

# **fairkom GTC**

## **(General Terms and Conditions)**

Last changed: 24 May 2018

### **Preamble**

The fairkom association for the promotion of medial communication and immaterial assets of the public domain, located at Badgasse 3, 6850 Dornbirn, Austria (hereinafter referred to as 'fairkom'), offers services that further the goals defined in its bylaws. These general terms and conditions entail regulations and conditions that apply to the services offered by fairkom. fairkom offers services based on these general terms & conditions (fairkom GTC) and according to the applicable performance descriptions and price lists.

### **1. Service Utilization**

The use of at least one of the services provided by fairkom results in the respective party entering into a contractual relationship with fairkom. You as a customer accept these GTC by acknowledging that you have read and understood this agreement upon entering into a contractual relationship with fairkom. fairkom exclusively offers its services based on the GTC; this means that all services are subject to these GTC. You may not utilize the service until you have entered into this legal agreement.

## **2. Right of Cancellation for Private Consumers**

If you enter into a contractual relationship with fairkom and utilize the service for purposes that are not associated with your commercial or self-employed occupational activities, you are considered a consumer as defined in the Austrian consumer protection law or similar consumer protection legislation outside of Austria. As such, the following regulations apply to you:

You can withdraw from your contractual declaration within seven (7) days without providing a reason by sending a corresponding letter to the postal address provided below. This deadline is calculated from the day the agreement and the included text-based information on the cancellation policy are transferred. This means that the grace period will only start after fairkom has fulfilled its obligations of information. As regards consumers living outside of Austria, we grant a legal right of cancellation within 14 days starting with the day the service agreement and the included text-based legal notice are transferred. The cancellation term is considered to be met if the cancellation request is sent before the grace period expired. Please send cancellations to:

fairkom Gesellschaft, Badgasse 3, 6850 Dornbirn, Austria.

In the event of a valid cancellation, both parties are required to return their received goods/payments. If you cannot return the received goods/services in full or in part, or if you can only return them in a state inferior to the one they were in when you received them, you shall reimburse for the discrepancy in value. This may result in you being required to make the contractually agreed payments for the time period until the cancellation. The respective party must meet obligations for the reimbursement of payments within 30 days. For customers, this term starts with sending the notice of cancellation, and for fairkom it starts with receiving this notice.

We are interested in reaching an amicable settlement. In cases where such a settlement cannot be reached, customers can contact the following arbitration bodies:

- Internet – Ombudsman – <http://www.ombudsmann.at>
- Dispute settlement platform of the EU Commission – <http://ec.europa.eu/odr>

### **3. Fees, Due Dates, Consequences of Defaulting on Payments**

The fees to be paid to fairkom are based on the service agreed with the customer and the price applicable when the contract was signed. This price and the applicable currency are listed on the fairkom homepage or in offers. Payments must be made in one of the currencies listed. The prices are net prices and do not include VAT. As regards new payment periods (the first new payment period and all subsequent ones), fairkom shall be entitled to charge the fee currently applicable to the service at the start of the corresponding payment period. If the price increase taking effect at the start of a new payment period exceeds 5% as compared with the previously billed price, the customer shall be entitled to terminate the agreement in writing within 14 days after the start of the new payment period (with a fee that is more than 5% higher than the previous fee). This termination shall take effect on the last day of the month when the new price was charged. In the event that the customer terminates the agreement due to a price change, fairkom shall charge the customer the previously applicable fee for the termination period.

The amount is payable upon termination of the contract or at the start of a new payment period.

The due date for payments is 14 days, without deductions. (Partial) amounts can be remunerated in a regional currency listed on the invoice. The customer shall not be authorized to assign any claims due to fairkom to third parties. The customer is required to make the contractually agreed payments regardless of whether the ordered service is actually being used.

In the event the customer defaults on payment, fairkom expressly reserves the right – without prejudice to other rights – to suspend or cancel the services to be provided. The parties agree that a default interest of 8 percent above the basic interest rate in accordance with BGBI. I No. 125/1998 (Federal Law Gazette), published by the Austrian National Bank, shall apply. In addition, the customer shall reimburse fairkom for any and all expenditures toward collecting the payment due.

### **4. Warranty**

fairkom guarantees that the type, characteristics and condition of the service agreed with the customer as part of an individual business transaction generally conforms to the scope as defined when the contract was signed. Should the service be provided in a manner that does not comply with the agreement or should it be flawed, and if fairkom can replicate this flaw and is responsible for it, fairkom shall be obligated to deliver the service as agreed within an appropriate period and at no added cost to the customer; the

customer shall provide the necessary assistance fairkom requires to analyze and remedy the defects. The prerequisite for this is that the customer notifies fairkom about the problem no later than two (2) weeks after discovering it. If fairkom fails to deliver the agreed service in significant parts within a reasonable extension period specified by the customer, the customer shall be entitled to terminate the agreement without notice. In this event, fairkom shall be entitled to receive payment for the services delivered under the agreement until the termination took effect. No payment shall be due for services which the customer can prove are unsuitable and of no interest within four (4) weeks of giving notice of the contract's termination.

