Terms and conditions of GA Conseils Sàrl (MaxiHoster.com)

# SCOPE OF APPLICATION AND CONCLUSION OF CONTRACTS

* 1. Field of application

These General Terms and Conditions of Sale (hereinafter "GTC") apply to the legal relationship between GA Conseils Sàrl (hereinafter "MaxiHoster") and its Customer (hereinafter "Customer"). They apply to all services and products offered by MaxiHoster during the whole period of their use by the Customer.

* 1. Incorporation of the T&Cs in the order process
     1. As part of the online ordering process, the customer is asked to confirm his or her acceptance of the GTC by activating the corresponding field. By confirming, the Customer accepts these GTC unchanged and in their entirety.
     2. The GTC are an integral part of the contract concluded with the Customer.

# BENEFITS AND RIGHTS OF MAXIHOSTER

* 1. General information about the range of services
     1. MaxiHoster offers its Clients the services and products described on the website [www. MaxiHoster.ch.](http://www.kreativmedia.ch/) The Customer selects the services or products available from the range of services at the time of use. The terms and conditions of the services or products are listed on the MaxiHoster website or in the Customer's personalized offer.
     2. MaxiHoster reserves the right to change its range of services at any time. If such a change results in a price increase or service restrictions to the detriment of the Client during the term of the contract, MaxiHoster shall inform the Client concerned in accordance with point [13.1.2.](#_bookmark18)
  2. Hosting
     1. MaxiHoster provides its customers with storage space and server services, the scope of which they define themselves, on an infrastructure connected to the Internet.
     2. The calculation of hosting services is based on the average usage of MaxiHoster resources. If the usage behavior of the Customer, a third party using the service or product, or the user of the Customer's website adversely affects the operation of the Customer's service, product or website (e.g. high number of simultaneous accesses to the Customer's website by DDoS attacks), MaxiHoster reserves the right to block the Customer's user account or access to the Customer's website. MaxiHoster shall inform the Customer in advance (if possible within the scope of operating resources and depending on the concrete circumstances) of such blocking or notify the Customer immediately after the blocking. Subject to MaxiHoster's procedure in accordance with point [12.5.1.](#_bookmark17)
     3. Unless otherwise agreed, MaxiHoster's internet hosting services are exclusively for the Customer's own use in terms of the domain name administered in this context.
     4. Additional applications and services from MaxiHoster and third-party providers
        1. MaxiHoster offers its Customers various applications for installation on its servers, as well as various additional services to the existing hosting. By using such an application or add-on service, the Customer agrees to the license terms, general terms and conditions and terms of use in effect for the application or add-on service, and/or the terms and conditions of MaxiHoster or the relevant third party provider mentioned on the relevant offer page.
        2. The Customer acknowledges and agrees that MaxiHoster has the right to limit the use of applications or additional services at any time, without prior notice and without refund of the remaining term to the Customer (i) and/or to remove applications or additional services from its range (ii).
  3. Domain name
     1. General

MaxiHoster shall administer the Customer's domain name to the extent defined by the services the Customer has procured from MaxiHoster and shall, upon the Customer's request, ensure the registration of domain names in the Customer's name with the relevant registrar, the transfer of existing domain names of the Customer for administration by MaxiHoster, or the transfer of a domain name already registered in the Customer's name and administered by MaxiHoster to a third party. With respect to

For domain names with endings indicated on MaxiHoster['s](http://www.kreativmedia.ch/) website, MaxiHoster is a registrar and provides the above-mentioned services upon the Customer's request.

