

General Terms and Conditions of Business of basilicom GmbH

This translation of our AGB [General Term an Conditions of Business] is for illustrative purposes only and shall not be legally binding; only the the German original is legally binding.

These General Terms and Conditions of Business (hereinafter referred to as the “GTC”) are intended to act as the basis for effective cooperation based on mutual trust between basilicom GmbH, Sickingenstraße 70, 10553 Berlin (hereinafter referred to as “basilicom GmbH”) and its customers.

basilicom GmbH’s business activities include consulting, creative and development services for the provision of digital solutions, as well as sales of the technical infrastructure and services necessary for this.

Version: 22 September 2020

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PART 1 – SCOPE OF APPLICABILITY, DEFINITIONS AND AMENDMENTS TO THE GTC

§ 1 Scope of applicability

- (a) These GTC are an integral part of the contracts concluded between basilicom GmbH and the customer (including follow-up orders) and form the basis for the services provided by basilicom GmbH.
- (b) The current version of these GTC as amended when the contract is concluded is applicable.
- (c) Service specifications, tariffs and SLAs of the tariff, if provided, form a part of the contract and shall take precedence over the provisions of these GTC in the event of a contradiction with respect to these GTC.
- (d) The sections of these GTC marked “Special provisions” take precedence over the general provisions of these GTC.
- (e) Any individual arrangements made by the parties that differ from these GTC shall take precedence over these GTC, insofar as they have been agreed in writing. This also applies to any annulment of the requirement of written form.
- (f) Any differing general terms and conditions of business of the customer shall only be effective insofar as basilicom GmbH has explicitly agreed to them in writing. Failure to reject contradictory general terms and conditions of the customer communicated by it does not constitute agreement to them.
- (g) basilicom GmbH shall have the right to agree the applicability of further GTCs for additional and separate services. The further GTCs shall be made clearly recognisable for the customer. If the further GTCs contradict these GTCs, the further GTCs shall take precedence.

§ 2 Definitions

- (a) **Content** – the term “content” as used below should be understood to mean all content and information, for example photographs, artworks, logos, videos, texts, source code, information on locations and persons, as well as links.
- (b) **Software** – “software” should be understood to mean executable programs and the related functions, data and design elements. Software includes, among other things, application programs, applications and websites.
- (c) **Continuous obligation contracts** – should be understood to mean contracts which are concluded for a definite or indefinite term, for example maintenance contracts or web hosting contracts.
- (d) **SLA / service level agreement** – a service level agreement is a part of the service specifications for a tariff and establishes assured availabilities for the agreed services.
- (e) **Parties** – refers to both the customer and basilicom GmbH.
- (f) **Work** – should be understood to mean the outcome of basilicom GmbH’s services, i.e. the content or software created within the framework of this contract.

§ 3 Amendments to the GTC

- (a) basilicom GmbH reserves the right to amend these GTC at any time with effect for the future. Amendments will only be made if there is a valid and objective reason for doing so, particularly of a legal, technical or economic nature.
- (b) In the event of amendments, basilicom GmbH shall inform the customer of the amended GTCs at least in text form, such that the customer has two weeks to object to the amendment. In the event of an objection the customer and basilicom GmbH shall have the right to terminate the contract. The termination may not occur if the contractual interests of the customers would be unreasonably affected. If the customer fails to object to the amended terms and conditions within the time limit, they shall be deemed to have been accepted.

PART 2 – BASES OF THE CONTRACT AND ENTRY INTO FORCE

§ 1 Offers and their acceptance

- (a) Descriptions and presentations on websites, in prospectuses etc. do not constitute binding offers.
- (b) Contractual enquiries (including order and other service enquiries) submitted to basilicom GmbH shall only establish a contractual relationship with basilicom GmbH from the moment of their acceptance. basilicom GmbH reserves the right to reject contract enquiries.
- (c) Offers of basilicom GmbH are valid for 30 days subject to information to the contrary.

§ 2 Subsequent changes and change requests

- (a) If, during the term of the contract, the customer requests a change to the agreed services or if the circumstances reported by the customer change after an offer is made by basilicom GmbH or after the conclusion of the contract, basilicom GmbH shall prepare an offer regarding the additional or reduced costs, unless remuneration based on work performed is agreed or the customer explicitly waives a separate offer.
- (b) Until a decision has been made on the acceptance or rejection of the offer by the customer basilicom GmbH shall suspend the work on the services affected by the offer insofar as the later acceptance of the offer by the customer would give rise to additional expenses. Agreed delivery periods shall be extended accordingly.

§ 3 Location and time of the work

- (a) basilicom GmbH is free to determine the manner in which it fulfils the agreed individual orders in terms of time and location.
- (b) basilicom GmbH has the right to make use of subcontractors for the fulfilment of this contract, provided that no contractual obligations are opposed to this, particularly the obligation of basilicom GmbH to perform the services directly (for example due to its technical expertise) or the obligation to maintain confidentiality and data protection.
- (c) The employees of basilicom GmbH do not enter into an employment relationship with the customer. Instructions shall be issued by the customer exclusively to the responsible employee specified by basilicom GmbH, with effect for and against basilicom GmbH.

