

General Terms and Conditions of mobilespot-systems GmbH

Applicable for sales and services of "mobilespots"

I. Sales Contracts concerning mobilespots

1. **Applicability.** The following general terms and conditions shall apply for any and all contracts for the sale of one or more mobilespot devices in connection with the use of CMS software created by **mobilespot-systems GmbH** in order to operate the mobilespots as well as connected applications and additional services. The mobilespot devices are sold exclusively in connection with the possibility to use the CMS system created by **mobilespot-systems GmbH**, whereas **mobilespot-systems GmbH** shall only sell and deliver to these general terms and conditions. Deviating general terms and conditions of the buyer are not accepted. The contract parties covenant and agree to treat any and all information strictly confidential which is designated as such or is apparently a business or operation secret, whereas this duty to treat information confidential is not limited in time. With respect to such information, the parties covenant and agree not to record any such information nor to disseminate nor process it, unless that shall be required to achieve the purpose of the contractual agreement.
2. **Place of Performance.** The place for performance and the handover of the mobilespots shall be the place of business of **mobilespot-systems GmbH**, Paul-Roosen-Straße 16a, 22767 Hamburg. Provided that the buyer shall demand the delivery to another destination, § 447 BGB shall apply. In an individual case, the delivery to a place different from the place of performance can be explicitly agreed in writing. The pickup/delivery can only be made once all documentation, permissions and approvals according to the order confirmation have been presented.
3. **Installation Site.** The buyer has to clearly identify the installation site for every mobilespot in a discernible way in order to allow the designation and announcement of the installation of each mobilespot.
4. **Implementation / commissioning.** The buyer shall be responsible for the implementation and commissioning of the mobilespot at the respective installation site. The buyer may also request that **mobilespot-systems GmbH** performs these services by a separate assignment. In such an event, **mobilespot-systems GmbH** will provide such services itself or by vicarious agents, but only after the separate assignment has been placed by the buyer and accepted by **mobilespot-systems GmbH**. The costs for this additional service are set forth in the respective and applicable **mobilespot-systems** pricelist.
5. **Delays by mobilespot-systems GmbH**, which are a result of events for which mobilespot is not responsible, especially force majeure, strikes, government or administrative measures, blackout of telecommunications or servers, exempt **mobilespot-systems GmbH** from the respective duty to deliver the services in the required time. **Mobilespot-systems GmbH** commits itself to inform the buyer about the disruption or services and the respective event in due course.
6. **No access to third parties.** The access data to the CMS server may not be forwarded to a third party by the buyer. In case of a breach of that covenant, access to the CMS server can be blocked, which also applies in a case where there is sufficient evidence to justify the allegation of such a breach. In such an event, **mobilespot-systems GmbH** is authorized to block access temporarily for reasons of safety.
7. **Prices** are according to the respective offer. The base price for all services are set forth in the table of the current price list. All prices are subject to any applicable statutory VAT rate.
8. **Payment Date** of every invoice shall be 14 days after the receipt of the respective invoice by the customer. There shall be no offsets. Provided that this payment date is exceeded and also provided that other later part payments are still outstanding, these outstanding payments shall also become due immediately if default occurs with respect to the first invoice payment becoming overdue.
9. **Security.** Provided that **mobilespot-systems GmbH** shall take notice of a deficient possibility to perform on the part of the buyer, **mobilespot-systems GmbH** is authorized to deliver and perform goods and services still outstanding to be delivered only subject to advance payment or other adequate security. Provided that such payments, advance payments or securities are not made or delivered after the expiry of an adequate additional time for performance of at least 2 (two) weeks, **mobilespot-systems GmbH** may rescind the contract in whole or in part. Further and different remedies of **mobilespot-systems GmbH** shall remain unimpaired. Costs incurred can be invoiced to the buyer and have to be borne by the buyer in full.
10. **Retention of Title.** Until full payment of all delivered, installed and/or implemented systems (as the case may be according to the contract) has been made, **mobilespot-systems GmbH** shall retain title to all goods and equipment delivered.
11. **Offset / Right of Retention.** Buyer shall only be allowed to make an offset with a counterclaim and against his payment obligations provided that his counterclaim is undisputed or has been decided by a court in an ultimate and final judgment. In order to exercise a right of retention, the buyer may only do so if his counterclaim is based on the same contract and is either undisputed or has been finally and ultimately decided by a court of law.
12. **Warranties.** The warranty period shall be 1 year, beginning from the transfer of the risk of loss. Provided that instructions or maintenance manuals etc., issued by **mobilespot-systems GmbH** are not adhered to, or if modifications are made to the products, parts are replaced or consumable materials are used which are not in line with the original specifications, no warranty shall apply. The buyer covenants and agrees to immediately **inspect** delivered goods after delivery and with respect to any defects / operation disruptions and the buyer furthermore commits himself to put **mobilespot-systems GmbH** on notice without undue delay and within two weeks after receipt at the latest. Defects and operation disruptions, which surface later are to be brought to the attention of **mobilespot-systems GmbH** without undue delay after discovery of such malfunctions has been made. Provided that obvious defects, which are readily visible even without exercising special care are not brought to the attention of **mobilespot-systems GmbH** within 14 days, no warranty concerning these defects shall continue to apply. Provided that a defect which gives rise to a warranty is present, **mobilespot-systems GmbH** shall be authorized to choose between replacement delivery or repair. In case of remedial measures, **mobilespot-systems GmbH** is obliged to bear any and all costs and expenses in terms of material and labor costs, provided that such costs do not increase because the item of purchase needs to be shipped to a place different from the place of performance. Provided that the defective goods are not located at the place of performance, the buyer needs to do the following and at the election of **mobilespot-systems GmbH**: (a) send the defective goods with freight prepaid in order to conduct a repair and return sending by **mobilespot-systems GmbH** or (b) hold the defective goods ready in order to allow repair by a service technician of **mobilespot-systems GmbH** on site.

