

*The text below is an English translation of our German General Terms and Conditions of Trade or Allgemeine Geschäftsbedingungen. Should there be discrepancies between the interpretation of the German and English versions of these General Terms and Conditions of Trade, the German version shall prevail.*

## General terms and conditions of trade

AS OF OCTOBER 15, 2010

### Preamble

The following general terms and conditions of trade apply to all existent contracts between the Kyberio GmbH, represented by the executive board, Am Mittelfelde 29, D-30519 Hannover (in the following named: KYB) and their customers.

According to these general terms and conditions of trade, the customers are entrepreneurs according to § 14 BGB<sup>1</sup>. We only deliver to sole proprietors or legal entities as well as to private companies with legal capacities that practise their business as a commercial business or as freelancers. Divergent, opposing or additional general terms of trade of our co-contractor will never be part of the contract, even on notice, unless KYB explicitly expresses its agreement in written form.

<sup>1</sup> BGB = Bundesgesetzbuch = German Civil Code

### 1. Conclusion of contract

**1.1** Our offers are subject to change. Technical changes are subject to change as well, as far as these changes remain within a reasonable range. We reserve the right to enhance or ameliorate our services

**1.2** We are authorised to accept the co-contractor's order and the implied offer to enter into a contract within two weeks after receipt. The acceptance will either be declared in written form or with the supply of our service to the customer.

**1.3** In case the customer orders the service electronically, we will confirm receipt of the order as soon as possible. The acknowledgement of receipt does not yet represent our binding acceptance of the order. The acknowledgement of receipt though may be conjoined with the notice of acceptance.

**1.4** Provided the customer orders the product or the service electronically, the wording of the contract will be stored by us and if the customer explicitly asks for it in written form, it will be sent to him – regularly by e-mail – together with the included general terms and conditions of trade in the form of communication chosen by KYB.

**1.5** The agreed beginning of the contract is the date or allocation of the service and eventually necessary access data.

### 2. Provision and extensiveness of service

**2.1** In case KYB is not capable of delivering the ordered product through no fault of its own, because KYB's supplier has not fulfilled his contractual obligations, KYB is authorised to retreat from the contract agreed with its customer. This right to retreat is only applicable if KYB has concluded a congruent hedging transaction (binding, accurately timed and sufficient order of the product) and is not responsible in any other way for not delivering the product. In such a case, KYB will immediately inform its customer about the fact that the ordered product is not available. Service already rendered in return by the customer will be reimbursed immediately. In case KYB is not capable of fulfilling its obligations of delivery because of unforeseen events that concern KYB or its supplier, and KYB was not able to avert these unexpected events in the respective circumstances with reasonable care, such as war, natural disasters and force majeure, the time of delivery will be extended appropriately. KYB will immediately inform the customer about this fact as well. The customer's legal claims remain unaffected by this.

**2.2** The services include free support by e-mail or phone, which is restricted to malfunctions concerning the access to the client's server if KYB is responsible for these malfunctions.

**2.3** In case the customer draws on exceeding technical support services of KYB or if he orders such support services by fax or e-mail, they will be billed separately – according to the actual costs that occur when the

service has been carried out by an KYB employee. The calculation of the charge will be done according to the actually carried out support units. Each support unit comprises fifteen (15) minutes and will be charged with EUR 24.75 from Monday to Friday, from 8.00h to 20.00h, during all the other hours and on German public holidays (as well as on public holidays in Lower Saxony) the charge is EUR 49.50, unless KYB and the customer have arranged a divergent agreement in written form.

**2.4** In case the customer is responsible for a malfunction or if actually there is no malfunction which was reported by the customer, KYB is authorized to charge the resulting costs because of the ordered debugging and remediation of deficiencies with the fees mentioned in 2.3. Further respective (compensation-) claims remain unaffected.

**2.5** Provided the customer and KYB have agreed upon a "Service-Level-Agreement", the agreed regulations, services and tariffs as mentioned in that agreement are binding.