§ 4 Time limits and deadlines

- (a) Time limits and deadlines shall only be deemed binding if basilicom GmbH explicitly specifies a time limit or deadline or otherwise explicitly commits to it.
- (b) basilicom GmbH shall not be held responsible for performance delays due to events of force customer's area of responsibility (late provision of content etc.); such events shall entitle it to postpone the performance of the affected service for the duration of the impediment/delay plus a reasonable additional period. In return, basilicom GmbH undertakes to notify the customer of any performance delays resulting from events of force majeure.

§ 5 Legal requirements and legal cooperation obligations

- (a) The provisions of this section regulate the legal responsibility and legal obligations between basilicom GmbH and the customer, insofar as they are not explicitly agreed in the order description:
- (b) basilicom GmbH's services do not include a legal review or legal consulting (for example with regard to trademark rights, copyrights, data protection laws, competition law or codes of professional conduct) or the fulfilment of statutory disclosure obligations of the customer (for example provider identification, privacy policy, consumer information for distance selling contracts etc.).
- (c) Insofar as basilicom GmbH provides the customer with legal documents (for example additions to the privacy policy), they shall be deemed legal specimens without any claim to correctness or completeness, which must be individually verified by the customer.
- (d) The customer shall ensure that the content provided by it is free from third-party rights and that its publication will not infringe applicable laws in any form. The provided content also includes content (and the sources thereof) that the customer recommends or proposes to basilicom GmbH with respect to the performance of its tasks.
- (e) If a third party claims that basilicom GmbH has violated rights or committed other legal violations, basilicom GmbH shall promptly notify the customer. In this case, the customer shall have the right to take charge of defence and shall indemnify basilicom GmbH against all claims and losses.

PART 3 – SPECIAL PROVISIONS FOR AGENCY SERVICES

§ 1 Order description

- (a) basilicom GmbH's services include agency services, also the creation of software and content, as well as analysis and consulting services. The specific specifications of the respective contractual service, its scope, areas of application, framework conditions, functions, documentation, as well as the schedule and roadmap, will be specified in the order description being the basis for the respective service.
- (b) No requirements apply for the order description. It may also be issued, for example, in the form of an order description or technical and functional specifications. The order description must have a sufficient degree of detail being in line with the industry standard for the respective service.
- (c) If the order description is inadequate or if its scope is doubtful in particular cases, the services to be provided shall include the industry-standard tasks being necessary for the purpose of achieving the agreed objective of the contract.
- (d) Subsequent amendments to the order description shall require, in order to be effective, explicit confirmation by the respective contract partner.
- (e) If the contractual services are intended to achieve a specific outcome (for example the creation of a specific work, the achievement of particular performance figures), the contract shall be deemed to be a work contract. Otherwise it shall be deemed to be a service contract.
- (f) The installation of software on the customer's systems shall be carried out by an administrator of the customer. Training of the users, documentation, briefing, installation and maintenance are not a part of the services provided by basilicom GmbH and must be separately agreed.

§ 2 Collaboration and cooperation obligations

- (a) The parties shall work together on a basis of mutual trust and promptly notify each other of any deviations from the agreed procedure or doubts regarding the correctness of an action taken by the other party.
- (b) The customer undertakes to support basilicom GmbH in the performance of its contractually agreed services. This includes, in particular, timely provision of information and data material, insofar as the customer's cooperation obligations require it.
- (c) Insofar as they are needed for the provision of basilicom GmbH's services and are not to be provided by basilicom GmbH,
 - (i) the customer shall provide technical equipment such as hardware, the electricity supply, a telephone connection and data transmission lines in proper working order, to a reasonable extent free of charge;
 - (ii) the customer shall provide the access data. The access data includes the necessary user name(s) and the password;
 - (iii) the customer shall support basilicom GmbH during test runs and acceptance tests through appropriate personnel.

- (d) The customer shall fulfil its cooperation obligations and provide the items required of it free of charge for basilicom GmbH.
- (e) If basilicom GmbH is unable to perform the services because the customer fails to fulfil its cooperation obligations and provide the items required of it or does so inadequately, or can only perform them with additional expenses, basilicom GmbH shall have the right to claim any resulting necessary additional expenses from the customer.
- (f) The parties and their contact persons shall discuss at regular intervals, which shall be jointly established, the progress of and obstacles to the performance of the contract, so that if necessary they can intervene in the performance of the contract for the purpose of guiding its implementation.
- (g) If the customer finds that its own information and requirements are defective, incomplete, unclear or impracticable, it must promptly notify basilicom GmbH to that effect and inform it of any foreseeable consequences.

§ 3 The scope of the transferred usage rights

- (a) basilicom GmbH transfers to the customer the usage rights that are necessary for the respective contractual objective to its works already existing upon the conclusion of the contract (“existing works”) for a scope of use, period of use and spatial application area corresponding to the order description. Unless agreed otherwise, a simple usage right for own use is transferred.
- (b) The customer shall receive, for works provided individually and specifically for it (for example individual artworks or program routines) (“new works”), an exclusive usage and utilisation right without any restrictions in terms of time or territory but restricted in terms of content to the contractual purposes, encompassing in particular usage, reproduction and distribution rights and the right to make them publicly available (“new work right”). Resale and further distribution of the work (including unpaid transfers) by the customer are excluded.
- (c) In the case of new works that build on, alter, extend or adjust existing works (for example individual adjustment of templates or software modules), the customer’s new work rights shall not extend to the existing works but only as far as the changes, extensions and adjustments carried out by basilicom GmbH for the customer extend.
- (d) The customer is granted a right to edit the work, provided that an editing right has been explicitly agreed or arises from the nature of the order.
- (e) The usage rights to the works shall only transfer to the customer once it has paid the remuneration in full.
- (f) Insofar as the work / our service includes open source components, the transfer of rights shall only occur in the scope of and in accordance with the respective open source licence. In many cases the works and services of basilicom GmbH are based on open source solutions, such as “Pimcore”, under a GNU GPLv3 licence. This type of licensing includes a so-called strict copyleft effect. That may mean that it is only possible to offer solutions based thereon as an open source solution and to use, edit and dispose of them within the framework of the respective licence.