13. **Return of the mobilespots.** In case of a return of the mobilespots, any original spare parts, replacement parts as well as accessories, such a return must be effected by sending the goods in their original packaging to **mobilespot-systems GmbH**.
14. **Liability.** Mobilespot shall not be liable for damages other than damages to the delivered goods or software; in particular, **mobilespot-systems GmbH** shall not be liable for lost profit or other pecuniary loss of the buyer. **Mobilespot-systems GmbH** does not assume any liability for the function ability of mobile telecommunication, data or other telecommunications networks. Damages and blackouts, which are a result of an interference by a third party with such networks, are excluded from any liability, as well as such damages which are a result of the technical equipment configuration or the net infrastructure of the buyer or which are a result of faulty or negligent installation by the buyer or are a result of deficient knowledge of the handed over manuals or product information. With respect to the rest, liability of **mobilespot-systems GmbH** for simple negligence is excluded, unless otherwise agreed below.
15. The preceding liability disclaimer does not apply if
 - a. the damage was caused as a result of willful conduct or gross negligence on the part of **mobilespot-systems GmbH**,
 - b. provided that the buyer's claim is based on the lack of a guaranteed quality of the goods (§ 443 BGB) or if the claim is based on another kind of guarantee in the meaning of § 276 BGB.
 - c. to the extent that damage claims by the buyer are the result of a culpable violation of a duty, the performance of which enables the performance of the contract altogether (cardinal duty) and with respect to which the buyer can reasonably expect full and conforming performance.
 - d. to the extent that damages are concerned, which are based on the violation of life or limb or health (based on a negligent breach by **mobilespot-systems GmbH**) or are based on the willful or grossly negligent breach of any of **mobilespot-systems GmbH**'s vicarious agents.
 - e. to the extent that liability according to the ProdHaftG (products liability) is concerned which cannot be disclaimed.The entire preceding liability disclaimer shall not shift the statutory burden of proof in any way.

II. Use of CMS

1. **CMS.** For the purposes of
 - a. upload and download of contents to and from the mobilespots,
 - b. configuration of the dissemination of contents,
 - c. creation of evaluations concerning the retrieval of contents

mobilespot-systems GmbH shall provide access to the CMS system over a central **mobilespot-systems GmbH** server for the period of two years.
2. The buyer shall be fully responsible for the selection and subject matter of the content to be distributed over the mobilespots and mobilespot servers (bluetooth and W-LAN). The buyer acknowledges the fact that **mobilespot-systems GmbH** does not alter data and merely forwards the data in an automated procedure to the mobilespots and the servers / software located there. **Mobilespot-systems GmbH** is not obliged to monitor the information transmitted or stored in this way and shall also not be obliged to inquire into a possibly unlawful action, whereas this is also impracticable. Obligations to remove or block information according to the law shall also remain unimpaired in the case of a lack of responsibility of **mobilespot-systems GmbH** according to the *Telemediengesetz*. The secrecy of telecommunications according to § 85 of the Telecommunications Act shall be respected. **Mobilespot-systems GmbH**, however, can be obliged by law to act without undue delay in order to remove information stored according to the *Telemediengesetz* or may be obliged to block access to such information as soon as **mobilespot-systems GmbH** obtains knowledge about the fact that information has been removed from the net at the origin of the transmission or that access to such information has been blocked or that a court or administrative body has ordered the removal or blocking of such information.
3. **Data Format.** **Mobilespot-systems GmbH** shall inform the buyer about the data format needed for the content to be placed and transmitted. The buyer shall not have a claim against **mobilespot-systems GmbH** for extension of the support of other data formats by the CMS or the computer software. It is prohibited to use **mobilespot-systems GmbH** software or the software of the mobilespots respectively in order to disseminate pornographic, inhuman or defaming or visibly untrue content concerning third persons or entities. The buyer covenants and agrees furthermore not to violate copyright or intellectual property, trademark or other rights of third parties.
4. **Encroachment of Rights by Content.** Furthermore, **mobilespot-systems GmbH** does not assume any liability concerning content disseminated or transmitted via the mobilespots by the buyer or users, in particular not for
 - a. the violation of rights of third parties protected by law, unless **mobilespot-systems GmbH** was aware of the conflicting rights of third parties or was unaware of such rights as a result of gross negligence. The parties will inform each other without undue delay provided that they are confronted with claims based on the violation of protected rights by third parties.
 - b. the violation of competition law provisions or other provisions protected by law (§§ 823, 1004 BGB etc.) by content provided for by the buyer.

The buyer declares that it will hold **mobilespot-systems GmbH** harmless against claims of third parties including the costs for out-of-court and legal/judicial proceedings in full against any claims made by third parties, provided that these claims are based on content, which the buyer has provided via the mobilespots or the **mobilespot-systems GmbH** software respectively.