



364 Grad Unternehmensgesellschaft (haftungsbeschränkt)  
Heinrich-Wieland-Str. 95, 81735 München

**Please note:** *The English translation of the 364 Grad UG Terms and Conditions is provided for the convenience of our non-German-speaking customers. Regardless of this, only the original German-language version is legally binding.*

Effective: 19.01.2010

## General Terms and Conditions

### 1. Scope of application

364 Grad UG goods and services are only effected on the basis of the following purchasing conditions (subsequently called "AGB"). The AGB will also be applied to all future business transactions without pointing this out separately again. 364 Grad UG reserves the right to modify or add these terms and conditions any time, within an appropriate notification period. Notice shall be given by publication in the internet on 364 Grad UG's web-site. Moreover will the customer be notified in writing or by email about changes or amendments. Should the customer not object to the altered or amended AGBs within 14 days upon notification then the alterations or amendments are regarded as accepted. If the customer contradicts on the due date, 364 Grad UG is entitled to terminate the agreement up to the time the modified conditions shall become effective.

### 2. Offer and Conclusion of Contract

To conclude the contract it is necessary to have the customer contract countersigned by 364 Grad UG or upon first fulfilment action regarding said order by 364 Grad UG, without requiring further notification to the customer. Alterations or amendments to the contractual offer or of these general terms and conditions by the customer shall be deemed as new offer.

### 3. Contract Negotiations

Providing 364 Grad UG has submitted an offer about the provisions of services then this is the basis for contractual negotiations and, in cases of doubt, the basis for the interpreting of the confidential obligations. The customer shall bear the full risk that the contractual object correspond to his wishes and requirements. Providing the customer would like to agree upon binding standards deviating here from, he must put this in writing. These specifications will only be an effective part of the contract with the countersignature of 364 Grad UG.

### 4. Delivery and service obligations

364 Grad UG reserves the right to make changes in the course of technological progress and product improvement concerning its deliveries and services. The customer shall examine the received goods after delivery or making it available concerning any deviations from the contractually agreed quality and where appropriate give notice of such defects without undue delay. The hardware shall be put up, activated and tested by the customer himself. The sole responsibility herein lies with the customer. This is not applicable, if setting up, activation and testing of the required hardware are part of 364 Grad UG's contractual obligation. With regard to physically delivered contractual objects shall the risk of the goods pass to the commercial customer upon delivery of the goods. The customer guarantees that he is entitled to install additional devices or type or model modifications in the computers in question, even if he is not their proprietor. The contractual programs are not installed by 364 Grad UG, unless this installation is explicitly agreed. The operability of programs already installed in the customer's system with the new contractual programs shall not be warranted unless this is explicitly agreed. As far as they are contractually due 364 Grad UG is entitled to deliver manuals and assistive devices concerning the contractual object as deemed appropriate on data carriers such as CD-ROMs. With regard to purchasing and maintenance of internet domains 364 Grad UG will act only as mediator between the customer and the responsible domain registration authority such as DENIC or InterNIC or any other organization responsible domain delegation. Contracts concerning the domain registration are concluded between the customer and the domain registration authority. 364 Grad UG has no influence on the domain allocation. For this reason, 364 Grad UG shall assume no warranty or guarantee that the domains applied for and allocated to the customers are free from third-party rights or that they are of lasting value. The customer shall exempt 364 Grad UG from any claims for damages by third parties arising out of an unauthorised use of a domain. 364 Grad UG itself has no access to the web servers of Neue Medien Münnich. 364 Grad UG rents these domains from Neue Medien Münnich and leases them out to their customers.

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www.364grad.de

Competent country court:  
Munich, Germany,  
Register-ID : 178108



## 5. Acceptance

Provided that no contracting party requires a formal acceptance, or provided that the acceptance date, demanded by one of the said parties, cannot be fulfilled by the customer for some reason, wherein the sole responsibility lies with the customer, the contractual service of 364 Grad UG counts as accepted upon use and receipt of access data by the customer.

## 6. Utilization of charges

Within a rate booked at 364 Grad UG, the customer is only allowed to enter data concerning himself, as well as of such companies he himself holds a majority in stake or whose management responsibilities lies with the customer himself.

## 7. Alterations in price

364 Grad UG is entitled to raise prices at any time after a notification in writing within a due date of 6 weeks. The given prices are no fixed prices. In case of default 364 Grad UG shall be entitled to charge an interest of 6% above the respective discount rate of the Deutsche Bundesbank and to immediately block access to the customer's website. 364 Grad UG shall be entitled to invoice its services for the minimum contract period. Payments have to be carried out immediately after billing.

## 8. Warranty

364 Grad UG ensures in dependence on Neue Medien Münnich an availability of the internet web server of an annual average of 99%. Excluded from this are periods of web server downtime due to technical or other problems not within the control of Neue Medien Münnich (e.g. force majeure, fault of third parties, internet access disruptions by network provider). In case of technical modifications and in line with the guarantee the customer must, if necessary accept a new programme/development standard unless this leads to inappropriate adjustment and reorganisation problems for him. The customer has to report any potential defects encountered to 364 Grad UG in writing, by documenting, if possible, any error messages that may have been displayed. Excluded from the warranty is damage and defaults resulting from external influences, operating errors and modifications, amendments, instalments or removing, attempts of repair or other kinds of manipulation not conducted by 364 Grad UG or Neue Medien Münnich. Replacement of used basic equipment (writing or printing elements, colour carriers etc.) are excluded from warranty.