- (g) Proposals and instructions of the customer or its employees will not establish any joint copyright.
- (h) basilicom GmbH shall have the right to implement reasonable technical measures for protection against use of the work in breach of contract, provided that use in compliance with the contract is not impaired as a result.
- (i) basilicom GmbH shall have the right to refer to the works designed and produced for the customer, subject to any explicit non-disclosure obligations, for the purposes of self-promotion.
- (j) basilicom GmbH shall also have the right to indicate its authorship in the usual place within the work, particularly in an infobox in the case of client and server components, in the page footer in the case of website components and in the legal notice in the case of websites. The customer shall not have the right to remove that information without the consent of basilicom GmbH.

§ 4 Surrender of templates, drafts and source code

- (a) The templates, drafts, raw data, files, and other tools produced by basilicom GmbH that serve the purpose of performing the service provided for in the contract (hereinafter referred to as “templates”), shall remain the property of basilicom GmbH. If the customer would like them to be surrendered, this must be separately agreed and paid for.
- (b) If the surrender of the source code has been agreed, its transfer/the provision of access in digital form shall be sufficient. If a right to edit the work has not been agreed, the customer may only use the source code if basilicom GmbH cannot or does not wish to carry out troubleshooting or an alteration or extension of the application within a reasonable time limit. The customer understands that to work with the source code it may have to purchase developer licences from third-party providers for the components used. If the source code is not covered by an open content licence, it may not be used, subject to an alternative arrangement, within the framework of an application not being an integral part of the contractual agreement with basilicom GmbH.
- (c) There is no retention obligation. basilicom GmbH shall have the right to erase the templates and the source code no later than after six months.

§ 5 Offers, presentations and pitches

- (a) The development of conceptual and design proposals by basilicom GmbH with the aim of further order placement by the customer shall be carried out, without prejudice to different arrangements in an individual case, against payment of the fee agreed with the customer for this (presentation fee).
- (b) The copyright, usage rights and ownership rights to the works presented by basilicom GmbH in this context shall remain with basilicom GmbH even if a presentation fee is charged. Only upon the placement of the order for implementation against separate remuneration shall the customer acquire usage rights in the agreed scope.

§ 6 Acceptance

- (a) These provisions on acceptance only apply if they form the basis for a work contract.
- (b) The subject of the acceptance is the contractually agreed service in accordance with the order description.
- (c) A requirement for acceptance is that basilicom GmbH fully provide the customer with the

service outcomes and notify it that they are ready for acceptance. The handover of all the service outcomes necessary for acceptance shall constitute a request for acceptance.

- (d) The customer must then begin verifying fitness for acceptance within seven days.
- (e) If the acceptance fails, the customer shall provide basilicom GmbH with a list of all defects preventing acceptance. After the lapse of a reasonable time limit, basilicom GmbH shall provide a defect-free version of the contractually agreed service which is fit for acceptance. In the subsequent test, only the recorded defects will be tested insofar as, in view of their function, they can be the subject of an isolated test.
- (f) After a successful test the customer must declare acceptance of the work outcomes in writing within seven days.
- (g) If no significant defects are previously reported, the work outcomes shall be deemed to have been accepted by the customer after the lapse of six weeks from submission for acceptance.
- (h) Defects must be reported and described to basilicom GmbH.
- (i) The client may not refuse acceptance due to insignificant defects, subject to immediate elimination of the defects by basilicom GmbH. These defects must be individually specified in the acceptance report.
- (j) The creation of the contractual performances in individual partial stages may be agreed. basilicom GmbH shall have the right to request partial or interim acceptance by the customer if this is objectively justified due to the subject matter, scope or timing of the provision of the services and is reasonable for the customer.
- (k) The provisions on acceptance, warranty and remuneration shall apply for the respective partial stages. This means, in particular, that change requests of the customer that differ from already accepted partial stages must be separately paid for by it.