**2.6** As far as KYB provides free services, these may be discontinued at any time without any advance notice. If the cessation of the services is of significance for the customer, he will be informed by KYB in advance. Claims of compensation, reduction or reimbursement do not result for the customer because of the cessation. KYB reserves the right to offer its customer these services against payment, if they are continued by KYB after their cessation, on the basis of a separate contract.

**2.7** If the service, especially support and up-dating services for certain software, produced by KYB is dependent on services of third parties, KYB will no longer supply the services for the customer in case of a final cessation of support and updating services for certain software from the date given from the part of the producer, and KYB will no longer produce own support- or updating services exceeding the use of the software within the bounds of the contract. This does not apply if the service can be continued because of an upgrade to a newer version. In this case the customer is obliged to upgrade his software.

**2.8** KYB is authorised, to restrict its contractual services contemporarily or for a short time within a reasonable range, as far as it is necessary because of

reasons of public security, the safety of the web's operation, the maintenance of the web's integrity, the interoperability of the services, data privacy protection, and for the fight against spam or computer viruses, computer worms, Trojans, Hacking- or DoS-attacks or others, in order to grant security for the customer.

**2.9** The same applies to the accomplishment of necessary operational and technically necessary operations. KYB will inform the customer – as far as possible – at least forty-eight (48) hours in advance in case the availability is temporarily not granted because of the above-mentioned reasons.

**2.10** Basically, KYB is not responsible for data storage of the customer's files on the virtual or dedicated server. The realisation of a backup – in whatever interval or extensiveness – is neither one of KYB's main nor of the ancillary service obligations of the contract, unless this was differently agreed in written form. The customer only has to take care that archival backup copies are produced in adequate intervals according to the customer's needs. If the customer provides evidence that he uses KYB's contractual services for the transmission of data and his data are lost or damaged solely because of KYB's defective services, he is obliged to backup his data daily or at least in intervals that are adequate within the range of a preventive minimizing of loss in such a way, that these data, in the case of loss, can be reconstructed from provided data material in a machine-readable form at justifiable costs.

### 3. Use of the agreed services

**3.1** The customer is obliged to use the services in a proper way.

**3.2** As soon as services are provided for the first time, the customer is obliged to check if they are as stipulated in the contract and he has to report obvious and / or stated defects to KYB in written form. Defects of KYB's owed services which are stated later must likewise be notified in written form.

**3.3** The customer has to pay the fees as agreed at the beginning of the contract or agreed later according to the valid pricing plus the currently valid VAT which is to be added on top.

**3.4** In addition, the customer should inform KYB about his equipment (used hardware, software, installations) at the beginning of the contract in order to participate in the services and support provided by KYB which then can be optimized and have the highest efficiency.

**3.5** He has to ensure that the infrastructure of the network or parts of it won't be overloaded by excessive use. The customer is allowed to use the provided services only to the agreed extent as mentioned in the contract and only according to the legal regulations at a time. The customer is not allowed to spread any insulting, slanderous, inciting, (child-)pornographic, immoral or illegal contents via the KYB network and/or the Internet. He is neither allowed to abet the spread or provision of such contents by third parties. In particular, the customer has to protect/preserve the copyright and data privacy, as well as the right of competition, brands, trademarks and patent right when using the net. On the part of KYB there is no obligation to check or to verify this protection regularly. The customer has to ensure that there are no disturbances or malfunctions of the KYB-network or with other participants in the network caused by his end devices.

**3.6** The customer exempts KYB explicitly from any warranty concerning the contents of these data transmitted to the virtual or dedicated server by third parties. The customer himself is responsible for the contents of his respective websites.

**3.7** The customer obligates himself not to initiate any advertising circulars or mass mailings by e-mail via e-mail addresses of his respective domains, without having been asked for explicitly by the e-mail addressees.

