

# General Terms and Conditions

Inxmail GmbH

July 2017

## 1. Scope

- 1.1 These General Terms and Conditions of Inxmail GmbH ('Inxmail') apply to all business relations with enterprises (Section 14 German Civil Code), legal entities governed by public law and special trusts under public law (hereinafter 'Customer'). These General Terms and Conditions, as amended from time to time, are also regarded as a framework agreement for future contracts with the Customer, without Inxmail having to refer to them again in each individual case.
- 1.2 The following provisions apply only where no arrangements to the contrary have been made between Inxmail and the Customer (particularly in quotations or orders). Terms and conditions adopted by the Customer that differ from or supplement those of Inxmail will become an integral part of the contract, only if and to the extent that Inxmail has expressly approved of their application in text form.

## 2. Formation of contract

- 2.1 Unless expressly specified otherwise, all quotations from Inxmail are subject to change and are non-binding. Inxmail is entitled to accept orders from the Customer within 20 working days from Inxmail's receipt thereof. Acceptance may be declared expressly (particularly in the form of an order confirmation) or impliedly by commencement of the services. When an order is accepted, a binding contract is formed between the Customer and Inxmail.
- 2.2 Inxmail reserves title and copyright to all documents provided to the customer for the purposes of contract preparation and execution (quotations, service descriptions, terms of a contract, etc.) The Customer must keep the documents confidential. They may be made available to third parties only with the express written consent of Inxmail.

## 3. Delay

- 3.1 The delivery dates and deadlines specified by Inxmail are non-binding, unless binding dates or deadlines are expressly set out in the written order confirmation.
- 3.2 For Inxmail to be able to meet delivery dates, all commercial and technical issues must have been clarified with the Customer and the Customer must have fulfilled all the obligations incumbent upon it, such as, e.g. specification

of technical parameters, setup of a service description or acceptance of interim results. If this has not been done, the delivery time will be extended accordingly. This shall not apply to the extent that Inxmail is responsible for the delay.

3.3 Inxmail will not be liable for the inability to deliver or delivery delays where this is due to force majeure (such as natural disasters, war or unrest) or other events not foreseeable at the time the contract was entered into (such as disruption in operations of any kind, transport delays, strikes, lawful lockouts, lack of labour, energy and raw materials, difficulty in procuring necessary regulatory permits, regulatory measures, the cancellation of license agreements outside Inxmail's control, or the absence of, incorrect or delayed delivery by suppliers) for which Inxmail is not responsible.

## 4. Prices and terms of payment

4.1 Services for which no prices have been agreed will be charged by Inxmail at current list prices or current hourly rates. Stated Prices do not include statutory VAT.

4.2 Unless agreed otherwise, payments are due immediately upon receipt of invoice. The customer defaults on payment ten days after receipt of invoice, even if no reminder has been issued. Payment shall only be deemed to have been effected on the date of receipt thereof by the Supplier. In the event of default on payment, Inxmail is entitled in particular to charge interest for late payment and to withhold further deliveries and services from the Customer, including deliveries and services under other agreements.

4.3 Inxmail is entitled to carry out pending deliveries or services only where payment is made in advance or security is provided if it becomes aware of circumstances after the contract has been entered into which are capable of significantly reducing the creditworthiness of the Customer and by means of which the payment of outstanding receivables to the supplier by the orderer arising from the respective contractual relationship is put at risk (including from other individual orders to which the same framework contract applies).

4.4 The Customer shall not be entitled to set off claims or to withhold payments on the basis of any counterclaims that it may have against the Supplier, unless such counterclaims are undisputed or have been confirmed by a competent court.

## 5. Obligations of the Customer

5.1 The Customer must treat as strictly confidential the personal username, passwords and customer keys provided to it by Inxmail. The Customer must ensure that no unauthorised parties come into the possession of or use this information. The Customer must notify Inxmail in writing, by fax or by e-mail, without delay, of any loss or the possibility that unauthorised parties may

have come into possession of the username, passwords and customer keys. Inxmail can then block these details.