PART 4 – SPECIAL PROVISIONS FOR WEB HOSTING, SERVERS, DOMAINS AND CERTIFICATES

§ 1 Web hosting and servers

- (a) basilicom GmbH shall provide the customer with storage space on a web server and databases in accordance with the respective service specifications for the selected tariff. The customer shall share the physical servers with other customers of basilicom GmbH, unless physically separate hosting has been agreed.
- (b) Insofar as specific storage capacity is specified in the respective service specifications for the selected tariff, it shall apply for the entire storage space on the server which is available in accordance with the service specifications and shall also serve the purpose, among other things, of storing databases, log files etc.
- (c) Unless stated otherwise in the service specifications for the tariff, the term of the contract is 12 months and the notice period for termination 30 days.
- (d) The customer has neither in rem rights to the servers that provide its services nor, subject to arrangements to the contrary, a right to enter the premises in which the servers are located.
- (e) Besides the provision of the servers and services, basilicom GmbH must make efforts to ensure that data stored on them by the customer in accordance with the contract is accessible for the public via the network to be maintained by basilicom GmbH and the Internet connected to it. basilicom GmbH shall only be held responsible for such accessibility insofar as the lack of access is exclusively attributable to the part of the network operated by it.
- (f) If the customer can independently influence the server environment, it must ensure that the Internet presences or data of other customers of basilicom GmbH, the server stability, server performance and server availability are not in any way impaired contrary to the contractually assumed use (e.g. due to the installation of defective or high-traffic software).
- (g) The customer is responsible for all content which it or a third party commissioned by it independently uploads to the server and / or keep accessible or store there.
- (h) The customer undertakes to keep strictly confidential the passwords it receives from basilicom GmbH for the purposes of access and to promptly inform basilicom GmbH if it learns that the password is known to unauthorised third parties.

§ 2 Domains

- (a) In the provision and / or maintenance of domains, basilicom GmbH shall only act as an intermediary between the customer and the respective domain allocation organisation (“registrar”). basilicom GmbH provides no warranty that the domains applied for by the customer will be allocated at all or that assigned domains are free from third-party rights or will continue to exist on a long-term basis. The terms of registration and guidelines applicable for the domain to be registered, for example the DENIC terms of registration and the DENIC registration guidelines by DENIC eG for DE domains, therefore apply on a supplementary basis.

- (b) In particular, the customer must, when requested to do so by basilicom GmbH, specify for the domain registration the correct and complete data of the domain holder (“registrant”) and the administrative contact person (“admin-C”). Irrespective of the relevant registration terms, this includes the name, a postal address for service (not a mailbox or anonymous address), an e-mail address and a telephone number. In the event of changes to the data, the customer must promptly update it by way of a notification submitted to basilicom GmbH by web interface, post, fax or e-mail.
- (c) basilicom GmbH shall be authorised to carry out the activation of a domain only after payment of the agreed registration fees. The notification by basilicom GmbH as to whether a particular domain is still free shall be carried out by basilicom GmbH on the basis of information from third parties and only relates to the moment when basilicom GmbH obtains that information.
- (d) The customer must check before applying for a domain that the domain does not infringe any third-party rights or applicable laws. The customer warrants that it has fulfilled this obligation and that the check did not result in any indications of an infringement of rights.
- (e) If claims are asserted by third parties against basilicom GmbH due to an actual or claimed infringement of rights in accordance with Part 4 - § 2(d) of these GTC, basilicom GmbH shall have the right, according to its reasonable judgement and taking into account the interests of the participating parties, to immediately block the customer’s domain and / or place it under the care of the registrar.
- (f) The customer shall have no entitlement to apply for a free-of-charge replacement domain.

§ 3 SSL and other certificates

- (a) In the provision of certificates, basilicom GmbH shall only act as an intermediary in the relationship between the customer and the respective certification body (“certification authority”). Each of those certification authorities has its own terms and conditions for the allocation of certificates. The contractual terms and conditions (“subscriber agreement”) of the respective certification authority, which basilicom GmbH will send to the customer at its request and which can also be accessed on the website of the respective issuing authority, therefore apply on a supplementary basis. They form an integral part of the contract.
- (b) Upon each order of a certificate a separate contract on the application for it shall be concluded. The contract shall enter into force upon application for the certificate to the certification authority.
- (c) The term of the contract shall correspond to the selected term of the certificate and automatically terminate thereafter.
- (d) The customer must ensure that the data required for the issuance of the certificate is correct.
- (e) The customer must ensure that the certificate is used for its intended purpose and is not misused.
- (f) The certification authority and basilicom GmbH shall have the right to block the certificate if there is a justified suspicion of misuse of the certificate or if the customer provided incorrect information to basilicom GmbH when applying for the certificate.

§ 4 Blocking and indemnification

- (a) Subject to the conditions set out below, basilicom GmbH shall have the right to block the services and performances being the subject of the contract (which includes marking certificates as invalid, suspending domains through HOLD status and suspending transfer procedures for domains). The choice of the blocking measure shall be at the reasonable discretion of basilicom GmbH. In this context basilicom GmbH shall take the legitimate concerns of the customer into account. If the blocking occurs through the deactivation of the domain name server service, basilicom GmbH shall inform the customer of how it can access the content, in particular to alter / eliminate the legal infringement at the same time as it notifies it of the block. basilicom GmbH shall be deemed to have fulfilled its notification obligation if it sends the blocking notice by e-mail to the e-mail address specified by the customer.
- (b) In the event of a payment default of more than 30 days, basilicom GmbH shall have the right to block the services used by the customer. If basilicom GmbH justifiably blocks the services due to a payment default, it shall make unblocking conditional on the settlement of all outstanding receivables as well as the payment of a processing fee in the amount of €20.00. The customer shall have the right to provide proof that basilicom GmbH incurred no losses or significantly lower losses.
- (c) If basilicom GmbH independently learns of a violation committed by the customer, particularly in accordance with Part 4 - § 1(f) and Part 4 - § 1(g) of these GTC, which is not obviously unjustified or if legal action is taken against the customer due to such a breach (in particular if a warning notice is issued to it by an attorney), basilicom GmbH shall have the right to set up a block. basilicom GmbH shall promptly inform the customer of the block, specifying the reason, and take the customer's opinion and interests into account before effecting a block. basilicom GmbH shall lift the block if the customer submits a written statement to basilicom GmbH and provides appropriate security. The amount of that security shall correspond to the amount of possible legal costs payable by basilicom GmbH in the event of judicial clarification as to whether a breach of the law or contract has occurred.
- (d) Insofar as legal action is taken against basilicom GmbH by third parties or by governmental authorities due to action by the customer in breach of the law or contract, the customer shall indemnify basilicom GmbH against all claims and bear the costs that it incurs due to the legal action or for the elimination of the unlawful status. This includes, in particular, the costs incurred by basilicom GmbH for a legal defence. The indemnification shall also be effective, as a contract in favour of third parties, for the respective domain issuing authority, as well as other persons engaged for the registration of domains.

