

General Terms & Conditions (AGB)

(Version January/06)

1. Scope and validity

The General Terms & Conditions (AGB) of Net4You Internet GmbH (in the following referred to as Net4You) apply to all deliveries and services provided by Net4You for the customer. Different Terms and conditions submitted by the customer do not apply, even if there is no explicit objection.

The current version of Net4You's AGB voids all previous AGB. In addition to the General Terms and Conditions of Net4You the "Allgemeinen Lieferbedingungen der Elektro- und Elektronikindustrie Österreich" and the "Softwarebedingungen der Elektro- und Elektronikindustrie Österreichs" are in force in their current version. – The customer accepts these AGB as part of the contract by signing the application.

2. Prices, service and support

2.1. Handling of contracts – procedure for online ordering

The range of products presented in the online-shop is an invitation by Net4You to interested parties to submit an offer for purchase or to order a service. As soon as an order is received, a confirmation of the order, including all details, is returned via e-mail. A purchase contract/service contract, however, does not come into being before the order product is shipped respectively the ordered service is begun by Net4you and also is confirmed in a further e-mail to the customer (confirmation of shipping and order). Until the customer's purchase offer is accepted by Net4You, all prices and conditions listed in the presentation of goods and services and in the online shop are not binding. Should Net4You notice during the transaction that in any of the information to a product, a price or availability an error was made, Net4You will immediately inform the customer accordingly. The customer may then confirm the order under the changed conditions, otherwise Net4You is not obliged to fulfill the contract. – Agreements made orally, via telephone and by proxy need to be confirmed in writing by Net4You in order to become legally valid.

2.2. Prices and service

All prices listed in our price lists and quotes are in Euro, excluding VAT, unless differently noted. The prices depend on the price list that is in force at the time of the signing of the contract. Services are billed quarterly in advance (unless differently noted). Delivery times are fixed at completion of the contract. All prices listed exclude the fees to Telekom Austria. Telekom Austria fees are (among others): landline usage fees, ADSL installation fees and leased line fees. Net4You is entitled to change the prices if necessary. An increase in prices will be announced at least 30 days before it comes into effect; in the case of which the customer has the right to terminate the contract immediately.

2.3. Technical support via telephone

Net4You provides its customers with technical support via telephone, which is free of charge during office hours (Monday through Thursday 9 a.m. to 5 p.m. and Friday 9 a.m. to 1 p.m.) and in case of technical difficulties caused by Net4You (excluding the customer's own telephone costs). A disruption caused by the customer will be charged according to service rendered. Net4You reserves the right to change the technical support to a value added telephone service; all customers, however, will then be informed sufficiently and in advance.

2.4. Maintenance work

In order to provide the customers with even more quality and service, expansions and optimizations to the Net4You network or the Net4You servers are necessary from time to time. For this purpose, Net4You has fixed a timeframe for maintenance work of this kind. During this maintenance window there might be disruptions in access and for single VoIP and internet services on Wednesdays from 4 a.m. to 8 a.m.

2.5. Support hotline for selected products

Certain products, such as EGB Online, and if explicitly noted, are exclusively supported over the telephone number 0900/44 00 25 during office hours (Euro 1,30 per minute, exkl. VAT)

3. Reservation of proprietary rights

All delivered goods (hardware, software, etc.) remain the property of Net4You until full payment by the customer. In this case, the customer is not entitled to either sell them or give them away to third parties nor to raise loans on them.

4. Network services

4.1. General terms of usage

The customer, at his own cost, has to take care of all necessary preparations for the realization of the contract. He is to supply the equipment that is necessary for the transmission of data from the point of access to him, which are telephone lines (leased lines) and modems, should they not be explicitly included in the range of the ordered product or service. These costs are to be paid by the customer. If a net termination device is installed by Net4You or a supplier of Net4You, no changes may be made by the customer.

It is prohibited to pass on network services to third parties for a fee; this is only possible with explicit written permission from Net4You. Any abuse of network services is prohibited and immediately results in the discontinuation of these services, and, depending on the manner of the abuse, legal ramifications. The use of value added services from various networks is to be paid entirely by the customer. Net4You is not liable for the content of the data transmitted or the content or the form of data that is available through services provided by Net4You. Net4You reserves the right to block access to certain publicly accessible services in case they violate Austrian law, EU regulations or offend against common decency. Net4You pledges itself to use utmost care in rendering its services and to strive for continuous availability and reliability, but does not extend warranty to these services' being accessible without interruption. The customer is obligated not to transfer any data or information that violate Austrian laws, EU regulations or offend against common decency.

