



ambiWAN GTC

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ambiFOX



GENERAL TERMS AND CONDITIONS

GTC of the **ambiFOX network GmbH**
Fleehook 1
48683 Ahaus
- in the following called **provider**

for **ambiWAN services**

§ 1 General subject matter of the contract

1.1

The following agreements regulate the provision of ambiWAN by the provider. With ambiWAN the customer gets the technical possibility to connect locations via different access technologies and to use further services. The provider leaves ambiWAN to the customer within the existing technical and operational possibilities as router (ambiBOX) (on loan or purchase basis) or as virtualized appliance on a hypervisor provided and operated by the customer, as well as the related services of the provider, within the scope of this contract.

1.2

For the provision of ambiWAN the necessary technical and organizational requirements are determined by the provider in the course of a project planning with costs. The implementation of ambiWAN may require changes to the network infrastructure and operational procedures or digital workflows of individual employees of the customer.

§ 2 Services, Prices

2.1

The type and scope of the contractual services are defined in the service obligations of the provider (service description appendix B). These appendices are attached to the contract and as such form an integral part of the contract.

2.2

Not included in the scope of services is the maintenance and care of the EDP network used at the customer's site and the hardware and software used there. The responsibility of the provider ends at the exit of the provided router to the customer's network and does not include - unless otherwise stated in the contract - the data-carrying lines.

2.3

The Provider is entitled to increase the usual or listed prices for the contractual services appropriately to compensate for personnel and other cost increases. The Provider shall notify the Customer of such price increases in advance in writing or by e-mail. Any price increase of more than 10% shall entitle the customer to terminate the contract as a whole with a notice period of three months to the end of the month; if the customer exercises this right of termination, the prices that have not been increased shall be charged until the termination takes effect. An increase of the prices within six months after acceptance of the work / first provision of the services is excluded.



GENERAL TERMS AND CONDITIONS

§ 3 Right of use

3.1

The customer and the users authorized by him according to § 1 receive the non-exclusive right, limited to the duration of this contract, to access ambiWAN via data lines and to use the functionalities connected to ambiWAN according to this contract. The customer shall not receive any further rights - in particular to ambiWAN, the software application or the operating software.

3.2

The customer shall not be entitled to use ambiWAN beyond the usage permitted according to this contract. In particular the customer is not allowed to duplicate, sell or give ambiWAN or parts thereof for a limited period of time, especially not to rent or lend ambiWAN.

3.3

For each case in which the customer culpably enables the use of ambiWAN by users not authorized by the customer or unauthorized third parties, the customer shall pay damages in the amount of the remuneration that would have accrued for an individual user in case of conclusion of a contract during a regular contract period of one month. The customer reserves the right to prove that no damage or significantly less damage has occurred. The provider remains entitled to claim further damages.

3.4

In the event of an unauthorized transfer of use, the customer must immediately provide the provider with all information required to assert the claims upon request.

3.5

If the contractual use of ambiWAN is affected by industrial property rights of third parties without the provider's fault, the provider shall be entitled to refuse to provide the services affected by this. The provider shall inform the customer immediately. In this case the customer is not obliged to pay for the affected services. Other claims or rights of the customer remain unaffected.

§ 4 Data protection and data security

4.1

Both parties shall observe the respective applicable data protection regulations and oblige their employees employed in connection with the contract to maintain data secrecy in accordance with § 5 BDSG, unless they are already generally obliged to do so.

4.2

If the customer collects, processes or uses personal data himself or through the provider, he is responsible for ensuring that he is entitled to do so in accordance with the applicable, in particular data protection regulations and, in the event of an infringement, indemnifies the provider from claims by third parties.

4.3

The provider does not assume any control of the data and contents transmitted / stored for the customer with regard to a legal admissibility of the collection, processing and use; this responsibility is assumed exclusively by the customer.

4.4

The data protection requirements of this commissioned data processing in accordance with § 11 BDSG are described in Appendix A.