PART 5 – WARRANTY AND LIABILITY

§ 1 Performance disruptions

- (a) basilicom GmbH shall only be held responsible for performance disruptions insofar as they relate to the services to be performed by it. In particular, basilicom GmbH shall not be held responsible for the proper functioning of the actual Internet presence of the customer, consisting of the data loaded onto the server (e.g. HTML files, Flash files, scripts etc.) insofar as the improper functioning does not result from a defect in the services to be performed by basilicom GmbH.
- (b) basilicom GmbH must promptly eliminate any disruptions within the limits of its technical and operational possibilities. The customer must promptly report to basilicom GmbH any malfunctions which it is able to identify (“error report”).
- (c) If the proper functioning of the services is impaired due to content in breach of contract or due to usage outside the scope of what has been contractually agreed, the customer will not be able to assert any rights with regard to resulting malfunctions.
- (d) If an SLA is submitted by basilicom GmbH, the assured availability of the individual services and functions shall be based on the SLA associated with the tariff.
- (e) If events of force majeure occur basilicom GmbH shall be released from the obligation to perform. They include, in particular, lawful industrial action, including in third-party companies, and measures of governmental authorities, provided that basilicom GmbH is not responsible for their occurrence.
- (f) Subject to agreements and SLAs to the contrary basilicom GmbH guarantees annual average availability of its infrastructure of 99.5%. This does not include periods during which it cannot be accessed due to technical or other problems which are beyond basilicom GmbH’s control (events of force majeure, culpability of third parties etc.). basilicom GmbH may restrict access to the services insofar as the security of the network operation and the maintenance of the network integrity, particularly the avoidance of serious disruptions of the network, the software or stored data, requires this.
- (g) Maintenance hours will be agreed for regular, urgent, planned or unplanned maintenance work on the systems and infrastructure of basilicom GmbH and the suppliers of basilicom GmbH which is necessary for the preservation and security of ongoing operations or for updates and upgrades. Any impairments of availability due to maintenance work during the maintenance hours shall not constitute downtime. Maintenance may be carried out daily from 10.00pm to 6.00am as well as outside those hours if the maintenance is announced in ordinary cases six days and in urgent extraordinary cases two days in advance. The announcement may be made by e-mail. If different maintenance hours are agreed in an SLA, they shall take precedence over the above-mentioned maintenance hours.

§ 2 Claims in the event of material defects

- (a) Claims for defects shall not exist with regard to only minor deviations from the agreed or assumed characteristics/quality or with regard to only a minor impairment of usability. The content of the order description does not constitute a guarantee without a separate written agreement.
- (b) Furthermore, basilicom GmbH undertakes to create websites such that they exhibit response time behaviour which, with a comparable Internet connection and technical specifications of the hardware and software used by the end user to access the site, corresponds to the response time behaviour of other websites with comparable content, a comparable scope and a comparable server environment. Websites must be runnable within browsers and resolutions being industry-standard as of the moment of the conclusion of the contract. Browser versions from more than one year ago and browsers and monitor resolutions with less than 10% market representation are not deemed industry-standard.
- (c) In the case of software updates, upgrades and new version deliveries, claims for defects shall be limited to the new content of the update, upgrade or new version delivery vis-à-vis the existing version status.
- (d) If the customer demands supplementary performance due to a defect, basilicom GmbH shall have the right to choose between repairs, replacement delivery or compensation. If, after the ineffective lapse of an initial time limit, the customer sets basilicom GmbH a further reasonable additional time limit and it too lapses ineffectively or if a reasonable number of attempts at repairs, replacement delivery or compensation fail, the customer will be able, subject to the statutory conditions and according to its choice, rescind the contract or demand a price reduction and demand compensation for losses or expenses. The supplementary performance may also take the form of the handover or installation of a new program version or a workaround. If the defect does not impair functionality or only impairs it insignificantly, basilicom GmbH shall have the right, to the exclusion of further claims for defects, to eliminate the defect through the delivery of a new version or update within the framework of its version, update and upgrade planning.
- (e) Complaints concerning defects must be submitted in writing with a clear description of the error symptoms, as far as possible, proven with written records, screenshots or other documents illustrating the defects. Submitted complaints should enable the error to be reproduced. Statutory inspection and complaint obligations of the customer remain unaffected.
- (f) Changes or extensions to the services or software that the customer carries out either itself or through third parties shall result in the customer's claims for defects being forfeit, unless the customer provides proof that the change or extension did not cause the defect. basilicom GmbH shall also not be liable for defects attributable to improper operation or operating conditions or the use of inappropriate equipment by the customer.
- (g) basilicom GmbH may refuse the supplementary performance until the customer has paid it the agreed remuneration less a portion corresponding to the economic significance of the defect.
- (h) The time limitation period for claims for defects is 12 months from the acceptance of the service.

