

General Terms and Conditions of rapidmail.de

§ 1 General

(1) rapidmail GmbH, Zollstraße 11b, 21465 Wentorf bei Hamburg (hereinafter referred to as "rapidmail") operates the web-based rapidmail.de e-mail marketing system (hereinafter referred to as "rapidmail.de") under the www.rapidmail.de Internet address.

(2) The service is exclusively provided to entrepreneurs (§ 14 BGB [German Civil Code]), legal entities under public law and special funds under public law, however not to consumers (§ 13 BGB).

(3) The use of the services of rapidmail.de is exclusively governed by these General Terms and Conditions unless otherwise agreed upon by contract in each case. Any differing general terms and conditions of the customer are hereby expressly rejected.

§ 2 Definitions

For the purpose of these General Terms and Conditions of Use, the following definitions apply:

1. "Users" means addressees of the offer as defined by § 1 section 2 that use the services of rapidmail.de;
2. "Customers" means users who have registered with rapidmail.de with their complete data and can thus use the entire service offer of rapidmail.de;
3. "Account" means the user account with rapidmail.de;
4. "Mailing" means an e-mail newsletter sent via rapidmail.de.

§ 3 Demo mode

(1) Following the very first entry of the e-mail address, the user name for the login and the password, the user can use the services of rapidmail.de with a limited functionality before starting to use it against payment.

(2) This demo mode is a voluntary service by rapidmail. Users have no claims to its provision and the fulfilment of certain requirements, in particular not to its availability. rapidmail may block the demo mode at any time without indicating any reasons.

(3) § 8 to § 13 of these General Terms and Conditions apply accordingly to the demo mode.

§ 4 Registration as a customer, conclusion of contract

(1) In order to be able to use the full scope of services of rapidmail.de, the customer needs to register permanently. Registration is made by entering the required data in a particular online form. By completing the registration process, the participant makes a binding offer to enter into a contract on the use of the services of rapidmail.de. rapidmail reserves the right to request an application to be sent by mail or fax instead of the online registration in individual cases.

(2) The user may cancel the registration at any time by clicking on the “Back” button and by closing the browser window. The summary displayed before completion of the registration enables the user to check their entries for typing errors again and, if any, to correct such after clicking on the “Back” button. German and English are the only languages available for the conclusion of a contract. The order is stored by rapidmail, sent to the user with the e-mail confirmation, and a copy can be sent to the user at the user’s written request in the event the documents get lost.

(3) The information provided by the user is verified by rapidmail. rapidmail reserves the right to reject the activation of an account for the use of all functions of rapidmail.de without indicating any reasons and even if all formal requirements for an acceptance are met.

(4) Upon the activation of the account, the service contract between the parties becomes effective. The customer is informed about the activation by e-mail.

§ 5 Services of rapidmail.de

(1) rapidmail.de provides an account to the customer. Under such account, several gratuitous functions, such as uploads and creations of address lists and drafting and preparation of e-mails for sending, are available to the customer. The data communication with rapidmail.de is made by means of online access via the web browser. The scope of services of rapidmail.de does not include a certain availability of the above gratuitous functions of rapidmail.de.

(2) The sending of mailings via rapidmail.de is a service against payment. Rapidmail does not owe any particular success in this respect. In particular, rapidmail is not able to ensure that e-mails sent via rapidmail.de actually reach their recipients. However, rapidmail will take any necessary action in order to transmit the e-mails to the public Internet into the direction of the recipients indicated by the customer within the scope of availability specified in section 3.

(3) rapidmail provides the function for sending mailings subject to an availability of 95% in each calendar month. This does not include periods during which use is interrupted or impaired due to imperative technical reasons or necessary maintenance works. The maintenance window of rapidmail for such maintenance works is from 6.00 to 12.00 pm on weekdays. The entire duration of such maintenance works must not exceed 12 hours per quarter.

(4) rapidmail receives a copy of each mailing and reserves the right to subsequently check the mailing for violations of the contract and/or any laws. Such checks are only carried out at random unless there are special reasons. There is no obligation to check the contents of mailings.

(5) The obligations of rapidmail do not include the access of the customer to the Internet or the operation of data lines and data networks as part of the public Internet. Therefore, rapidmail may not be held liable for the performance of such data networks or such data lines to its servers. Furthermore, rapidmail is not liable either for power failures or failures of networks or servers that are beyond the control of rapidmail.