§ 5 Duties and obligations of the customer

The customer shall fulfil the obligations necessary for the performance and processing of this contract. He will in particular:

5.1

to name all users authorized to use the ambiPORTAL or users authorized to give instructions. Furthermore the customer commits himself to inform the provider immediately and in writing about every change in the assignment of users caused by organizational changes, change of employees or similar;

5.2



GENERAL TERMS AND CONDITIONS

protect the usage and access authorizations assigned to him or the users as well as identification and authentication safeguards against access by third parties and not pass them on to unauthorized users;

5.3

ensure that there is a legal basis or consent of the data subjects to the contractually agreed data processing. The provider has no influence on the type and scope of the data processed by the customer. In the event of special confidentiality obligations that go beyond the requirements of § 5 BDSG, the customer shall inform the provider of these requirements in writing;

5.4

do not misuse ambiWAN or let it be used in an abusive way. In particular the customer shall not transmit any information offers with illegal or immoral contents, he shall not refer to such information that serves sedition, leads to criminal offences or glorifies or trivializes violence, is sexually offensive or pornographic, is suitable to seriously endanger children or adolescents morally or to impair their well-being or to damage the reputation of the provider;

5.5

refrain from attempting, either themselves or through unauthorized third parties, to retrieve information or data without authorization or to interfere or allow to interfere with the software operated by the Provider or to penetrate unauthorizedly into data networks operated by the Provider

5.6

provide the provider with the documents and information necessary for the provision of the service.

5.7

not to remove, manipulate, circumvent or disregard any copyright, trademark, other product rights or product licensing

5.8

refrain from analyzing, decompiling, disassembling or manipulating software or hardware

5.9

indemnify the provider from all claims of third parties, which are based on an illegal use of ambiWAN by the provider or which are made with his approval or which result especially from data protection, copyright or other legal disputes connected with the use of ambiWAN. If the customer realizes or has to realize that such a violation is imminent, the customer is obliged to inform the provider immediately;

5.10

oblige the users authorized by him according to § 1 to comply on their part with the provisions listed for the use of ambiWAN in § 5 clause 5.3 to 5.9

5.11

grant the provider access to the premises where the provider's components are installed and will secure these with a stable power supply (UPS)

5.12

the provider must inform the provider immediately in the event of faults or defects in the line using the information channels specified in the service description in Annex B.

5.13

upon termination of the contract, to return all hardware & software provided by the Provider at his own expense to the Provider's registered office and to delete all other data.

§ 6 Use of the product contrary to the terms of the contract

6.1

The provider shall be entitled to block access to ambiWAN in case of illegal violation of one of the essential obligations defined in this contract by the customer or the users named by him, especially in case of violation of the obligations mentioned in § 5 clause 5.3. - 5.9. The access will only be restored, if the violation of the affected essential obligation is permanently removed or the risk of recurrence is ensured by issuing an appropriate penalty-proven declaration of discontinuance towards the provider. In this case the customer remains obliged to pay the monthly fees.

6.2

The provider is entitled to cut off the affected connections in case of a violation of § 5 clause 5.3 - 5.9.



GENERAL TERMS AND CONDITIONS

6.3

If in the cases of § 6 clause 6.1 and 6.2 a culpable violation of the customer exists, the customer is obliged to pay damages in the amount of 2.500,00 €. The compensation is to be set higher or lower, if the offerer proves a higher or the customer a lower damage; the customer can also prove that there is no damage. The customer reserves the right to assert other claims for damages.

6.4

In the event of a breach of the obligations set out in § 5 clauses 5.3 - 5.9 by a user, the customer must immediately provide the provider on request with all information necessary to assert the claims.

§ 7 Terms of payment

7.1

Monthly invoiced services are to be paid for on a calendar-monthly basis, beginning on the day of operational provision, at the end of the month.

7.2

Other services are to be paid after they have been rendered and invoiced.

7.3

The invoice amounts are debited from the customer's account by direct debit when due.

§ 8 Default

8.1

If the customer is in arrears with the payment of a service invoiced according to § 7 clause 7.1 with more than one monthly fee, the provider is entitled to block ambiWAN. In this case the customer remains obliged to pay the monthly fees.

8.2

If the customer comes

- for two consecutive months with the payment of the prices or a not insignificant part of the service or
- in a period of more than two months, with the payment of the remuneration in an amount equal to the remuneration for two months,

in arrears, the Provider is entitled to terminate the contract without notice and to demand lump-sum compensation in one sum, which is due immediately and amounts to twice the outstanding amount.

8.3

The amount of damage is to be set higher or lower if the provider proves a higher damage or the customer proves a lower damage.

8.4

The provider reserves the right to assert further claims due to default of payment.

8.5

If the Provider is in arrears with the operational provision, liability shall be governed by § 9 of this contract. In addition, the customer is only entitled to terminate the contract if the provider does not comply with a reasonable grace period set by the customer, which must be at least four weeks.



GENERAL TERMS AND CONDITIONS

§ 9 Liability

9.1

The liability of the Provider for damages, regardless of the legal basis, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tort, is limited in accordance with this § 9, insofar as fault is involved.

