

## General Terms and Conditions

of nic.at Internet Verwaltungs- und Betriebsgesellschaft m.b.H. (in short: **nic.at**)

AGB 2003/Version 2.0 of December 1st, 2003

These General Terms and Conditions shall apply to any and all services provided by **nic.at** to its contractual partners, even if no specific reference is made hereto. The updated and, in the contractual relationship to the domain holder, respectively valid version of the General Terms and Conditions is available at [www.nic.at/agb](http://www.nic.at/agb). The German original version is valid, other versions are merely informative.

Modifications to the General Terms and Conditions can be made at any time by **nic.at**, which are also applied for existing contractual relationships. The current version is available at the **nic.at** website (or will be sent on the customer's demand). A modification of the General Terms and Conditions is only allowed if it is reasonable towards the consumer, especially because it is marginal and factually justifiable. The consumer has the right to object to the modification of the General Terms and Conditions within 4 weeks from the information about the modification; otherwise the modified General Terms and Conditions are considered accepted. **nic.at** will inform the consumer about his right of objection as well as the definite legal consequences of the refrained objection.

### 1. Conditions for Registration

#### 1.1. Obtaining a Domain below the Top-level Domain „.at“

In order to obtain a globally distinctive domain name on the internet (delegation), the registration of the relevant domain (entry into the domain database) is necessary. The technical rules documented in the currently valid version of the registration regulations ([www.nic.at/registrationsguidelines](http://www.nic.at/registrationsguidelines)) shall exclusively apply to the registration of domains by nic.at below the top-level domain “.at“ and the second-level domains “.co.at“ and “.or.at“.

#### 1.2. Transmission of Declarations of Intent by E-mail

With regard to the services requested by the applicant (delegation of a domain), the consent to the transmission of declarations of intent by e-mail is recognized as customary and necessary by both contractual partners, who are aware of the corresponding risks. In addition, the applicant expressly agrees that **nic.at** may request declarations bearing a validly certified and safe electronic signature.

#### 1.3. Domain Holder

Domain holder means such an authorized party (natural person or legal entity) that is the bearer of all rights and responsibilities towards **nic.at** with regard to the relevant domain. In the application form, the holder shall be specified by his full and correct name, a valid address, an operative e-mail address as well as his status as individual person or organization. A P.O. Box address does not meet these requirements. By filing the application, the applicant declares that he is of full age and contractually capable.

The domain holder's data as well as the e-mail address shall constantly be kept up-to-date.

If these conditions are not met or if only one precondition ceases afterwards, **nic.at** may deny or revoke the delegation of the domain.

#### 1.4. Technical Requirements

The technical requirements are defined by the respectively valid registration regulations.

#### 1.5. Data Processing

All data specified in the application form or resulting from the ensuing business relationship shall be processed by **nic.at** for administrative and invoicing purposes.

The applicant expressly agrees to the publication of the domain holder's name, his address, as well as the name and address of other contacts named by him, on the internet, especially in the **nic.at** Whois-database or in other publicly available databases (e.g. RIPE). Regarding other contact persons, the applicant declares that he has their agreement and that he will indemnify and hold **nic.at** harmless from and against any claims concerning this matter.

#### 1.6. General Requirements and Conditions

With regard to registrations **nic.at** acts in good faith, relying on the legality of the claim. The applicant declares that he complies with the relevant legal regulations and, in particular, not to infringe other parties' rights to signs and rights under the law of competition (right to a name, trade mark right, unfair competition, etc.). **nic.at** will not carry out an examination concerning the domain applied for, but reserves the right to deny applications in case of a blatant infringement of a right or in case of an unauthorized use of **nic.at**'s services. The applicant commits himself to indemnify and hold **nic.at** harmless from any claims of third parties whose rights have been infringed upon, if such an infringement results from the domain delegation applied for by the applicant.

The applicant is not entitled to delegation of a particular domain. He is merely entitled to delegation of a unique domain name, with the exception of the reasons for refusal specified in the General Terms and Conditions.

No additional rights may be inferred from the delegation of the domain by **nic.at**. No protective effects in favour of third parties shall be derived from the contractual relationship with **nic.at**.

### 2. Domain Disputes; Blocking the Change of Holder – Wait Status

In case of differences between parties concerning a domain, settlement has to be achieved between the parties. **nic.at** does not act as an arbitration board. The domain holder expressly agrees that in cases of disputes nic.at may forward his contact information and the registration date of his domain to persons whose rights have been infringed upon or who claim a right to the domain.