* + 1. Registration, transfer and administration of domain names
       1. The Customer acknowledges and accepts
          1. that MaxiHoster, in the context of the administration of domain names within the relationship between the Client and the organizations responsible for the administration of the central database, only serves as an intermediary and cannot guarantee that MaxiHoster or the relevant registrar actually allocate the ordered domain name to the Client and/or that the domain name is free of third party rights;
          2. that it is no longer possible to change the domain name once the domain has been registered;
          3. that the service ordered is a service tailor-made for the Customer, according to his instructions;
          4. that MaxiHoster or the relevant registrar is entitled to perform the ordered service immediately;
          5. that the registrar does not give him the ownership of the domain name concerned, but only gives him a right of use;
          6. that MaxiHoster is released from any obligation to perform in case of impossibility to execute the Customer's order;
          7. that MaxiHoster, with respect to the administration of the domain name towards the registrar and ICANN, as well as towards other parties involved in the registration process, acts as the designated representative of the Customer, and that it may take the necessary steps for the administration of the domain name;
          8. that, in the context of the domain resale proposed by MaxiHoster, the regulations of the registries and ICANN (in terms of domain name with generic TLD, and in particular the Uniform Domain Name Dispute Resolution Policy [UDRP]) in force for MaxiHoster also apply to it and that these regulations may change;
          9. that MaxiHoster, in the context of the resale of the domain it offers, deducts all costs related to the administration of the domain names (including any restoration as per point [3.2.8](#_bookmark4)), that MaxiHoster will not provide the ordered service in case of insufficient balance, and that, in the context of the extension of the domain name's validity, an insufficient balance will result in the loss of the domain name;
          10. that for domain name extensions, the prices in effect at the time of extension shall apply, that extension and transfer fees may change in the short term, and that MaxiHoster shall be entitled to cancel a Customer's order after notification to this effect by e-mail to the address specified by the Customer for communications relating to the contract in case there is a price increase by the registration bodies between the time of the order and the time of execution, and in case the Client does not accept this price increase in writing within days 10vis-à-vis MaxiHoster;
          11. that MaxiHoster is entitled to cancel the transfer of a domain name if a prior transfer was made without the domain owner's approval, or if the domain owner was unlawfully stripped of the domain name;
          12. that MaxiHoster has the right to cancel or not execute a change of domain name owner when the Customer does not prove that the former owner of the domain name has approved the transfer of the domain name, as well as these T&Cs;
          13. that MaxiHoster or the relevant registrar has the right to cancel the registration of a domain name or transfer the domain name to a third party at any time (i) due to a violation of the guidelines of the relevant registry or ICANN, (ii) to correct a registration or transfer error, and/or (iii) to resolve disputes regarding the registered domain name;
          14. that MaxiHoster shall only[3.2.8](#_bookmark4) process a request for restoration of a domain name within the meaning of the point when the request has been submitted to MaxiHoster in due time before the final deletion by the registrar and
          15. that MaxiHoster is entitled to terminate the agreement with the Customer within a period of days30 before the end of each month without refund of the remaining term, insofar as the registration of a domain name of the Customer or the accreditation of MaxiHoster with the registration body cannot be maintained in accordance with the applicable provisions of the competent registration body.
    2. Transfer of domain names
       1. MaxiHoster will transfer a domain name upon request of the Customer. This request must be in writing, be part of the compliant online ordering process and be accompanied by MaxiHoster's written acknowledgement of receipt. The Client's obligation to acquire any necessary transfer code, as well as any necessary notarial declarations, is defined in point [3.2.4.](#_bookmark2)
       2. In the absence of a written request from the Client to this effect within the framework of the compliant online ordering procedure, MaxiHoster shall execute the transfer of the domain name upon presentation of an enforceable court decision or an agreement between the Client and a third party, which orders MaxiHoster to immediately execute the transfer of the relevant domain name to the third party. The third party shall be obliged to produce a certificate of enforceability of the court order.
       3. MaxiHoster is entitled to temporarily block the transfer of a domain name when forced to do so by a court of law or an authority. This is subject to any other measures ordered by a court of law or the authorities. In addition, MaxiHoster is entitled to block a transfer if a third party can prove that it has filed a complaint in a court or arbitration court against the current holder to have the domain name deleted/cancelled or transferred.
    3. Lack of control of the client's authorization

MaxiHoster is not obligated to review the Customer's domain name registration or transfer authorization. By submitting an application for registration or transfer of a domain name to MaxiHoster, the Customer provides MaxiHoster with a binding assurance that the registration or transfer of the domain name indicated in the application can be legally carried out, that the Customer is entitled to dispose of the domain name and therefore possesses the registration and transfer rights.

* + 1. MaxiHoster's right to refuse to provide domain name services
       1. The Customer is deemed to be the owner of the domain name towards MaxiHoster and assumes sole responsibility for its use.
       2. In case of concrete indication or justified suspicion that the Client has no rights to register or transfer the domain name, and/or in case of false information provided by the Client, MaxiHoster is entitled to refuse to provide the relevant services. The Client's liability towards MaxiHoster in such a case is defined by the point MaxiHoster's [9.](#_bookmark15)right to immediate termination pursuant to the point remains [12.5](#_bookmark16)reserved.
    2. Domain name location

MaxiHoster is entitled, but not obliged, to link the domain names reserved by the Customer with a MaxiHoster domain name server defined by MaxiHoster, or with a third party, provided that the Customer does not expressly wish the temporary deactivation of the domain name. MaxiHoster, or the third party commissioned by MaxiHoster, is entitled, at its sole discretion, to publish its own advertising or advertising on the website accessible via the reserved domain name.

* 1. Calling on third parties

MaxiHoster may at any time use third parties to provide its services.

* 1. Maintenance work, security updates and modifications
     1. MaxiHoster is entitled to carry out maintenance work at any time, which may result in temporary interruptions of service. MaxiHoster will try to keep such maintenance work as short as possible and, if possible, inform the affected customers in advance via a notification sent to the e-mail address they have provided for contractual communications.
     2. MaxiHoster is entitled to carry out security updates or changes to system components and applications at any time, which may result in temporary service interruptions, without having to inform the customer.