Any additional claims of the customer due to qualitative or quantitative performance defaults shall be excluded. This exclusion shall not apply in the event of damage caused intentionally or by gross negligence or in cases of loss of life or injury to body or health. The customer shall inform fairkom about service package flaws using the fairkom ticket system. The problem shall be described in a detailed and comprehensible manner. The case will be prioritized and processed accordingly by fairkom. The customer shall not be entitled to refuse acceptance of the service due to minor defects.

fairkom does not accept liability for nor guarantee that the provided software meets the requirements of the customer, is compatible with other programs of the customer and is free of faults.

## **5. Intellectual Property**

fairkom alone, as well as licensors of fairkom, shall own all rights and legal entitlements relating to the services provided by fairkom; this shall include, in particular, all associated intellectual property rights and shall extend to products such as the fairkom homepage and product-specific landing pages, media, concepts or software. Whenever the customer delivers suggestions for improvement, feedback, images, text-based contributions, recommendations or other information, the customer is granting fairkom a non-exclusive permission to use said works by means of any and all types of use. The fairkom word mark and its associated product names are brands of fairkom or partner organizations of fairkom. Customers are expressly granted no right of ownership or use to these, unless specifically agreed otherwise as part of, e.g., a partner agreement, for instance as regards use of the logo.

## **6. Newsletter**

fairkom publishes a newsletter that provides information on activities, new services and the like. fairkom shall have the right to send regular newsletters to persons who have subscribed to the newsletter. By subscribing to the newsletter, you explicitly consent to receiving electronic mails, in particular

newsletters. If you do not wish to receive any further information or newsletters electronically, the customer needs to send an e-mail to [office@fairkom.eu](mailto:office@fairkom.eu) or follow the cancel subscription link in the newsletter.

## **7. Privacy Policy**

In order to optimize the user experience, statistics and cookies are used for the web pages provided or maintained by fairkom. In general, fairkom manages these autonomously and does not share them with third parties. Whenever access of a third party is necessary, this will be explicitly stated in the terms of use of the respective fairkom Internet offering. In accordance with these GTC, fairkom shall not disclose data, information or materials provided by the customer as part of using a fairkom service or as part of the agreement on using a service to other persons and shall not use or publish this data. This shall exclude, only to the extent necessary to ensure proper operation, persons performing server administration tasks. As regards the respective applicable data privacy law, fairkom shall handle such 'personal data' according to the data confidentiality regulation as defined in the national, substantive and data protection provisions. In the event fairkom should be forced to provide a judge or another federal authority with access to customer data stored at fairkom as part of a legal obligation or legal proceedings, fairkom will proceed as follows: fairkom will inform the customer of this situation as quickly as possible (by electronic means) in order to allow the customer to take legal measures on their own initiative to prevent their data from being accessed in such a manner.

fairkom processes the customer's personal data for a specific purpose and in accordance with the statutory provisions. The personal data provided (such as name, e-mail address, address, payment data) are used by fairkom to fulfill and process the customer order. These data will be treated confidentially by fairkom and not passed on to third parties who are not involved in the ordering, delivery and payment process. The customer has the right to receive information free of charge on request about the personal data that fairkom has stored about him or her. In addition, the customer has the right to data transmission, correction of incorrect data, blocking and deletion of his personal data, insofar as there is no legal obligation to store such data.

## **8. Final Provisions**

In addition, the customer shall expressly confirm that the information provided regarding their identity are correct and that no false information has been given and will not be given in the future in order to gain access to the service associated with this agreement. The customer shall also confirm that all information relevant to payment (account details, credit card number, etc.) – if such was provided – is correct.

fairkom expressly reserves the right to change or update these GTC without notice. Any changes will be communicated to the most recent e-mail address provided by the customer. The customer shall nevertheless be responsible for regularly checking the GTC for updates by visiting the fairkom.eu homepage and select product pages or by requesting the latest GTC via e-mail.

The place of performance with respect to the obligations of the contractual partners created under this agreement shall be Dornbirn/Austria. These GTC as well as the agreement on using a service, including the question of whether a valid contract has been brought about and whether it has an effect before conclusion and after termination, shall be subject to Austrian law exclusively.

The court of jurisdiction for all disputes arising from this agreement shall be the respective court with jurisdiction over the registered seat of fairkom.

The relevant language for this agreement is German. Any relating texts available in other languages shall be considered as a non-binding service.

If any provision(s) of these GTC should be or become void, the validity of the remaining provisions of these GTC shall in no way be affected. In this event, the contractual parties shall be obligated to replace such ineffective provision by an effective provision that shall come as close as possible to the economic spirit and purpose of such ineffective provision. The same shall apply to gaps in the agreement.

This text was written in a manner that strives to be as gender neutral as possible.

The interpretation of these GTC shall include consideration of all provisions – regardless of their assignment in the document.

The customer confirms that s/he has read and comprehended these GTC in their entirety and agrees to the contents.

The contractual parties agree that agreements among them shall be valid in writing only; this shall include written statements using online media. Oral agreements shall have no legal consequences. Any deviations from the rule of written agreements require a corresponding agreement in writing.