

# **General Terms and Conditions (GTC)**

of

## **"lagis Internet Service Provider GmbH"**

As of January 2006

### 1. Basic principles

#### **1.1. Applicability of GTC**

These General Terms and Conditions (GTC) shall apply for all deliveries and services rendered by **lagis Internet Service Provider GmbH (hereinafter referred to as: "LAGIS")**, registration number **FN 270805v**, **Wiener Straße 151, 4021 Linz**, to the customer. The mutual rights and obligations of the contracting partners shall be determined solely in accordance with the content of the order accepted by LAGIS and its General Terms and Conditions as well as any other existing business terms and conditions of LAGIS if required.

The General Terms and Conditions of the customer shall apply only if LAGIS has given its explicit and – except for consumers – written consent.

The General Terms and Conditions of LAGIS shall also apply for future business between the contracting partners, even if they are not expressly referred to when concluding future contracts.

#### **1.2. Conclusion of contract, start of periods**

A contractual relationship between LAGIS and the customer shall be created once LAGIS provides confirmation of the order (written in the case of companies), or when the provision of the actual service commences (e.g. activation of Internet access, provision of a user login name and password, the creation of Web space or the placing of necessary orders with third parties, etc.).

In calculating periods for the minimum contract duration or the waiver period in terms of terminating the contract, etc. the start of the contract in all cases shall be the first of the month after the service provision commences, unless the order is explicitly confirmed otherwise. This does not apply for the right to withdraw from a contract under Section 3 or 5e of the Consumer Protection Act (KSchG).

#### **1.3. Amendments to the GTC**

Amendments to the GTC can be made by LAGIS and are also effective for existing contractual relationships. The current version can be downloaded from the LAGIS website (or can be sent to the customer upon request). Amendments can only be made to the GTC vis-à-

vis consumers if such changes are reasonable for the consumers, in particular because they are minor yet technically relevant.

Provided the amendments do not solely benefit customers, the amendments shall be notified at least two months before the new provisions actually take effect. In this case LAGIS will provide its customers with a summary of the main content in a suitable format at least one month before the changes take effect, for example by including it on a periodical invoice. Upon providing this information, LAGIS will also intimate to its customers that they are entitled to terminate their contract free of charge before the new changes enter into force. In the event the customer terminates the contract, LAGIS reserves the right within two weeks of receiving notification of said termination to uphold the original conditions of the contract. In such a case the termination by the customer is no longer valid. LAGIS will also inform the customer of the possibility that LAGIS may continue the contractual relationship under the previous terms and conditions and that under such circumstances the termination by the customer will be invalid.

#### **1.4. Transfer of rights and obligations**

Without prior written consent, the customers of LAGIS are not entitled to transfer the rights and obligations from this contract to third parties.

LAGIS is authorised to pass on its obligations to a third party in whole or in part – and therefore in respect of individual services or the entire contract – in full satisfaction of its debt and will notify the customer thereof. This does not apply for consumers and does not affect the right to use vicarious agents.

The use of contractual services by third parties as well as the passing on of such services to third parties in return for payment requires the express and – except for consumers – written consent of LAGIS. In the event a re-sale is agreed, the resellers must pass on these general terms and conditions to their contracting partners and hold LAGIS harmless in this respect.

#### **1.5. No power of attorney for LAGIS employees**

Sales partners or sales staff as well as technical advisers of LAGIS have no powers of attorney to make statements on behalf of LAGIS, make commitments or accept payments.

## **2. Services provided under this contract**

### **2.1. Services of LAGIS**

The scope of the contractual services is derived from the description of the service and (any) related agreements (written for business customers) of the contracting parties (orders/individual contracts).

### **2.2. Period for providing services**

Unless otherwise agreed on the given order form or in the order confirmation, telecommunication services shall be provided within a period of 40 working days after LAGIS accepts the contract, or 40 working days after the customer has fulfilled all of its

technical and other obligations (as specified in Section 2.4.) (hereinafter referred to as: "provision date"). If the provision date is missed for reasons attributable to LAGIS then LAGIS shall provide the customer with a credit equal to the amount of EUR 15, exclusive of VAT, for every week that the deadline is not met after the 40 working day deadline is passed. This does not apply if the failure to meet the provision date is due to delays in services of third parties which are not subcontractors or vicarious agents of LAGIS. Any additional compensation for damages is excluded; this applies only for consumers in the case of minor negligence and not for personal injury.

### **2.3. Repairing faults**

Faults in the telecommunications services caused by LAGIS shall be repaired within two weeks at the latest. If this deadline is exceeded then the terms of Section 2.2. shall apply.

