

**magic moving pixel S.A.**  
**General terms and conditions<sup>1</sup>**

**§1 Application**

1. The following general terms and conditions apply for all contracts, supplies and other services and legal relations of *magic moving pixel S.A.*, with its registered office in Luxembourg (in the following also called "*mmp*") with its clients, as long as no other agreement has been made within the respective legal rapport.
2. *mmp*'s offers are not binding and without obligation. The contract materializes only through an order confirmation or through the order execution. Deviations from these terms of contract need *mmp*'s explicit written acknowledgement.

**§2 Consulting**

1. *mmp*'s technically consulting and applicability statements in relation to a specific device or software are made to their best knowledge and corresponding to experience. All statements and information concerning suitability and implementation of goods and products are, however, without obligation and do not dispense the client to undertake his own verifications and tests. The right to withdraw from the sales contract for reasons like suitability of products for a certain purpose is particularly excluded for software not developed by *mmp*.
2. If the client insists on the supply of a product having been informed by *mmp* that the respective product or respective configuration might have potential sources of error, that the product hasn't yet been technically well-engineered or amply tested by *mmp*, a rescission or depreciation of the sales contract for engineering deficiency is excluded.

**§3 Contracts for Internet services, domain use and utilization by third parties**

1. A contract for hosting of a virtual Internet server or the utilization of any other Internet services by *mmp* is concluded sine die. The minimum duration is three months. At the termination of the minimum duration, both contracting parties may cancel the contract respectively for the end of the month, subject to a term of two weeks of notice. The notice must be in writing.
2. The client confirms that by ordering a domain name he does not knowingly violate the trademark of another company or, respectively, that the domain name is not trademarked by third parties. In case third parties defer *mmp* for impinging such rights, the client commits himself to indemnify *mmp*. In this case *mmp* also reserves the right to block the concerned domain.
3. If *mmp* takes on the registration of a domain name, neither liability nor an engagement can be taken on for its attribution. The attribution occurs only after the consent of the respective institutions.
4. A direct or indirect utilization of *mmp*'s services by third parties is only authorized with explicit approbation by *mmp*. If the utilization by third parties is authorized, the client has to duly instruct them for the utilization of the services. If the utilization by third parties is not authorized, no claims for loss in value, reimbursement or claim for indemnity will occur.

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<sup>1</sup> The English version is informative. Only the German version is the legally binding version.

#### **§4 Contents published by clients on the Internet**

1. The client declares owning the complete rights for using the data or software transferred to *mmp*. This also includes the right to use certain videotaping, sound recordings, data or any other records but is not limited to it.
2. The client exempts *mmp* from all claims from third parties concerning the transmitted data. This also includes eventual cost for a lawyer or for legal cost that might occur from a pretended or effective non-respect of such rights.
3. The client agrees that *mmp* is allowed to block his access in case third parties claim for non-disclosure or if the client is not undoubtedly the legal owner of the published documents or programs. In case the client publishes contents that might hurt, offend or denigrate someone's honour, *mmp* is entitled to immediately block the access to the complete offer, even if a concrete legal claim might not exist. The same occurs if contents infringe against the general legal sense or against legal rights of the Grand Duchy of Luxembourg. *mmp* does, however, not assume liability for any verification. It is up to the client to prove the actual innocuousness of the contents. As soon as this is supplied, the offer is being activated again.
4. *mmp* also reserves the right to block the client's offer without warning if the client runs programs or services on his offer which might compromise the server's operating performance.
5. If the client uses *mmp*'s Internet services for the transmission of mass e-mails or mass circulars (also known as "spamming") without having been asked for by the recipients, *mmp* reserves the right to immediately deactivate his client's Internet services without warning. This also applies to publicity e-mails in public newsgroups.

#### **§5 Data security**

As long as data are being transmitted to *mmp*, no matter in which form, the client produces back-up copies. *mmp*'s servers are regularly backed-up. In case of data loss the client is, however, bound to retransmit once more the relevant data to *mmp* free of charge, if required. For the maintenance of his offer, the client obtains a user id and a password. He/she is obliged to use this with the utmost discretion and is liable for any misuse that might result from an unauthorized use of the password. The client is aware of the risk for all participants that transmitted data may be intercepted. The client accepts this risk. In case of suspicion, the client has at any time the possibility to ask for a new password.

