

Terms of Service

Not even we can do without the small print. On this website, you will find the rules for using the Website Builder and other services provided by webme GmbH – the General Terms and Conditions (also called „GT&C“) governing the contractual relationship between webme GmbH and the natural and legal persons using webme GmbH’s services (in the following called „Users“). You can always find the current version of our GT&C at <http://www.webme.com/en/Terms-of-Service.php>.

Recitals

webme GmbH’s Website Builder helps Users to build their own web pages free of charge, without the need for any prior programming knowledge. Professional designs and a number of additional features like guest book and visitor counter have already been included, and Website Builder Users will be provided their own short domain.

In addition to the free Website Builder, a number of chargeable Premium Services (hereinafter called the „Premium Services“) are available – these include, for example, the registration of an own second level domain (www.yourname.de), or additional web space. Nevertheless, the Website Builder can basically be used independently from these Premium Services and free of charge.

webme GmbH (in the following referred to as „webme“), **represented by the Managing Director Mr. Andreas Wohlmuth**, has its registered seat in **Richard-Wagner-Straße 2, 91054 Erlangen/GERMANY**; please find further information such as contact details and commercial register data in our <http://www.own-free-website.com/impressum.php>.

§ 1 Scope

- (1) These GT&C apply to all services provided by webme. In addition, if the subject matter of the agreement is a domain, the applicable **Terms and Conditions of the relevant domain name registering organization** (<http://www.webme.com/en/Terms-and-conditions-of-the-relevant-domain-name-registering-organization.php>) will apply. webme will in no case accept any covenants related to these GT&C, nor any terms and conditions of the User that deviate from these GT&C, which will be considered invalid except to the extent explicitly endorsed by webme in text form. The same applies to a waiver of the requirement of the text form.
- (2) webme is entitled to amend these GT&C with the User’s consent, if and to the extent that such amendment can be reasonably expected to be accepted by the User in consideration of webme’s interests. In such cases, the User will be notified of the amendment and the revised version of the GT&C will be sent by email to the User’s email address as recorded by webme no later than four weeks before the coming into effect of the amended GT&C. In the event that the User fails to notify webme of his or her disapproval of the new GT&C within four weeks after having received this email, the amended GT&C will be considered as accepted by the User. If the User notifies webme of his/her disapproval in due time, webme is entitled to

terminate the license agreement as per the date on which the amended General Terms and Conditions shall come into effect. webme will inform the User of the consequences of his/her failure to notify webme of his/her disapproval together with the notification of change.

- (3) webme may provide the User with tools or software (such as a computer-based editor), which may require the User to accept separate terms of service. In this case, webme will alert the user of such requirement in a clearly recognizable way.
- (4) The User has no legal claim for closure of an agreement with webme. Without limiting the foregoing, the basic requirement for a registration with webme is a minimum age of 12. Further to this, the future User must possess the necessary maturity and mental capability to understand the consequences of his or her personal data being collected, processed and stored according to § 12 of these GT&C and the webme Privacy Policy. By subscribing, the User guarantees webme that he or she has reached the age of 12 and is sufficiently aware of the consequences of the collection, processing and storage of his or her personal data.

§ 2 User's Right of Revocation

(1) Right of Revocation

You may cancel this agreement without giving reasons by sending a revocation in text form (e.g. letter, fax, email) within two weeks, or - if the item is placed at your disposal prior to the expiry of this period - by returning the item. The period begins upon receipt of the present instruction in text form, but not before the conclusion of the agreement in case of provision of services, and in case of supply of goods not before the merchandise has been received by the recipient (for recurring deliveries of the same type of goods, not before receiving the first partial delivery) and not before we have met our information duties as defined by § 312c, para. 2 of the German Civil Code (§312c Abs. 2 BGB) in conjunction with § 1, para. 1, 2 and 4 BGB-InfoV and our duties as defined in § 312e para. 1 clause 1 German Civil Code (§ 312e, § 1, clause 1 BGB) in conjunction with Section 3 BGB-InfoV. Your timely dispatch of the revocation notice or the goods is deemed sufficient for compliance with the revocation period.