In the event of the delivery of updates, upgrades or new versions, the time limit for those parts shall begin upon their acceptance.

- (i) Claims for compensation for losses are subject to the limitations under Parts 5 - § 6 of these GTC (liability and compensation for losses.)

§ 3 Claims stemming from legal defects

- (a) The contractually agreed service delivered or provided by basilicom GmbH is free from third-party rights opposed to use in accordance with the contract. This does not include industry-standard retentions of title or licence provisions or the like where products of third parties are used (for example licences for open source software).
- (b) If third parties are entitled to such rights and assert them, basilicom GmbH shall do everything in its power to defend the contractually agreed service against the asserted third-party rights at its own expense. The customer shall promptly notify basilicom GmbH of the assertion of such third-party rights in writing and issue all powers of attorney and authorisations which are necessary to defend the contractually agreed service against the asserted third-party rights.
- (c) If defects of title exist, basilicom GmbH (1.) shall have the right according to its choice (i) to eliminate through lawful measures the third-party rights which impair the use of the contractually agreed service in accordance with the contract, or (ii) eliminate their assertion, or (iii) change or replace the contractually agreed service such that it no longer infringes third-party rights, if and to the extent that the agreed functionality of the contractually agreed service is not significantly impaired as a result and (2.) shall be obliged to reimburse the customer for any incurred necessary and reimbursable costs of prosecution. If the indemnification fails within a reasonable additional time limit set by the customer, the customer will be able, subject to the statutory conditions and at its own discretion, to rescind the contract or demand a price reduction and demand compensation for losses.
- (d) Otherwise Part 5 - § 2(h) of these GTC (time limitation period of 12 months), Part 5 - § 2(i) hereof (reference to the limitations of the compensation for losses), and Part 5 - § 2(g) hereof (refusal of the supplementary performance until the fee is paid) shall apply.

§ 4 Use of third-party products

- (a) The following provisions apply where third-party products are used by basilicom GmbH in connection with the performance of the service for the customer. Third-party products should be understood to mean products/services of third parties such as online platforms or open source software.
- (b) If material defects or defects of title result from defectiveness of the product of a third party and if it does not act as a vicarious agent of basilicom GmbH but rather basilicom GmbH merely passes on a third-party product to the customer in a manner discernible for it, the customer's claims for defects shall be limited to the assignment of the claims for defects by basilicom GmbH against the third party (for example if open source software is incorporated). basilicom GmbH shall itself be liable for the defect if the cause of the defect arose due to action taken by basilicom

GmbH, i.e. the defect resulted from improper modification, integration or other handling of the third-party product for which basilicom GmbH is responsible.

- (c) basilicom GmbH shall not be held responsible if third-party products are restricted or completely discontinued by the third party. If the third party introduces a fee for the provision of the third-party products, basilicom GmbH shall have the right to adjust the fee agreed with the customer accordingly, provided that the customer states that it wishes to continue the use of the third-party product after an enquiry to that effect and the fee would be borne by basilicom GmbH.

§ 5 Contractual amendments

- (a) basilicom GmbH reserves the right to extend or change its services and carry out improvements, particularly if they serve the purpose of technical progress or appear necessary in order to prevent misuse or if basilicom GmbH is obliged to do so on the basis of provisions of law, and provided that the achievement of the objective of the contract and the customer's interests will not be unreasonably impaired as a result. Voluntary, unpaid services and performances of basilicom GmbH which are explicitly designated as such and are not a part of the service specifications may be discontinued at any time. Upon changing or discontinuing free-of-charge services or performances, basilicom GmbH shall take the legitimate interests of the customer into account.
- (b) Furthermore, basilicom GmbH may transfer its rights and obligations under this contract, insofar as they relate to web hosting, servers, domains or certificates, to one or more third parties ("contract transfer"). basilicom GmbH must notify the customer of any contract transfer at least two weeks before the transfer date. In the event of a contract transfer, the customer shall have the right to terminate the contract in that respect effective as of contract transfer date.

§ 6 Liability and compensation for losses

- (a) basilicom GmbH is only liable under this contract in accordance with the following provisions:
- (b) basilicom GmbH shall be liable without limitation for losses caused by it or its statutory representatives or managerial employees either intentionally or due to gross negligence, as well as for losses intentionally caused by other vicarious agents; for gross culpability of other vicarious agents, the liability shall be determined in accordance with the provisions on minor negligence set out in item (f) below.
- (c) basilicom GmbH shall be liable without limitation for losses resulting from loss of life or injury to the body or health caused by basilicom GmbH or its statutory representatives or vicarious agents either intentionally or due to gross negligence.
- (d) basilicom GmbH shall be liable for losses resulting from the absence of assured properties up to the amount covered by the purpose of the warranty and which were foreseeable for basilicom GmbH when it issued the warranty.
- (e) basilicom GmbH shall be liable for product liability losses in accordance with the provisions of the German Product Liability Act (*Produkthaftungsgesetz*).