## 9. Content of websites

The customer may only feature designs or contents or the purpose of his web sites may only be designed in a way that does not not infringe upon the legal prohibitions, local moral conventions, and/or the rights of third parties (trademark, rights to name, copyright and data-protection laws etc.). The customer particularly undertakes not to offer pornographic contents and such services as are aimed at generating profit and/or as have pornographic and/or erotic contents (e.g. nude photos, peep shows, etc.) or mandate the offer of same. Furthermore does a customer's violation against aforementioned obligations entitle to reject the customer's content, delete content immediately and block the user from further uploads, delete the pages and any references thereto immediately and/or terminate the customer's contract effective immediately. 364 Grad UG does not take upon itself the duty of inspecting the contents of these pages. The instructing party will be liable for any direct or indirect damages or financial loss due to breach of legal prohibitions or morality caused by their websites. The customer is obligated to release 364 Grad UG in the internal relationship of all possible claims from third parties which are based upon unlawful acts of the customer or errors in the contents of information and websites provided by him. 364 Grad UG does not take responsibility for the correct account of the Internet-pages within the Internet presence of the customer excluding the case that 364 Grad UG can be accused of having acted with intent or in gross negligence. 364 Grad UG shall not be liable for collateral or consequential damage including damages for loss of business profits, unless such damage was caused intentionally.

## 10. Obligations of the Customer

The customer undertakes to keep passwords given to him by 364 Grad UG for the access to the services strictly confidential and to notify 364 Grad UG immediately should he learn about any unauthorized access to the passwords by third parties. If, through the negligence of the customer, a third party uses the services of 364 Grad UG on the basis of such passwords, the customer shall be personally liable for any damages or user fees or compensation incurred by 364 Grad UG as a result. It is explicitly pointed out to the customer that even the smallest carried-out modification to the software on his own account can nullify the execution of the system. The complete responsibility for all risks, rests solely with the customer.

## 11. End of user rights

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The following applies as far as the customer has been granted a temporary and content-restricted right of use for the programs or promotional materials, or the user rights end due to termination: With the ending of the user rights the customer must return all data carriers with programs, any copies, written documentation and advertising aids to 364 Grad UG. The customer must delete all saved programs, graphics or data from his computer system, unless and as long as he is obligated due to compulsory legal provisions to keep them for a longer period of time. Upon fulfilling this obligation the customer, on request of 364 UG, immediately issues a written confirmation. The remaining contractual subsidiary obligations of the customer to 364 Grad UG remain in place even in case of a possible termination or end of the contract.

## 12. Data protection

364 Grad UG saves all personal data of the customer during the duration of the contractual relationship in as much as this is necessary for fulfilment of the contract purpose, in particular for invoicing purposes. 364 Grad UG also processes and uses the customer's submitted stock data for consulting with their customers, for advertising and for market research for its own purposes. Upon request by the customer 364 Grad UG will provide him with full information on the saved data record at any time free of charge, in as much as this data pertains to the customer. 364 Grad UG will not pass on this data or the content of the customer's private messages to third parties without the customer's consent. This is not applicable only in cases where 364 Grad UG is legally required to disclose such data to third parties, in particular government offices, or to the extent that internationally recognized technical standards envisage this and the customer does not object. 364 Grad UG explicitly points out to the customer that data protection for data transmission in open nets such as the Internet cannot be completely guaranteed according to the current state of technology. The customer is aware that the provider shall be able to inspect for technical reasons and at all times, the page-offer saved on the web-server and under certain circumstances, also other such data of the customer as are saved therein. Also other subscribers of the internet are under certain circumstances, in a position to intervene in network safety without authorization and thus control the traffic of messages. The customer shall bear full responsibility for the safety of the data transmitted by him into the internet and saved on the web-servers.

## 13. Final provisions

Every amendment, complementation or the partial or complete annulment of the agreement shall require the written form also the amendment or annulment of the written form requirement. Exclusive jurisdiction and legal venue for all disputes arising from this contract shall be the District Court of Munich, insofar as the customer is a registered merchant (full businessman). The laws of the Federal Republic of Germany shall apply exclusively for contracts concluded by 364 Grad UG on the basis of these General Terms and Conditions (AGBs) and for all claims arising there from regardless of type excluding the application of the UN Convention on Contracts for the International Sale of Goods (CISG) with the exclusion of any further reference to the "Deutsches Internationale Privatrecht" (German International Private Law). Should provisions of these General Terms and Conditions and/or the contract be or become invalid, the validity of the remaining provisions shall remain unaffected. On the contrary, a provision corresponding with the objectives or at least, identical substitute provision which the parties would have agreed for the attainment of the same economic result if they had known the invalidity of the provision shall apply in place of every invalid provision. The same shall apply for any incompleteness in the contract.

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