(6) The further details of the services and functions are described on the websites of rapidmail.de. rapidmail is entitled to independently carry out updates and extensions in rapidmail.de at any time provided that this is reasonable for the customer. Furthermore, rapidmail is entitled to make the further provision of its services subject to the condition that a separate declaration on compliance with anti-spam regulations is made by mail or fax.

(7) rapidmail is entitled to have its services carried out by third parties.

(8) Furthermore, rapidmail offers the customer services to be booked against payment. § 4 applies accordingly to the booking of services against payment.

§ 6 Prices, payment

(1) The prices agreed upon by contract apply. The customer is informed about the arising costs prior to sending a mailing. All indicated prices are net prices to which the legal VAT will be added.

(2) rapidmail can at its discretion invoice the agreed remunerations either directly following the sending of the mailing or by a summarising monthly invoice. The invoices are deposited in the customer's account. The customer will be informed about the deposition of an invoice in their account by e-mail.

(3) Payments are generally made by direct debit. If direct debit has been agreed upon, the customer will authorise rapidmail upon the conclusion of the contract to debit a valid bank account with the due payments.

(4) If wire-transfer upon the issue of invoices has been agreed upon as a payment mode, payment must be made within a maximum of seven days from receipt of each invoice.

(5) Furthermore, rapidmail is entitled to request payments to be made in advance.

(6) Payments are not deemed made until rapidmail is able to dispose over the amount. Partial payments and instalments are only possible if they have been agreed upon by contract.

(7) The customer must be prepared for rapidmail to offset payments against older debts. If costs have already arisen in relation with the assertion of legal rights, such as reminder costs, rapidmail may first offset payments by the customer against such costs, then against the interests and finally against the principal debt.

(8) In the event of default, rapidmail is entitled to block the customer's account for the duration of such default. In such event, any further claims and rights remain unaffected.

§ 7 No offsets

The customer may only offset any accounts receivable of rapidmail against counterclaims that are undisputed or legally established.

§ 8 Accessory obligations

(1) For the purpose to ensure a proper performance, all users of rapidmail have obligations of conduct, the non-compliance with which might lead to termination and damage claims. Such obligations of conduct are listed below.

(2) The user is obliged to

1. provide complete and true information in relation with required registrations and other inquiries that are necessary in order to achieve the purpose of the contract,

2. immediately correct any data that changes subsequently in the administrative function provided for such purpose,
3. ensure that the user name and the pertaining password as well as the quick login link are not made available to third parties,
4. prevent any use of the services of rapidmail under their own account by third parties,
5. immediately notify rapidmail under info@rapidmail.de if the password and/or the account are abused or there are any indications for an imminent abuse.

(3) In particular, the user is obliged not to use the services of rapidmail in an illegal way or against public policy and to observe the law and the rights of third parties. This comprises the following obligations:

1. The user ensures that the contents stored by them under their account or distributed from their account do not infringe the legal provisions on the protection of minors, the personal rights and other property rights, in particular trademark rights, company rights and copyrights, of third parties. The user will check prior to each storage and each sending of a mailing whether they hold the required rights in the work (e.g. text, photography, image, graph, video, music track, sample). With photographs and videos it must also be checked whether the shown persons have given their consent; without such consent, the photographs or videos must not be stored and/or distributed.

2. The user refrains from storing and distributing data with contents that are pornographic, against public policy, discriminating, racist, rightist extremist or that hurt religious sentiments.

3. The user undertakes to

- a) exclusively address any mailings to recipients that have given their express consent to such receipt separate from any other declarations and contractual provisions, subject to the exceptions under § 7 para. 3 of UWG [German Act Against Unfair Practices],

- b) clearly indicate themselves as the sender of any advertising mail,

- c) include a true and complete imprint in accordance with § 5 para. 1 of the German Telemedia Act (TMG) in its e-mails,

- d) integrate a gratuitous and easy-to-handle option to avoid future receipts to the recipients of their mailings, where it must be possible for the recipient to unsubscribe to e-mails without knowing the access data (e.g. login and password) and deregistrations must be processed immediately,

- e) delete e-mail addresses of the involved Internet service providers from the mailing list if three hard bounces occur after mailings have been sent to such addresses and

- f) indicate a contact for complaints, including the telephone number and e-mail address, to rapidmail; the response time must not exceed 24 hours on weekdays.

Upon request, the user must explain to rapidmail in writing how the e-mail addresses have been collected. Furthermore, rapidmail may request the user to present declarations of consent by the recipients.

4. The user observes the legal provisions on data protection and data security, in particular the provisions on address trading under §§ 28 et seq. of BDSG [German Data Protection Act].