# RIGHTS AND OBLIGATIONS OF THE CLIENT

* 1. General
     1. The Customer shall be entitled to use the services and products purchased from MaxiHoster in accordance with the provisions and the law, and in doing so shall comply with the T&Cs as well as with any other instructions of MaxiHoster (in particular regarding maintenance, updating or removal of software). The Customer's liability for damages resulting from improper use is defined in point [9.](#_bookmark15)
     2. If the Client entrusts third parties with the use of MaxiHoster's services or products (free of charge or for a fee), the Client remains the sole contractual partner of MaxiHoster, retains its corresponding rights and obligations, and remains responsible for the conduct of such third parties, as well as for its own. The Client's obligation to transfer the T&Cs to such third parties is defined in the General Terms and Conditions in point and [3.4](#_bookmark6)more specifically in points and[3.2.4](#_bookmark2) [3.2.10.](#_bookmark5)
     3. The Customer agrees to keep the applications and software it uses (both on the server and on the client) technically up to date and to regularly maintain and update them. The Customer also agrees to respect the storage space thresholds defined by MaxiHoster and to remove from the server the applications and software that are no longer needed or used.
     4. The Customer's obligation to inform MaxiHoster of any failures, problems or interruptions in the services or products, facilities or software purchased from MaxiHoster is set out in general in section [6.2](#_bookmark13) and in particular in section [3.2.6.](#_bookmark3)
     5. The Customer agrees to always provide MaxiHoster with truthful information and shall solely ensure that the customer information registered with MaxiHoster (e.g. customer name, company, email and postal address, phone number, technical contact, etc.) is kept up to date, complete and correct throughout the term of the contract.
  2. Specific obligations related to MaxiHoster's domain name services
     1. When ordering a domain name service from MaxiHoster for country code domain names or domain names with generic Top Level Domain (hereinafter "TLD"), such as ".com", ".net", ".org.", etc., the Customer agrees to comply with the current guidelines for these names in addition to the T&Cs and accepts them as part of the contract he has entered into with MaxiHoster.
     2. The Customer undertakes to inform himself/herself about changes in the applicable guidelines of the registry and ICANN and to either accept them or to have the domain name concerned deleted.
     3. The Customer agrees to pay all costs related to the administration of the domain names.
     4. If the Customer registers a domain name for a third party or on behalf of a third party, the Customer shall ensure that the third party is aware of and agrees to all applicable provisions and guidelines, in particular these GTC, prior to the order. The Client undertakes to document this knowledge and his right to perform these actions for the third party by means of appropriate evidence and to present it to MaxiHoster upon first request.
     5. If the transfer of a domain name in the sense of this point requires the [2.3.3,](#_bookmark1)provision of a transfer code and/or notarial declarations, the Customer undertakes to submit these at his own expense.
     6. The Client undertakes to check the announced domain registrations and transfers immediately after receipt of the notification and to notify MaxiHoster of any deficiencies within 24 hours in the form of a complaint. The complaint must be in writing and must describe the alleged deficiencies in sufficient detail. The Customer may communicate the complaint to MaxiHoster as follows: (i) by registered mail (with legally valid signature), or (ii) by mail (with legally valid signature), with written acknowledgement of receipt from MaxiHoster, or (iii) by fax (with legally valid signature) with confirmation of dispatch or with attached complaint showing a legally valid signature (iv) by e-mail, with written acknowledgement of receipt from MaxiHoster. Any deficiencies shall be deemed to have been remedied without further formalities if the Client fails to submit a complaint in a timely and proper manner and if the Client makes productive use of the MaxiHoster product to which the complaint relates.
     7. After a transfer carried out according to the terms of point [2.3.3,](#_bookmark1) the Customer undertakes to check the accuracy of the information entered in the domain's Whois and, if necessary, to correct it.
     8. Restoring a domain name

If and as long as a registry allows the restoration (Restore) of an expired domain name or a domain name surrendered to the registry for certain TLDs and MaxiHoster also offers this service within the relevant TLD, MaxiHoster shall provide this service upon the request of the registered owner of the domain, but does not give any guarantee on the success of the restoration. The Customer agrees to bear the full cost of any such restoration.

* + 1. Whois-Privacy and Trustee Services

The contractual provisions of the relevant providers apply to the use of privacy services, or where a local contact address is provided.

* + 1. Resale of the domain

If the customer acts as a reseller or intermediary in the context of the resale of the domain proposed by MaxiHoster, he undertakes

1. to ensure that his customer account has the necessary balance for the administration of the domain name (including the restoration as defined in point [3.2.8](#_bookmark4)) by MaxiHoster;
2. ensure that the previous owner of the domain has approved the transfer of the domain name;
3. to ensure that the end customer/domain owner is aware of and agrees to all applicable provisions and guidelines, in particular these GTC;
4. to inform the end-customer/domain owner about MaxiHoster's notifications, the expiry of his domain name and the costs involved and
5. ensure, prior to any termination of the domain name or modification of the owner's information, that the termination or modification is legal vis-à-vis the end-customer/domain owner, and to process the latter's transfer requests and transfer code requirements in accordance with the relevant registrar's and ICANN's transfer requirements.

The Customer undertakes to document compliance with these obligations, as well as its right to perform all actions for third parties, with adequate evidence and to present it to MaxiHoster upon first request.

* 1. Obligation to provide contact information and legal notices
     1. The Customer agrees to provide MaxiHoster with a valid postal address, email address and telephone number through which it can be reached. In addition, business customers agree to appoint a responsible contact person to MaxiHoster.
     2. In the case of commercial offers, the Customer shall also indicate in the legal notice of the website hosted by MaxiHoster the valid postal address of the person responsible for the content of the website concerned, and shall immediately make any changes thereto.
  2. Transfer of the GTC to third parties

If the Customer transfers MaxiHoster's services or products (free of charge or for a fee) to third parties for use, or transfers the rights and obligations arising from the contract to a third party in the sense of clause [13.3,](#_bookmark19) the Customer undertakes to ensure that the said third parties are aware of these GTC and approve them. In this context, the Customer undertakes to document the approval of the relevant third party by means of adequate proof and to present it to MaxiHoster only upon request.