#### **§6 Software development and software licence**

1. *mmp* keeps the copyright und commercial rights as well as the right for its utilization for any supplied software, as long as nothing else has been formally stipulated. This applies also for any software developed individually at a client's request or modified for a client. The transfer of a source code only takes place if this has been clearly stipulated.
2. For software solutions developed for and transmitted to a client, he/she has the unlimited right of use for his/her internal use, as long as nothing else has been stipulated. The rights of use for project results can only be transferred to third parties with *mmp*'s agreement, which also implies that a client may not make accessible software to third parties, neither as a whole nor partly. Neither is the client authorized to rename software, to sell it under his/her name or to declare himself/herself as the software producer.

## **§7 Delivery date**

Delivery dates are only binding for *mmp* if they have been agreed upon in writing and formally as engaging. Changes in order result in the cancellation of agreed dates and delays, as long as nothing else has been stipulated. Delays are being prolonged for interruptions by force majeure and in the case of any obstacles, which cannot be covered by *mmp*.

## **§8 Liability and warranty**

1. *mmp* assumes in no way any liability for any prejudices which arise directly or indirectly for the client from the utilization of Internet services offered by *mmp* or by supplied or installed programs, or supplied or customized software for the client, as long as no grossly negligent misfeasance underlies.
2. *mmp* cannot guarantee that the Internet services used by the client are available at all times and without interruption. Imperatively necessary maintenance tasks or security measures may result in an interruption or the restriction of the offered services. *mmp* tries, however, to reduce such interruptions to the minimum. In any case the client is previously informed by *mmp* about any scheduled interruptions.
3. *mmp* guarantees the serviceability for the software developed by *mmp* for a period of six months after delivery respectively after product take-over and in accordance with the specification respectively the service description. All software problems which are not related to products of third parties will be solved free of charge within this period. *mmp* assumes no liability for defects with products of third parties.
4. In case adjustments or programming take place in several segments, it is then a matter of new orders for which the warranty is provided independently from anterior customisations. The periods of warranty for services rendered previously remain therefore unaffected from follow-up orders. At buyer's option *mmp* can arrange emerging deficiencies by touching up or by exchange of error-free software respectively by cession of a revised version. In case of definite failure of the revised version or the exchange the client as well as *mmp* is entitled to change or cancel the contract. Sundry compensation claims are excluded. Warranty claims should preferably be asserted in writing. They have to contain a precise description of the reproved insufficiency and must be comprehensible for *mmp*.
5. The express warranty is excluded if the client does not, or too late, honour his testing, examination or reproof duty. If software modifications are performed by the client or any third party, the warranty claim expired. Claims for damages are limited to the contract value.

## **§9 Conditional sale, blocking of Internet services**

*mmp* reserves the right for the property in the supplied goods as long as claims from the present or future business connection can be asserted. If the client is delayed in payment with respect to the rented Internet services, *mmp* is entitled to block the respective services after a written notification, if the late payment is more than two months.

## **§10 General payment terms**

1. For amounts over 2.500 EUR *mmp* reserves the right to agree upon a prepayment. The amount of the prepayment and the respective terms of credit depend on the order's amount and the project's running time. In case of an agreed prepayment, the first instalment is due immediately after the placing of the order.

2. If not stipulated separately in writing, *mmp*'s bills addressed to the client are payable strictly net and without deductions, after reception of the products respectively of the service. The date of invoice holds good for delivery date. A payment is considered in time only if the invoice amount is transferred to *mmp* within thirty days after the date of invoice. Checks or drafts are accepted under reserve of definite credit advice. In case of a term of payment the payment is considered in time only if on the day of expiry of the time-limit the currency is available to be cashed by *mmp*, or if the agreed invoice amount is credited by cash remittance on one of *mmp*'s accounts. The proof for the timely inward flow is incumbent on the debtor. In case of a delayed receipt of payment *mmp* is entitled to claim late interest of the amount of 5% per annum above the main refinancing operations rate of the European Central Bank. Differing agreements are only in force if they have been specifically annotated for each single service or supply on the acknowledgement of order or on the bill. In case of a customer's delayed payment, *mmp* is allowed to make all outstanding debits immediately payable and, in case of annulment of terms of payment, to deliver all outstanding supplies only in case of advance payment.

## **§11 Final provisions**

1. If one of the agreed stipulations becomes void, the validity of the rest of the contract remains unaffected. Eventual legal successors of the client are bound to the respect of these agreements. *mmp* is allowed to transmit the customer order to third parties for performance of the contract. The client is being informed about that in writing.
2. For all legal conditions based on the contractual relationship exclusively the law of the Grand Duchy of Luxemburg is applied. The court of jurisdiction is Luxemburg.