Customers are obliged to co-operate with LAGIS to the best of their ability in locating faults and/or failures and to grant LAGIS or a duly authorised third party access to equipment in order to repair such faults. If LAGIS or its duly authorised third party is called to repair a fault and it is ascertained that there is either no problem with the contractually agreed services or the disruption was caused by the customer, then the customer shall compensate LAGIS for any expenses incurred.

### **2.4. Obligations of the customer**

Where necessary, the customer shall provide at his expense all software and hardware for his terminal equipment as well as other necessary equipment required for a smooth installation, unless such shall be provided by LAGIS as expressly agreed in advance. The same applies to all other technical prerequisites (e.g. power supply, suitable rooms, etc). Furthermore, the customer shall obtain the necessary consent and agreement from third parties and shall provide LAGIS with any other information to ensure a problem-free installation (including the route of electrical cables and water pipes).

LAGIS shall not assume any liability for the functioning of any telecommunication equipment installed by the customer, in particular PCs and modems, radio equipment, etc.

### **2.5. Quality of service**

LAGIS shall ensure that the agreed standard of service is provided. In the event this service quality is not maintained, any compensation or reimbursements shall be based on the liability provisions in Section 6 of these GTC.

### **2.6. Supply or sale of goods or equipment by LAGIS**

Sold goods and equipment shall remain the property of LAGIS until payment is received in full from the customer.

LAGIS shall remain the owner of equipment provided by LAGIS to the customer, even if it is installed, and such must be returned immediately after the termination of the contract at the

expense of the customer; otherwise the full purchase price shall be charged, unless otherwise agreed. The customer and individuals within his scope of responsibility shall use all LAGIS terminal and auxiliary equipment with extreme care. In the event of damage the customer must pay the compensation. The service and maintenance of leased terminals and auxiliary equipment shall be carried out exclusively by LAGIS or its duly authorised representatives throughout the entire term of the contract.

### 3. Service charges and changes in service charges

#### 3.1. Applicable service charges

All fees for using the Internet service are based on the current price list as well as on any written agreements between contracting partners that deviate herefrom (orders/individual contracts). Agreements in writing are not necessary vis-à-vis consumers.

Prices for installation, maintenance and special services are also contained in the current price list or in any other written agreements (orders/individual contracts). The customer acknowledges that the set charges for Internet access only comprise Internet connectivity, not, for example, fees charged by third parties for the use of the services offered on the Internet, unless otherwise agreed (in writing for business customers) or stated in the price list. The prices agreed for deliveries made by LAGIS are effective ex works. Any packing and delivery costs are borne by the customer, unless otherwise agreed.

Prices do not contain value added tax, while prices for consumers are given gross.

Unless otherwise agreed in the individual contract (order), the listed prices do not contain the costs for using transmission equipment to the chosen Point of Presence, the costs which arise at the customer's location as well as the costs of equipment provided by LAGIS for the exclusive use by the customer on the Point of Presence. Nor are the costs included which are charged by third parties for the use of services reached through the connection to the Point of Presence.

#### 3.2. Individual charges

A distinction is made between fixed monthly charges (e.g. basic charge for Internet access, basic charge for leased line, charges for the use of dedicated Internet lines, for domain registration and for the possible leasing of terminal and auxiliary equipment), variable charges (depending on the volume of the transmitted data or connection times) and one-off fees (set-up and installation fees for Internet access and/or leased lines as well as charges for domain registration). The ratio between these fees and charges varies depending on the product, whereby the provisions on charges and the applicable regulations in the individual contracts/offers shall apply.

#### 3.3. Changes in service charges

LAGIS is entitled to amend its service charges (up or down) in the event of changes in the costs relevant to their calculation (e.g. personnel expenditure, interconnection fees, electricity, telecommunication charges).

Increased charges can only be demanded from consumers if LAGIS is not responsible for the circumstances triggering the changes in the charges. Furthermore, higher charges may not be imposed for services to be rendered within the first two months after the conclusion of the contract. This also applies for changes in taxes or the introduction of new taxes as well as other official charges, which are relevant for the calculation of the fees.

The customer's right to terminate the contract if prices are changed as per Section 25 (3) of the Telecommunications Act 2003 shall not apply if the prices are lowered or are adjusted to the index indicated in the price list or any other agreed index. If discounts were agreed with the customer, the customer shall not benefit from any price reductions, unless agreed otherwise.

## 4. Payments

### **4.1. Invoicing**

All charges shall be invoiced at the end of the month for the current calendar month, unless otherwise stated in these GTC or agreed upon (in writing for business customers).

