

fccDataPrivacy for SMB and Clubs

General Terms and Conditions (GTC) for the use of the data protection platform *fccDataPrivacy*

of the

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Scope

These General Terms and Conditions apply to all contracts between bw-fcc GmbH (hereinafter: **Contractor**) and the clients (hereinafter: **Client**) concerning the use of the online-based data protection platform "**fccDataPrivacy** for SMB and Clubs" (hereinafter: **fccDataPrivacy**) as well as to the optional appointment of the Contractor or a person to be appointed by the Contractor as external data protection officer. Deviating general terms and conditions of the client will not be accepted by the contractor - subject to express consent.

The offer is aimed at small and medium-sized enterprises (SMBs), clubs and associations based in states in the European Economic Area (EEA), Switzerland and a number of selected other states. An up-to-date list of all supported states can be found in the order form on the **fccDataPrivacy website** (<https://www.fccdataprivacy.com>).

The Contractor does not enter into contracts with consumers or users. A right of withdrawal is not granted.

The Contractor is not a law firm and therefore cannot provide legal services or similarly regulated legal services.

Services

The contractor offers **fccDataPrivacy** to the client for chargeable use via the medium internet (Software as a Service, SaaS). Within the scope of **fccDataPrivacy** the client receives the services specified in the following for the internal data protection administration within the company or association/association. The contractor can offer further services against additional payment.

Service Description

fccDataPrivacy consists of the application components website (<https://www.fccdataprivacy.com>) and the admin portal.

Design and structure

- Design and structure are essentially based on the legal requirements of the EU General Data Protection Regulation (GDPR), but other data protection regulations are also supported (an up-to-date list of all supported data protection regulations can be found on the website under Q&A)
- Multilingualism
All **fccDataPrivacy** components are multilingual:
 - the website itself and the services implemented there (e.g. training) are available in German and English
 - the legal documents relevant to a website (privacy statement, cookie policy and cookie banner) are currently available in 8 languages (an up-to-date list of all supported languages can be found on the website under Q&A)

- the Admin-Portal is available in German and English.

fccDataPrivacy offers the following data protection features:

- Privacy policy / Data protection information
- Cookie Policy
- Cookie banner
- Processing directories
- a repository for storing documents in Portable Document Format (PDF), for example data protection impact assessment, order processing contracts, etc.)
- Education of registered users
 - Online basic courses on relevant data protection and data security topics
 - twice a year update courses on current topics and court judgements in the areas of data protection and data security
 - Quiz per course with certificate
 - Evidence of formal qualifications.

The tasks, position and duties of the external data protection officer are governed by GDPR and the data protection regulations in Switzerland.

Support and Customer service

The Contractor shall answer enquiries from the Client within office hours (Monday - Friday, 08:00 - 17:00 local time, excluding national and cantonal holidays at the Contractor's registered office) as quickly as possible. General enquiries can be made via the contact form on the website or directly via e-mail to info@fccdataprivacy.com and support enquiries via the support request form in the admin portal or directly via e-mail to support@fccdataprivacy.com.

Availability

fccDataPrivacy is basically available 7 x 24 x 365. An availability measurement does not take place.

Planned maintenance work that causes unavailability takes place outside office hours and will be announced in good time. If required for technical reasons, maintenance work to remedy a malfunction can lead to a temporary interruption or impairment of availability, even at short notice.

Client Technical Requirements

Internet access, browser.

Software as a Service (SaaS) Contract

The contractor provides SaaS services for the client in the area of data protection via the Internet.

- The contract (subscription) between the client and the contractor is considered concluded and begins with the registration, unless the contractor has rejected the new client. The term of the contract (subscription period) is 1 year and is automatically extended by a further year.
- With the registration the current general terms and conditions for the contractual relationship are considered as accepted.