4.2. Fair Use

Net4You's various service packages are based on average transfer rates of network and internet services including VoIP. They are calculated according to the capacity limits of the backbone networks (of Net4You's suppliers) on the "fair use" principle: In case the customer transmits significantly higher data rates during a longer period, Net4You is entitled to block access for the current month or suggest invoicing the surplus or initiate a change of product in case of repetition. These actions will only be taken after the customer was informed. If "fair use" conditions are defined separately for certain products, then these conditions prevail over the AGB.

4.3. xDSL4You and xDSL4Biz access services

The customer agrees that for all xDSL4You and xDSL4Biz access services a contractual relationship is concluded, based upon the General Terms & Conditions (AGB) of Telekom Austria, including all currently valid descriptions of service (LB) and fee regulations (EB) „Online-ADSL" with Telekom Austria AG. Telekom Austria's AGB, LB and EB can be found online at www.telekom.at and will be sent to the customer by Net4You upon his request. The customer has read and accepted the AGB, LB and EB „Online ADSL" by Telekom Austria.

4.4. SDSL access services

The customer agrees that for all SDSL access services a contractual relationship is concluded with Telekom Austria AG, based upon the General Terms & Conditions (AGB) of Telekom Austria, including all currently valid descriptions of service (LB) and fee regulations (EB) „Online-DSL". Telekom Austria's AGB, LB and EB can be found online at www.telekom.at and will be sent to the customer by Net4You upon his request. The customer has read and accepted the AGB, LB and EB „Online-DSL" by Telekom Austria.

4.5. xDSL4You, xDSL4Biz and SDSL change of service provider

The customer is obligated to arrange for a proper termination of services with his previous provider. The customer is obligated to immediately provide this termination note to Net4You upon request.

4.6. Line transfer – unbundled lines

The customer authorizes Net4You to set in motion all necessary steps for the line transfer in his name and to make all necessary signatures as the customer's authorized agent. Should the desired line transfer entail the termination of services rendered by other telecom service providers, then the customer herewith authorizes Net4You to do so as well. Essentially, the responsibility for a proper and timely termination of other telecom services always lies with the customer, who needs to allow for an adequate time for the execution of such.

4.7. VoIP – transfer of telephone numbers

The customer authorizes Net4You to set in motion all necessary steps for the transfer of telephone numbers and to make all necessary signatures as the customer's authorized agent. Should the desired telephone number transfer entail the termination of services rendered by other telecom service providers, then the customer herewith authorizes Net4You to do so as well. Essentially, the responsibility for a proper and timely termination of other telecom services always lies with the customer, who needs to allow for an adequate time for the execution of such.

4.8. VoIP – geographical land line numbers

The customer is obligated to adhere to the directives of the telecom regulating authority RTR and therefore only to use the allocated or ported geographical land line numbers (e.g. 0463 ...) at the designated place and to indemnify and hold harmless Net4You to any violation. All scheduled changes of location, be it temporary or permanent, must be announced to Net4You by the customer at least 14 days prior to the movement. All changes in the customer's contact data (address) must be announced to Net4You immediately.

4.9. Access services without fixed basic charges

The customer explicitly agrees that access services that are offered by Net4You without fixed basic charges and where no usage charges are accrued in a period of 12 months can be discontinued by Net4You without giving reasons. Net4You will then inform the customer 14 days prior to the discontinuation.

Any prepaid usage charges will not be refunded by Net4You.

Furthermore, the customer agrees that access services that are offered without fixed basic charges can only be obtained in combination with other access services that are billed with regular service charges. Should the customer give notice for the last remaining access service with a regular service charge, the termination of all other services without a regular basic charge inevitably follows.

5. Software licences

For all software that is provided but not produced by Net4You („Third Party Software") the licencing requirements of the respective software producer apply, which are enclosed to the third party software.

For all software that is produced by Net4You and the documentation of such (in the following: „Software") Net4You grants the customer a non-exclusive right to use (software licence) that is defined in the notice of receipt and the description of the product. In case of doubt the licence is valid for one work station. The replication and production of copies of the Software, including printing out the source code and copying the documentation, is only admissible with prior written agreement by Net4You. An exception are duplicates/copies that are necessary for the intended use of the Software or for the production of a backup copy. The transfer of usage rights for Software, issuing of sub-licences and the temporary assignment to third parties is subject to prior written agreement by Net4You. An exception is the usage of the Software for the customer's own purposes through usage by employees or agents, provided that the customer makes sure that these licencing regulation are binding for these persons as well.

However, it is herewith explicitly pointed out that for public domain software, freeware and shareware the licencing regulations of the producer or author have to be effective.

6. Distribution products

All products that are marked as „service provider for" with mentioning of the respective company in the order form, order confirmation and invoice are only distributed by Net4You and the fees are collected by Net4You in the name of

the service provider. The immediate contractual partner of the customer, however, solely is the mentioned service provider, who is liable to the customer for the agreed upon service.