- (f) basilicom GmbH shall be liable for losses stemming from breaches of key obligations by it or its statutory representatives or vicarious agents; key obligations are essential obligations that form the basis of the contract, were decisive for the conclusion of the contract and upon whose fulfilment the customer can rely. If basilicom GmbH breaches such key obligations due to minor negligence, its liability shall be limited to compensation for the foreseeable, typically occurring losses (hereinafter referred to as "typical losses").
- (g) basilicom GmbH shall be liable for failure to comply with the SLA being part of the contract exclusively in the amount established therein as typical losses.
- (h) As a rule, the typical losses shall be limited to the established amount and otherwise to the amount of the contractual fee payable by the customer for the period in which the breach of obligation occurred. This shall not apply if, in an individual case, the limitation would be unreasonable with due consideration of fairness. As a rule, the typical losses shall not exceed five-fold the agreed fee.

§ 7 Liability and compensation for losses when data is lost

- (a) basilicom GmbH shall only be liable for loss of data up to the amount that would be payable for its restoration assuming correct and regular backing up of the data by the customer. The customer warrants to basilicom GmbH that it conducts data backup and virus protection according to the state of the art of technology.
- (b) In the event of minor negligence, basilicom GmbH shall only be liable insofar as the customer carried out a correct backup directly before carrying out the measure that led to the loss of data.
- (c) Any further liability of basilicom GmbH is in principle excluded.

PART 6 – FEE AND BILLING

§ 1 Fee

- (a) The fee and payment schedule for the contractually agreed services are detailed in the order description. If the parties have not agreed a fixed fee, the fee shall be calculated based on work performed. In this respect the rates of basilicom GmbH effective upon the provision of the service shall apply.
- (b) In the case of billing based on outlays of time the minimum billing unit amounts to 15 minutes.
- (c) Services outside the agreed service scope or subject of the contract shall be paid for by the customer separately. The currently applicable rates of basilicom GmbH apply in this respect. The foregoing also applies for services performed due to incorrect or incomplete information provided by the customer, unverifiable defect reports, improper system use or breaches of obligations by the customer.
- (d) Work performed by order of the customer outside the core working hours (business days 9.00am – 7.00pm) will be charged based on a factor of 130%.
- (e) basilicom GmbH shall be entitled, over and above the agreed remuneration, to reimbursement of the costs and expenditures necessary for the provision of the services, particularly travel and accommodation costs, as well as expenses approved by the customer in terms of the reason for incurring them. basilicom GmbH shall, in an auditable manner, invoice these expenses together with the provided services or promptly invoice them separately. Travel expenses will be calculated either according to the actually incurred costs for rail journeys in second class / flights in economy class or for journeys by car at €0.30/km net. The basis shall be the fastest route according to the route planner (one commonly used in commercial dealings) used by basilicom GmbH. Within a range of 10km no travel expenses shall be deemed to have been incurred. Unless otherwise agreed, the starting point for journeys to/from the destination is the address of basilicom GmbH.
- (f) If basilicom GmbH receives a fee depending on hours worked, the customer must sign off submitted records as an expression of agreement without delay and no later than within seven days from their receipt. If the customer does not agree with the submitted records, it must submit any reservations regarding the records within that time limit in the form of detailed written objections. The parties shall then promptly attempt to clarify the matter. The customer must then promptly sign off the records. Upon payment, the records shall be deemed signed off.

§ 2 Billing

- (a) The fee shall be due for payment at the agreed time.
- (b) If the contract terminates prematurely, basilicom GmbH shall be entitled to a fee corresponding to its services performed up to the termination of this contract.
- (c) In the case of work contract services the fee shall be due for payment upon (partial) acceptance of the service. Where the order amount exceeds €20,000, basilicom GmbH shall be entitled, even

without a separate agreement, to 30% of the order amount before beginning the work, 30% midway through the agreed project period and 40% after acceptance.

- (d) Subject to an arrangement to the contrary, invoices may be issued in electronic form and sent by e-mail or made available online for downloading.
- (e) Subject to an explicit provision to the contrary, all amounts should be understood as being net amounts, i.e. exclusive of statutory VAT.
- (f) Subject to information to the contrary, invoices shall be payable without deductions within 14 days from the invoice date.
- (g) If the customer is late in making payment, the outstanding amount shall bear interest in a legally established amount above the currently applicable base interest rate. The assertion of further rights shall remain unaffected by this.
- (h) The customer may only set off against claims of basilicom GmbH with claims which are undisputed or have been established with legally binding effect and provided that the claims in question are not claims for completion or elimination of defects. The customer shall only be able to assert a right of retention in connection with counterclaims stemming from this contract.

§ 3 Price adjustments

- (a) In the case of continuous obligation contracts, basilicom GmbH shall have the right to reasonably increase the agreed flat rate after announcing the increase. Such an increase shall become effective as of the end of the current settlement period.
- (b) A price reduction shall become effective as of the end of the settlement period that ends after the adjustment of the price.
- (c) If the purchase prices for third-party services and products (e.g. domains or certificates) increase, that increase may be passed on to the customer in the same ratio.
- (d) If the customer does not agree to the adjustment, it may terminate the contract in compliance with the notice period for termination, effective as of the effective date of the new fee. If the regular notice period for termination of the contract exceeds 30 days, a notice period for termination of 30 days shall, however, apply in this case.