### **4.2. Method of payment, maturity**

Unless otherwise agreed (in writing with business customers), payments shall fall due within 14 days from the date of invoicing, without any deductions. Settlement dates are derived from the individual agreements (orders/individual contracts). In the event of doubt, one-off costs can be charged directly upon the conclusion of the contract or delivery, regular costs independent of consumption can be billed monthly in advance, while regular costs related to consumption can be billed on a monthly basis after consumption.

The agreed purchase price is invoiced after the installation and/or the delivery of the equipment and shall be payable within 10 days from receipt of the delivery and invoice, without any deductions.

### **4.3. Payment default, default interest**

In the event of payment default, businesses are charged default interest of 8% p.a. over the base rate published by the National Bank of Austria, while for consumers the rate is 4%. Furthermore, the customer shall bear all of the necessary costs, charges and cash outlays that arise during the appropriate enforcement of claims.

### **4.4. Objections to invoices**

Objections by the customer to the invoice have to be submitted within 30 days of the date of the invoice, otherwise the invoiced amount shall be deemed to be accepted. LAGIS shall inform consumers of this deadline as well as the legal consequences arising upon the expiry of this deadline.

If after careful investigation LAGIS deems the objections made by the customer to be unjustified, within one month of receiving the written statement from LAGIS the customer must initiate arbitration proceedings at the regulatory authority (Rundfunk- und Telekom-Regulierungs GmbH) and may institute legal proceedings within an additional month after the unsuccessful completion of the arbitration process, otherwise the customer shall forfeit his right to raise objections.

If the customer does not wish to launch an arbitration process he must take legal action within three months after receiving the relevant statement from LAGIS, otherwise the right to enforce the objection and institute legal proceedings shall be forfeited. LAGIS shall inform consumers about all of the deadlines mentioned in Section 4.6 as well as the legal consequences that may arise if they are not adhered to.

#### **4.5. Settlement of disputes**

Notwithstanding the jurisdiction of ordinary courts, customers are entitled to appeal to the regulatory authority in the case of disputes or complaints (concerning the quality of services, payment disputes not satisfactorily resolved, or alleged infringements of the Telecommunications Act 2003).

LAGIS is obliged to co-operate in such proceedings and to provide all the information and documents necessary to assess the matter at hand. The regulatory authority shall ensure an amicable settlement is reached or shall state its own view of the filed lawsuit to the parties.

#### **4.6. Payment dates in the event of objections**

Invoiced amounts are payable by the due date in spite of any objections raised. However, if the customer brings the objection before the appropriate regulatory authority (Rundfunk- und Telekom-Regulierungs GmbH), the due date of the disputed sums is postponed until a settlement is reached. Yet in any event, an amount corresponding to the average of the last three undisputed invoiced amounts is payable immediately.

#### **4.7. Consolidation of charges in the event of service charge disputes**

If an error is detected which may have been detrimental to the customer and the correct charges cannot be determined, the customer shall pay a lump sum amounting to the average of the last three invoiced sums. If the contractual relationship has not yet existed for three months, the customer shall pay the amount last invoiced.

#### **4.8. Offsetting**

The customer may not offset claims of LAGIS with counterclaims or withhold payments on the grounds of alleged claims that are not recognised by LAGIS.

The following applies for consumers: offsetting outstanding claims of LAGIS with counterclaims is only possible if LAGIS is insolvent, or the mutual claims are connected on a legal basis, or the counterclaim of the contractual partner has been established by a court or has been recognised by LAGIS.

#### **4.9. Exclusion of customer's right to refuse performance**

The customer shall not have the right to refuse contractual performance as per Section 1052 of the General Civil Code (ABGB) to obtain or secure a service in return, while his legal rights to refuse performance are excluded. This provision does not apply for consumers.

#### **4.10. Payment record**

Customer invoices (payment record) contain the following information: name and address of customer, date of invoice, customer number, billing period, invoice number, charges for fixed and regular monthly services, for variable services, for one-off services, total amount exclusive of VAT, VAT amount, total amount including VAT, as well as any discounts granted.

The customer is only entitled to receive itemised information about his access data, log files, proxy records, etc. (as far as is technically feasible and legally permissible), if a special agreement is reached (in writing with business customers) regarding the storage and provision of such data.

### **5. Warranty**

#### **5.1. Warranty period**

The warranty period vis-à-vis consumers shall be 2 years, and in all other cases 6 months. This period shall be extended in the event of instalment payment plans with consumers up to the due date of the last payment, whereby customers have the right to enforce their warranty claims if by that time they have signalled the shortcoming to LAGIS.

