



Unsere Stadt.  
Unsere Domain.

# General Terms and Conditions of punkt.wien GmbH

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## **1 Subject matter and applicability**

These General Terms and Conditions shall regulate the relationship between applicants (legal and natural persons applying for a domain), registrants (persons using a domain) and the registry of the .wien internet Top Level Domain.

### **1.1 Object of the transfer of rights**

After registration of a specific domain the applicant will be given a restricted, transferable, renewable and exclusive right to use the domain for the term of the contract.

The applicant has no right to be allocated a specific domain. Domains will be allocated according to the policies of punkt.wien GmbH. No other rights may be deduced from allocation of the domain by punkt.wien GmbH. No protective effects for the benefit of third parties can be deduced from the contractual relationship with punkt.wien GmbH.

### **1.2 Effectiveness of Terms and Conditions**

As no direct contact is established between the applicant and the registry in the course of registration, these General Terms and Conditions are accepted by the applicant in the contract between 2013RAA registrar and applicant and become effective thereby.

### **1.3 Underlying regulations**

Registration and allocation of domains under the .wien TLD will be effected on the basis of the ICANN rules (<http://www.icann.org/>), which will thus become valid also in the business relationship between the registries, the registrants and registrars. This means that, apart from these General Terms and Conditions, mandatory procedures and adapted processes apply, which are described in the documents listed below and are also effective for all parties involved.

- .wien WHOIS-Policy
- Principles of Registration and General Rules of Setting up and Function of the .wien TLD
- .wien Sunrise Rules
- .wien Landrush Rules
- Auction Guidelines for the .WIEN Top-Level Domain



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- Claiming privileged signs in the .WIEN sign procedure

The above documents can be retrieved from [www.nic.wien/wien/policies](http://www.nic.wien/wien/policies) and will be sent to customers upon request.

## 2 Registration of a domain

To obtain a domain name in the internet that is unique worldwide (delegation) registration of that domain is required (entry into the domain database). punkt.wien GmbH is responsible for registration of .wien domains. Registration of a domain or changes of entries may be requested by applicants only via a 2013RAA registrar. The technical requirements are laid down in the applicable registration policy.

### 2.1 Application for domain registration

An application will be deemed made once it is received by punkt.wien GmbH free of any mistakes in terms of contents or formalities. No claims of third parties against punkt.wien GmbH for delegation of a domain on the basis of a wrong application exist. punkt.wien GmbH shall accept an application for registration of a domain, an application for renewal of a domain registration or an application for transfer of a domain only if the registrar instructed by the applicant

- is accredited according to 2013RAA,
- has entered into a valid Registry Registrar Agreement (RAA) with punkt.wien GmbH
- is of a satisfactory credit standing.

### 2.2 Disclosure of data in the course of registration

All data stated in the application and resulting from the future business relationship will be processed by punkt.wien GmbH for purposes of documentation, administration and accounting. In accordance with the ICANN regulations the WHOIS Policy provides in detail what data of the applicant will be processed and published. Thus, the applicant him/herself publishes the data on a voluntary basis and also agrees that his/her data will be processed and published on the internet according to the Policy, including in the WHOIS database of punkt.wien GmbH. The applicant acknowledges and agrees that his/her permanent consent to publication is a mandatory prerequisite for allocation of domains and regular delegation. If the registrant revokes his/her consent to publication of data later on, the registrant will be informed by punkt.wien GmbH in



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advance that his/her revocation of consent will result in a revocation of delegation and asked for his/her comments. As regards other contact persons stated in the data report the applicant represents that s/he has obtained their consent and shall indemnify and hold harmless punkt.wien GmbH in this respect.

### **2.3 Representations and warranties of the applicant**

The applicant represents and warrants that

- s/he fulfils one of the General Registration Requirements and will inform punkt.wien GmbH via his/her 2013RAA registrar if and when s/he no longer fulfils those requirements;
- all information provided to punkt.wien GmbH in the course of the domain registration is true, complete and accurate;
- the application for domain registration is made in good faith and for a statutory purpose and infringes no rights of third parties;
- use of the domain will not be against public policy and not violate accepted principles of morality (e.g. is not obscene or insulting) and will not be against the law;
- s/he will observe these General Terms and Conditions and all applicable rules during the entire term of the contract.

During the entire term of the contract the applicant shall:

- keep complete and up-to-date his/her contact details with the 2013RAA registrar with whom the applicant has concluded a contract. In addition, the applicant represents and warrants that any email address advised via the 2013RAA registrar is a working email address;
- that s/he will use the domain in such a manner that s/he will not infringe any rights of third parties or breach any applicable laws or regulations, including the provision on non-discrimination on the basis of race, language, sex, religion or political views;
- s/he will not use the domain (i) in bad faith or (ii) for an illegal purpose.