- 5.2 Where the services to be provided under contract include the sending of e-mails via servers belonging to Inxmail, the Customer undertakes to comply with the applicable statutory regulations regarding e-mail communication. In particular, the Customer will not send e-mails with unlawful content or send e-mails to recipients who have not given their required and documented consent to receiving e-mails. In the event of a breach of this sec. 5.2, Inxmail has the right to block the customer accounts concerned and/or to otherwise discontinue the sending of e-mails from its servers.
- 5.3 If the Customer has access to Inxmail servers, the Customer must install the latest version of an antivirus program as well as a state-of-the-art firewall on all computers from which the servers are accessed.
- 5.4 If the Customer transfers data to Inxmail, the Customer will ensure that it has saved this data beforehand on its own system and that a state-of-the-art back-up system is in place on its system.
- 5.5 If Inxmail provides a customised service to the Customer (programming services, creative services, etc.), the Customer will check within two calendar weeks of receiving the work results that they conform to the contract or will notify Inxmail of any objections in text form. Where Inxmail receives no notification from the Customer within two weeks of receiving the service, the service is deemed to have been accepted.

## 6. Warranty

- 6.1 Inxmail warrants ("*gewährleistet*") the scope of functions and services specified by it and the fulfilment of contractually agreed specifications concerning the services under contract. Inxmail does not warrant any service characteristics in excess thereof or in deviation therefrom. In particular, Inxmail does not warrant that the service will be suitable for a specific purpose not covered by its service description or specification.
- 6.2 If, as part of services provided, the Customer is given access to Inxmail computer systems (ASP services, etc.), Inxmail warrants minimum system availability for these computer systems of 98% p.a. Scheduled downtimes for updates, maintenance etc. shall not be included in the times of non-availability, insofar as the contracting party is informed of the non-availability of the system reasonably well in advance.
- 6.3 Except in the event of malice and with respect to claims for damages, the period of limitation for defect claims is 12 months, calculated from the time of delivery or from the time of acceptance where acceptance is required.

## 7. Limitation of liability

- 7.1 Inxmail will be liable for itself and its vicarious agents, regardless of the legal grounds, only where a substantial contractual obligation is culpably breached in a manner harmful to the contractual purpose or where the damage is due to gross negligence or wilful intent. A substantial contractual obligation is defined as any obligation the performance of which characterize the contract and which are necessary for its proper implementation. Provided such a substantial contractual obligation is not breached due to gross negligence or wilful intent, Inxmail's liability will be limited to such damage that is typical to the type of contract and that is reasonably foreseeable at the time the contract was entered into.
- 7.2 Liability on the part of Inxmail for malice and personal injury (life, limb and health) as well as in accordance with the provisions of the Product Liability Act remains unaffected.
- 7.3 In any event and regardless of the legal grounds, total liability on the part of Inxmail is limited to twice the value of the order within the context of which the damage was caused. In the event of a continuing obligation with regularly recurring services, Inxmail's liability shall be limited to the net turnover generated by Inxmail in the last two years from this continuing obligation.
- 7.4 Where liability on the part of Inxmail is excluded or limited under the above provisions of this sec. 7, the same applies to the personal liability of Inxmail's employees, other workers, executive bodies, representatives and vicarious agents.

## 8. Non-disclosure, data protection

- 8.1 Inxmail and the Customer undertake to keep confidential and not to share with third parties any commercial or business secrets received from the respective other party, including the terms of any order or contract Inxmail and the Customer have entered into.
- 8.2 Inxmail will treat received data as confidential and will use it only for the purposes of the contract. Data will not be passed to third parties without the consent of the Customer. Data will be deleted in its entirety on request, unless it is required for the execution of the contract.

## 9. Provision of information and technical advice

- 9.1 Information and recommendations are given by Inxmail in a non-binding manner and to the exclusion of any liability, unless Inxmail has expressly obligated itself in writing to provide information and recommendations. The Customer must examine for itself in its own test series whether a standard Inxmail product is suitable for specific application intended by the Customer. Information provided by Inxmail does not constitute any promise of product properties.

## 10. Other provisions

- 10.1 Unless specified otherwise or called for by the nature of the obligation, the place of performance for all obligations incumbent upon Inxmail and the Customer shall be Inxmail's registered seat.
- 10.2 German law shall apply, the place of jurisdiction shall be Freiburg im Breisgau (Germany). In addition, Inxmail may assert at its choice any of its claims at the Customer's place of general jurisdiction.