Please send your revocation notice to:

webme GmbH
represented by the Managing Director Andreas Wohlmuth
Richard-Wagner-Straße 2
91054 Erlangen
GERMANY
Email: support-en@webme.com

Telefax: +49 (0)180 5 333 88 6

(2) Consequences of Revocation

In case of a valid revocation, the services rendered by each party will be returned and any benefits (e.g. interest) that may have accrued will be released. If you are partially or wholly

unable to return the services received from us – or only to do so in a deteriorated condition – you shall to this extent provide compensation accordingly. This may, in the case of a service rendered, involve your obligation to fulfill your contractual payment obligations for the period before revocation nonetheless. In the case of goods, this does not apply if the deterioration of the goods is brought about solely by a tryout thereof - such as it would have been possible for you e.g. in a retail shop. In other respects, you can avoid the obligation to compensate for a deterioration caused by using the goods for their intended purpose by simply not using such goods as if they were your own property and refraining from doing anything that might impair their value.

Items that can be shipped in boxes are to be returned at our risk. You have to bear the expenses for the shipping if the goods were supplied in accordance with your order and at a price of not more than € 40.00, or, if such price is above € 40.00, if you have not yet paid for the goods or made a deposit in accordance with the contractual agreement. In all other cases, return delivery is free of charge for you. Goods not suitable for dispatch in boxes will be picked up at your premises. Any reimbursement obligations have to be fulfilled within 30 days. For you, this period starts from the dispatch of your notice of revocation or of the item, for us it starts from our receipt of the same.

(3) Special Notes

Your right to revocation will cease prematurely in case of a service if the service agreement was entirely fulfilled according to your express request before you have exercised your right to revocation.

§ 3 Services provided by webme: Website Builder

- (1) webme's Website Builder helps registered Users to build an own webpage free of charge and without the need for any prior programming knowledge. As a Website Builder User you will also be provided with your own short domain. You can learn more about the exact scope of services provided with the Website Builder from the current version of the Service Description as in effect at any given time, which you can find at <http://www.webme.com/en/Service-Description.php>. webme reserves the right to extend, limit or change in any other way the services provided within the scope of the Website Builder, if and to the extent that such change can be reasonably expected to be accepted by the User.
- (2) Using webme's Website Builder requires prior subscription. Sending your subscription constitutes your offer of contract to webme for the conclusion of an agreement for use of the Website Builder. As soon as webme confirms your subscription, an agreement between you and webme is being entered into.

§ 4 Services provided by webme: Premium Services

- (1) The scope of the individual chargeable Premium Services is described in the current version of the Service Description as in effect at the time of your subscription (which can be found at <http://www.webme.com/en/Service-Description.php>).
- (2) Top-level domains (such as „.com“ or „.de“) are managed by different organizations that have varying **terms and conditions for the registration and administration of domains** (<http://www.webme.com/en/Terms-and-conditions-of-the-relevant-domain-name-registering-organization.php>) and differing rules governing domain related disputes. If and to the extent that the subject matter of an agreement is a domain, the corresponding terms and conditions of the relevant registering organization will apply. The contractual relationship related to registration of a domain is established directly between the User and the respective organization or registrar. Regarding domain registration or domain service webme only acts as a mediator between the User and the respective organization or registrar. webme has no influence on the allocation of domains and no liability can be assumed for the actual allocation of the domains applied for on behalf of the User and/or for such domains being free of any third party rights and/or for such domains being permanently available. webme may change the registrar, at any time and without prior notice, to the extent that this may be reasonably expected to be accepted by the User in each case.
- (3) An agreement for Premium Services is concluded upon webme’s confirmation of the User’s offer to contract, or upon first fulfillment of webme’s contractual obligations.

§ 5 Granting of User Rights

- (1) webme may provide the User with tools, programmes, codes or scripts which are subject to industrial property rights of webme and/or third parties. Webme grants the User a non-exclusive, non-perpetual license, which may not be sublicensed to third parties, for the term of the contractual relationship. Save as otherwise provided by law, particularly in Section 69 e of the German Copyright Law, the User is not permitted to disassemble or otherwise reduce to a human-readable form such tools, programmes, codes or scripts, or use them for other purposes than those contractually agreed. Any other use is subject to webme’s express prior permission, at least in text form.
- (2) With regard to Open Source Software, the provisions of Article 5, Section 1 of these GT&C will not apply, whereas the according licensing terms will apply exclusively.
- (3) Apart from that, the licensing terms of the respective software publisher will apply.
- (4) The use of texts, pictures, audio and audio-visual contents or other contents provided to the User by webme is limited to the term of the contractual relationship and exclusively to the design of the User’s own websites subject to the contract. Any other use is not permitted.

