

# General Terms and Conditions

Firstload

Revised on: 6 December 2007

The provider of the services provided under [www.firstload.de](http://www.firstload.de), [www.firstload.net](http://www.firstload.net), [www.firstload.com](http://www.firstload.com), [www.firstload.at](http://www.firstload.at) and [www.firstload.fr](http://www.firstload.fr) (hereinafter Firstload) is

USEPRO FZE

Ajman Free Zone

40262 Ajman

United Arab Emirates

Member of the Ajman Chamber of Commerce

(hereinafter Provider).

## 1. General regulations

1.1 These General Terms and Conditions (hereinafter GTC) shall apply to all contracts concluded between the Provider and the Member via Firstload. By registering with Firstload the Member accepts the GTC as amended at the time of conclusion of the contract. The Member can retrieve the GTC from Firstload, print and store them at any time.

1.2 The Provider expressly reserves the right to modify or amend these GTC. The Member shall be informed of changes to these GTC in writing. The new GTC shall enter into force if and when the Member, after having been notified of changes to these GTC, logs on to Firstload by its username and password (hereinafter Access Data) again and has not objected to applicability of the new GTC in writing beforehand. If the Member objects, the GTC applicable before the change shall continue to apply.

## 2. Offer and conclusion of contract

2.1 The services offered by the Provider under Firstload are exclusively directed at persons of age. Consequently, persons who have not attained the age of 18 shall not be allowed to become members of Firstload. There shall be no entitlement to membership of Firstload. The Provider shall be entitled to deny applications for membership without having to state a reason.

2.2 The contract between Provider and Member shall come into existence if and when the Provider has accepted registration of a member with Firstload. For that purpose the Member shall first enter the data necessary for conclusion of the contract into the registration form; such data can be changed by the Member until the "send" button is clicked. By clicking the "send" button the Member submits to the Provider a legally binding request to conclude a contract. The Provider shall confirm receipt thereof to the Member via e-mail without delay. At the same time or in a separate e-mail message the Provider shall send the Member the Access Data to Firstload, by which the Provider accepts the Member's offer.

2.3 If the Member fails to fulfil its duties under the contract with the Provider, in particular because (i) the Member fails to pay a fee owed to the Provider and does not exercise the right of cancellation at the same time or beforehand, (ii) the Member has passed on Access Data to third parties, or (iii) the Member has stated incorrect data such as name, address, phone number, e-mail address and/or date of birth at the time of registration, the Provider reserves the right to charge the Member a handling fee of EUR 15 for each breach of duty, unless the

Member can prove that the Provider has incurred no damage or that the amount of damage incurred is significantly lower than the handling fee. Any other claims for damages shall remain unaffected.

### **3. Subject-matter of the Contract**

3.1 The Provider shall provide the Member with access to several Usenet servers operated by third parties throughout the world (hereinafter Usenet Access). The Member shall have a certain data volume for downloads from Usenet and further use of the newsgroups in Usenet for use of the Usenet Access during the term of the contract.

3.2 The Member shall have no claim to a certain functionality of Firstload vis-à-vis the Provider. The Provider may redesign Firstload at any time by replacing, extending or changing functionality and design, provided that the service agreed at the time of conclusion of the contract with the Member can still be provided. The Provider reserves the right to discontinue Firstload in whole or in part. If, as a consequence of discontinuation, services owed to the Member by the Provider cannot be provided, the Provider shall refund the Member any payments already made.

### **4. Obligations of the Customer**

4.1 Upon registration with Firstload the Member shall advise the data requested by the Provider completely and truthfully. The Member shall advise the Provider of any changes of data made after registration without delay.

4.2 The Member shall be obliged to keep its Access Data secret. Disclosing Access Data to third parties shall be prohibited. Access Data shall be used exclusively by the Member itself. The Member shall be liable for misuse of Access Data by third parties until the time the Member has informed the Provider of the misuse unless the user is neither responsible for the misuse nor for the failure to notify the Provider of the misuse.

4.3 Compliance with statutory provisions when using the Usenet Access and the contents retrievable from the Usenet servers by the Member or contents uploaded to those servers shall not be the responsibility of the Provider but of the Member. The Member shall neither (i) distribute or retrieve contents leading to violations of the law such as criminal offences or copyright infringements, nor (ii) operate unsolicited advertising (spam) or distribute or retrieve malware via the Usenet Access made available by the Provider.

4.4 If the Member breaches one of the aforementioned duties or if the Provider possesses specific information about such breaches of duties by the Member, the Provider shall be entitled to suspend the Member's access until the facts have been clarified. The Provider's right to termination of the contract without notice and to assertion of claims for damages against the Member shall not be affected thereby. If other Members or third parties assert claims for damages, claims to cease and desist and/or other claims against the Provider because the Member has negligently breached one of the aforementioned duties when it used Firstload, the Member shall indemnify the Provider against those claims. Indemnification of the Provider by the Member shall also refer to those costs of the Provider which are necessary for defence of the asserted claims.

### **5. Trial Membership, Service Packages, Prices and Payment**

5.1 Upon conclusion of the contract the Member shall be entitled to test the services offered by the Provider under Firstload free of charge for fourteen days (hereinafter "Trial Membership"). During Trial Membership the Member may fully test the services under Firstload; other than with respect to the service packages listed under Firstload, during Trial Membership a maximum data volume of 15 gigabytes shall be available to the Member for that purpose. After Trial Membership the term of contract and data volume shall depend on the Provider's service packages as amended at the time of conclusion or renewal of the contract, which the Member can retrieve from Firstload at any time.