* 1. Security measures and data backup
     1. The Customer undertakes to take the necessary measures for the protection of his data and is solely responsible for the latter. In particular, the Customer agrees to choose an appropriate password, to renew it regularly, to keep it vigilantly and to protect it against any access by unauthorized third parties. Passwords or other identification parameters provided by MaxiHoster are intended for the personal use of the Customer and must be treated as confidential. MaxiHoster can rely on the fact that each person using a login parameter also has the authorization to use it. In addition, the Customer agrees to properly log out of the www.maxihoster.com platform to end their session. The Customer's obligation to immediately inform MaxiHoster of a finding of potential abuse of an account by a third party is defined in the point [6.2.](#_bookmark13)
     2. The customer undertakes to close any security loopholes in the programs he has installed within a reasonable period of time. Furthermore, the customer undertakes to take measures against the automatic storage or transfer of unwanted content (e.g. contributions to guest books, blogs, forums and contact forms).
     3. Unless otherwise agreed with MaxiHoster, the Customer is solely responsible for the backup of its data. MaxiHoster recommends that the Customer backs up its data on a regular basis to avoid loss of data.
  2. Customer's responsibility for the contents
     1. The Customer is solely responsible for the content of the information (language, images, sounds, programs, databases, audio or video files, etc.) that it (and the third party with whom it communicates) has transmitted or processed via MaxiHoster, that it disseminates or makes available, as well as for references (including links) to such information. MaxiHoster is not obliged to monitor the content made available by the Customer.
     2. By using MaxiHoster's services and products, the Customer undertakes to make available only authorized content. In particular, content based on prohibited conduct as defined in point MaxiHoster[4.1.](#_bookmark9) is always entitled, but never obliged, to check the legality of content made available by the Customer.
     3. Any dispute between the co-owners of an account, or between the Client and third parties, regarding the use of an account or the contents of the Client's website is exclusively the concern of the co-owners or the Client and the third parties. Requests or complaints addressed to MaxiHoster in this context are forwarded by MaxiHoster to the (other) co-owners or the Customer for resolution.
     4. MaxiHoster shall be entitled to charge the customer for the costs incurred by the measures mentioned in points [3.6.2](#_bookmark7) to [3.6.3.](#_bookmark8) The right to claim further damages remains reserved. MaxiHoster may claim a security deposit from the Customer to cover its alleged costs and other charges. If the Client does not comply with the corresponding request for payment or does not follow MaxiHoster's instructions accompanying the measures taken, MaxiHoster is entitled to apply the procedure described in point [12.5.1.](#_bookmark17)
  3. Client's responsibility for the actions of third parties

The customer is solely responsible for the actions of third parties appointed by him (e.g. technical contact).

# PROHIBITED BEHAVIOR OF THE CLIENT, AS WELL AS PERSONS UNDER HIS SUPERVISION, AND PROHIBITED APPLICATIONS

* 1. Prohibited behavior of the Client and persons under his supervision
     1. The Customer and the persons under his supervision (e.g. children, employees, subcontractors, etc., hereinafter referred to as "supervised persons") shall, within the framework of the contractual relationship with MaxiHoster, comply with these GTC as well as with the applicable Swiss and foreign laws. In particular, the Customer and the supervised persons are prohibited from doing the following:

