



General terms and conditions for the Stars programme from Upload.de

Effective from 22 July 2010

The following provisions apply for participation against payment in the "Stars" programme of the author platform Upload.de (operator's service). The platform operator is the company Shareware.de SWV GmbH, Siemensstraße 32, 35440 Linden, Germany, managing director: Oliver Kruse.

1. Conclusion of contract

- a) A contract is concluded exclusively between the operator and the participant (author).
- b) Through his/her online registration in the "Stars" programme, the author submits an offer to conclude a contract with the operator.
- c) The operator is under no obligation to accept the author's offer to conclude a contract. The rejection of an offer to conclude a contract requires no explanation on the part of the operator.
- d) The confirmation of acceptance by the operator is effected via email to the email address provided by the author.

2. Participation authorisation

Exclusively authorised to participate in the non-gratuitous operator service are natural persons of the age of majority with full legal capacity, in addition to legal persons.

3. Storage/documentation of conclusion of contract

- a) The contractual text of the agreement (participation) is stored with the operator and can be called up on the secure author site following conclusion of contract. This requires the entry of a password.
- b) Moreover, the order process is sent immediately following conclusion of the order via email to the address provided by the author.

4. Right of withdrawal/consequences of withdrawal

Wheresoever the author is a consumer, and thus a natural person, who concludes a participation contract for a non-commercial purpose or a purpose that cannot be ascribed to his/her self-employed activities, the following right of withdrawal shall apply:

The author can withdraw his/her declaration to contract, without providing explanation, within two weeks following confirmation of participation in the "Stars" programme by the operator. Observance of the text format will be regarded as sufficient for withdrawal, i.e. in document form or an alternative form that enables the permanent reproduction of the lettering (for example, via fax or email). Sending of the withdrawal within the period of notice allowed for this shall be sufficient for observance of the deadline.

The withdrawal is to be submitted to:

Firma Shareware.de SWV GmbH

"Stars" programme

Siemensstraße 32

35440 Linden

Germany

Fax: +49 (0) 64 1 98 62 05 49

Email: autoren@upload.de

In the case of an effective withdrawal on the part of the author, all services received by both parties are to be returned. Wheresoever the author is wholly or partially unable to return services received from the operator or can only do so in damaged condition, the author shall be liable to pay compensation as necessary. The right to withdrawal ceases prematurely where the operator commences execution of the service prior to expiry of the withdrawal period with the express approval of the author, or such is prompted by the author his/herself.

A request on the part of the operator: in the case of withdrawal, in addition to the customer name, submission of the customer account number provided by the operator is also required in order to assign the withdrawal.

5. Performance requirements

- a) Performance on the part of the operator is only possible where the author has registered his/her programme via the Upload.de platform (operator's platform).
- b) In addition to these terms and conditions, provisions arising in the scope of programme registration (terms and conditions for software registration at Upload.de) shall also apply unless any such provision is amended by a condition stated here.

6. Scope of service provided by the operator

- a) The scope of service provided by the operator, the technical requirements of the author and the extent of the author's cooperation obligations are determined (additionally) by the author's selection from the "Stars" programme and performance descriptions contained within documents available at www.upload.de/starsprogramm.php
- b) In order to utilise services provided by the operator, the customer must log-in to the operators system using his/her customer log-in data accordingly. Utilisation of operator services without prior customer log-in is not permitted!
- c) The author asserts to have printed out or permanently stored the description of his/her product selection.

7. Log-in data

- a) A password is required to use the services provided by the operator. The author undertakes to keep the password secret, to maintain the password and username in safe custody and not to communicate the password or any other access codes to third parties.
- b) The author is responsible for all activity occurring with the use of his/her access code and is specifically liable for any unauthorised use of his/her account resulting from his/her conduct.
- c) The author is to notify the operator immediately in the case of loss of an access code or part thereof, or any unauthorised use of a customer's account.

8. Star boxes

- a) Star boxes are created by the author him/herself and subsequently transferred by uploading via the interface provided on the author site, which is accessible subsequent to registration as a Stars participant.
- b) The form of star boxes may be changed at any time. They must, however, be checked and activated by editorial staff following each change.
- c) The temporal and spatial (position and size) placement of Star boxes by the operator is at the operator's discretion. The author has no claim to a specific size, position or time.
- d) Use of the author's star boxes to advertise third party products/services is not permitted.
- e) The operator is entitled to reject a star box or other advertising material submitted by the author without providing explanation.

9. Download URLs

- a) No FTP access is provided to the author by the operator (upload via web interface).

10. Search terms

- a) Insofar as the author can and/or wishes to freely select search terms for his/her programme, the author undertakes to select search terms that are thematically commensurate with his/her programme. The author is not permitted to select search terms that are objectionable or contrary to statutory provisions.
- b) The operator is entitled to reject or delete the author's search terms without providing explanation. The author is to be notified immediately in the case of deletion.

11. Newsletter advertisements

- a) Insofar as the author wishes to include a newsletter advertisement in his/her Star account, the author is to draft an advertising text up to a maximum of 10 lines of 70 characters (including spaces) and to forward this to the operator (email: stars@upload.de).
- b) As regards content, the text must predominantly relate to the author's programme and may not be objectionable or contrary to statutory provisions. The operator is entitled to reject the text without providing explanation.
- c) The operator makes no guarantee with respect to any specific number of issues of the newsletter.
- d) The author has no claim on a specific positioning or fixed publication date with respect to the advertisement.
- e) Advertising for third party products/services is not permitted.