#### 2.1. Wait Status 1, No Lawsuit Pending

In order to allow differences between the domain holder and third parties to be settled out of court, **nic.at** offers to set the status of the relevant domain to “wait”. Precondition is the third party's attestation of the basis for the claim as well as his request to activate the wait status in writing or by telefax. As soon as the prima facie evidence has been examined, the domain status can be set to “wait” for one month. Wait status 1 allows the domain holder to either continue using the domain or to cancel the domain. However, the domain cannot be transferred to third parties that are not involved in the dispute. The cancellation of the wait status upon joint application by the parties in dispute is possible at any time.

#### 2.2. Wait Status 1, Prolongation

At the request of either party in the dispute, the wait status 1 can be prolonged for the duration of one month. After the expiration or cancellation of wait status 1, wait status 1 cannot again be set in the same dispute.

#### 2.3. Wait Status 2, Lawsuit Pending

If a lawsuit regarding the domain is already pending or assigned to the arbitration board and proof thereof has been supplied to **nic.at** by any of the parties in dispute, the transfer of the domain to third parties other than the parties in dispute shall, upon request of either party in the dispute or the arbitration board, be suspended for an indefinite period of time, but at least for as long as the lawsuit is pending. For the duration of the wait status the holder may continue to use the domain, unless he is prohibited by means of an enforceable court decision (e.g. legally effective preliminary injunctions).

### 3. Administration Process

#### 3.1.1. Application for Domain Registration

Applications can be submitted via electronic application form or, if not available to the applicant, via letter or fax to **nic.at**. An application is not considered filed until **nic.at** receives it without any errors regarding form and content. **nic.at** cannot be held liable by third parties regarding the delegation of a domain made on the basis of an application containing errors.

#### 3.1.2. Registration by Authorized Agent

The application for a domain registration or the modification of entries can be made directly by the applicant or by an agent authorized by him. If someone requests the delegation of a domain or the modification of entries in the name of someone else, he declares to have the proper authorization; otherwise he shall commit himself to indemnify and hold **nic.at** harmless (compensation for any subsequent disadvantage), especially including third-party claims which are enforced against **nic.at** because of the unauthorized entry.

#### 3.2. Delegation

After a valid application has been filed and not been rejected by nic.at, **nic.at** shall delegate the domain and charge the registration fee. **nic.at** expressly reserves the right not to process the delegation until receipt of the registration fee. Registration in the domain nameservers of **nic.at** renders the delegation active and the domain is deemed “delegated”. Upon delegation of the domain, the applicant commits himself to check the correctness of the specified data without delay but not later than one month. Requests for correction which are received late shall be treated as modification requests and shall be processed according to the relevant conditions. The domain holder must ensure that all specified nameservers are constantly available.

#### 3.3. Invoice

The person or organisation specified in the application form („billing address“) shall be the invoice recipient, except the

regulation in point 3.9. regarding the registrar. As a rule, invoices will be delivered to the invoice recipient – and to the domain holder in case of non-payment. The domain holder is liable for the payment of the domain. Interest on late payments are based upon the original due date, even if the invoice cannot be delivered to the invoice recipient or he doesn't pay, which results in the re-delivery to the domain holder.

The amount of the invoice shall be settled free of costs for **nic.at**.

### 3.4. Prices and Due Date

The current prices are published at [www.nic.at/price](http://www.nic.at/price). The registration fee shall be due not later than 14 days from the date of the invoice. The subsequent annual fees shall be due on the domain's key date at the latest. These regulations are valid unless otherwise expressly declared. The key date is the date of the domain registration.

In case of price increases or changes regarding the due date, the domain holder is entitled to cancel the domain, subject to a cancellation term of 4 weeks, by the key date at which the increased fee is first due or the new due date will be applied.

If due invoices have not been completely settled, **nic.at** is entitled to revoke the registration of the domain and to re-delegate the domain. In addition to claiming the general fees, **nic.at** is entitled to claim any dunning charges actually incurred and necessary for properly enforcing its rights as well as interest and transfer charges. Disregarding any other payment dedication, incoming payments shall first be credited to costs and interest, then to the earliest claim outstanding for the domain. The annual fee shall only be deemed to have been paid in a legally effective manner when all arrears are covered.