### **3.8 Violation of obligations and blocking**

**a)** If there is sufficient evidence that the customer has violated the obligations of this regulation, KYB is allowed to block or to restrict the access to the use of the virtual or dedicated server of the customer temporarily. Generally, the customer will be informed about this fact 24 hours in advance. He will not be informed if the state of suspicion the so-called state of "imminent danger" is assumed. If the suspicion of the violation of obligations according to paragraph 3.5 is provably and completely dispelled, the blocking or the restriction of the access and the use on will be cancelled immediately on the presentation of an official or judicial order of the same wording.

**b)** As far as the customer affirms that he has completely removed a violation of an obligation within 96 hours in written form, in particular according to paragraph 3.5, or that in the future he won't commit any again, the blocking or restriction will be cancelled promptly after receipt of the affirmation, unless there is an official or judicial order of different wording. If the client culpably repeats the same violation or if he violates an obligation equal in rank or if the violation has actually not been removed as agreed in the written affirmation, KYB is free to cancel/terminate the contract with its customer without any previous notice.

**c)** If the suspicion is based on the assertion of the violation of the rights of third persons via the concerned third parties, KYB will promptly inform the customer about this fact. In this case, the customer has the right to demand the cancellation of the blocking or restriction respectively, if he presents a judicial or official decree to KYB, which he has obtained against the third parties.

**3.9** If in a period of less than six (6) months a contemporary blocking is caused a second time because of misconduct from the part of the client, KYB is authorised to base this and any further unblockings on a fee or to cancel the contract.

**3.10** The customer receives a login name and a login password. He is obliged to handle both strictly confidentially and not to communicate them to third parties. He himself is the exclusively reliable person of any kind of misuse which may be the result of unauthorised use of the password. The customer is aware of the fact that because of the structure of the Internet there is the possibility to bug transmitted data or to make them transparent to third parties. This applies in particular to the use of wireless-LAN-technology. This risk is accepted by the client at his own responsibility. KYB is not liable for any violations of confidentiality of messages transmitted via e-mail or information transmitted via other means.

## **4. Domain names**

**4.1** The domain names for a virtual or dedicated server ordered by the customer will be registered by the Kyberio GmbH with the respective NIC and will be billed directly with the customer as he is the co-contractor.

**4.2** The IP-numbers which are necessary for the operation of the virtual or dedicated server remain property of Kyberio and may be altered and newly assigned at any time. The customer will be informed immediately about this circumstance.

**4.3** The essential data for the registration of domain names transmitted by the customer will be transmitted to the respective NIC via an automated procedure. The customer can only be sure of the actual availability and assignment of a domain name if it has been confirmed by the respective NIC.

**4.4** As far as the registration of domain names is included in the scope of services rendered, KYB will only be active as a mediator towards the DENIC Domain Verwaltungs- und Betriebsgesellschaft eG (for domains of the TopLevel: .de), the company nic.at Internet Verwaltungs- und Betriebsgesellschaft m.b.H. (for domains of the TopLevel: .at), the Nominet UK (for Domains of the TopLevel: .uk), the EURid, of ICANN (for .com / .net / .org / .info / .biz u.a. TopLevel Domains) and the accredited ICANN-Registrars DomainPeople and CORE as much as all other administrative post. Solely the customer is authorised and obliged to complete the registration of the domains because of the agreed contracts with the correspondent administrative posts. A cancellation of the respectively agreed contracts between the customer and KYB does not affect the contract between the customer and the respective administrative post.

**4.5** These contracts are based on the general terms and conditions of trade and regulations of the respective administrative posts which are accessible on the respective homepages. The customer particularly takes note of the contents of the correspondent regulations under www.denic.de, the ICANN Uniform Dispute Resolution Policy (which together with the Rules for Uniform Dispute Resolution Policy form the guidelines of the ICANN), the DomainPeople Registration Agreement, the CORE-Richtlinien, as well as the Nominet Dispute Resolution Policy, he agrees and is obliged to take care of obeying them.