1. committing an offence (fraud, computer crime, money laundering, violation of professional secrets, falsification of documents, violence and threats against authorities and civil servants, prohibited games of chance, etc.); participation in an offence (participation, incitement, complicity) or transferring the services or products used by MaxiHoster to a third party in order to commit an offence;
2. Violation of the provisions of the Swiss Federal Law against Unfair Competition (UWG), including the obligation to provide legal information in accordance with Art. 1 letter s of the1 UWG;3
3. dissemination or provision of content contrary to criminal or civil law (depictions of violence, so-called soft or hard pornography, incitement to breach of the public peace, infringement of freedom of belief and religion, racial discrimination, violation of honor, slander, violation of personality, etc.). References (e.g. links, banners) to such content are also prohibited. In addition to the legal provisions, the provision of so-called soft pornography is generally prohibited, in particular if the Customer installs effective barriers that only allow access to the relevant content by persons over the age of 16;
4. unauthorized reference, storage or distribution of legally protected content (including personal, copyright, trademark, data protection, design and/or patent rights)
5. sending identical e-mails to a large number of recipients without the prior consent of the recipients ("Opt in"), without correct indication of the identity of the sender or without indication of a simple and free possibility of refusal ("Opt out") ("spamming"). It is also forbidden for the Customer and the supervised persons to use, record, offer or recommend instruments or methods for such mailings. The sending of information about goods and services without prior Opt in by the recipient is exceptionally permitted if the recipient concerned is already a customer of the sender and if the message contains information about goods and services similar to those which the recipient has already obtained, as well as a possibility of Opt out (Art. 3, para. 1 letter 0UWG).
   * 1. Customer and supervisees are also prohibited from violating system and network security in the course of the contractual relationship with MaxiHoster. In particular, the following behaviors represent a violation in this sense:
6. unauthorized access to or use of data, systems and network elements;
7. Examination of the vulnerability of the system or network competence without prior agreement ("scanning");
8. attempt to circumvent security measures and access authorizations without prior written consent;
9. unauthorized monitoring of data traffic without prior written authorization from the competent authorities or the network owner ("sniffing");
10. harm MaxiHoster's and its customers' systems, including mail bombing, mass mailings or other attempts to overload the system ("flooding");
11. manipulations of control information within TCP/IP packets ("packet header"), e.g. TCP/IP addresses or control part information (e.g. recipient/sender address), in an electronic message.
    * 1. The Customer undertakes to take appropriate measures to prevent prohibited behaviour in accordance with points [4.1.1](#_bookmark10) and If [4.1.2.](#_bookmark11)the Customer becomes aware of any potentially prohibited behaviour in the sense described, the Customer shall immediately report it to MaxiHoster in accordance with point [6.2.](#_bookmark13)
      2. The Customer shall fully indemnify MaxiHoster for all claims made against MaxiHoster as a result of prohibited conduct within the meaning of clauses [4.1.1](#_bookmark10) and [4.1.2](#_bookmark11). This indemnification obligation of the Customer extends to the costs generated by the appropriate legal representation of MaxiHoster. The Customer undertakes to support MaxiHoster in any proceedings. MaxiHoster is entitled to demand a guarantee from the Customer to cover the alleged damages. If the Client does not comply with the demand for payment of the relevant guarantee or does not follow the instructions provided by MaxiHoster in this context, MaxiHoster is entitled to apply the procedure described in point [12.5.1.](#_bookmark17)
    1. Prohibited applications
       1. Only with MaxiHoster's prior written approval shall installation and execution of resource-intensive applications/scripts on MaxiHoster's servers, resource-intensive downloads and other resource-intensive uses of the hosting by the Customer and the supervised that may interfere with the normal operation or security of the network provided by MaxiHoster as part of its hosting services be permitted. MaxiHoster is always entitled to revoke with immediate effect any authorization issued for reasons of security of operation of the infrastructure and to prohibit, also with immediate effect, the use of the relevant applications/software.
       2. Customer and supervisees are prohibited from installing and running the following applications:
12. peer-to-peer software;
13. download archive;
14. network scanner;
15. bruteforce software/scripts/applications;
16. processes or scripts (such as PHP or CGI), which overload the CPU and/or consume MaxiHoster's resources excessively at the expense of other clients (e.g. chat scripts, proxy scripts, faulty or poorly programmed scripts that cannot be terminated properly after execution);
17. VoIP software;
18. applications that listen for incoming network connections, even if the application has received permission (e.g. BitTorrent services, Internet Relay Chat [IRC] Bots or IRC Bouncer [BNC]);
19. IRC related services;
20. terminal emulation;
21. games on explorer.

This list is not exhaustive and the Customer is required to obtain the corresponding written permission from MaxiHoster before installing any potentially prohibited application.

# BILLING, PAYMENT TERMS AND METHODS OF PAYMENT

* 1. Start of the Customer's payment obligation

The Customer's payment obligation for MaxiHoster's services and products begins at the time of the conclusion of the contract or the use of such services or products. With respect to domain name services, the Customer's payment obligation shall commence upon receipt of the registration confirmation or the corresponding access data.

* 1. Billing by MaxiHoster; due date
     1. MaxiHoster shall send the Customer the invoice for the selected contract period by e-mail to the address usually indicated by the Customer for contract-related communications. Upon request of the Customer, MaxiHoster shall send the invoice to the Customer by post, provided that the Customer has a Swiss billing address. The Customer acknowledges and agrees that MaxiHoster reserves the right to require the Customer to pay the cost of sending the invoice by post.
     2. The Customer is generally required to pay the invoice in advance, unless otherwise instructed by MaxiHoster.
  2. Late payment by the Customer
     1. If the Customer fails to pay an invoice within the time limit, MaxiHoster will invite the Customer to make the due payment through a payment reminder. If the Customer does not pay the renewal invoice before its due date, the relevant products are automatically suspended. The product will be cancelled in full and removed after 30 days. MaxiHoster assumes no responsibility for any damage incurred by the Customer or third parties as a result of the termination of the services.
  3. Prepaid account
     1. The customer can load a balance on his customer account on the platform www.maxihoster.com. With this balance, the customer will be able to purchase MaxiHoster services and products and pay MaxiHoster invoices. The customer can charge his customer account with a payment method accepted and supported by MaxiHoster or with a voucher. The maximum amount is CHF 500. In addition, MaxiHoster reserves the right to credit any refunds due to the customer directly to the prepaid account. The balance on the prepaid account does not earn interest.
     2. If the customer chooses payment via their prepaid account as a method of payment, it is the customer's responsibility to ensure that the prepaid account has a sufficient balance to pay the amount due. If the balance on the prepaid account is not sufficient to pay the amount due, MaxiHoster will refuse the payment via the prepaid account and the amount will remain fully due.
     3. All balances on a prepaid account are charged to the customer concerned. MaxiHoster will refund any remaining balances exclusively to the account mentioned by the customer. Residual balances of up to CHF 5,- are not refunded. The customer must use the remaining balance within the applicable cancellation period or within the period defined by MaxiHoster. After expiration of the defined period, the remaining balances of up to CHF 5,- become the irrevocable property of MaxiHoster in case of termination without notice according to section 12.5 as well as in case of deactivation of the relevant account(s) according to section5.3.1 .
  4. Third party payment methods

If the Customer chooses a payment method accepted and supported by MaxiHoster (e.g. debit or credit card, Payrexx, Twint or a payment application) as a payment method or for loading the prepaid account in accordance with section 5.4.1, the provisions agreed between the Customer and the issuer of this payment method shall apply. If the issuer in question revokes the post-payment accounting, MaxiHoster shall be entitled to invoice the respective claim.