If any of these conditions is not fulfilled or if any of the prerequisites ceases to be fulfilled at a later point in time, punkt.wien GmbH may refuse to delegate the domain or revoke a delegation.



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## 2.4 Delegation

After a valid application was filed and not rejected by punkt.wien GmbH, punkt.wien GmbH shall delegate the domain. Unless registrations during the start-up phases or a premium domain are concerned, only the 2013RAA registrar shall issue invoices to the registrant. The following separate documents describe the procedure during the start-up phases and during allocation of premium domains:

- .wien Sunrise Rules
- .wien Landrush Rules
- Auction Guidelines for the .WIEN Top-Level Domain

By registration in the domain name servers of punkt.wien GmbH the domain will be activated. The applicant agrees to verify accuracy of the data stated via a WHOIS search immediately after delegation of the domain and not later than within one month.

The registrant shall ensure permanent availability of all name servers stated by him.

## 2.5 Registrants (Domain Owners)

After registration the registrant of the domain is the natural or legal person who holds all rights and duties related to that domain vis-à-vis punkt.wien GmbH. Registrants are obliged to provide all information via the 2013RAA registrar in accordance with the WHOIS Policy in a timely manner, completely and accurately. By filing an application the applicant represents that s/he is capable of acting and of contracting with regard to the envisaged business volume.

## 2.6 Charges and payments

Payment of any charges due must be arranged via the 2013RAA registrar (exceptions: sunrise, landrush, auction/fixed price). punkt.wien GmbH shall not be responsible for any mistake of the 2013RAA registrar in that connection, including where such a mistake leads to non-registration or termination of the domain concerned.

## 2.7 General prerequisites and conditions

All domain registrations made by punkt.wien GmbH are made in good faith as regards legality of the claim. The applicant represents that s/he knows and will observe the



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relevant statutory provisions and, in particular, that he will not infringe anybody's proprietary rights (right to name, trade mark right, Statute against Unfair Trade Practices, etc.).

In this context punkt.wien GmbH will carry out no review of the domains applied for but reserves the right to reject applications in the case of obvious violations of the law or abuse of services.

The applicant or registrant undertakes to indemnify and hold harmless punkt.wien GmbH in the case that punkt.wien GmbH is held liable by third parties whose rights have been infringed, provided that the infringement is due to the domain delegation applied for by the applicant or registrant.

## **2.8 Revocation of delegation**

Delegation of a domain may be revoked by punkt.wien GmbH for important reasons (cause), including but not limited to the following:

- due to technical problems with the domain (e.g. name servers are not working) despite a written request to eliminate the condition;
- non-payment of charges due (including from past service periods and even if the current period has been paid for) or other outstanding amounts payable,
- due to insufficient or wrong information on the registrant that has been noticed at a later point in time only,
- due to a legally valid decision of a court or arbitral tribunal that is enforceable in Austria and upon order of a competent public authority.

Any outstanding accounts receivable by punkt.wien GmbH that are due at the time of revocation shall continue to exist.

## **3 Disputes over domains; no change of owners - waiting status**

In the case of disagreements over a domain among several parties a solution must be found by the parties. punkt.wien GmbH shall neither be a party nor a conciliation agent. The registrant acknowledges that punkt.wien GmbH may disclose contact



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information and the registration date of his/her domain to persons who allege that a right has been infringed or that he or she holds claims to the domain.

### **3.1 Arbitration**

In the case of disputes over domains the applicants and registrants of punkt.wien GmbH will submit to the arbitration proceedings provided for by ICANN for that purpose. The most frequently used proceedings are UDRP proceedings but also other proceedings are applicable, depending on the facts and circumstances of the case. The different proceedings are mentioned and described in "*Grundsätze der Registrierung und allgemeine Regeln der Einrichtung und Funktion der Top-Level-Domain .wien*" [Principles of Registration and General Rules of Setting-up and Function of the .wien TLD] and at "<http://www.icann.org/>"; detailed procedural rules are described in the original texts of ICANN, which are recognised as authentic sources.

### **3.2 Lock status**

In the case of arbitration proceedings the procedural rules provide for many cases that a lock status will be set automatically in order to prevent relocation of the domain to another 2013RAA registrar for the duration of the arbitration. Upon application of one of the parties that status will also be set during domain disputes for a maximum period of 2 months. In detail the procedures are also described in the "Principles of Registration and General Rules of Setting-up and Function of the .wien TLD".

## **4 Transfer of domains**

According to the procedure defined in the "Principles of Registration and General Rules of Setting-up and Function of the .wien TLD", registrants are entitled to transfer a domain to a new registrant and/or a new 2013RAA registrar. In any case the following prerequisites must be fulfilled beforehand:

- When the domain is transferred to a new registrant, the new registrant has confirmed that s/he fulfils the General Registration Requirements.
- No lock status has been set for the domain.
- The new registrar is ICANN certified according to 2013RAA and has entered into a standard contract (RRA) with punkt.wien GmbH.