**4.6** KYB is authorised to cancel any cooperation with one or more accredited registrars, who are in charge of the registration and administration of the respective customer's domain, at any time without advance notice, and to replace one or more registrars for this purpose

or to bind themselves contractually with further or other registrars. Related to the selection of the respective registrar, KYB is – at its own discretion – especially authorised to transfer the relative domain names from one registrar to another, with the cooperation of the customer when carrying out such transactions.

## 5. Payment

**5.1** Fundamentally, invoices are due immediately and without any deduction. If KYB has received a direct debit authorization, the owed fee will be debited from the customer's given account at the earliest one (1) week from the date of the invoice. The customer is obliged to take care that the given account has sufficient cover.

**5.2** KYB is authorised – having sent a written reminder with fixing of a period of time of one (1) week – to impose a partial or total lock-up of the connection and the utilization of its services, if there is an unauthorised return debit note when collecting debts – by KYB – via agreed and approved debit note (especially in the case of lacking cover of the account or protest) and if the customer delays payment, unless the customer is not responsible for the return debit note. The same applies if the customer delays payment. Even after a lock-up, the customer is still obliged to pay the monthly agreed basic price. KYB reserves the right to assert further claims resulting from any delay of payment.

**5.3** If the customer, in foreign transactions, has his seat in a country which is not member of the EU, KYB and its customer will agree that the accruing transaction fees, tariff rates and costs of the involved financial institutions will be paid at 50 (50) percent each by each contracting partner.

**5.4** The customer will receive his personal invoices as a free preliminary version in the form of a PDF-document via e-mail with a qualified digital signature. In case the customer cannot assert the received invoice in the value added tax procedure because of an error as regards content, he must immediately notify KYB about this error. In this case, KYB will promptly make up an invoice which is conforming to the specifications of the value added tax (procedure). If the customer expresses his wish in written form to receive a printed version of the invoice, this invoice will be sent to him as a hardcopy every month. This hardcopy will be charged with an extra fee of 1.00 EUR net.

**5.5** KYB is authorised to charge the costs for an issued reminder in case of delay of payment. The first reminder based on delay of payment will be charged with 2.50 EUR, a partial or complete blocking of servers and racks because of outstanding payment with 25.00 EUR, the unblocking of servers and racks after receipt of payment of outstanding payments with 25.00 EUR as well as the cancellation of a collecting order, e.g. for the Infoscore GmbH with 100.00 EUR, plus the respective value added tax in force each. The customer is informed that he will be completely in charge of any further costs that might be refundable because of his delay in payment, like e.g. the costs of an assigned attorney according to the regulations for the gratification of attorneys or the costs of an assigned and licensed collection agency.

**5.6** The customer can only settle outstanding debits or claims of KYB with claims that are unquestioned or legally stated. The customer may only execute his right of retaining as far as his opposing claim is based on the same contractual relationship.

## 6. Duration of contract and cancellation

**6.1** Each cancellation has to be rendered in written form, which is also granted if it is sent by fax.

**6.2** The contract is basically concluded – except in case of other, especially marked data in the contract or in the offer – at a minimum duration of twelve (12) months. The contracts can be cancelled orderly with a deadline of 30 days before the ending of the contract. If the contract is not cancelled, it will be prolonged automatically for the minimum duration of the contract.

**6.3** The right to cancel the contract without previous notice because of serious reasons or because of other legally justified reasons remains unaffected for both parties. One important reason that authorises KYB to cancel the contract without previous notice is given in particular if

**(a)** the customer has delayed payment of the contractually agreed basic fee and / or compensation fee for two successive months or in a period of time which exceeds the period of two months with an amount, which equals the average of the owed compensation for two months, but amounts at least to 75.00 EUR. As far as a legal special regulation concerning the right of

blocking might be applicable for the contract, the cancellation without previous notice is only admissible, if KYB is actually authorised to execute the blocking.

**(b)** the customer violates an essential obligation of the contract (the so-called “cardinal obligation”) and if he – despite a written warning – doesn’t take any adequate measures in order to remedy or terminate the respective violation of contract within one week after receipt of the mentioned warning. In case of serious behaviour contrary to the contract a warning is dispensable.

