

Terms of use of hosting services (November 2012)

1. General Provisions

1. The delivery and the provision of hosting services by Key-Systems GmbH is based on the general terms and conditions of Key-Systems and these terms of use.
2. The customer explicitly consents to the immediate initiation of the implementation of the service in question by Key-Systems accepting the order.
3. As far as the hosting services of Key-Systems are provided by third parties, Key-Systems will inform the customer about the contractual conditions of the third party. These will be considered part of these terms of use unless the customer terminates the hosting agreement within 14 days after receipt of the third party conditions.
4. Provided that hosting services are provided to a third party by customer, the customer remains the sole party to the contract with Key-Systems and is responsible for the use of the service and the compliance with these terms of use.

2. Obligations of Key-Systems

1. The specific service obligations result from the description of the service on the websites of Key-Systems. Key-Systems is entitled to extend the range of the service at any time as well as to undertake improvements or adaptations to technical developments.
2. In the provision of additional services free of charge the customer has no claim to such continued provision of that delivery in the future. Key-Systems is entitled to terminate such free of charge services after a reasonable announcement period as well as change the parameters of such services or introduce a fee.
3. The servers of Key-Systems are usually available 24/7 during 52 weeks of the year. Outages due to previously announced maintenance work shall not be affected.
4. Key-Systems provides direct technical support within their business hours and the framework of the agreed terms, and - in the event such an agreement has been made - under a service level agreement. Technical support for third parties, such as customer of the customer, is not provided.
5. By arrangement and for an additional fee Key-Systems may provide capacity for additional data transfer within the limits of the data center's technical capability and with due regard to the service obligation towards other customers. Prices for such additional transfer capacity result from the price list. Unless no limitation of the data traffic has been agreed upon (Traffic Flatrate) the capacity of data transfers is being provided in accordance with the fair use principle and under the reservation of actual availability.

3. Renewal and termination of services

1. Contracts regarding the use of web- and mail space with set durations will renew automatically for another full term at the end of their term, unless they are terminated at a term of one month to the respective date of expiration and no other agreement has been made.
2. After the expiration of the service agreement Key-Systems is entitled to immediately suspend the customer's and the third party's access to the hosting service and to release the webspace used by the customer.

4. Customer's obligations as a result of the use of hosting services

1. By use of Key-System's services within the scope of web-hosting, server providing and collocation, customer is obligated to mark all content provided on his website as his own by indicating his full name and his address. The customer has been informed there may be a further requirements to designate legal responsibility required by law, for example if tele- or media services are offered on the website.
2. The customer may not offend legal prohibitions, the morals and the rights of third parties (brands, name -, authors -, data protection laws etc.), by means of the Internet-presence, placing banners on the website, the designation of his E-Mail address and the contents of his operational website. The customer is not allowed to enter his website in Search-Engines as long as the customer uses keywords which could violate legal prohibitions, the morals and rights of third parties.
3. Similarly, the offering of viruses, of content that glorifies violence, that incites people, racist or right wing extremist content, incitements towards criminal activity as well as content directed at debasing the human dignity of others (Hatepages) is prohibited.
4. The use of the service for actions which violate legal prohibitions, offend the good morals or third party rights is prohibited and the customer has to refrain from taking such actions. This includes the unauthorized infiltration into third party computers or computer systems, port scanning, the distribution of malware, the forgery or encryption of IP addresses or email senders, provision of anonymization services, the sending of unsolicited commercial emails to third parties ("Spamming") and both the execution and participation in attacks against third parties (DOS, DDOS, Mail-Bombing).
5. It is prohibited to use the web space or servers mainly or exclusively as download server, P2P-Client or P2P-Host. The customer agrees not to operate any chat services on the servers provided by Key-System without explicit written approval.
6. When offering pornographic and/or erotic content and commercial services which involve pornographic and/or erotic content (e.g. nude pictures, peepshows etc.) the customer agrees to comply with the legal requirements and the directives of jugendschutz.net.
7. The customer is obligated to configure his online presence appropriately in order to avoid use of the systems of Key-Systems which either substantially exceeds the average expected amount of usage or which compromises the use of the service by other customers, e.g. by use of techniques such as CGI/PHP scripts that require a lot of computational power, require main memory above average or cause extensive traffic.
8. Furthermore the customer shall comply with the obligation to keep the scripts and software solutions running on the servers updated at all times and to close security gaps if possible.
9. Key-Systems is authorized to deactivate or block the hosting services partly or completely for the customer's or third parties access at any time and instantly without prior warning upon detection of potential breaches of law or illegal content. In the event of a third party putting forward plausible claims against Key-Systems based on actual or asserted violations of rights, the same applies. The customer hereby declares his agreement concerning this matter. Key-Systems will inform the customer immediately about any such sanction by stating the relevant reasons. As far as possible the deactivation will be limited to the (allegedly) infringing content and will be repealed as soon as the customer proves the legitimacy of the content in question. Furthermore, the access to a hosting service can be blocked temporarily if the customer commits a serious breach of the law by the hosted content or fails to react upon a request to remove the content in question.
10. For any case of infringement of the above obligations the customer agrees to to compensate Key-System for the damages caused hereby. A blocking of hosting services does not affect the customer's obligation to pay for the service.
11. The customer acknowledges that he is solely responsible for the contents published on the website or servers and agrees to indemnify Key-Systems against all liability from claims due to infringement

of third-party rights, the good morals or legal regulations made against Key-Systems due to the customer's usage of the services. Furthermore, the customer agrees to compensate Key-Systems for all the resulting expenses, direct or indirect damages – including financial losses – arising from his use of the service. This provision remains in force regardless of any termination of the contract.

5. Customer's obligations within the frame of the usage of e-mail services

1. The customer is committed not to dispatch any advertisement or have advertisement dispatched, without the explicit agreement of the respective receiver. This applies especially if the respective E-Mails have the same content and are sent to a broad mass (so-called “Spamming”).
2. The customer has to check his e-mail post boxes for incoming messages at regular intervals being no longer than two weeks. Key-Systems is entitled to refuse the receipt of the customer's incoming personal messages if the storage capacity limits which have been designated in the appropriate rates are exceeded.
3. A usage with the purpose of sending an excessive amount of data in order to disrupt the recipient's computer systems is prohibited.
4. If the customer breaches the stated obligations, Key-Systems is entitled to suspend the service instantly and to claim damages.
5. In the event of a justified assumption based on objective criteria that messages for it's customers contain malicious content or unsolicited commercial communication (Spam), Key-Systems is entitled but not obligated to prevent the transmission of the messages by means of adequate technical measures.

6. Availability and disclaimer of liability

1. Key-Systems is not able to guarantee that its services are continuously available free from error. This being the case, Key-Systems excludes all liability for data loss, canceled data transfers, disruptions caused by the general structure of the internet, strikes, hacker attacks or any other problems due to technical malfunctions, circumstances beyond its control or the fault of third parties. The same applies for outages due to previously announced maintenance work.
2. The liability for the availability of the service connection or the transmission paths of the internet not being situated within the frame of Key-System's or their agent's responsibility is excluded. The same applies for any service interruptions which do not exceed 2 % of the average annual service time.
3. Key-Systems does not take responsibility for content hosted on its servers. The customer is responsible for securing his own data hosted on Key-System's servers, storing backups and installing them again on his own and on his own expenses in the event of a data loss.
4. The customer is obligated to report disruptions, defects and interferences immediately in order that Key-Systems may remove them promptly.
5. Key-Systems is not obligated to review the online presences for potential legal violations. Pursuant to § 5 Teledienstgesetz the customer's uploaded contents are considered third party content.