§ 6 User’s Obligations

- (1) The personal data requested to be entered during subscription must be indicated completely and truly. The User agrees to update, in each case and without undue delay, the personal data stored by webme should any change of this data occur. The User will be held liable for any and all losses incurred by webme arising from incorrect or outdated personal data due to misrepresentation by the User.
- (2) The User agrees to change the passwords allocated by webme for example upon registration without undue delay. The User will keep his/her passwords secret from third parties. webme will not provide such password to third parties and will at no time request the User to disclose his or her password (e.g. by email or on the phone). The User will be held liable for any and all fees and damages incurred by webme through third parties using webme's services arising from a misuse of a password on account of a fault of the User.
- (3) The User is responsible to take backups upon changes of the data created by him and stored by webme (referred to as **"Backup"** in the following). Such Backup should never be implemented by the User on webme servers or computers, but only on external storage facilities.
- (4) The User agrees to comply with applicable law in using the Website Builder and other webme services. webme hereby explicitly notifies the User that the User is solely responsible and liable for any and all websites and any and all domains created or registered by the User. webme is not obliged to investigate the User's websites and/or domains for illegal content of any kind. With no exception, for example it is prohibited:
 - To publish or distribute contents that violate applicable laws and regulations for the protection of minors, criminal or other laws or accepted principles of morality;
 - To publish or distribute contents that infringe copy rights, trademark rights, personal rights or any other third party rights;
 - To register domains which constitute an infringement of third party rights or other applicable rights;
 - To use the services for purposes of „spamming“, e.g. distribution of "junk email", "chain letters" or unsolicited emails of any other kind;
 - To send emails providing false sender details or disguise the sender's identity in any other way;
 - To provide incomplete or false data during subscription or omit personal data updates upon any change of such data during the term of the agreement – for example, in case of a change in address due to relocation.
- (5) Any and all User activities which aim to disable the functionality of webme's infrastructure or obstruct use of the same are prohibited and may give rise to prosecution under civil or criminal law. In particular, the User is obliged to design his/her website in a way that will not expose webme's infrastructure to excessive load. It is not permitted to partially or wholly integrate any websites that have been created with the Website Builder into other websites (e.g. by using frames). The websites created with the Website Builder may only be loaded via the

short domain allocated by webme or a domain acquired under a Premium Service. Likewise, it is not permitted to include any elements provided by third parties (such as guest books, visitor counters or widgets), unless such elements have been certified by webme. webme is entitled to take offline any and all websites that do not comply with the provisions set forth herein above. Automatic readout of websites created with the Website Builder (e.g. by crawlers or spiders) is only permitted with webme's prior consent.

- (6) webme reserves the right to include webme's and/or third party advertisements on websites created by Users with the Website Builder. The User is not permitted to cross fade or in any other way sabotage such advertisements.
- (7) The User is not permitted to include own advertisement on websites created with the Website Builder without webme's express approval. webme is entitled to take offline any websites that do not comply with this provision.
- (8) The User agrees to periodically check the emails on his webme account and download them for further reference. webme reserves the right to
 - o Limit the size of inbound and outbound emails to an extent that can be reasonably expected to be accepted by the User;
 - o Use so called spam filters in order to limit the system load and for risk prevention, which may result in incoming or outgoing emails being sorted out; and
 - o Delete emails from the User's account six months after receipt.
- (9) The User will to a reasonable extent cooperate with webme in the registration, transfer and/or deletion of domains, changes in the data base records held by registering organizations and/or a change of providers and/or registrars. The User will notify webme without undue delay if he/she loses his/her domain.
- (10) In the event that there are specific clues that the User is in breach of applicable law, or these GT&C or any other agreement with webme or has violated third party rights, or in case of any other legitimate interest, webme is, in consideration of the legitimate interests of the User, entitled to
 - o Block access to or remove from the web certain contents of the User, where appropriate without prior information to the User;
 - o Block access to or remove from the web all websites of the User; or
 - o Block access to a domain.

Grave or repeated misconduct on part of the User will, in consideration of the legitimate interests of the User, entitle webme to terminate the agreement without notice and may give rise to additional proceedings under civil or criminal law against the User.