* 1. Refusal of a payment method

MaxiHoster reserves the right to refuse a payment method to the customer without giving any reason.

* 1. Prohibition of compensation

Offsetting of mutual claims of the contracting parties is excluded.

# MAXIHOSTER GUARANTEE

* 1. General
     1. MaxiHoster agrees to provide its services without disruption or interruption to its operating resources. Subject to other agreements in this regard between MaxiHoster and the Customer.
     2. However, MaxiHoster cannot give any warranty to the Customer regarding (i) the uninterrupted availability of the Customer's website that it hosts, (ii) the uninterrupted availability at any given time of its services, (iii) the availability, quality and performance of the telecommunications infrastructure of the telecommunications network and service providers, as well as (iv) the correct, unchanged, complete, uninterrupted and timely transmission of data within the telecommunications networks, in particular the Internet.
     3. Furthermore, MaxiHoster cannot guarantee that an ordered domain name (i) is actually assigned to the Customer, (ii) is free of third party rights and (iii) is durable.
     4. MaxiHoster furthermore cannot guarantee that the services provided by itself or by third parties involved will enable the Customer to achieve the economic or other objectives desired by the Customer.
     5. Finally, MaxiHoster cannot give any guarantee for the applications it offers or for additional services of third-party providers (see point [2.2.4](#_bookmark0)).
  2. Claim
     1. The Customer agrees to immediately inform MaxiHoster of all defects, problems or interruptions it has found within the services, products, devices and software it has purchased from MaxiHoster (including all cases of use contrary to law, or agreement, of services by third parties) by means of a complaint, as well as to support MaxiHoster in resolving the problems to the extent it is able. The complaint must be in writing and must describe the alleged deficiencies in sufficient detail. The Customer may communicate the complaint to MaxiHoster as follows: (i) by registered mail (with legally valid signature), or (ii) by mail (with legally valid signature), with written acknowledgement of receipt from MaxiHoster, or (iii) by fax (with legally valid signature) with confirmation of dispatch or with attached complaint showing a legally valid signature (iv) by e-mail, with written acknowledgement of receipt from MaxiHoster. In addition, the Customer is obliged to grant MaxiHoster a reasonable additional period of time of at least days30 to resolve the issues detailed in the complaint.
     2. If the additional period is not met, the Customer is entitled to terminate its contractual relationship with MaxiHoster with immediate effect. MaxiHoster shall reimburse the Customer for any fees paid on a pro rata basis for the period during which the Customer no longer uses the service or product due to the termination. The Customer acknowledges and agrees that MaxiHoster does not grant any compensation, subject to point [8](#_bookmark14) (in particular for costs related to the identification and/or resolution of the problem by the Customer and/or third parties commissioned by the Customer).
     3. If the Customer has requested the analysis and if the cause of the problem is due to the Customer's behaviour, the behaviour of third parties who use the relevant MaxiHoster service or product with their knowledge, the equipment used by the Customer or by such third parties, or the behaviour of users of the Customer's website, the Customer shall bear the costs of identification and resolution of the problems by MaxiHoster.

# CUSTOMER WARRANTY

* 1. General

The customer certifies that he/she is entitled to enter into the contract with MaxiHoster and to instruct MaxiHoster accordingly.

* 1. Domain name

The Customer guarantees that

1. neither the domain name which he/she entrusts to MaxiHoster nor the intended use of the domain name infringes the rights of third parties;
2. the administration by MaxiHoster is not confronted with legal or effective obstacles and that
3. the domain name is not contrary to good morals.

# RESPONSIBILITY OF MAXIHOSTER

* 1. MaxiHoster's liability to the Customer shall be limited to direct damages caused intentionally or by gross negligence to the extent permitted by law.
  2. Exclusions of liability
     1. MaxiHoster is particularly not responsible for

1. indirect or consequential damages (loss of profit, production stoppage, loss of reputation and damages caused by loss of data, in particular as a result of erroneous or late registration or transfer of domain names)
2. damages arising from circumstances for which MaxiHoster cannot be held responsible (e.g. damages arising from typographical errors by the Customer, illegal registration or transfer of a domain name by the Customer [e.g. lack of authorization by the Customer for the transfer of the domain name, non-trademark compliant nature of the registered domain name, etc.], force majeure, interventions by the registration and administration authorities, strikes, insurrections, wars or natural disasters)
3. damages incurred by the Customer due to unavailability or limited availability, delays, non-delivery or non-sending of information (e.g. e-mails), transmission errors or operational interruptions;
4. damages incurred by the Client due to incorrect or false information disseminated via MaxiHoster;
5. damages that occur because third parties misuse MaxiHoster's communication infrastructure or the Customer's website or intervene in it without authorization (e.g. computer virus attacks, DDoS attacks, hacking attacks or unauthorized e-mailing). This exclusion of liability also includes damages incurred by the Customer as a result of defensive measures taken by MaxiHoster to protect itself from such third party attacks (e.g. blocking access to the Customer's website in order to protect MaxiHoster's infrastructure or the websites of other customers from DDoS attacks), as well as
6. security gaps and defects in the telecommunication, cable or satellite and Internet network.