7. Data protection

Net4You pledges itself to the adherence to the Austrian Data Protection Law (DSG) and the EU guidelines for data protection as well as the Austrian Telecommunication Law (TKG). The customer explicitly gives his permission to Net4You to pass on his data (name, e-mail, address, ...) for the rendering of the service, for support tasks and marketing campaigns to suppliers and service providers or partners, receive from them and to reuse themselves. The permission for the use for marketing purposes can be revoked any time (in writing or via e-mail).

8. Banned contents, liability and restitution

8.1. Obligations of the customer

The customer obligates himself to follow all laws and regulations and to accept the sole responsibility towards Net4You for the compliance with these laws and regulations. The customer herewith is explicitly referred to the regulations of the pornography law, BGBl. 1950/97 idgF., the „Verbotsgesetz“ of 8. May 1945 idgF. and all pertinent criminal legislation wherein the relaying, distribution and exhibition of certain contents is subject to legislative restrictions respectively forbidden. The customer obligates himself not to use or let others use the contractual services in any way that might lead to the damage of third parties or is endangering the security or operation of Net4You and/or other servers.

Lastly, the customer obligates himself not to use any data, information or images in the presentations made by himself or Net4You that are protected by the copyright law and/or are not the property of the customer. Claims for compensation or licence fees will in no case be borne by Net4You but will always be at the customer's expense. The customer is responsible for the content of his web pages and obligates himself to identify himself on every page (If the pages are not produced by Net4You). The effective regulations and information requirements according to the e-commerce law (ECG) are pointed out. – Should Net4You be claimed against in any form by a third party or the authorities due to culpable behaviour of a customer, the customer obligates himself to indemnify and hold Net4You harmless!

8.2. Obligations and liability of Net4You

Net4You pledges itself to use utmost care in rendering its services but is not liable for services rendered by or purchased from third parties (e. g. Telekom lines). The customer discharges Net4You from liability for all damages that might ensue from the malfunction of its own network and that of its contracting parties, unless these were caused with deliberation or wanton negligence.

8.3. Address data of the customer

The customer obligates himself to immediately announce any changes in address and contact data in writing to Net4You, in order to ensure that invoices and necessary information (including the RTR controlling authority) reach the correct recipient address; should Net4You incur any expenses (e. g. for investigations) due to the breach of this notification duty, these will be charged to the customer as compensation for damages.

9. Insurance

Server or other devices of the customer that are hosted with Net4You must be insured by the customer himself. If the customer uses devices (modem, router etc.) provided by Net4You he also has to take for proper insurance himself.

10. Allocation of data material, copyright

Documentation such as brochures, images, slides, CD-ROMs or similar things that were provided by the customer and allocated to Net4You will be returned on demand. Should the documentation be damaged or not available any longer, Net4You does not assume liability or grant indemnity claims!

The customer assures that he has the complete exploitation right and copyright for all provided texts, data and images – including the use in network services (www).

11. Domain registration

Every registration and/or transfer of a domain name automatically is subject to the terms and conditions of the responsible registry respectively the acting registrar. On principle, all domain transactions are subject to UDRP (Uniform Domain Name Dispute Resolution Policy) by ICANN, that can be accessed at <http://www.icann.org/dndr/udrp/policy.htm>

The customer as the registrant of a domain name (= applicant and holder) herewith instructs and authorizes Net4You with the handling and is responsible to provide exact and correct contact details.

The fact that the registrant does not react to inquiries concerning the completeness and correctness of information provided in connection with the domain registration within fifteen (15) calendar days may lead to the cancellation of the registration.

Every registrant obligates himself to indemnify and hold the registry's administrator and the registrar as well as all directors, management employees, employees and agents harmless against all claims, losses, liabilities, costs and expenses (including reasonable lawyer's fees and costs), that arise from or in connection with the domain registration. Net4You always attends to offer a domain registration for the best price-performance-ratio and to therefore choose high performance registrars. For this reason Net4You reserves the right to change the registrar at any time. The customer empowers and authorises Net4You to change the registrar at any time.

For an untimely cancellation (before the expiration of the registration period) of a domain the customer will be charged with a processing fee of 55 € plus all costs arising for Net4You directly from the transaction.

12. General terms of usage mail server

The size (data volume) of the mailboxes the customer uses via Net4You is not limited, the size of single mails is limited to 15 MB. The access to e-mails with IMAP resp. Webmail is possible.

Net4You doesn't issue a warranty to save e-mails older than twelve months. If not mentioned differently for a certain product, Net4You does not save any e-mails and the customer is responsible for any form of data backup himself.

Net4You reserves the right to contact customers who repeatedly use more than 100 MB e-mail space and to introduce a limitation to 100 MB e-mail space.