#### **5.2. Elimination of faults**

LAGIS shall remedy faults falling under warranty at its discretion either by making improvements or by providing replacement goods/services. Prices will not be reduced. Warranty claims require that the customer notifies LAGIS of the faults within two working days in writing and in detail. Section 5.2 does not apply for consumers. The right of recourse according to Section 933b of the General Civil Code (ABGB) is excluded.

#### **5.3. Exclusion of warranty**

Faults resulting from installations and mountings not performed by LAGIS (unless such by the customer or third parties was agreed and performed professionally, or authorised replacement procedures were carried out professionally by the customer or third parties due to the failure of LAGIS to remedy the fault within a reasonable period despite being notified), from an unsatisfactory set-up, from non-observance of installation requirements and terms of use, from exceeding the limits given by LAGIS as well as from incorrect treatment and use of inappropriate operating material shall be excluded from warranty. This shall also apply for faults caused by materials ordered by the customer. LAGIS shall not be held liable for damages due to lightning, power surges and chemical influences. Warranty shall not refer to the replacement of parts which have worn out naturally, except if the defect already existed upon delivery.

#### **5.4. Notification of faults**

Except for consumers, any and all warranty claims shall require a written, detailed and precise description of the fault submitted immediately after the fault is detected.

### **6. Liability of LAGIS; Exclusion of liability and limitations on liability; Customer responsibilities**

#### **6.1.Exclusion of liability**

In general, LAGIS shall not be held liable for minor negligence (except for personal injury) nor for consequential damage and loss of profit. The following applies for consumers: LAGIS shall not be held liable for minor negligence, except for personal injury.

Except for consumers, any and all claims against LAGIS shall require a written, detailed and precise description of the damage submitted immediately after the damage is detected.

#### **6.2.Exclusion of LAGIS liability with regard to availability of services; undeliverability of email messages**

LAGIS provides its services focusing on utmost diligence, reliability and availability. However, for technical reasons it is impossible to ensure uninterrupted access to these services, to ensure that the desired connections can always be established or stored data will always be available under any circumstances.

For technical reasons, LAGIS can in particular not guarantee that emails shall be received or that related error messages are sent. The delivery of email messages may be prevented especially by spam filters, virus scan programmes etc. (installed either by LAGIS or the customer), for which LAGIS accepts no liability, unless it has acted deliberately or through gross negligence. This does not affect all other liability exclusions and limitations.

LAGIS reserves the right to enforce temporary restrictions due to limited capacity, as far as these are reasonable for the customer, especially because they are only minor and technically justified, as well as being due to reasons beyond the sphere of influence of LAGIS.

The accessibility of Internet services may be limited or interrupted in the event of force majeure, strikes, restrictions in services of other network operators or repair and maintenance activities. LAGIS shall not be held liable for such losses, insofar as such were not caused deliberately or through gross negligence.

Unreasonably long interruptions or unreasonable limitations shall not affect the customer's right to terminate the contract for significant reasons. LAGIS does not assume liability of any kind for content that is or should be transmitted via the Internet or that is accessible via the Internet. No liability is assumed for lost data; this only applies for consumers if the data loss was not caused by LAGIS deliberately or through gross negligence.

It should be noted that Section 6.2 does not affect any warranty claims of consumers.



### **6.3. Exclusion of LAGIS liability with regard to transferred data; damage by viruses, hackers, etc.**

Furthermore, LAGIS shall not be held liable for data downloaded from the Internet by the customer or for emails received by the customer (also in the case of virus-infected messages received) as well as for services provided by third-party service providers, not even if the customer obtains access to these via a link from the homepage of LAGIS or through information provided by LAGIS. The customer acknowledges that using the Internet is associated with uncertainties (e.g. viruses, Trojan horses, attacks by hackers, intrusions into WLAN systems, phishing, etc.), for which LAGIS assumes no liability; this provision only applies for consumers if LAGIS acts deliberately or through gross negligence. Any resultant damage or expenses shall be borne solely by the customer.

### **6.4. Exclusion of liability in the event customer breaches obligations; Obligations of the customer**

LAGIS shall not be held liable for damage caused by the customer failing to adhere to the contract and its individual parts, in particular these General Terms and Conditions, or by using the services other than for their defined purposes.

#### *6.4.1. Protection of access data*

The customer shall keep his passwords secret. He shall be liable for any damage caused due to the insufficient protection of the passwords by himself or by passing them on to third parties.

The customer shall be held liable for any charge claims from communication services as well as other claims from communication services resulting from the use of his connection and/or access data (also by third parties), provided LAGIS is not responsible for this misuse. This does not affect further claims for damage and all other claims of LAGIS.

