against applicable laws, from

the time of the initial request made by such third party. The Customer particularly undertakes to bear all costs, particularly lawyers' fees, court fees, costs of the proceedings and damages which Artfiles may incur in this context.

§ 13 Termination

1. The term of the contracts depends on the periods specified in each case.
2. The contracts shall be extended automatically – except as otherwise agreed – by one year at a time, unless one of the parties terminates the contract, at the latest four weeks prior to the end of the current term. A fixed-term contract with a duration of at least three months can be terminated as of the end of the three-month period at the earliest, upon four weeks' notice to the end date of the contract.
Quarterly contracts shall be extended automatically by another quarter, unless they have been terminated in adequate time. A fixed-term contract with a duration of at least six months can be terminated as of the end of the six-month period at the earliest, upon four weeks' notice to the end date of the contract. Half-year contracts shall be extended automatically by another half year, unless they have been terminated in adequate time. A fixed-term contract with a duration of at least one month can be terminated as of the end of the one-month period at the earliest, upon four weeks' notice to the end date of the contract. Monthly contracts shall be extended automatically by another month, unless they have been terminated in adequate time.
3. If a contract with a minimum term or an annual subscription is terminated prematurely, the Customer shall not be entitled to request reimbursement of any sums paid in advance, unless the Customer has terminated the contract extraordinarily for cause.
4. The termination can only be made in writing. A notice by email, without a qualified electronic signature is not possible.

§ 14 Inactivation/ extraordinary termination

1. Notwithstanding the reasons for a termination as specified in § 13 above, Artfiles reserves the right to deactivate the account and terminate the contract for cause. Artfiles particularly reserves the right to deactivate the Customer's access without observation of a notification period if the customer violates the basic contract, the present General Terms and Conditions, particularly the duties specified in § 5 above, or other applicable laws, or if another good cause exists, and the Customer fails to immediately eliminate the corresponding violation of duties upon a corresponding reminder by Artfiles.
2. If a contract, for which the minimum contract term has not yet been reached, is terminated by Artfiles for cause with immediate effect, the Customer shall continue to be obligated to effect payments. The sum to be paid, shall be 50% of the monthly basic fee, which corresponds to the contractual damage incurred by Artfiles due to the Customer's infringement upon his/her contractual obligations. The payment obligation shall end upon reaching the minimum contract term. Artfiles reserves the right to provide proof for, and assert, higher damages in individual cases.

§ 15 Data protection clause

With regard to data protection, the information on data protection issued by Artfiles shall apply.

§ 16 Domains

1. With regard to the registration of domains, Artfiles shall only act as an intermediary between DENIC e.G. or another domain registration body and the Customer. The domains will be registered in the Customer's name.
2. Artfiles shall provide the domain names to the customer, ordered by the customer, according to the provision directive of the particularly responsible domain name authority.
Artfiles does not guarantee the allocation of a domain, as the allocation depends on the availability of the domain name under the respective top level domain. Artfiles does not accept

- any guarantee for the continued availability of domains.
3. Artfiles would furthermore like to point out that a guarantee cannot be accepted for the domain desired by the Customer being free of third party rights. The Customer shall be obligated to examine the possibility of collisions with third party trademark rights (e.g. by checking the register with the Deutsches Patent- und Markenamt (German patent and trademark office) and the IHK (chambers of commerce and industry), or through a commercial research service). Therefore, Artfiles is not liable for the domain contents, nor for them being free of third party rights. This shall also apply to sub-domains.
4. Upon assigning Artfiles with the registration of a domain, the Customer expressly confirms that the desired domain does not violate third party rights.
5. Should a third party request the deletion or abandonment of a domain or sub-domain because it violates his/her rights or third party rights, the Customer shall inform Artfiles thereof immediately. In such cases, Artfiles shall have the right to abandon the domain or sub-domain, completely or partially block access to the domain or sub-domain on behalf of the Customer, up until the allegations have been clarified, if the third party requests Artfiles to do so, and assumed that the Customer does not forward security for the costs of legal proceedings for at least two court instances.
6. The Customer shall hold Artfiles harmless against any claims and costs incurred by third parties due to the inadmissible or illegal use of a domain or sub-domain, from the time of the initial request for such payments by the third party. Reference is made explicitly to the regulation in § 12 subsection 6 above.
7. Insofar as the domain registration bodies increase the fees for registration or other services, Artfiles shall have the right to adjust the remuneration charged to the Customer from the time such increase by the registration bodies takes effect. Artfiles undertakes to inform the Customer immediately after having obtained knowledge of such increase in costs.
8. During the contract term, Artfiles shall service the Customer's domain names on the basis of the requirements set by the domain registration bodies. Should such requirements be modified, they shall automatically become the object of the Artfiles services and shall be deemed to have been agreed with the Customer.
9. The Customer shall cooperate in the process of registration, modification or re-registration of a domain, insofar as this is necessary.

§ 17 Applicable law/ place of performance/ place of jurisdiction

1. The law of the Federal Republic of Germany, excluding UN sales law, shall apply. Any imperative provisions valid in the state of the Customer's usual place of abode shall not be affected.
2. The place of performance shall be Artfiles' registered offices.
3. If the Customer is a business, a legal entity under public law or a public law special fund, or if he/she does not have a domestic general place of jurisdiction, or has relocated his/her place of residence abroad after the conclusion of the contract, or if his/her place of residence is unknown at the time a law suit is filed, the place of jurisdiction for all disputes arising from this contract shall be at Artfiles' registered offices.

§ 18 Final provisions

Artfiles shall have the right to modify these General Terms and Conditions at any time. Artfiles shall provide notification of such modifications upon adequate notice. The Customer shall have the right to object to the modification. Should he/she not object to the modified terms and conditions within one month after notification, the modifications shall become an integral part of the contract, assumed Artfiles has explicitly made the Customer aware of the consequences of not objecting to the modification together with the notification regarding the modification of the General Terms and Conditions. In case of an objection, Artfiles shall have the right to terminate the contract as of date when the modified or amended terms and conditions are meant to take effect.