Use of the Service

- The contractor enables the client to use the software solution **fccDataPrivacy** in the respective current version via internet (Software as a Service, SaaS) against payment for the duration of this contract.
- contents and functions provided by **fccDataPrivacy** are continuously developed further. The extent and type of further development is essentially based on what is legally required and is at the contractor's discretion. There is no claim to certain functions.
- Contractor shall continuously monitor the functional efficiency of the software and eliminate software errors in accordance with the technical possibilities. An error shall be deemed to exist in particular if the software does not fulfil the functions specified in the service description, delivers incorrect results or otherwise does not function properly so that the use of the software is impossible or significantly restricted.

Appointment of a Data Protection Officer

The appointment of an external data protection officer requires a valid **fccDataPrivacy** subscription. After successful login to the administration account of the client (in the admin portal), the client can then book an external data protection officer.

Data protection officers can only be booked by organizations (companies, clubs, associations) based in Switzerland.

Prices and Payment Terms

Prices

The use of **fccDataPrivacy** and the appointment of the contractor or a person to be appointed by the contractor as external data protection officer is compensated by a fixed recurring lump sum. For the provision of additional services - in particular for the fulfilment of the tasks in accordance with Art. 39 GDPR, support in dealing with data protection violations, requests from data subjects and official procedures - will be invoiced according to time and material. Prices and terms of payment can be found in the price list.

Subject to deviating provisions, all prices are net prices plus the statutory value added tax.

The contractor reserves the right to adjust prices for reasons of technical progress, expansion of the service content or general inflation. Price adjustments shall apply from the next renewal of the subscription. If the client does not wish to continue the subscription at the changed prices, he is entitled to extraordinary termination.

Terms of payment

The following terms of payment apply to the contracts between the contractor and the client:

Fees for contracts with periodically recurring payments (in particular the flat rate as defined in the chapter "Prices") are due annually in advance by the first working day of the commencing subscription period and, in the case of new clients, on the day the contract is concluded. Fees due and paid for incompletely used or begun years (e.g. due to termination) will not be refunded; legally binding refund claims - in particular due to mandatory liability, withdrawal, rescission or warranty for defects - remain unaffected. Fees for expense-related services are due after the end of the calendar month in which the services were provided.

Payment is made against invoice.

If the payment deadline is exceeded (without the client asserting justified objections or rights of retention against the claim(s) before the payment deadline expires), the account will be blocked or deleted according to the following procedure:

- 30 days after the payment is due, the account will be blocked
- 60 days after the due date of payment, the account including all data that are not subject to a legal retention period will be deleted.

The block is lifted as soon as the owed payment has been paid or a deferment of payment has been agreed. The blockage does not affect the duration of the contract and does not release the client from his obligation to pay.

Invoices and other notifications are sent to the client by e-mail. Invoices are formatted as PDF documents.

The contractor is entitled to assign due claims against the client from this contractual relationship to third parties.

Term and Termination

Subject to any provisions to the contrary, the contract period shall be one year. Contracts can be terminated with a notice period of one month to the end of the term.

Notices of termination may be given in writing or in text form (e.g. by e-mail or contact form). If the contract is not cancelled in time, it will be automatically extended by the originally booked term. The time of the appointment of a data protection officer in the **fccDataPrivacy account** has no effect on the term of the contract. Also, a change of the person of the data protection officer does not affect the duration of the contract.

The right to extraordinary termination without notices for good cause remains unaffected. For the Contractor, an important reason entitling extraordinary termination of this contract of service is, in particular, that the Client has not carried out a necessary cooperation action for the fulfilment of this contract of service within a reasonable period determined by the Contractor, has violated essential parts of these General Terms and Conditions, has booked an edition which does not correspond to the size of the Client (see "Rights and obligations of the contractual parties") or does not independently change to a higher edition if the size is exceeded at a later date.

The termination of the contract also ends any activity of the contractor or a person to be appointed by the contractor as the external data protection officer of the client. The client shall remove all references to the Contractor from its websites and - if necessary - notify the competent data protection authority of the departure of the data protection officer. Access to **fccDataPrivacy** and all solutions offered there will be blocked, and the account of the client will be deleted in accordance with the defined deletion periods. It is incumbent on the client to save his data (processing directories, contract processing contracts, etc.) otherwise before the termination of the contract.