Offsetting against claims outstanding against **nic.at** and the retention of payments because of alleged defects not honoured by **nic.at** is not permitted, except in case of consumer transactions according to the Austrian Consumer Protection Act (KSchG).

### 3.5. Notice of Changes

All modifications of application-related data shall be promptly notified to **nic.at** and implemented by means of a new, fully completed electronic application. In case of modifications, **nic.at** may request a confirmation in writing or by telefax from the domain holder. The domain holder shall be liable for the correctness of the data submitted by him.

Notifications by **nic.at**, especially invoices and other information as well as relevant information concerning the contract, shall be deemed to be delivered as soon as they have been sent to the contact address which has been specified last.

### 3.6. Change of the Holder

When transferring the domain to another holder, a confirmation in writing or by telefax of the current and future domain holder or a legally effective decision of the court or the arbitration board for .at domains is necessary, in addition to the new, fully completed electronic application. Such a confirmation shall be drawn up using the forms supplied by **nic.at**. The domain shall be taken over by the new holder with all rights and obligations pertaining thereto, especially outstanding claims of the former domain holder.

### 3.7. Contract Period and Cancellation of a Domain

The contract shall be deemed to be placed with the acceptance by **nic.at** in the form of the domain delegation (§ 864 ABGB – Austrian Civil Code). The contract is placed for an indefinite time.

The domain can be cancelled at any time, but not later than four weeks before the beginning of the next service period (key date of the domain) on the domain holder's request in writing or by telefax, using the forms supplied by **nic.at**. Outstanding claims that were due at the date of cancellation remain active.

There is no claim to reimbursement of unexhausted fees. If the delegation of the domain is a consumer transaction within the meaning of the Austrian Consumer Protection Act (KSchG), reimbursement of unexhausted fees may only be claimed if and when the contract is cancelled subject to a notice period of one month, with cancellation to take effect at the end of the first year or, subsequently, at the end of each six-month period (§15 para. 1 KSchG). If the contract has been concluded via electronic application and if more than 7 days have elapsed between the application and the delegation, the consumer is entitled to rescind the contract with **nic.at** within 7 workdays (excluding Saturday) as from delegation of the domain. The consumer is entitled to rescind the contract within 7 days as from receipt of the information according to §5 d of the Consumer Protection Act (KSchG); if he does not receive this information, he may exert such right of rescission within 3 months as from the delegation of the domain.

### 3.8. Revocation of the Delegation

The delegation of a domain can be revoked by **nic.at** in special cases, especially under the following conditions:

- in case of technical problems with this domain (e.g. nameservers are not operative), in spite of requests to remove this condition,
- non-payment of outstanding fees (including past service periods, even if the current service period has been paid) or other outstanding claims,
- because of insufficient data of the domain holder (see 1.3.),
- in case of a legally effective decision by a court or the arbitration board for .at-domains as well as upon official order,

Outstanding claims of **nic.at**, that have been due at the date of the revocation, remain active.

### 3.9. Registrar

**nic.at** offers the domain holder the possibility to delegate the application for the registration and administration of a domain to a registrar. The invoice recipient of this domain must always be the registrar, who has to inform **nic.at** about it.

The transactions mentioned in the points 3.5. to 3.7. can also be taken directly with the registrar, with the registrar acting as the agent towards **nic.at** in case of a change of the holder and a cancellation. The current list of all registrars is available at [www.nic.at/registrars](http://www.nic.at/registrars).

## 4. Liability and Miscellaneous

### 4.1. Limitation on Liability

**nic.at** shall not be liable for damage which is attributable to a slightly negligent conduct of **nic.at** or employed persons (personal injury excepted). Except in case of consumer transactions, **nic.at**'s liability for grossly negligent or wilful conduct in any given case is limited to 10 times the amount of the annual fees; the liability for loss of profit, loss of savings etc. is excluded in any case except towards consumers.

### 4.2. Choice of Law and Jurisdiction

The contractual relationship between **nic.at** and the domain holder shall be governed by Austrian law.

All disputes arising from the contractual relationship shall be settled by the Commercial Court of Vienna or, in case of proceedings at district-court level, by the Vienna District Court for Commercial Matters and, if the relevant contractual relationship is a consumer transaction according to the Austrian Consumer Protection Act (KSchG), by the competent court having general jurisdiction over the consumer.

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