Net4You reserves the right to block temporarily or permanently external mail servers resp. IP addresses that are listed as SPAM sources or are identifiable as such. All e-mails from such sources will thus not be accepted by Net4You and not forwarded to the customer.

13. General terms of usage web server

The size (data volume) of the webspace used by the customer from Net4You is limited to the agreed upon (= charged) size. Exceeding this limit may lead to the blocking of the webspace (i.e. further data upload). Thus it will no longer be possible to save more data to the webspace in question.

The consequences to the customer's website can differ and may even lead to the complete failure of the website.

Compliance with this limit is the customer's duty and responsibility as well as all possible outcomes and the rectification thereof due to a possible blockage.

If not noted differently, Net4You does not save webspace data and the customer is responsible for any form of data backup himself!

14. Duration of contract, termination and terms of payment

14.1. Duration of contract and termination

The duration of contract for Net4You products generally is at least three (3) months (unless noted differently) and is for an indefinite period of time; the contracts for these products may be terminated in writing with one (1) month's notice at the end of each quarter (31.3., 30.6., 30.9. und 31.12.). The usual registration period for domains is one year.

For all products that constitute exceptions to this regulation, this is separately noted on the application/order form.

In case that payment for the services is not made despite a payment reminder and an extension of the payment deadline, Net4You is entitled to terminate the contract and/or discontinue services to the customer (block access). In this case, Net4You is entitled to receive the agreed upon fee in full for the entire duration of the contract, if the contract was terminated or suspended due to the customer's fault.

14.2. Terms of payment

All prices indicated apply to yearly payment in advance or payment in advance through direct debit or credit card. Products depending on transfer rates (e.g: leased lines, ADSL, VoIP) are partly invoiced afterwards, the fixed basis amounts are invoiced monthly in advance. Quarterly payment of the fees in advance by bank transfer is possible; in this case Net4You charges an additional handling fee of € 2,00 plus 20% VAT per invoice period.

The customer has to take care that the entire invoiced amount is transferred to Net4You's bank account. Possible expenses (domestic and foreign bank charges, check cashing fees, etc.) are to be paid in full by the customer. In case of delay of payment 8% p.a. interest on arrears and reminder fees in the amount of € 3,90 from the second reminder letter are charged.

If product descriptions, quotes or order confirmations contain different terms of payment, these prevail over the AGB.

For projects, such as website programming, online applications or security solutions, 1/3 of the contract amount is due when the order is given, 1/3 at delivery and 1/3 at inspection and approval or at the beginning of general usage at the latest. If a delivery from Net4You is not complained about in writing within fourteen (14) days, the service is considered approved.

In case a product description sheet, quotation or order confirmation contains different payment conditions, these prevail over the General Terms & Conditions. For projects, such as WWW presentations, online applications or security solutions, 1/3 of the order value is payable on ordering, 1/3 on delivery and 1/3 after acceptance or at the latest, when the solution is online. If a delivery by Net4You is not objected to in writing within 14 days, the delivery or service automatically is accepted.

It is only possible to deduct or set off against claims that are legally secured by court or accepted by Net4You. The customer is not entitled to hold back payment because of warranty or guarantee claims. Invoices will be sent online with a secure signature to the customer's last announced e-mail address unless ordered differently. (8.3 applies analogously)

14.3. VoIP connection fees:

All call charges are always calculated with the rate that is applicable at the beginning of the call. A division between a peak and an off-peak part will not be made.

15. Court of jurisdiction, place of performance and applicable law

As the place of performance for all services and the appropriate court of jurisdiction Villach is agreed upon; the contract is governed by Austrian law and excludes UN Kaufrecht (Uniform Law on the International Sale of Goods (CISG)). For litigation with consumers in terms of consumer protection law, whose residence or common abode is in Austria or who are employed in Austria, the courts of jurisdiction according to the laws are applicable.

16. Right to withdraw for consumers

For a contract that was concluded via distance selling, the customer, if he is a consumer in terms of consumer protection law, is entitled to withdraw from the contract within seven working days from the conclusion of the contract (Saturday is not a working day). For observing this deadline it is sufficient to send a written declaration of withdrawal on the last day of the period. The right to withdraw does not apply to orders that were made customer specific (e. g. domain name), orders that were made to personal conditions of the customer, software, or in case that the rendering of the service ordered was begun by Net4You within seven working days from receiving the binding offer or from conclusion of the contract (Saturday is not counted as a working day). This is the case if, for example, the internet access account is activated by Net4You within seven working days. In case of a withdrawal from contract the customer has to pay all fees that have accumulated until the effectiveness of the withdrawal according to the agreement. The customer also has to return all received goods (such as hardware) at his own expense and risk and to pay a reasonable fee for the usage, including a compensation for a related loss in value of its common worth.