

General Terms and Conditions

1. Introduction

With up4distribution GmbH services and products can be purchased against payment and free of charge. The current brochures, offers and the website of up4distribution GmbH provide information on the range of services and specific user conditions.

2. Scope

These terms and conditions are binding, in particular recorded documents in addition to the terms and conditions, as well as the privacy policy, the user condition and the letter of intent. up4distribution GmbH reserves the right to make changes to these documents at any time and to publish the current version.

3. Contract

The contract is concluded by means of an offer and a declaration of intent. Detailed information on specific prices, contract liabilities, terms and conditions can be found in the terms and conditions and the letter of intent.

Unless otherwise specified in the offer, it will remain valid for 30 days from the date of issue.

Changes and additional agreements are only effective if agreed in writing by both parties.

In the event of a breach of contract by up4distribution GmbH, up4distribution GmbH shall be liable for proven damages, unless up4distribution GmbH proves that up4distribution GmbH is not at fault.

3.1. Forms of Contract (according to Swiss law)

3.1.1. Simple commission - Einfacher Auftrag OR 220 Art. 394

As a result of a simple order, the client is the executor. up4distribution GmbH acts according to the instructions of the client and provides the contracted services without guarantee of success.

3.1.2. Special-Order Contract - Werkvertrag OR 220 Art. 363

By this agreement, up4distribution GmbH owes the client a completed work.

3.1.3. Brokerage Agreement - Maklervertrag OR 220 Art. 412

The brokerage agreement is subject to the 13th title of the OR and is a commission. The fee is based on commission.

4. Fees

up4distribution GmbH provides the service described to the current offered and published prices and conditions in compliance with due diligence in the execution and under the required legal requirements.

All prices are exclusive of VAT.

5. Payment

5.1. Payment Method

The client can pay via PayPal, credit card or monthly bill.

5.2. Terms of Payment and Payment Arrears

The client is responsible for the timely payment of received services and are liable for dunning and collection fees.

In case of late payment the client indemnifies up4distribution GmbH with an arrears interest of 8%.

6. Obligation of the Client

The client confirms with the signed letter of intent to have read and understood these terms and conditions, the non-disclosure agreement and the terms of use.

6.1. Exercise of the terms of use

The client undertakes to exercise the use of up4distribution GmbH web software only to the extent granted. Detailed information can be found in the terms of use.

6.2. Duty to Collaboration

The client is responsible for the progress of the mission. up4distribution GmbH acts exclusively as an instrument and accompaniment.

The client undertakes to make all arrangements necessary for the provision of the service without delay, including the provision of suitable information and documents.

In addition, the customer is obliged to fully participate. The client is responsible for the correctness of the submitted documents and is subject to the legal obligation to cooperate and to provide information.

Faults must be reported immediately.

7. Obligation of up4distribution GmbH

7.1. Service Obligation

up4distribution GmbH complies with the agreements made in the contract. The services can be claimed on site or remotely.

7.2. Contractual Obligation

The terms and conditions, confidentiality agreement and the letter of intent are valid for up4distribution GmbH. Changes must be unanimously signed by parties in writing.

8. Technical Requirement

up4distribution GmbH takes no responsibility if course attendance / BEM software is not to be used due to technical problems.

It is the responsibility of the client to create technical conditions to use programs and BEM software.

9. Rescission

The contract can be terminated after a period of notice of 30 working days, whereby the date of receipt in the inbox at up4distribution applies.

In the case of client rescission, the already incurred expenditure is to be paid in full. A rescission at untimeliness is not allowed.

up4distribution GmbH is entitled at any time, with reasonable advance notice, to cease the provision of a service or the operation of an up4distribution GmbH web software offer without compensation.

Advance payments will be repaid pro rata temporis to the customer.

10. Retention

10.1. Reservation of Title

In case of repeated default of payment, access to software will be blocked. Only by settling the open bills, the access will be unlocked.

10.2. Intellectual Properties

All rights to existing or acquired intellectual property remain with up4distribution GmbH or the authorized third party.

11. Warranty and Liability

11.1. Warranty

up4distribution GmbH endeavors to ensure high availability for up4distribution GmbH web software products and related services.

As owner the up4distribution GmbH provides the up4distribution GmbH web software development, operates the offers and fixes disturbances to the development team location-dependent operating times.

A guarantee of success for the provision of advice and services is completely excluded from a warranty service.

up4distribution GmbH does not guarantee the undisturbed and uninterrupted operation of the up4distribution GmbH web software products or the associated services.

11.2. Liability

For consequential damages, lost profits, data loss and damages, e.g. as a result of downloads, use of up4distribution GmbH web software and up4distribution GmbH website or services provided up4distribution GmbH assumes no liability.

In addition, up4distribution GmbH is not liable for:

- Spamming
- Malicious Software
- Hacker, Spyware or Phishing attacks
- Malfunction or business interruptions of up4distribution GmbH web software products

In case of impairment or damage caused by the use of up4distribution GmbH web software at client end devices, up4distribution GmbH is completely and explicitly excluded from any subsequent performance, warranty or compensation.

If customers use up4distribution GmbH BEM web software or related services for the collaboration and /

or rendering of services to third parties, up4distribution GmbH is not a contractual partner and therefore excludes any liability for damages, consequential or debt collection claims.

11.3. Force Majeur

up4distribution GmbH is not liable if the provision of the service or the operation of up4distribution GmbH web software BEM and the associated services is interrupted due to force majeure.

As force majeure is e.g. Power failure, unexpected employee breakdown, construction, the occurrence of harmful software (virus attack) or nature-related hurdles preventing the resumption of operations.

11.4. Negligence

up4distribution GmbH is not liable for any damages that show slight negligence.

The customer is responsible for the legally compliant and contractual use of the up4distribution GmbH web software.

The customer is liable for the lack of conformity with:

- Hacking
- Attempts to spy on other up4distribution GmbH users and their data (pishing)
- Damage or endangerment of up4distribution GmbH infrastructure by dangerous and harmful software (malware)

If clients infringe intellectual property, the clients have to indemnify up4distribution GmbH and are responsible for themselves.

12. Salvatorius Clause

Should a provision of these terms and conditions be void or ineffective, the remaining provisions remain unaffected. Instead of the void or ineffective provision, a provision / determination, which comes closest to the intent and the meaning and purpose of these terms and conditions.

These terms and conditions come into effect from 01.05.2019.