**(c)** the customer acts contrary to his obligations as regulated in these general terms and conditions of trade, in particular according to clause 3.5 in connection with clause 3.7 b), and / or in case he hasn’t handed in a written affirmation in due time. Any rendered advance payments for the registration of domains for a period of 12 months cannot be reimbursed in the case of cancellation within the contract duration. The domains which are registered for the customer must be cancelled in written form at the latest 6 weeks before expiry of the respective contract duration of 12 months each.

## 7. Reservation of propriety rights

All services or products delivered or sold by KYB remain property of KYB until all the claims against the client or the persons who accepted the product have been paid completely. This regulation also applies in equal manner to future arising claims. For the assertion of our reservation of propriety rights, we are authorised to demand the immediate delivery/withdrawal of the reserved goods excluding any kind of right of retention, unless it’s a question of stated legally binding claims of the customer claims from his part beyond dispute. If the customer or the person who accepted the products doesn’t meet this requirement without delay, we or any persons explicitly authorised by us, are authorised to enter the customer’s premises in order to procure ourselves the immediate possession of the reserved goods. In this case, the customer has to provide information about the whereabouts of the goods and – as far as necessary – to grant insight into his related business documents in a reasonable way. In case creditors of the customer enforce the sold goods, the customer is obliged to inform KYB promptly about this fact in written form. The customer must exempt KYB immediately from all the costs that might arise because of the usage of third parties for the granting of their propriety rights

towards the impounding creditor, insofar as they are necessary and adequate and must not be reimbursed by the impounding creditor.

## 8. Warranty

Insofar as nothing else is determined, all claims of warranty of the customer because of defects of the product and the beginning of the period of limitation are subject to the legal regulations. The period of limitation for the customer's claims of warranty is one year from the date of delivery of the product. KYB does not assume any guarantee for any working parts.

## 9. Liability

**9.1** We cannot assume any liability for disturbances or malfunctions of the Internet. It is generally known that according to the present status of technology it is neither possible to develop or operate computer programmes (software) or data processing equipment (hardware) completely error-free nor to exclude any kind of imponderability in connection with the medium Internet.

**9.2** Unless KYB is liable because of the assumption of a warranty, the liability for claims of compensation is restricted as follows: KYB is liable for slightly negligent caused damages, as far as these are due to a violation of essential obligations related to the contract (cardinal obligation). Cardinal obligations are such contractual obligations that basically render possible the orderly execution of the contract and the co-contractor must be sure that these obligations will be strictly complied with. According to this regulation, the liability of KYB for simple negligence is restricted to a typically predictable damage. In case of slightly negligent damages of delay, the liability of KYB is restricted to the typically predictable damage, at the most though to 5% of the total price as agreed in the respective contract. The regulations of the above paragraph apply correspondingly to the restriction of the obligation to reimburse any vain expenses (§ 284 BGB). The preceding restrictions of liability apply as well in favour of the vicarious agents of KYB.

**9.3** The Kyberio GmbH is liable during the supply of its (TK-) services for financial damages that are not caused deliberately – except the liability according to the regulations of the Product Liability Act – which are restricted up to an amount of EUR 12,782.30 for each customer, whereas the liability towards the total of damaged entities is restricted to a total amount of 10,225,837.62 EUR

in each event that causes a damage. If the compensations that have to be paid to various customers because of the same event exceed the maximum limit, the compensation for each customer will be shortened according to the proportion in which the total of all claims of compensation is to the maximum limit.

**9.4** KYB does not grant any warranty in a legal sense. The employees of KYB are not allowed to give promises of guarantee of any kind towards third parties. Possibly existing and granted manufacturers' guaranties are unaffected. The Kyberio GmbH does not assume any warranty that the virtual or dedicated server will be proper/ apt or continually available for a certain service or certain software. The sole service rendered by KYB lies in the provision of the virtual or dedicated server.

## 10. Credit assessment

KYB cooperates with business information services and credit insurance companies. On explicit customer's demand, KYB will name the addresses of these enterprises, which can also give information about the data that are stored in their files about the customer. Information about the customer can be requested with these enterprises.