5.2 Trial Membership may be terminated by the Member at any time within fourteen days of conclusion of the contract. If the Member gives no notice during that period, Trial Membership shall automatically turn in to a membership which is subject to a charge. If the Member selects no specific service package as defined in Clause 5.1, the Member shall automatically use all services of the service package with the highest data volume (currently 250 gigabytes for EUR 16.50/month, or 800 gigabytes for EUR 29.90/month respectively, depending on the payment method chosen upon registration) after expiration of Trial Membership. Trial Membership shall end automatically upon such a change.

5.3 The Member shall pay the price for the relevant service used by it as stated in the description of the service package. All prices include statutory VAT. The Member shall pay the price for the minimum term of contract applicable to the service package in advance. The invoice shall be sent to the Member by the Provider exclusively via e-mail; there shall be no entitlement to a written invoice.

5.4 The Provider shall accept payments from the Member by bank collection, wire transfer or credit card. Invoices of the Provider shall be due for immediate payment and payable without deduction. The Member shall be in default if it fails to pay the invoice within one week of the due date and receipt of the invoice and if the Member has been advised of this fact in the invoice. In the case of default by the Member the Provider shall be authorised to block Access Data until the Member has settled the invoice. The Provider's right to termination of the contract without notice shall not be affected thereby.

5.5 Even if counterclaims are asserted, the Member shall be entitled to setoff only if the counterclaims have been finally ascertained by a court, acknowledged by the Provider or if they are beyond dispute. The Member shall be entitled to exercise a right of retention only if the Member's counterclaim is based on the same contract.

## **6. Information about the right of cancellation**

- Right to cancellation -

6.1 You may cancel your statement of intention to enter into a contract within fourteen days in writing (e.g. letter, fax or e-mail message) or in the Member Area, without having to state a reason. The said period shall commence upon receipt of this information in writing but not prior to conclusion of the contract.

6.2 In order to observe the cancellation period timely dispatch of the letter of cancellation shall suffice. The letter of cancellation shall be addressed to: USEPRO FZE, Firstload Care Center, No 1 Liverpool Street, London EC2M 7QD, United Kingdom, phone: +43 (1) 353 05101, e-mail: support@firstload.net. In the case of an effective cancellation services received by both parties shall be returned and any benefits gained (e.g. interest or benefits of use) shall be surrendered. If you are unable to return the service received in whole or in part or if you are only able to

return it in a deteriorated condition, you may be obliged to refund the value, if applicable.

6.3 Your right of cancellation shall expire early if the Provider commenced provision of the service before the end of the cancellation period with your express consent or if you caused provision yourself. With Firstload this shall be the case if you registered with Firstload for the first time using the Access Data provided by us or have used the Access Data for Usenet Access prior to expiration of the cancellation period. Trial membership as defined in Clauses 5.1 and 5.2 shall not be affected thereby.

- End of information on the right of cancellation

## **7. Term and termination**

7.1 The term of the contract shall depend on the service package selected by the Member as per Clause 5.1. If the Member has used up the data volume available to it even before expiration of one month, the Provider may grant the Member an option to use the data volume available for the following month in the current month. The agreed term of the contract shall be reduced by the days used up in advance. There shall be no entitlement to early consumption of the data volume for the following month. Data volume not used up by the end of one month shall be forfeited without replacement. This shall also apply if the Member has used of data volume for the following month early.

7.2 Trial Membership as described in Clauses 5.1 and 5.2 may be terminated by the Member at any time within fourteen days of conclusion of the contract. Thereafter, termination shall be possible only after expiration of the minimum term of contract of the service package applicable to the Member. The contract shall be renewed automatically on the terms and conditions of the service package applicable to the Member as amended at the time of renewal of the contract, unless the Member has terminated the contract not later than fourteen days before expiration of the minimum term of contract.

7.3 The Member shall always give notice of termination in writing via e-mail (support@firstload.net), by post (USEPRO FZE, Firstload Care Center, No 1 Liverpool Street, London EC2M 7QD, United Kingdom), and/or by fax: +43 (1) 353 051091.

7.4 The right to termination without notice shall remain unaffected. Important reasons for termination without notice by the Provider shall include a situation where the Member has violated these GTC, either grossly, or repeatedly, or despite warning(s). If the Provider terminates the contract without notice, charges already paid shall not be paid back.

## **8. Liability of the Provider**

8.1 If servers run normally, use of the services offered by the Provider is warranted at all times. The Provider shall not be liable if the service cannot be made available or retrieved for a reason for which the Provider is not responsible. This shall include but not be limited to fire, stroke of lightning, storm, flood or other acts of God (force majeure) due to which Firstload is unavailable, as well as general technological disturbances on the internet for which the Provider is not responsible. The Provider may temporarily restrict Usenet Access if maintenance of operational security and/or network integrity and/or protection of data stored by the Provider so require.

8.2 The Provider shall neither be liable for damage not directly caused by provision and use of Firstload by the Member nor for other pecuniary damage such as lost profit. For the rest, the Provider's liability shall be limited to typically foreseeable damage. These limitations of liability shall not apply to (i) damage to life, limb and health, (ii) other breaches of contract by

the Provider, a legal representative or agent [Erfüllungsgehilfe as defined by Section 278 of the German Civil Code] of the Provider caused by gross negligence or intent, or (iii) damage covered by liability under the German Product Liability Act.

## **9. Other Provisions**

9.1. German law shall apply except for UN Sales Law.

9.2 To meet the formal requirement of written form, transmission by fax or e-mail shall suffice.

9.3 If any of the above provisions is ineffective, this shall not affect effectiveness of the remaining provisions.