#### *6.4.2 Impairment of third parties; Spam and spam protection*

The customer shall not use the services set forth in the contract in a way that impairs third parties or jeopardises the security or operation of equipment owned by LAGIS or third parties. Accordingly, spamming (aggressive direct mailing via email) or any use of the services to transmit threats, obscenities, harassing material or to harm other users of the Internet are in particular prohibited.

The customer shall use suitable and sufficiently secure technical installations and settings. In the event insecure technical installations of the customer (e.g. open mail relays) lead to difficulties for LAGIS or third parties, the customer shall indemnify and hold LAGIS harmless, while LAGIS shall have the right to block the customer's access immediately or to take any other suitable measures (e.g. blocking of individual ports). LAGIS will endeavour to use the mildest means possible in every case. LAGIS will immediately inform the customer of the measure taken as well as the reason for doing so.

#### *6.4.3 Duty of customer to observe legal regulations*

The customer shall comply with all legal provisions and assume sole responsibility to observe these provisions vis-à-vis LAGIS. The customer shall indemnify and hold LAGIS fully

harmless in the event a claim is lodged against LAGIS under civil or criminal law, before court or out of court, due to content circulated by the customer. If an action is brought against LAGIS, it alone shall decide how to respond (appearance in court, settlement etc.); except in the event of gross negligence by LAGIS the customer shall not be entitled to raise the objection of insufficient defence.

#### *6.4.4 Duty of customer to report faults*

The customer shall notify LAGIS immediately of any fault or interruption in the telecommunication services, in order to allow LAGIS to eliminate the problem before commissioning other companies to handle the troubleshooting. If the customer fails to meet this notification obligation, LAGIS shall not be held liable for damage and expenses resulting from the failure to inform LAGIS (e.g. expenses for an external company contacted unnecessarily by the customer).

### **6.5 Special provisions for firewalls, Intrusion Prevention Systems (IPS), Clear Link functions**

In respect of firewalls installed, operated and/or checked by LAGIS, in principle LAGIS ensures the utmost care within the framework of the relevant technology. However, LAGIS points out that firewall systems cannot guarantee absolute security. Therefore, the liability of LAGIS with regard to warranty or compensation for any damages shall be excluded if these result from the fact that installed firewall systems are circumnavigated or shut down. LAGIS also notes that it shall not be held liable for incorrect use by the contracting partner or his vicarious agents and staff, such as in the event of software or configuration changes performed by the customer without prior approval from LAGIS.

LAGIS shall not be held liable for damages resulting from firewall systems installed, operated or checked by the customer being circumnavigated or shut down. The following applies for consumers: the liability of LAGIS for damage to property is ruled out in the event of minor negligence.

The content of Section 6.5 also applies to other security systems provided by LAGIS, in particular Intrusion Prevention Systems (IPS) and Clear Link functions.

### **6.6 Exclusion of LAGIS liability in the event of customer rights being violated by third parties**

If the customer is entitled to damages because his rights were infringed due to information stored by LAGIS for other customers of LAGIS, LAGIS shall not be held liable (notwithstanding all other limitations and exclusions of liability) if it has no actual knowledge about this infringement or if the reference to this infringement is not qualified according to the ISPA Code of Conduct (General rules regarding liability and disclosure duty of Internet Service Providers, available for viewing at [www.ispa.at](http://www.ispa.at)).

## 7 Term of contract and termination; Disconnection

### **7.1 Term of contract and period of notice**

Agreements entered into between the contracting parties on the provision of services shall be concluded for an unlimited period or a limited period agreed upon in the individual contract (order). In the latter case, the contractual relationship shall automatically be renewed by the original term of the contract, insofar as the contract is not terminated by one party in writing observing a two-month period of notice. Consumers shall be expressly informed of their right to terminate the contract and of the implications if they do not exercise such right (contract extension) in good time. If no agreement has been reached on a waiver of termination, contracts concluded for an unlimited period can be terminated in writing on the last day of every month observing a two-month period of notice. By law, consumers may terminate contracts which are concluded for an unlimited period or for a fixed period of over one year, with due observance of a two-month period of notice, at the end of the first year.

### **7.2 Interruption of services and dissolution of contract due to delayed payments**

The observance of agreed payment dates is a major prerequisite for the provision of services by LAGIS.

In the event of delays in payment and an unsuccessful written or electronic reminder, LAGIS shall, after granting an extended deadline of two weeks and threatening to interrupt the services or dissolve the contract, be entitled at its discretion to interrupt the services or dissolve the continuous obligation with immediate effect according to the provisions of Section 70 of the Telecommunications Act 2003.