# CUSTOMER RESPONSIBILITY

* 1. General

The Customer shall be liable to MaxiHoster for all damages caused by the failure to comply with the contractual obligations.

* 1. Special features
     1. The Customer is fully liable to MaxiHoster for all damages related to third party claims made due to illegal registration or transfer of domain names, as well as damages caused by false information from the Customer.
     2. The Client's obligation to indemnify MaxiHoster also extends in particular to damages incurred by MaxiHoster as a result of legal proceedings brought against it or one of its employees as a result of prohibited conduct by the Client or a supervisee in the sense of the point or[4.1,](#_bookmark9) as a result of MaxiHoster or one of its employees being held liable.

# CONFIDENTIALITY AND DATA PROTECTION

* 1. Protection of privacy
     1. MaxiHoster and the Customer undertake to mutually protect the confidentiality of all information which is not public knowledge or accessible to the public and which becomes accessible to the Customer during the preparation and execution of the contract. In case of doubt, the information shall be treated as confidential.
     2. This obligation continues after the end of the contract as long as there is a justified interest.
  2. Respect for data protection
     1. Both MaxiHoster and the Customer shall ensure compliance with data protection within their respective areas of influence and responsibility.
     2. MaxiHoster collects and processes personal data as described in MaxiHoster's privacy statement, in accordance with any additional agreements made with the Customer and in compliance with applicable data protection laws.

# INTELLECTUAL PROPERTY

* 1. Assignment of rights

The customers receive (subject to point [13.3](#_bookmark19)) the non-transferable and non-exclusive right to use and exploit the service and/or product concerned for the duration of the contract.

* 1. Intellectual property rights

All intellectual property rights existing or arising upon execution of the contract and relating to MaxiHoster's services and products (e.g. programs, models, data, platform www.maxihoster.com) are owned by MaxiHoster or by third parties engaged by MaxiHoster.

# CONTRACT TERM, WITHDRAWAL, AUTOMATIC CONTRACT RENEWAL AND TERMINATION

* 1. Duration of the contract

MaxiHoster offers contracts of various durations, the duration in force for the relevant service or product being indicated on the MaxiHoster website. The contract between MaxiHoster and the Customer comes into force upon the confirmation of the setup sent by MaxiHoster to the Customer.

* 1. Mutual right of withdrawal in the days30 applying to certain products

With respect to the products specified by MaxiHoster on its website, MaxiHoster and the Client have the right to withdraw from the contract without charge within the first 30 days. In this context, the day on which MaxiHoster sends the Client a confirmation of installation is considered day number one. Withdrawal requires written form.

Customer may communicate withdrawal as follows to MaxiHoster: (i) via the www. MaxiHoster.com platform, with written acknowledgement by MaxiHoster, or (ii) by email to the address provided to MaxiHoster for communications relating to the Agreement, with written acknowledgement by MaxiHoster, or (iii) by registered mail (with legally valid signature), or (iv) by mail (with legally valid signature), with written acknowledgement by MaxiHoster.

MaxiHoster may communicate withdrawal as follows to Customer: (i) by email to the address provided to MaxiHoster for contract communications, or (ii) by registered mail, or (iii) by mail.

* 1. Automatic renewal of the contract and mutual right of termination

The contract is automatically renewed for the agreed contract term, provided that it is not terminated in writing by the Customer or MaxiHoster at the latest one day1 before the expiry of the agreed contract term. The Customer may communicate the termination to MaxiHoster as follows: (i) via the www.maxihoster.com platform, with written acknowledgement of receipt from MaxiHoster, or (ii) by registered mail (with legally valid signature), or (iii) by mail (with legally valid signature), with written acknowledgement of receipt from MaxiHoster, or (iv) by e-mail, with written acknowledgement of receipt from MaxiHoster.

MaxiHoster may communicate termination to Customer as follows: (i) by email to the address provided to MaxiHoster for contract communications, or (ii) by registered mail, or (iii) by mail.

* + - 1. In the event of termination of the contract during the contract period, the Customer shall not be entitled to a refund of the fees already paid pro rata temporis.
      2. When the termination becomes effective, the domain name in question becomes available again for re-registration, or the Customer may transfer the domain name to another provider, provided that all services and products are paid for. The Customer (domain name holder) is solely responsible for the transfer of the domain name to another provider.
  1. General right of termination of MaxiHoster hosting

MaxiHoster may terminate the contract at any time, within a period of days30, in writing and by e-mail to the address indicated by the Customer for communications relating to the contract. Services or products already paid for, but not yet used, shall be refunded to the Customer.

* 1. MaxiHoster's right of immediate termination
     1. MaxiHoster shall be entitled to terminate the contract with immediate effect, in writing and by e-mail to the address specified by the Customer for contract-related communications in the following cases:

1. if the Customer violates the contractual provisions (in particular by illegally using MaxiHoster's services and/or products) or if MaxiHoster has reason to suspect the existence of such a violation;
2. when MaxiHoster is exposed to a risk of reputational damage;
3. when there is a risk to MaxiHoster's infrastructure or
4. if MaxiHoster or its appointed collection agency comes to the conclusion that the Client is insolvent or that MaxiHoster's claims cannot or will not be settled in due time.
   * 1. Instead of terminating the Agreement with immediate effect, MaxiHoster may also, at its sole discretion, suspend the relevant services or, in the case of [12.5.1](#_bookmark17) 1) above, require the Customer to use its services and products in compliance with the Agreement.

