

General terms and conditions of the ViMP GmbH

1. General terms

These general terms and conditions apply for all actual and future legal acts regarding all business relationships of ViMP GmbH (hereinafter referred to as “ViMP”) and the business partner (hereinafter referred to as “customer”). Opposed terms and conditions of the customer are invalid, provided that ViMP does not accept their applicability. A reference on the customers own terms and conditions does not count as accordance of these, even if they are attached and the agreement is enhanced. The customer’s terms and conditions always need to be additionally signed by ViMP. ViMP will only accept a further contractual responsibility, if the kind and the range of services and return services are defined in writing by both sides. Later verbal agreements and additions initially get effective when being accepted in writing afterwards. The same applies for all statements of intention, especially complaints, reminders and notices of defect regarding contractual relationships. The license agreements, which customer receives with the according software version, are independently from these terms and conditions a legally contractual basis for the use of the according products. The additional services and provision of services of ViMP are regulated amongst others in these terms of business.

2. ViMP Services: Installation

In line with the installation service your pre-installed server is prepared and adjusted for the use of the ViMP software. To use ViMP to the full extend, the installed MySQL database and the Apache installation get configured for the ViMP system. Additionally, the needed transcoding tools mencoder and ffmpeg get installed and configured to guarantee the high-quality display of your media. Afterwards, also the ViMP software gets installed and prepared for the first use.

Dates of delivery and delivery terms are basically not binding temporal guidelines, unless they have been agreed as fixed dates in writing. Basically a standard version of the software, that has to be delivered, comes to be installed. The customer provides ViMP immediately after the contract signing all documents, from which the actual configuration of the customer’s hardware / operating system platforms can be determined. In case that ViMP recognizes that the configuration has to be altered, the alteration has to be done before the installation of the software with costs and risks with the customer. The customer is obligated to render all acts of concurrence, which are necessary in line with the implementation of the software. ViMP guarantees the perfect functioning of the software only on the approved hardware systems. The release and acceptance are effectively completed with the program installation of ViMP on a hardware system of the customer

3. ViMP Services : Hosting

The services, contract periods and prices for the hosting booked by the customer, can be read on the websites or in an individual offer. If there is no other agreement, the contract runs for 12 months and is automatically extended by 12 months, if not later than 3 months before the end of the respective contract period it is canceled. Material to the adherence of the cancellation period is the betimes delivery of the cancelation at the respective other contract party’s address, named within the contract or ulterior conveyed. In the field of hosting, ViMP works together with a specialized provider.

The customer may not breach with the form, content or intended purpose of his websites and other data stored on the server, regarding legal prohibitions, morality and third parties’ rights (rights of name, originator, data security, etc.). The customer has to abide the affective law of the Federal Republic of Germany regarding the use of the server. He alone is liable and responsible for his server and the content stored on it. The customer is liable for all effects and disadvantages, which happen to ViMP and third parties due to improper or illegal use of the provided services or occurring due to the customer not abiding his obligations. Insofar as ViMP is used for illegal actions of the customer – especially regarding data security, obligator and competition rights – the customer pledges to absolve ViMP from all possible claims and to bear the costs emerged from the use or deletion of the illegal condition.

The customer will be informed about necessary scheduled maintenance work at least 24 hours beforehand. These will take place outside the usual operating time (Mo-Fr 8am – 8pm).

In case of price increase by providers, especially in the field of electricity powers, ViMP is entitled to adjust the monthly costs. The customer has to be informed about such increases at least 4 weeks beforehand and can make use of a special cancelation right at the moment of the price increase, as long as this increase exceeds 5% of the present invoice amount.

4. ViMP Services: Transcoding

For the allocation of the media in best quality on the customer server, the ViMP transcoding service offers a high-performance service with which the media is prepared and provided. In doing so, ViMP usually uses the newest available codecs. The media uploaded in the portal are directly transferred to the transcoding service, converted with the desired settings and subsequently automatically integrated into the framework with all dedicate meta-data. ViMP works in cooperation with a specialized company to fulfill the transcoding service. Further services, as well as the contract periods and prices can be found in the product description on the websites or in an individual offer. The customer will be informed about necessary scheduled maintenance work at least 24 hours beforehand. These will take place outside the usual operating time (Mo-Fr 8am – 8pm).

For the calculation and the settlement of accounts for the minutes, the length of the converted media (output) is relevant. In case of transcoding a video longer than one minute (Input) into one output format, one minute is charged. Regarding two different output formats this would mean two minutes. In case of transcoding in HD (at least 1280 x 720 px) every output minute is counted double, meaning one minute of video calculated with two minutes. In case of price increases by the providers, ViMP is entitled to adjust the monthly costs. The cancelation period for the transcoding is one month before the end of the month.

5. ViMP Services: Updates & Support

In line with the Update & Support package, the customer receives information about product updates. Subsequently the updates can be downloaded in the secured area and be installed with the help of the update manual. The contained product updates are valid for all purchased ViMP software products, inclusively the modules if necessary. The premium support is realized via a ticket system and can be done via e-mail or telephone in singular cases.

The support service can be constricted or denied by ViMP at any time, if the customer has questions with regards to content of running the portal, that do not have anything to do with technical or infrastructural problems, or if the customers does wish detailed information on enhancing the software (Enterprise, Enterprise Ultimate). In this case, ViMP will forward the customer to one of the partner agencies, which will provide support for these questions with charges.

6. Availability

For provided services hosting and transcoding mentioned in this contract an availability of 99% is guaranteed. A disturbance is considered as occurring, if the fault has been reported by the customer via telephone and an error description has been provided to the hotline via e-mail (hotline@vimp.com). The customer at this will receive a reference number, which confirms the receipt of the message.