### **7.3 Other reasons for dissolving contract or interrupting services; Disconnection or partial disconnection**

Apart from delayed payment, other major reasons for dissolving a contract include the launch of insolvency proceedings against the customer or the rejection of insolvency proceedings due to insufficient assets to cover the costs; a request for an out-of-court settlement; a minimum of two pending execution proceedings of the customer's creditors; the launch of liquidation proceedings or suspected abuse of communication services; the infringement of legal provisions, requirements set forth by authorities or contractual provisions; furthermore, if the customer uses or enables use of a single-access account several times in violation of the explicit agreement in the individual contract (order); causes a disproportionately high transfer of data; violates "netiquette" and the generally accepted standards of Internet usage; in the case of spamming or using unsecure technical installations as set forth under Section 6.4.2.

At its own discretion, LAGIS can not only dissolve the contract agreement but instead also interrupt the provision of services. In addition, on suspicion of infringements LAGIS shall not only be entitled to disconnect services in their entirety but also partially. In the case of infringed rights, LAGIS can in particular remove information stored on hosted websites or close access to these sites. LAGIS will endeavour to use the mildest means possible in each case. LAGIS will immediately inform the customer of the measures taken as well as the reason for doing so. This does not affect the right of LAGIS to terminate contracts without notice for major reasons.

#### **7.4 Charge claims and damages in the event of premature dissolution or disconnection**

All cases of immediate dissolution of the contract and the interruption or disconnection of services, for reasons attributable to the customer, shall not affect the claim of LAGIS to service charges for the term of the contract until the next possible termination date as well as to the assertion of claims for damages.

Blocking the provision of services for reasons attributable to the customer shall incur a fee of EUR 30; this does not affect any other claims of LAGIS over and above this.

In general, if the timely payment of service charges claimed by LAGIS appears threatened, the continuation of services can be made contingent upon provision of an adequate security or advance payment, in particular if the customer's connection has already had to be blocked due to delayed payments, as well as in all cases that would entitle LAGIS to dissolve the contract prematurely in accordance with Section 7.2 and 7.3.

#### **7.5 Termination of contract and content data**

The customer is explicitly informed that upon termination of the contract, for whatever reason, LAGIS shall no longer be obliged to continue providing the agreed services. LAGIS shall thus be entitled to delete content data that was stored or kept available for use. The customer alone shall thus be solely responsible for the timely retrieval, saving and securing of such content data prior to the termination of the contract. Thus the customer cannot lay any claims against LAGIS derived from the deletion of data.

### **8 Data protection**

#### **8.1 Secrecy of communication and confidentiality**

LAGIS and its staff are subject to keeping communication secret according to Section 93 of the Telecommunications Act 2003 as well as to the confidentiality obligation as laid down in the Data Protection Act, even after the end of the activity underlying the confidentiality obligation. No access is given to personal data or to user data. Even the mere fact of a message exchange is subject to the confidentiality obligation, as are unsuccessful connection attempts.

The customer may object to the processing of personal data. However, this shall not conflict with the technical saving of or access to such data, if the sole purpose is to transmit or facilitate the transmission of a message via the communication network of LAGIS or to provide a service the customer has ordered. Routing and domain information accordingly has to be passed on.

#### **8.2 Information according to Section 96 (3) of Telecommunications Act 2003 on processed data, master data**

Based on the Data Protection Act and on the 2003 Telecommunications Act, the contracting parties shall save, process and pass on master data only within the framework of providing services and for the purposes laid down in the contract. Such purposes include: concluding,

implementing, changing and terminating the contract with the customer, the billing of charges, compiling a subscriber directory and transferring data to emergency services pursuant to Section 98 of the Telecommunications Act 2003. As far as LAGIS is obliged to transfer such data in accordance with the prevailing version of the Telecommunications Act, LAGIS shall meet this legal obligation.

According to Section 92 (3) 3 and Section 97 (1) of the Telecommunications Act 2003, LAGIS is authorised to collect and process the following personal master data of its customers and subscribers:

First name, last name, academic title, private address, date of birth, company name, email address, phone and fax numbers, other contact information, creditworthiness, information on type and content of contract, methods of payment as well as receipts of payment to maintain contractual relationship.

Master data shall be deleted by LAGIS after the termination of the contractual relationship at the latest in accordance with Section 97 (2) of the Telecommunications Act, provided that this data is not required for billing or collection of charges due, for dealing with complaints or fulfilling any other legal obligations.

### **8.3 Traffic data**

In line with its legal obligation according to Section 99 (2) of the Telecommunications Act 2003, LAGIS shall save access data and other personal traffic data required to establish connections or to bill service charges, for technical reasons, to check the functioning of services and installations, in particular source and destination IPs, as well as any other log files until the expiry of the deadline by which the invoice can be legally contested or payment can be claimed, or as long as this is necessary for the above mentioned technical reasons or to verify the functioning of systems. In the case of disputes, LAGIS shall make such data available to the competent authorities. LAGIS shall not delete this data until a definitive decision has been made. Otherwise LAGIS will delete or render anonymous traffic data immediately upon termination of the connection.