5. In relation with the sending of e-mails to foreign countries, the user ensures that they do not violate the applicable law of such countries.

rapidmail reserves the right to make the further implementation of its services subject to the condition that a separate declaration on compliance with the above provisions is made by mail or fax in individual cases.

(4) In the event of any breach of obligations pursuant to section 2 or 3, rapidmail is entitled at its discretion to temporarily block and/or delete affected contents with immediate effect and/or to temporarily or permanently exclude the user from its offer and/or to terminate the contract with such user without prior notice. This also applies if rapidmail is advised by third parties that the user is in breach of the obligations contained in section 3 by providing or distributing certain contents unless such claim of a breach is obviously untrue. Even in the absence of any breach of obligations, rapidmail is entitled to block the account if and as long as there are any indications for an existing or imminent abusive use of the account by third parties.

(5) The user will have to compensate rapidmail for the damage resulting from a breach of obligations unless such cannot be attributed to it. The user indemnifies rapidmail against any and all disadvantages incurred by rapidmail due to claims by third parties for harmful acts to be attributed to the user.

(6) In the event of any breach of the obligation to include an imprint in accordance with sec. 3 lit. 3 c), rapidmail will provide recipients of the mailing with the name and serviceable address of the customer at their first request.

§ 9 Property rights, reference lists

(1) The user will particularly observe the rights of third parties (§ 8 section 3 lit. 1).

(2) In the event that the user provides or transmits contents in relation with the services of rapidmail in which they hold copyrights or other rights, rapidmail is entitled for the duration of the provision of services to those acts of exploitation that comply with the purpose of the relevant services of rapidmail.de.

(3) rapidmail is entitled to include the customer's company name and logo in reference lists and publish such on the Internet or in print media for objective information. Any further use is prohibited. Furthermore, both parties are entitled to publish press releases that briefly describe their cooperation or individual projects.

(4) The contents provided in the Internet offer of rapidmail.de are protected by copyright. Therefore, the user is not entitled to copy, process and/or distribute such contents beyond any use granted by the holder of the copyright in individual cases.

§ 10 Confidentiality and data protection

(1) The data provided by the user will exclusively be stored and processed by rapidmail for the purposes resulting from this contract in compliance with the relevant legal provisions on data protection (please also refer to rapidmail's data privacy statement).

(2) For compliance with the provisions on data protection by the users, § 8 section 3 lit. 4 applies.

§ 11 Liability

(1) rapidmail is only liable for damages or compensation for vain expenses, on any legal grounds whatsoever (e.g. from contractual obligations under legal or similar transactions, breaches of obligations or tortious acts), up to the following extent:

a) The liability in the event of wilful acts and under warranties is unlimited.

b) In the event of gross negligence, rapidmail is liable up to the amount of the typical damage foreseeable upon the conclusion of the contract.

c) In the event of a negligent breach of a material obligation, without the fulfilment of which the proper implementation of the purpose of the contract is not possible and on the fulfilment of which the other party can regularly rely (cardinal obligation), rapidmail is only liable up to the amount of the damage typically foreseeable upon the conclusion of the contract. If rapidmail is in delay with the provision of a service, rapidmail is liable for such service without limitation even in the event of coincidence unless the damage would also have occurred if the service had been provided in time. For the rest, any liability for simple negligence is excluded.

(2) rapidmail may invoke the defence of contributory negligence. The user is in particular obliged to secure their data in accordance with the latest state of the art.

(3) To the extent the liability of rapidmail is excluded or limited, this also applies to the personal liability of the employees, agents and vicarious agents of rapidmail.

(4) In relation with injuries to life, body and health as well as claims under the product liability act, the legal provisions apply.

§ 12 Term and termination

(1) The service contract is made for an indefinite term. The contract can be terminated by each of the parties by giving 14 days prior notice.

(2) The right of termination for important reasons remains unaffected.

(3) Notices of termination must be given in writing or by fax.

(4) Upon the effective date of the termination, the customer's account is blocked and any contents still stored are deleted. Therefore, the customer should make and keep copies of all data stored by them on rapidmail.de.

§ 13 Miscellaneous

All contracts are governed by the law of the Federal Republic of Germany; the UN Sales Convention does not apply. The place of jurisdiction for all disputes arising from or in relation with the contract based on these General Terms and Conditions is Hamburg for contracts with businesspersons, legal entities under public law or special funds under public law and Hamburg or any other place where a court of jurisdiction exists for petitions and actions against users.

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