12. Press statements

- a) Insofar as the author wishes to include a press statement on the operator's platform, the author is to draft a press statement of up to a maximum 3,500 characters (including spaces) and forward this to the operator.
- b) As regards content, the text must predominantly relate to the author's programme and may not be objectionable or contrary to statutory provisions. The operator is entitled to reject the text without providing explanation.
- c) Insofar as an image is also submitted, the author assures that s/he holds all unlimited rights required for the publication of the said image. The image size should not exceed 420 pixels wide/300 pixels high.
- d) The author has no claim on a specific positioning or fixed publication date with respect to the text. The operator makes no guarantee with respect to any specific number of page views or a specific positioning.
- e) Advertising for third party products/services is not permitted.

13. Uptime

The operator assures a mid-year platform availability of 95%. This does not include downtime resulting from acts of God, war, natural disaster, strike or unlawful third party actions.

14. Categorisation

- a) Insofar as the author's programme is incorporated into a category list on download platforms and/or Internet pages belonging to Upload.de, the programmes shown will be listed in alphabetical order.
- b) The operator is entitled to categorise the list of programmes shown according to author names or programme names.

15. Special promotion

Insofar as the operator agrees to any special promotion of the programme, the author shall have no claim on the size, positioning or time of the said promotion.

16. Performance of the operator's partners

- a) Agreements by the operator to provide concessions to the author through its partners shall remain in effect until withdrawn by the operator, and shall solely apply to use of a link from the operator to the partner that will be made available on the secure author site.
- b) The operator is entitled to withdraw concession agreements at any time and without providing explanation. Any compensation, abatement or other claims by the author against the operator are precluded.
- c) In the case of withdrawal of a concession, the author shall have an extraordinary right to cancel within 14 days from submission of the withdrawal. The time of submission is the point of time at which the declaration of withdrawal reaches the author's sphere of control, that is to say, when, for example, an email reaches the author's email account or a letter is placed in the author's letterbox.
- d) In the case of extraordinary cancellation on the part of the author following a withdrawal, payments already received from the author for the period up until expiry of the contract will be refunded pro rata. Any additional claims on the part of the author are precluded.

17. Prices/due date/default

- a) The amount payable for the services of the operator (price) is determined by the relevant price quotation. Prices stated include VAT and are payable without deduction.
- b) In the absence of alternative agreement, the agreed payments (prices) are to be paid in advance for the duration of contract and prior to commencement of services by the operator. In the case of a new account being opened, the agreed payment is due directly following opening of the account; in the case of extension of the contract period, payment is due on the first day of the extension.
- c) Payment is to occur exclusively via direct debit from the account designated by the author or by debiting the author's credit card.
- d) Payment default occurs without the requirement of a remainder insofar as a debit return is effected for reasons occasioned by the author.
- e) The operator is entitled to assign a third party to impose and collect due payments. The operator is also entitled to transfer its claims for payment to a third party.
- f) In the case of a debit return/non-payment, the operator is entitled to withhold its services immediately, while sustaining all claims. Such withholding can occur, for example, by blocking the account. In the case of a debit return/non-payment, the operator expressly reserves the right to claim for any additional loss/damages (for example, bank charges in the case of debit return).

18. Declaration of liability for links

Within the scope of services provided by the operator, insofar as publicised contents incorporate links to the author's Internet pages or to those of third parties, the following shall apply: in its judgement of 12 May 1998, the district court (*Landgericht*) of Hamburg concluded that whosoever publicises a link shall be potentially co-liable for the content of the linked Internet pages. In accordance with the district court, this can only be avoided where the relevant party expressly distances themselves from the said content. The operator expressly emphasises that it has no influence whatsoever on the design and content of the Internet pages relating to listed links. As such, the operator distances itself from all the contents of Internet pages related to the links and does not adopt their content as its own.

19. Liability of the operator

Liability on the part of the operator for the services it provides is limited to actions of gross negligence or wilful intent and, with respect to extent, is limited to foreseeable damages.

Exempted from this limited liability are damages caused by injury to life, body and health resulting from negligent or intentional breach of obligations by the operator or by third parties appointed by it.

20. Data protection

- a) The author agrees that his/her personal information and details can be stored and used by the operator for the purpose of implementing contractually agreed performance and payment administration.
- b) All data transferred to the operator will be stored and processed purely for internal administration purposes in compliance with statutory requirements. Unless expressly stated, data is not forwarded to third parties.

21. Confidentiality

Insofar as the author contacts the operator via the Internet or email, the operator expressly draws attention to the fact that the Internet is an open communications system and, as such, the operator cannot guarantee that personal information submitted by the author will not be intercepted or decoded by third parties.

22. Other agreement terms

- a) Place of performance for all contractual services is D-35390 Gießen, Germany.
- b) Conditions of contract and the contractual relationship between the author and operator are subject to the substantive law of the Federal Republic of Germany and these general terms and conditions, to the exclusion of international private law.
- c) In relation to commercial customers (according to the German Commercial Code [HGB]) and legal persons under public law, the legal venue for all legal disputes shall be D-35390 Gießen, Germany.
- d) Where individual provisions of these general terms and conditions are inoperative or invalid, this shall not prejudice the validity of the remaining provisions. Partial invalidity shall not result in the invalidity of the entire set of provisions.

Shareware.de SWV GmbH
Upload.de
Siemensstraße 32
35440 Linden
Germany