§ 7 Chargeable Services and Conditions of Payment

- (1) A list of the chargeable Premium Services including a price list can be found at <http://www.webme.com/en/Service-Description.php>. Prices are quoted inclusive VAT.
- (2) Subscription fees are payable in advance for the term of the agreement, unless a shorter payment period has been agreed. For renewed subscriptions, webme may change the prices by giving reasonable notice of at least one month from the start date of the extended agreement. In the event that the User fails to notify webme of his/her disapproval of such change within a reasonable period as determined by webme, the change will be considered as accepted by the User. webme will alert the User of such change in the announcement.
- (3) Use-based charges are as well payable in advance for the respective invoicing period, unless the amount of the charge depends on a scope of use that can only be determined according to the actual use. In this case, use-based charges fall due immediately after the respective invoicing period has ended. Use-based charges are in each case based on the current price list as set by webme from time to time according to reasonable discretion.
- (4) Payments of the User will be made by direct debit or any other means of payment which is accepted by webme. For each payment transaction, webme will issue an electronic invoice and avail it to the user for download.
- (5) In the event of unjustified chargeback of a payment (e.g. in the event that it is back-posted by the bank) webme will in each case be entitled to charge a compensation in the amount of € 10.00. The User is entitled to proof that no or a considerably smaller damage has been incurred by webme due to the cancellation of the direct debit rests.
- (6) If and for the period during which the User is in default of payment webme may disconnect the services. Reminders may be emailed or mailed by webme to the address provided to webme by the User.
- (7) webme is entitled to refrain from activating a domain until payment of the agreed fee for registration has been made in full. To the extent that a domain has been terminated by the User or released subject to a binding court decision in a domain dispute, the User has no claim to a free substitute domain. No charges will be wholly or partially reimbursed upon premature termination, unless such termination was caused by webme's default. The same applies to any other separable Premium Services.
- (8) In case of a change in the value-added tax rate, webme is entitled to adjust the prices of services delivered and performed under a continuous obligation accordingly.

§ 8 Term and Termination

- (1) The license agreement for the free Website Builder applies without any time limit and may be terminated by the User any time, by webme with two weeks' notice without giving reasons. For avoidance of misuse by third parties, the User is requested to terminate the

agreement by changing the settings in his/her account. In case of a termination by webme, such termination will be regularly be effected by a notice by email to the User's email address as recorded by webme. If the User has subscribed to additional Premium Services, the conditions for termination of the agreement will be applied in accordance with the applicable conditions for such Premium Services.

- (2) The subscription for Premium Services is a twelve months agreement if not otherwise specified. In the event that an agreement for Premium Services is subject to a definite term, such term will automatically extend for the term agreed upon (but not exceeding a term of twelve months) if it is not terminated before expiry of the respective period by giving four weeks' notice. webme is entitled to terminate contracts with a term of up to twelve months at the end of each month by giving four weeks' notice. For contracts exceeding twelve months, webme is entitled to terminate the agreement at the end of each month by giving six months notice. Premium Services require written notice, whereas a fax transmission will be deemed sufficient to comply with the request of the written form.
- (3) Both webme and the User reserve the right to terminate the agreement without notice for cause. Reason for a termination for cause on part of webme will exist particularly in the event that
 - The User seriously violates his obligations under § 6 of these GT&C;
 - The User is in default of payment for more than 20 days;
 - Insolvency or bankruptcy proceedings have been filed or instituted against the assets of the User, or a respective application has been rejected due to lack of funds; or
 - webme discontinue their business.
- (4) In the event that the User fails to request cancellation of a domain upon termination of the agreement, webme may return the domain upon expiry of the agreement and within a reasonable period thereafter to the relevant registering organization. webme hereby explicitly notifies you that in this event the User's payment obligation towards the registering organization may continue. Alternatively, webme may request cancellation of the domain upon expiry of a reasonable period.
- (5) In the event that the data requested to be entered by the User for a domain registration in accordance with the terms of registration is found to be incorrect and webme is unable to reach the User via the email address provided within a reasonable period, webme is entitled to have the domain cancelled.
- (6) If a license agreement with a User has been terminated by webme, re-registration of the same User with webme requires webme's prior approval, which must be issued at least in text form (i.e. by email, fax or letter) and include an express reference to the previous termination.