§ 4 Payment reimbursement in the event of blocks or terminations

- (a) If basilicom GmbH blocks the services due to a violation of the customer's obligations as provided for in the contract and these GTC, basilicom GmbH's entitlement to its fee shall continue to exist.
- (b) There shall be no refunding of amounts paid in advance insofar as basilicom GmbH is not culpable for a block or the termination of the entire contract or individual separable services.

PART 7 – TERMINATION

§ 1 Term of the contract

- (a) For contracts concluded as continuous obligation relationships, the term of the contract shall correspond to the agreed contractual term. If the term of the contract is not explicitly agreed and is not established in the related special provisions of these GTC, it shall amount to 12 months.
- (b) The settlement period for additional options (e.g. hosting) corresponds to the settlement period of the main contract. If the option is ordered during the term of the main contract, the first term of the contract will be adjusted in line with the remaining term of the main contract.
- (c) The termination of non-independent options of a contractual relationship shall not affect the overall contractual relationship if the overall contractual relationship is not terminated.

§ 2 Ordinary termination

- (a) If the notice period for termination is not explicitly agreed and is not established in the related special provisions of these GTC, it shall amount to 30 days, effective as of the end of the contract.
- (b) The notice period for termination for independently terminable parts/options of a contract shall correspond to the notice period for termination of the main contract.
- (c) If timely notice of termination is not issued, the term of the contract shall be automatically extended by the same period after the end of its previous term.

§ 3 Extraordinary termination

- (a) Either party may terminate contracts based on these GTC for good cause by way of extraordinary termination, if one or more arrangements are not complied with by the other party and this situation is culpably not remedied within a time limit of 14 days from the issuance of a written demand to that effect.
- (b) Extraordinary termination is also possible without a prior demand to remedy non-compliance, if the terminating party cannot be reasonably expected to continue the contract, taking into account all the circumstances of the individual case and weighing the interests of both parties. This shall be the case, in particular, in the event of:
 - (i) obvious and serious breaches of the contract or the law, for example storage or provision for accessing of content in the meaning of Article 4 of the German Interstate Treaty on the Protection of Minors (*Jugendmedienschutz-Staatsvertrag*) or of obviously copyright protected software / audiovisual content (music, videos etc.);
 - (ii) if the customer is repeatedly the target of DoS attacks whose effects affect basilicom GmbH's infrastructure and/or restrict other customers of basilicom GmbH;
 - (iii) criminal spying or manipulation of the data of basilicom GmbH or other customers of basilicom GmbH by the customer.

- (c) Good cause shall be deemed to exist, in particular, if
 - (i) basilicom GmbH fails to comply with an explicitly agreed completion date and a reasonable additional time limit set by the customer has lapsed ineffectively, unless basilicom GmbH is not responsible for the delay;
 - (ii) one of the parties grossly breaches its obligations under this contract or the respective order;
 - (iii) insolvency proceedings are initiated regarding the assets of the other party or the initiation of insolvency proceedings is refused on grounds of a lack of assets;
- (d) The notice of termination must be in writing.
- (e) After the termination of the contractual relationship basilicom GmbH shall no longer be obliged to perform the contractual services. basilicom GmbH may erase all the data of the customer stored on the server, including e-mails in the mailboxes. Timely storage and backing up of the data shall therefore be the customer's responsibility.

PART 8 – CONFIDENTIALITY AND FINAL PROVISIONS

§ 1 Data protection

- (a) The customer's personal data shall only be collected, processed and used for the performance of the contract. By concluding the contract, the customer declares that it agrees to the collection, processing and use of its data in electronic data processing systems.
- (b) The parties shall comply with the relevant data protection laws. In particular, basilicom GmbH shall only collect, process or use data of third parties that the customer passes on to it or which it collects, processes and uses on behalf of the customer within the limits of the customer's instructions. Otherwise the customer shall be responsible for compliance with the provisions of data protection laws.

§ 2 Confidentiality

- (a) The parties undertake to handle confidentially all confidential information of which they gain knowledge during the performance of this contract and to use it only for contractually agreed purposes.
- (b) Confidential information in the meaning of this provision is any information, documents or data which is designated as such or which must be considered confidential due to its nature. basilicom GmbH undertakes to grant access to confidential information of the customer only to employees who have been entrusted with the provision of the services under this contract. Both parties must, at the other party's request, have their employees sign an appropriate formal undertaking and submit it to the other party. The parties shall not submit any applications for the registration of protective rights to confidential information belonging to the other party.
- (c) If a public body demands release of confidential information as defined above, the party in question must be informed to that effect promptly and before the surrender of the information to the public body.
- (d) The rights and obligations under this section on confidentiality shall not be affected by termination of this contract. Upon termination of this contract, both parties shall return or destroy confidential information of the other party according to their choice, unless it has been properly consumed.

§ 3 Final provisions

- (a) The laws of the Federal Republic of Germany apply.
- (b) If the customer is a trader, a legal person under public law or a special fund under public law, the place of performance and exclusive place of jurisdiction for all disputes stemming from or related to the contractual relationship is the registered office of basilicom GmbH.

- (c) The customer may only transfer claims against basilicom GmbH based on this contract to third parties with the prior consent of basilicom GmbH.
- (d) If individual provisions of this contract are ineffective, the effectiveness of the other provisions hereof will not be affected. In such a situation, the parties shall agree effective provisions which come closest in commercial terms to the intended purpose of the ineffective provisions. This applies accordingly for filling in any unintended gaps/omissions in this contract.