### **8.4 Data content**

Data content shall not be stored by LAGIS. If short-term storage of data content is required for technical reasons, LAGIS shall delete the stored data immediately after the underlying reasons no longer apply. In the event the content is stored to provide a specific service, LAGIS shall delete the data immediately after the service is provided.

### **8.5 Use of data for marketing purposes, agreement to receive email advertising**

The customer hereby gives his consent, which may be revoked at any time, that LAGIS may use traffic data for the purposes of marketing its telecommunication services, in particular further development, demand analysis, planning of network extensions and the improvements of proposed solutions and offers of telecommunication services, as well as for the provision of services of additional benefit to the customer.

The customer agrees to receive advertising material and information via email on new products and services of LAGIS and its business partners to an acceptable extent. In this respect the customer's data including name and email address shall remain solely with LAGIS. The customer may revoke this consent at any time. In every advertisement email sent, LAGIS shall give the customer the opportunity to unsubscribe from receiving further messages.

## 9 Data security

LAGIS will undertake all measures that are technically possible and reasonable to protect the data saved on its equipment. In the event a third party unlawfully obtains a power of disposal over data or reuses data saved with LAGIS then LAGIS shall only be held liable to the customer if it acted deliberately or with gross negligence.

The following applies for consumers: LAGIS shall not be held liable if it or another person it assumes liability for caused damage to property merely through minor negligence.

## 10 Special provisions regarding supply and development of software

### **10.1 Scope of service**

In the case of software developed separately by LAGIS, the scope of service shall be determined by a service description (system analysis) signed by both contracting parties. The service shall comprise the programme code to be executed on the designated equipment as well as a programme description. The rights to the programmes and the documentation shall remain entirely with LAGIS, unless explicitly agreed otherwise.

### **10.2 Rights to supplied software**

When supplying software and unless explicitly agreed otherwise, LAGIS shall grant the customer a non-transferable, non-exclusive right to use the software, whereby the customer shall accept the licence conditions applicable for the software, even if the software is provided by third parties. The customer shall indemnify and hold LAGIS harmless in case of infringements. In all cases the customer shall contribute to avoiding damage as far as possible.

If licensed software of third parties is used, the customer shall read the licence provisions before use and comply with them fully. LAGIS does not provide any warranty for software qualifying as "public domain" or "shareware" that is downloaded by the customer and not developed by LAGIS. The customer has to observe the terms of use and, if applicable, the licence provisions indicated by the designer of such software and shall not pass on this software to third parties, not even for short-time use. In all cases the customer shall indemnify and hold LAGIS fully harmless against any claims with regard to the violation of the obligations described above.

### **10.3 Warranty**

LAGIS does not warrant that the software supplied shall meet all of the requirements of the customer (unless explicitly set forth in the contract), that it will be compatible with other programmes used by the customer, that the programmes will run without interruptions and errors (insofar as there are no shortcomings under warranty law) nor that all software errors can be corrected. For software supplied to business customers the warranty shall be limited to errors in the programme that can be reproduced (regularly repeated). This does not affect any warranty claims of consumers.

Otherwise, the warranty provisions of Section 5 shall apply.

### **10.4 Withdrawal in the case of software errors**

If LAGIS supplies hardware and software at the same time, any faults in the software shall not entitle the customer to withdraw from the agreement underlying the use or supply of the hardware as well. The same shall apply with regard to agreed services. In particular, faults in the supplied hardware or software shall not entitle the customer to withdraw from the contract on the provision of Internet services. However, this shall not apply in the event of indivisible services according to Section 918 (2) of the General Civil Code.

## **11 Special provisions for domain name registration**

### **11.1 Procurement and administration of domain; contractual relations**

LAGIS shall obtain and reserve the requested domain in the name and on behalf of the customer, as long as the desired domain has not been assigned yet. All top-level domains shall be set up by the competent registration authority. For the term of this contract, LAGIS is responsible for billing the domain administered by the registration authority, unless otherwise agreed in the individual contract (order); the contractual relationship for the installation and management of the domain, however, shall always be directly between the customer and the registration authority. The registration fee transferred to the registration body is included in the amount invoiced to the customer by LAGIS, unless otherwise agreed in the individual contract (order). In this case LAGIS shall bill the customer for the application, the technical equipment used and an administration fee.