In case of falling below the availability, the customer, for each percent shortfall, is entitled to receive a voucher of 10% of the monthly fee for the according service. The maximal voucher per year is restricted to a monthly fee per month. ViMP tries to guarantee a preferably high availability of the infrastructure. The grant of vouchers, compensation and fines are excluded, if the damage has been reported to a service provider or supplier of ViMP and if ViMP is waiting on the reparations by the service provider or supplier.

7. Shortcomings

A liability for a designed configuration is only given, if this has been agreed upon in writing specifically. ViMP points out, that according to the state of the art, it is not possibly to create software error free. If in case of a specific liability agreement an error occurs, the customer is obligated to report ViMP this error within two weeks in writing. In line with the written notice of defects the defect and its form of appearance need to be described as exact as possible, so a check of the defect can be performed (e.g. by submitting the error message) and a handling error can be excluded (e.g. describing the steps of procedure). The recession because of an insignificant defect is excluded. If the notice of defects proves as eligible, the customer sets ViMP an adequate period for supplementary performance. The customer informs ViMP, which kind of supplementary performance – enhancement of the delivered or delivering a new, free of defects object – he wishes. ViMP is however entitled to decline the desired supplementary performance, if it can only be done with disproportional costs and if the other way of supplementary performance would not bring considerable disadvantages.

8. Liability

In case of hindrance due to force majeure, ViMP is not obligated to value performance. ViMP only vouches with compensation, no matter because of which cause in law (including non-contractual liability), if the defect has been caused by ViMP or its suppliers grossly negligent or intentionally, has been based on violating an essential contractual primary obligation or cardinal obligation or the absence of an assured attribute. In case of slightly negligent violation of primal contractual primary obligations or cardinal obligations, the liability of ViMP is restricted to the extent of the typically foreseeable damage and the monthly order value. The liability of ViMP for financial losses with telecommunication services is restricted in all cases according to § 7 Abs. 2 telecommunications customer safety regulations. ViMP is not liable for financial losses, which occur in the first 48 hours of a disruption or a grave disturbance of the network connection.

Furthermore the liability for damages of ViMP is restricted on the grant of vouchers at the extent of maximal one monthly sum per damaging event. These vouchers resemble the sole compensation for the customer and the sole form of compensation by ViMP.

ViMP does not vouch for consequential harms caused by a defect, indirect and special defects (including damages for missed gains, missed sales volume or missed savings) independent of, if they occur for the customer because of deliberate or negligent actions or neglects by the employees or assistants of ViMP, or if ViMP has been informed about the possibility or the probability of the causation of such defects.

In case of claiming ViMP due to liability a contributory negligence of the customer has to be adequately considered, especially with inadequate error reports or inadequate data backup. The period of limitation for non-basic contract violations is restricted to two years.

The liability according to the law of product liability remains untouched by the preceding limitation of liability.

Irrespective of the preceding regulations, ViMP stays entitled and liable for amendment.

9. Data privacy statement

This is the data privacy statement for the use of the website and of the shop. ViMP pledges to secure your privacy and to use collected information about the customer only while considering the affective data protection act. ViMP understands individual-related data to be information about the identity, such as the name, an e-mail address or the postal address, as well as taken purchases and the data associated with that.

All data that has been transmitted to the operator as a matter of course are treated confidentially. He doesn't provide this data to others for the purpose of using, unless you gave your accordance or the operator is pledged to divulge this data, for example because of a court order. For the fulfillment of some ViMP services, such as e.g. hosting or transcoding, it can be possible to forward the customer's data to directly cooperating companies. This serves only the single qualified making delivery. A promotional or ulterior use of customers' data by this company is excluded.

ViMP will inform you about new developments and other important topics about this website regularly. You have the possibility to revoke this agreement in writing via e-mail (vie imprint or contact page) at any time. Also, in every newsletter you have the possibility to decline to receive any further information and to send an according cancellation. Furthermore, the operator saves your IP-address for a period of four weeks, at maximum after claiming, within designed offers, which offer you a communication with third parties or with the operator (questions in the forum, publications of comments, etc.). The intention is to facilitate the necessary identification, in case of the intervention of the users with the operation of the website or with other infringements by users. After completing the four-week safekeeping of the data, this will be deleted immediately.

To arrange the offer combined with the website as acceptable as possible, the page also uses so called Cookies, as many nameable websites do. Cookies are small text files that allow the recognition of a user, so the user does not have to register again every time. Besides, Cookies can help with allowing the adjustment of offers to your interests. The operator uses Cookies to analyze the use of the offer and to provide you interesting information. As a matter of course you can run the website without Cookies. WWW-browsers can be set, so Cookies generally are declined.

The operator is keen on the security of your data regarding the effective data protection act, anyhow no electronic communication is completely secure. The operator wants to indicate, that, despite his very high requirements of data security, all information that you provide on the net potentially also can be used by others. Hence the operator cannot take responsibility for the disclosure of information due to faults in the data transmission and/or unauthorized access by third parties.

The operator reserves the right to alter this data privacy statement at every time regarding the effective data protection act.

10. Final Provisions

Alterations of contracts, enhancements and additional agreements require the necessity of written form. If a regulation of this agreement is ineffective or is to be ineffective, this does not affect the remaining regulations. In fact, in lieu thereof an ineffective regulation an according or an approximate replacement regulation, that fits the intention takes place, which the two parties would have agreed about to achieve the same economic results, if they had known about the ineffectiveness of this regulation. The same is affective regarding the incompleteness of the regulations accordingly. For the contractual relations of the co-contractors German right is effective. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded. Place of execution for delivery and services is that place, that has been agreed about to be the address of execution, in doubt to be Munich. Place of execution for a payment is the location of the named paying office mentioned in the invoice. Court of jurisdiction is Munich.