Requests from Authorities and Data Subjects

If an authority or data subject contacts the contractor directly in his capacity as data protection officer, the contractor will record the request and forward it to the client. The client shall confirm the forwarding, decide on the further procedure and inform the contractor accordingly. As a matter of principle, the contractor will not take any action until the further procedure has been agreed with the client. If the client does not inform the contractor after the inquiry has been sent, the contractor can assume that his support is not necessary. Irrespective of this, the Data Protection Officer shall be entitled to communicate independently with the persons concerned and the authorities, even without consulting the client, if he considers this to be expedient.

Rights and Obligations of the Contracting Parties

Within the scope of registration (order), the client must truthfully answer the requested information and select a package (edition) that corresponds to the specified size of the organization. The client is entitled to make use of the services of his data protection officer at any time and to involve him in the data protection processes within his company. If an inclusion does not take place or information is not communicated, the contractor assumes that support actions, which go beyond the provision of **fccDataPrivacy**, are not required.

The client himself is responsible for the input and maintenance of all data and information not explicitly specified by **fccDataPrivacy**.

Furthermore, the client must observe the following obligations:

- to prevent unauthorized access by third parties by taking appropriate measures. For this purpose, the client will, if necessary, inform his employees of compliance with the data protection regulations and instruct them not to pass on any access data to third parties.
- to check its data and information for viruses, malware and other harmful components by using suitable virus protection software before entering them.

If the contractor has been appointed as data protection officer, he is entitled to check the implementation of the obligations under data protection law by inspecting the client's account.

The contractor is obliged to maintain the expertise of the representative within the meaning of Article 37, paragraph 5 of the GDPR. Expenditure in this respect is covered by the agreed service fee.

Liability

The contractor shall be liable in the event of intentional or grossly negligent breach of its contractual obligations. Liability for medium and slight negligence is excluded. The following provision on the liability of the contractor or a person to be appointed by the contractor as external data protection officer in the case of slight and medium negligence is reserved.

If the contractor or a person to be appointed by the contractor as external data protection officer negligently breaches a material contractual obligation in the course of his work as data protection officer, liability shall be limited to the foreseeable damage typical for the contract, but to a maximum of CHF 3,000.00. Essential contractual obligations are obligations which the contract imposes on the contractor according to its content in order to achieve the purpose of the contract as data protection officer, the fulfilment of which is essential for the proper execution of the contract and on the observance of which the client may regularly rely.

Any further liability of the contractor is excluded. In particular, liability for loss of profit, damaged reputation and consequential damage caused by defects is also excluded.

The above liability provisions shall also apply with regard to the liability of the contractor for his vicarious agents and legal representatives.

The client shall indemnify the contractor against any claims of third parties - including the costs of legal defense - which are asserted against the contractor due to actions of the client which are unlawful or contrary to the terms of the contract.

Final Provisions

Secrecy

The Contractor undertakes to maintain secrecy about all confidential processes, in particular business or trade secrets of the client, which have come to its knowledge in the course of the preparation, execution and fulfilment of this contract and not to pass on this information to outside third parties without the Client's authorization. This shall apply to any unauthorized third parties, unless the disclosure of information is necessary for the proper performance of the Contractor's contractual obligations.

Intellectual property rights

All intellectual property rights to the services, the "**fccDataPrivacy** for SMB and Clubs" software (website, admin portal) and the documentation remain with the contractor.

Place of Jurisdiction / Choice of Law

The law of the Swiss Confederation shall apply to the contracts between the contractor and the client, excluding the provisions of international private law (IPR) and the uniform UN Convention on Contracts for the International Sale of Goods (CISG).

The parties agree that the Swiss domicile of the contractor shall be the place of jurisdiction for all disputes arising from the present contractual relationship.

The Contractor is entitled to amend these General Terms and Conditions for objectively justified reasons (e.g. changes in case law, legal situation, market conditions or corporate strategy) and subject to a reasonable period of notice. Existing clients will be notified of this at least two weeks before the change comes into effect. If the existing client does not object within the period set in the notification of change, his consent to the change is deemed to have been given.