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## 5 Limitations of liability

punkt.wien GmbH shall not be liable vis-à-vis entrepreneurs for any loss, including direct or indirect loss, consequential loss or lost profit, be it due to contractual, tortious (including negligence) or other liability, as a consequence of or in connection with registration or use of a domain or use of software or the website of the registry, even if it was informed of the possibility that such a loss might occur, including but not limited to:

- registration or renewal (or non-registration or non-renewal) of a domain for the benefit of a registrant or a third party due to an error regarding their identity;
- termination of the authority of punkt.wien GmbH to register domains under the .wien TLD;
- rights to a domain that may be claimed by third parties;
- technical problems or errors/failures;
- actions or omissions of a 2013RAA registrar regarding the request or application for registration, registration or renewal of a domain that might lead to non-registration or termination of that domain; except for cases where a wilful misconduct of punkt.wien GmbH is proved. In any case liability of punkt.wien GmbH for damages will be limited to the amount of the registration fee applicable at the time at which the dispute is put before punkt.wien GmbH. The registrant agrees that no higher or other claims for damages may be asserted against punkt.wien GmbH.

punkt.wien GmbH shall not be liable for damage caused by slightly negligent behaviour of punkt.wien GmbH or its agents (except for personal injury). Liability for grossly negligent or wilful behaviour is limited to 10 times the annual charge per case, except for liability to consumers.

The registrant shall be liable for all costs, expenses and damages incurred by punkt.wien GmbH due to any violation of these General Terms and Conditions by the registrant. In addition, the registrant shall indemnify and hold harmless punkt.wien GmbH from and against any claims or disputes raised by third parties and shall compensate punkt.wien GmbH for all costs or expenses or damages incurred as a result of measures taken by third parties against punkt.wien GmbH because the application for the domain or registration or use of the domain by the registrant infringes the rights of those third parties.



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For the purposes of this clause the term "punkt.wien GmbH" also includes members and suppliers and the relevant managing directors and staff.

## **6 Miscellaneous**

### **6.1 Severability clause**

If any of the provisions contained herein is or becomes void, the effectiveness of the remaining provisions shall not be affected. In such a case the parties shall agree on a regulation that is equal to the ineffective or void regulation in terms of its financial effects or comes as close as possible to the same.

### **6.2 Adaptations or modifications of and amendments to the General Terms and Conditions**

These General Terms and Conditions shall apply to all business relations between punkt.wien GmbH and applicants and registrants. The most recent version of the General Terms and Conditions applicable to the contractual relationship with the registrant can be retrieved from the website of punkt.wien GmbH. The original German version shall be applicable; other versions are for information only.

Modifications of or amendments to the General Terms and Conditions may be made by punkt.wien GmbH at any time and shall also be effective for existing contractual relationships. This will be necessary, in particular, where framework conditions change due to changes in the law or resolutions of ICANN.

Changes of the General Terms and Conditions are permitted vis-à-vis consumers if the change is acceptable for the consumer, in particular because it is a minor one and objectively justified. The consumer is entitled to object to a change of the General Terms and Conditions in writing within one month of receipt of the notice advising the change; otherwise the changed General Terms and Conditions shall be deemed accepted by him/her. punkt.wien GmbH shall inform the consumer separately and prior to the period available for an explicit statement about his/her right to object to the change and about the legal consequences that will occur if s/he fails to do so.



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### **6.3 Communication between punkt.wien GmbH and the applicant/registrant**

Any official communication between punkt.wien GmbH and the applicant or, subsequently, the registrant, will be effected via email. When doing so, punkt.wien GmbH shall use the email address advised by the applicant, which the latter is obliged to keep up-to-date.

In view of the service requested by the applicant (delegation of a domain) and being aware of the risks involved, both parties have accepted as usual and necessary that declarations of intention will be transmitted electronically.

### **6.4 Written form**

Any modifications of or amendments to these General Terms and Conditions shall be made in writing. This shall not apply to consumers.

### **6.5 Choice of law and place of jurisdiction**

The contractual relationship between punkt.wien GmbH and the registrant shall be governed by Austrian law; UN Sales Law and the conflict of laws rules of private international law shall be excluded.

The place of jurisdiction for all disputes arising out of the contractual relationship shall be Commercial Court Vienna or, in proceedings before a district court, District Court for Commercial Matters Vienna. If the contractual relationship is a consumer transaction as defined in the Austrian Consumer Protection Act [*KSchG*], the court of the general place of jurisdiction of the consumer shall have jurisdiction over claims against the consumer; claims against punkt.wien GmbH may be brought by the consumer also at the place of punkt.wien GmbH's registered office in Vienna.