If MaxiHoster suspends its services in the manner mentioned, the Customer is still obliged to pay the full fees due for these services.

* + 1. In the event of termination with immediate effect by MaxiHoster pursuant to clause [12.5.1,](#_bookmark17) the Customer shall still be liable to MaxiHoster to pay all fees due until the ordinary end of the contract, as well as to compensate MaxiHoster for all additional costs incurred in connection with the termination with immediate effect.
  1. Deletion of Customer data

MaxiHoster is entitled to delete the Customer's data six months after the end of the contract or after a deactivation in the sense of the point of the Customer's account([5.3.1](#_bookmark12)s). The Customer is solely responsible for the timely backup of its data.

# OTHER PROVISIONS

* 1. Changes to the contractual provisions
     1. MaxiHoster strives to always keep its infrastructure up to date and in a current state for the industry. The Client acknowledges and accepts that new technical developments, new security requirements and/or changes in the range of services of MaxiHoster's contractual partners or the open source software used by MaxiHoster may result in an expansion or limitation of its range of services, but may also influence the evolution of prices.
     2. MaxiHoster is entitled to change its contractual terms and conditions (including the GTC) at any time. The latest version of the T&Cs shall be published on MaxiHoster's website and shall be effective at the time of publication. MaxiHoster shall notify the Customer of any price increases or limitations of services at the expense of the Customer in writing and by e-mail to the address specified by the Customer for contractual communications. Price changes will only be effective as of the next contract period. This does not apply to changes or the introduction of state taxes and duties, so that MaxiHoster is entitled to adjust its prices in accordance with such changes or introductions during the contractual period and without having to notify the Client. If the Client does not accept a change that results in a limitation of services at its expense during the contractual period, it is entitled to terminate the contract for the end of the month within days30 of receiving notification of the change in question, either in writing (i) via the platform www. MaxiHoster.com, with written acknowledgement of receipt by MaxiHoster, or (ii) by registered mail (with legally valid signature). In the absence of such termination, the change shall be deemed accepted by the Customer. Services or products already paid for but not yet used shall be refunded to the Client, provided that the Client proves that the limitation of services is such that it would have excluded it from the conclusion of the contract with MaxiHoster.
  2. Transmission of information related to the contract by MaxiHoster
     1. MaxiHoster will send the Customer information related to the contract (e.g. notification of price changes, technical maintenance work, payment reminders, termination, or the provision of access data, etc.) by e-mail to the address provided.
     2. MaxiHoster is not obliged to take into account any other customer data than the ones registered within it. However, MaxiHoster is entitled to correct or delete the Customer data stored within it if it is found to be false or violates the rights of third parties. In the context of correcting Customer data in its possession, MaxiHoster is entitled, but not obligated, to examine it properly.
     3. If the Customer's data proves to be incomplete, incorrect or outdated, thereby disproportionately impairing the Customer's ease of identification, or preventing the delivery of notifications to the Customer, MaxiHoster shall be entitled to stop providing its services or to terminate the contract as an exception, with immediate effect and without compensation. Furthermore, MaxiHoster is entitled to charge the Customer for any costs incurred in this context.
  3. Transfer of all rights and obligations under this Agreement from the Customer to a third party

A transfer of all rights and obligations under this contract from the Customer to a third party shall be made in writing and shall include the complete contact details of the new customer. The transfer presupposes the agreement of the new customer and his knowledge and approval of these GTC. The obligation of the former customer to transfer the GTC to the new customer is defined in the section [3.4.](#_bookmark6)

The Customer can arrange a transmission to MaxiHoster as follows: (i) via the my. MaxiHoster platform, with written acknowledgement of receipt from MaxiHoster, or, with a declaration of transfer legally signed by both the old and the new customer, as well as proof of identity of the old customer, (ii) by e-mail, with written acknowledgement of receipt from MaxiHoster, or (iii) by registered mail (with legally valid signature), or (iv) by post (with legally valid signature), with written acknowledgement of receipt from MaxiHoster.

If one or more provisions of these T&Cs are or become invalid, the validity of the remaining provisions shall not be affected. Invalid or void provisions shall be replaced by the provision that MaxiHoster would have made in good faith and

following the economic logic if it had been aware of the breach at the time of drafting these GTC.

* 1. If the provisions of these TACs, or portions thereof, are inconsistent with the provisions, clauses, policies or other regulations of the relevant registration organizations or ICANN, the provisions, clauses, policies or other regulations of the relevant registration organizations or ICANN shall apply.
  2. In case of contradiction between the different language versions of these GTC, the French language version shall prevail.
  3. Applicable law

**Swiss law shall** be the only law applicable to these GTC and to any disputes arising out of or in connection with the contractual relationship between MaxiHoster and its Customer, with the exception of conflict of laws rules and the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

* 1. For

The exclusive place of jurisdiction is the ordinary courts of **GA Conseils Sàrl's registered office.** MaxiHoster is also entitled to sue the Customer at his domicile.

Orsonnens, September 2021