## 11. Liens

With the positioning of items that belong to the property of the customer in the premises of KYB (or if he obtains possession of items that have been positioned by him), a lien is produced in favour of KYB. This lien is extinguished by the complete settlement of the claims that result from this contract at its termination. If the customer has any right to a certain object which is positioned in the premises of the Kyberio GmbH, particularly an expectant right, this will be ceded to the Kyberio GmbH for reasons of assurance.

## 12. Duty to supply information

When the customer registers, he is obliged to give true data. Insofar as the customer's data change, in particular name, address, e-mail address, telephone number and bank account, the customer is obliged to inform us immediately about these changes. If the customer fails to give such information or if he gives false information from the beginning, especially a wrong e-mail address, we are authorised to retreat from the contract, as far as a contract has been concluded. The written form is granted even by sending an e-mail. The customer has to take care that the given e-mail address is accessible



from the moment of declaration and that a reception of e-mails might not be excluded for reasons of routing, close-down or overfilling of the e-mail account.

### 13. Use of logos or usage of copyrighted contents

The customer is not authorised to use either the logo of KYB, or its products, its product descriptions or its data processing centre in any way without explicit permission for purposes of commercial use in legal relations, e.g. for the purpose of marketing or as a reference of any form (especially by graphical representation). Likewise the customer is not allowed to use photos, texts or other copyrighted material from KYB's website or from other sources or products from its website for the commercial use in legal relations, or for public use without explicit written permission given by KYB.

### 14. Alteration of the general terms and conditions of trade

**14.1** KYB may alter the existing contract with the customer because of the implementation of altered general or special terms of trade, specifications of services and / or price lists within the deadline of announcement of at least six weeks before their coming into force, if the customer does not disagree explicitly. The customer will be informed about these changes in the shape of text matter, and he will be informed in which way he can reasonably have insight into the altered conditions of contract as well as to where he can have access to the text matter.

**14.2** When informing the customer about the alterations of the contract to be carried out, KYB will explicitly instruct the customer about the fact that his agreement will be taken for granted unless he does not contradict the alterations in written form within a period of six weeks from the date of announcement of the alterations, at which the dispatch at due time is sufficient for the ensuring of the time limit.

**14.3** In case the customer does not contradict or does not contradict at due time despite the information and explicit instruction, this will be understood as the customer's acceptance of the alteration. This alteration will be effective automatically from the date the six weeks have passed, unless a later date has been fixed deliberately.

**14.4** The customer has no right to contradict in case KYB has to adapt the prices according to a change of the legally prescribed value added tax rate. In this case, the alteration automatically comes into effect when the new value added tax rate comes into force, unless a later date has been fixed deliberately. The customer has no right to contradict in case the alterations of the contract do not represent any disadvantage for the customer, i.e. if it is favourable for him. In this sense there will not be any disadvantages for the customer, even if a necessary and reasonable technical change may lead to a situation that the customer might have to execute investments of his own in order to be able to further use the contractual services (e.g. end devices that are adjusted to the technical alterations, servers with a higher performance etc.).

### 15. Place of venue

If the customer is a merchant, a legal person of public order or special assets subject to public law, the exclusive place of venue for all disputes resulting from this contract is Hanover. The same applies if the customer does not have any general place of venue in Germany or if his residence or his ordinary stay is unknown at the moment of the filing of a complaint.

### 16. Choice of law

The law of the Federal Republic of Germany is valid exceptionally. The application of the United Nations Convention on Contracts for the International Sale of Goods (agreement concerning contracts of the international sale of goods as of April 11, 1980) is excluded.

### 17. Supplementary clause

If single stipulations of this contract with the customer, including the general terms and conditions of trade, should be completely or partly ineffective, the validity of the other regulations is not affected. The regulation which is completely or partly ineffective shall be replaced by another regulation which is to the utmost similar – concerning its economic success – to the ineffective one.