§ 9 Availability and System Integrity

- (1) The right to use the services provided by webme depends only on the current state of the technology. webme explicitly notifies the User that 100 per cent availability of websites and other services is technically impossible. Technical problems such as power cuts, or hardware or software problems may temporarily limit availability of the services. The services provided by webme may be limited or affected by circumstances beyond webme's control. This includes in particular acts of third parties not contracted by webme, technical conditions of the internet beyond webme's control, and events of force majeure. Insofar and to the extent that said circumstances affect the availability or functionality of services provided by webme, this will not affect the contractual conformity of such services provided by webme.
- (2) webme may limit the services to the extent necessary for reasons of capacity limits, security or integrity of the servers or software or to implement technical measures and such limitation serves the due or improved performance of the services (e.g. maintenance work). In so doing, webme will duly consider the legitimate interest of the user, for example – wherever practicable – by providing corresponding information prior to limiting the service. webme will to the best possible extent effect any maintenance work during times when utilization is low.
- (3) The User agrees not to apply any software, scripts or any other mechanism or measure which could affect functionality or performance of the infrastructure utilized by webme. The User further agrees not to apply any software, scripts or any other mechanism or measure which might result in excessive or unreasonable load upon webme's infrastructure.
- (4) The User is aware that web based contents storage includes a risk of data loss. In his own interest, the User is responsible to backup his/her contents and data to a sufficient extent.

§ 10 Limitation of Liability

- (1) Webme will assume liability in cases of intentional misconduct and gross negligence.
- (2) In cases of ordinary negligence, webme will only be held liable in cases of non-performance of contractual obligations resulting from the nature of the contract, or to the extent that non-performance of the obligations endangers the contractual purpose and that the User may regularly rely on the performance of (so called "material contractual obligations"). Liability for ordinary negligence shall not exceed the foreseeable loss. No liability will be accepted in cases of ordinary negligence related to others than material contractual obligations.
- (3) The foregoing liability limitation shall not apply for any claims based on the Product Liability Act and for injury to life, limb or health. Damages resulting from defective material shall also be excluded from liability limitation in cases of fraudulent misrepresentation or deception, or where freedom from such defect has been the subject of an express guarantee.

- (4) The User agrees to take appropriate measures to prevent and minimize damage. webme reserves the right to claim contributory negligence.

§ 11 Indemnification

- (1) The User shall indemnify webme against any and all third party claims arising from or in connection with a violation of third party rights by the websites created or domains registered by the User, including any and all defense costs, lawyer's costs and costs of court to the full extent permitted by law. This obligation for indemnification shall only apply to the extent that the User is responsible for the violation of third party rights.
- (2) In the event of any claims being asserted against webme on the grounds of websites created by the User or any other services provided by webme and taken up by the User, the User shall make available to webme without undue delay correct and complete information as necessary to investigate and defend such claims.

§ 12 Privacy

webme take the protection of our Users' data seriously. Please find more detailed information on data protection and on the type, scope and purpose of collection, processing and use of the personal data required from you to perform this agreement by webme in our Privacy Policy, which can be found at <http://www.webme.com/en/Privacy-Policy.php>.

§ 13 Assignment of the agreement by webme

- (1) webme is entitled to assign this agreement including all of webme's rights and responsibilities pursuant hereunder to a third party.
- (2) In this event, the User is entitled to cancel the agreement and claim reimbursement of any advance payments for fees that have been paid to webme for Premium Services, which have not yet been used.

§ 14 Final Provisions

- (1) webme will submit all information and notices related to the contractual relationship between webme and the User to the User's email address as provided to webme by the User. The User will regularly check this email account.
- (2) The User is only entitled to offset webme's claims against claims which are undisputed or have been determined as legally valid.

- (3) Should any provision of these GT&C be invalid or not have been incorporated into the agreement, in whole or in part, the validity of the other provisions of this agreement is not affected thereby. To the extent that these GT&C have not been incorporated into the agreement or are invalid, the content of this agreement is governed by statutory provisions. Nevertheless, this agreement will become invalid if adherence to the agreement, even in consideration of the amendment provided for in clause 2. of this § (3), would imply unreasonable hardship for either webme or the User.
- (4) The agreement including these GT&C is governed by the laws of the Federal Republic of Germany, without giving effect to the Uniform Law on the International Sale of Goods (CISG). For merchants, the exclusive court of jurisdiction in all disputes arising out of this agreement is Frankfurt/Main, GERMANY.