### **11.2 Termination of contract with registration authority**

The customer acknowledges that the contract between the customer and the registration authority does not end automatically when the contract with LAGIS is dissolved; the customer must terminate it separately with the registration authority. Once the contract with LAGIS is dissolved the customer shall bear full responsibility for all necessary activities related to the "domain administration" (extension or termination of contract with registration authority; payment of registration charges, etc.).

### **11.3 Applicability of GTC of registration authority**

The General Terms and Conditions of nic.at (available at [www.nic.at](http://www.nic.at)) or any other competent registration body shall therefore apply with regard to the domain; upon request these will be sent to the customer by LAGIS.

### **11.4 Legal admissibility of domain**

LAGIS is not obliged to examine the admissibility of the domain with regard to protected trademarks or names for example. The customer agrees to heed the relevant legal provisions and, in particular, not to infringe the rights of any person to a name or trademark and will indemnify and hold LAGIS fully harmless in this respect.

## 12 Special provisions for web design or web consulting services

### **12.1 Duty of customer to cooperate**

The customer is obliged to co-operate as required. This duty shall in particular include the provision of all necessary information as well as, if necessary, the hardware on which any installations are to be made.

During necessary test runs, the customer shall be present in person or provide competent staff with the authority to make judgements and decisions with regard to faults, expansion of features, reduction of features as well as changes in the programme structure. In addition, the customer shall – if applicable – provide required test data as well as any texts and other content (e.g. logos) that are to be used.

Insofar as LAGIS provides the customer with drafts, test versions of programmes, final versions or similar material, these shall be thoroughly checked by the customer. Any complaints or requests for changes are to be brought forward at this stage, otherwise, with the exception of consumers, the customer shall lose the right to all claims against LAGIS.

### **12.2 Liability for elements provided by customer**

Elements provided by the customer such as logos, texts, corporate design elements, etc. shall remain the property of the customer; LAGIS shall not acquire any rights on these elements. When passing these elements on to LAGIS the customer guarantees that he possesses all of the necessary rights and shall indemnify and hold LAGIS fully harmless against any consequences derived from possible infringements of rights (e.g. breaching of the copyright of third parties).

### **12.3 LAGIS not obliged to perform checks**

LAGIS is not obliged to check elements provided by the customer, in particular content, with regard to their compliance with legal provisions, but may, however, refuse to distribute such content on suspicion of infringements.



## **12.4 Granting of rights by LAGIS**

Upon payment of the agreed charges and unless otherwise explicitly agreed (in writing for business customers), LAGIS shall grant the customer the exclusive and unlimited right to use the concept and/or design and/or contractual software applications developed by LAGIS exclusively within the framework of the Internet and for own purposes. Any other use, even in part, such as in the field of other electronic media or for printed products, shall require specific agreement (written for business customers). The same shall apply for granting powers, also only in part, to third parties.

## **13 Other provisions**

### **13.1 Applicable law**

Except where otherwise provided by law, legal regulations applicable between general merchants shall apply. This provision does not apply for consumers. Applicable law is Austrian law with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and non-obligatory referral rules.

### **13.2 Place of jurisdiction**

All disputes arising from this contract shall be settled by the court competent according to the registered office of LAGIS. This does not apply for consumers.

### **13.3 Written form for amendments and supplements to these GTC**

Amendments and supplements to these General Terms and Conditions as well as to the order or other parts of the contract must be in writing (a signed fax also meets this requirement). No ancillary oral agreements have been reached. This provision does not apply for consumers.

### **13.4 Written form for notifications by the customer**

All notifications and declarations by the customer referring to this contractual relationship have to be in writing.

### **13.5 Address changes; receipt of electronic notifications**

The customer shall notify LAGIS immediately in writing in the case of name or address changes. If no changes are notified, written documents shall be considered received by the customer, if they were sent to the address last given by the customer. If the customer fails to inform LAGIS of a name change in a timely manner, LAGIS shall, if possible, issue a new invoice at the customer's request. However, this does not affect the due date of the original invoice in any way.

Electronic messages are considered received if sent to the email address last given by the customer; they are deemed to have been received by the consumer if they can be retrieved by the consumer under normal circumstances pursuant to Section 12 of the E-Commerce Act.

### **13.6 No normative or interpretative meaning of headings**

Headings in these General Terms and Conditions only serve the purpose of clarity and have no normative significance; they do not limit or restrict the applicability of these terms and conditions and do not support interpretation.

### **13.7 Safeguard clause**

If any of the individual provisions become ineffective this shall have no impact on the legal effectiveness of the other provisions of the General Terms and Conditions. The ineffective provision shall be replaced by a valid provision that is closest to the economic purpose of the ineffective provision (except for consumers).