General Terms and Conditions

These General Terms and Conditions govern the contractual relationship between netfiles GmbH ("netfiles") and the customer ("Customer"). netfiles provides its services exclusively on the basis of these General Terms and Conditions. Customers who reject these General Terms and Conditions are not authorized to use the netfiles service.

§ 1 Contract Conclusion and Amendment

1. A contract takes effect when a Customer signs netfiles' offer and netfiles sends written confirmation of the order.

2. netfiles reserves the right to change these General Terms and Conditions at any time. In such cases, Customers will be notified of the changes by e-mail. Customers shall be deemed to have approved said changes if they do not raise any objections within 4 weeks of the change notification being sent. Customers will be explicitly informed of this legal consequence in the change notification.

3. If individual agreements between netfiles and the Customer are found to contradict these General Terms and Conditions, the individual agreements with the Customer shall be valid.

§ 2 Termination/Cancellation of Contract

1. Except where agreed otherwise, the minimum contractual term is 6 months. Either party can withdraw from the contract subject to 4 weeks' notice to the end of the contractual term. If notice is not served by the end of the current contract term, the contract will automatically be extended by 6 months. Notice of termination must be served in writing (by e-mail, fax or post).

2. netfiles GmbH reserves the right to terminate the contract without notice for material cause (extraordinary termination). This is valid particularly in exceptionally severe cases of violation of the Terms and Conditions of Use (especially violations of the Obligations of the User in § 3 of the Terms and Conditions of Use).

3. On termination of the contract, netfiles is authorized to delete all of the Customer's data. All such data will be deleted irrevocably from netfiles' operational systems at the latest 14 days after termination of the contract, and from all back-up systems at the latest 30 days later.

4. netfiles shall notify the Customer by e-mail of termination of its contract. Notification that the contract is being terminated by netfiles shall be deemed delivered when the e-mail is sent, even if non-delivery occurs as a result of the Customer supplying incorrect e-mail information.

§ 3 Invoicing and Payment

1. Except where agreed otherwise, invoices shall be made out in advance of the minimum contractual term or of the extended contractual term. Invoices (including VAT at the current statutory rate) are payable within 14 days.

2. If payment by the Customer falls into arrears, netfiles has the right to demand interest on arrears in the amount of 5% above the current base rate set by the European Central Bank. If netfiles is able to prove the existence of higher damages as a result of the Customer's arrears, this claim may also be asserted.

3. If the Customer fails to meet its payment obligations within the statutory period of grace despite receiving reminders, netfiles has the right to block access via the Internet to the Customer's data. This block will be rescinded as soon as full payment of arrears is received by netfiles.

4. The Customer shall be entitled to offsetting rights only if its counterclaims are backed by an enforceable final judgment, are undisputed or are accepted by netfiles. Furthermore, the Customer is authorized to exercise its right of retention insofar as its counterclaim is based on the same contractual relationship. Offsetting shall also be permissible if a counterclaim based on a right of retention as outlined in the previous sentence admits a claim for compensation.

§ 4 Exclusion of Warranty

1. The user acknowledges and agrees that netfiles is provided for use "as is" and that netfiles excludes any explicit or implied warranty of any kind. netfiles provides no guarantee or promise regarding the outcomes of using netfiles, the accuracy or reliability of information obtained over netfiles, the meeting of users' requirements or continuous, punctual, secure and error-free operation of the service. The risks of use are borne entirely by the user. Downloading or otherwise acquiring material or files using our services is at the discretion of the user and any risks associated with these actions are borne solely by the user. Any damages that may result from the use of netfiles are the sole responsibility of the user.

2. To the extent permitted by law, netfiles shall not be liable for any punitive, indirect or incidental damages, or for any consequential damages whatsoever that may result from access to or the use of the service (or the inability to do so).

§ 5 Liability

1. netfiles shall undertake all reasonable endeavors to prevent unauthorized persons from gaining access to the data stored on netfiles.

2. If the system is not available in part or in full for reasons for which netfiles cannot be held responsible, or for maintenance-related reasons, netfiles assumes no liability for any damages, including consequential damages, that may result for the user.

3. netfiles has no control over the transmission of data via the Internet or the World Wide Web. netfiles therefore provides no guarantee that the transmission of files or documents to or from netfiles will be successful or free of errors.

4. The user is responsible for creating periodic backup copies of his or her data.

5. Neither netfiles nor users of netfiles shall be responsible for the illegal behavior of other users, even if such behavior is associated with the content and use of netfiles.

6. Liability for events that are not the fault of netfiles, such as official acts, labor disputes, accidental damages and force majeure, is precluded.

7. In the case of damages resulting from default, impossibility and/or breaches of material contractual obligations, netfiles shall be held liable only insofar as the damages were foreseeable. In the case of breaches of contractual obligations that are not of material significance, netfiles GmbH accepts liability only in the case of gross negligence or malicious intent, and again only if the damages were foreseeable. For tortious claims, liability exists only in the case of gross negligence or malicious intent; this clause shall not apply if the tortious claims compete with contractual claims that are excluded from liability pursuant to § 5 (1) and (2). Liability pursuant to the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected. The universal burden of proof remains unaffected by this provision.

8. netfiles' liability for any incidents during the free trial period shall be restricted to malicious intent and gross negligence.

9. The statute of limitation for claims is 2 years. The start of the limitation period is determined by § 201 of the German Civil Code (Bürgerliches Gesetzbuch, BGB). Sentence 1 shall not apply to statutory warranty periods or tortious claims.

§ 6 Contact Details

1. Questions about privacy and data protection should be addressed by e-mail to our Data Protection Officer at dsb@netfiles.de.

2. Questions about information security should be addressed by e-mail to our Information Security Officer at isb@netfiles.de.

§ 7 Other Agreements

1. The language of the contract is German. This English version is merely a courtesy translation.

2. If the user is a businessperson, a legal entity under public law or a special fund under public law, the sole place of jurisdiction shall be Burghausen. The same applies if the customer does not have a place of jurisdiction in Germany.

3. § 7 (1) shall not apply if the legal dispute involves claims other than those of an economic interest or if an exclusive place of jurisdiction is applicable for the dispute.

4. Unless the Customer explicitly objects in writing, netfiles is authorized to use the Customer's name and logo on its website and in other marketing materials.

5. The place of fulfilment for delivery and payment is Burghausen, the legal domicile of netfiles.

6. All legal relations between netfiles and the user are governed by the laws of the Federal Republic of Germany, even if the user's place of residence or business domicile is in another country.