9.2

The Provider shall not be liable in the event of simple negligence on the part of its organs, legal representatives, employees or other vicarious agents, provided that it is not a matter of a breach of material contractual obligations. Essential contractual obligations are the obligation to timely delivery and installation of the delivery item free of material defects as well as consulting, protection and care obligations, which are intended to enable the Customer to use the delivery item in accordance with the contract or which are intended to protect life and limb of the Customer's personnel or to protect the Customer's property from substantial damage.

9.3

Insofar as the Provider is liable for damages on the merits pursuant to § 9.2, this liability shall be limited to damages which the Provider foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which he should have foreseen if he had exercised due diligence. Indirect damages and consequential damages resulting from defects of the delivery item are moreover only compensable to the extent that such damages are typically to be expected when the delivery item is used for its intended purpose and, in the case of ongoing remuneration, are limited to the amount of the remuneration per contractual year.

9.4

In the event of liability for simple negligence, the Provider's obligation to pay compensation for material damage and any resulting further financial losses is limited to an amount of 20 percent of the remuneration agreed upon at the time of conclusion of the contract per month and per case of damage (corresponding to the current coverage of his product liability insurance or liability insurance), even if it is a violation of essential contractual obligations.

9.5

The above exclusions and limitations of liability shall apply to the same extent in favour of the organs, legal representatives, employees and other vicarious agents of the provider.

9.6

As far as the provider gives technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by him, this is done free of charge and under exclusion of any liability.

9.7

The limitations of this § 9 do not apply to the liability of the provider due to intentional conduct, for guaranteed characteristics, due to injury to life, body or health or under the Product Liability Act.

9.8

Liability under the provisions of the Product Liability Act remains unaffected.

§ 10 Force majeure

10.1

In cases of force majeure, the party affected by this is released from the obligation to provide its services for the duration and to the extent of the effect. Force majeure is any event beyond the control of the respective contractual party which prevents it from fulfilling its obligations in whole or in part, including fire damage, floods, strikes and lawful lockouts, as well as operational disruptions or official orders for which it is not responsible. Supply difficulties and other performance disruptions on the part of the supplier's upstream suppliers shall only be deemed to be force majeure if the upstream supplier is itself prevented from providing the performance incumbent upon it by an event in accordance with the first sentence above.



GENERAL TERMS AND CONDITIONS

10.2

The affected contractual partner shall immediately notify the other contractual partner of the occurrence and the cessation of the force majeure and shall make every effort to remedy the force majeure and to limit its effects as far as possible.

§ 11 Commencement and term of contract, termination

11.1

The contract comes into force with its signature by both parties. The contract period starts with the day of operational provision of the respective ambiWAN.

11.2

ambiWAN is provided with a minimum contract period of three years. The contractual relationship can be terminated in writing by both parties at the earliest at the end of the agreed contract period with a notice period of three months. If the contract is not terminated in due time, the contract period shall be extended by one year.

11.4

The right to terminate for good cause remains unaffected.

11.5

In the event that insolvency proceedings are opened against the assets of the Provider, the Customer is entitled to terminate the contract without notice.

11.6

All cancellations under this agreement must be made in writing.

§ 12 Final provisions

12.1

The customer can only transfer the rights and obligations from this contract to third parties with the prior written consent of the provider. However, the Provider is entitled to transfer the rights and obligations under this Agreement to a group company within the meaning of Section 15 of the German Stock Corporation Act (Aktiengesetz). The Customer shall be informed of this by the Provider in writing and shall in this case be entitled to terminate the Agreement for cause.

12.2

German law shall apply to the contractual relations, excluding the provisions of the UN Convention on Contracts for the International Sale of Goods. In the event that the customer is a company (legal entity etc.), the parties agree on the registered office of the provider as the exclusive place of jurisdiction.

12.3

For any service within ambiWAN, as well as for the sale of software/hardware and maintenance and for pre-contractual obligations in business dealings the general terms of contract of the provider shall apply exclusively, unless otherwise agreed. The general terms and conditions of the provider can be viewed at <https://www.ambifox.de/agb>. Other contractual conditions will not become part of the contract, even if the provider does not expressly object to them.

12.4

Even if no reference is made to this again when concluding further or similar contracts, the general terms and conditions of the provider shall apply exclusively in their currently valid version.

§ 13 Validity of the General Terms and Conditions of Contract (AV)

13.1 In addition, the General Terms and Conditions of Contract (GTC) of the supplier shall apply.