

**Terms of Service for the
Online Services of chocoBRAIN GmbH & Co. KG
(Free Basic Version)**

1 Provider, Subject Matter of Contract, Scope of Applicability

(1) The website www.chocobrain.com is a service provided by chocoBRAIN GmbH & Co. KG (hereinafter “cB”), Uferstraße 20, 69120 Heidelberg, Germany, represented by its general partner, chocoBRAIN Verwaltungs GmbH, which in turn is represented by its managing director (*Geschäftsführer*) Jens Kramer. Additional contact details and the commercial register information can be obtained from the [legal notice](#) of this website.

(2) The following terms of service regulate all issues concerning the use of the online services provided by cB on www.chocobrain.com. These terms of service apply exclusively, adverse or divergent terms of service will not be accepted unless cB has explicitly agreed to them in writing. The user accepts these terms of service by using the online services offered.

(3) These terms of service can either be printed by the user, using the buttons below, or be downloaded as a PDF document.

2 Use of Service, Conclusion of Contract, Registration

(1) Prior to using the online services of cB, the user must successfully complete the registration process. The user does not have to pay any fees to cB to use the basic version unless explicitly otherwise agreed.

(2) The user makes a binding offer for using the online services (in this case: for the free basic version) provided by cB by sending the registration form. The offer is accepted by cB when cB sends a confirmation email to the email address of the user given at registration. The user must reconfirm his registration by clicking on the link in the confirmation email.

(3) If the user does not receive a message for registration/ activation, he can contact the following cB service point: webadmin@chocobrain.com.

(4) During the registration process, the user must decide on a username and password (hereinafter, “access data”) and must provide the mandatory information. The user is obligated to provide truthful and complete information and to update the information in the event of changes. Usernames that encroach upon third-party rights or that violate accepted principles of morality are not permissible. In such case, cB is authorized, but not obligated to immediately exclude the user from further use, to delete the user account without advance notice and to refuse a renewed registration. The user himself is responsible for keeping his access data secret and for protecting them from being accessed by unauthorized persons.

(5) By registering, the user, provided that he is an individual, affirms that he is at least 18 years old. Second accounts are not permissible.

(6) The user irrevocably agrees that correspondence from or with cB can take place via the email address given by the user during the registration process. The user will ensure that he can be reached via the email address he provides.

(7) The user undertakes to keep the information provided at registration up to date, in particular, to inform cB in writing without being asked about changes to his name or email address to the extent this is necessary for the proper performance of the obligations under the contract.

3 cB's Services

(1) At www.chocobrain.com, cB provides an interactive online portal as a communication platform. Users can describe themselves by way of profiles and contents, can communicate through messages and can give evaluations. cB's own contents, data, information and messages will be separately labeled as such.

(2) The main features of the portal are listed and explained in the content "What is chocoBRAIN?" and in its additional contents. By accepting these terms of service, the user obtains the right to use the free basic version. As a voluntary service, cB makes the user an offer of the use of all the features of the power version in the first month after his registration to give the user an opportunity to become acquainted with these features.

(3) cB's services are limited to the provision of the interactive portal as a communication platform for its users. cB explicitly does not appropriate the contents, data, messages or information uploaded by users. If users make use of services offered by other users (e.g., companies), the privity of contract is only between the respective users.

(4) cB will endeavor, but is not obligated, to guarantee the accessibility of its online services at all times. The user accepts, in particular, that a 100 percent availability of cB's website cannot be guaranteed. The user himself is responsible for arranging access to the Internet.

(5) cB offers its services with state-of-the-art technology. This can lead to capacity limits in storing and uploading the user's contents, data, messages and information.

4 CB's responsibility

(1) cB does not assume responsibility for contents, data, messages or information uploaded by the user or for contents, data, messages or information on linked external websites. This particularly applies to whether they are up to date, correct, complete and free of viruses. cB states explicitly that they will not be appropriated.

(2) Any contents, data, messages or information provided by cB serve the sole purpose of providing information and are always subject to changes. The composition of such contents, data, messages or information is provided to the best of cB's knowledge and belief; cB is unable to examine these in detail. For this reason, cB cannot guarantee that such contents, data, messages or information are up to date, correct, complete and free of viruses.

(3) An identification of persons or companies in the Internet is possible only to a limited extent. cB cannot guarantee that the registered users are actually the persons or companies they pretend to be. cB therefore cannot assume any liability for the actual identity of the users.

5 Obligations of the Users, Consequences of Offenses, Indemnity, Report of Offenses

(1) In addition to the obligations listed in Article 2(4) to (6), the user is obligated to refrain from any kind of improper use of the services offered by cB, to comply with the applicable laws and not to violate the rights of third parties. In particular:

a) It is exclusively the user's responsibility to resolve in advance questions concerning competition law, trademark law, copyright or naming rights relating to the contents, data, messages or information uploaded by him.

b) It is not permitted to publish or disseminate illegal, defamatory, pornographic or other offensive contents, data, messages or information or to violate the law for the protection of children and youth (*Jugendschutzgesetz*).

c) It is not permitted to use programs, program features or comparable technical devices to enable the use of the personal profile circumventing the user surface (i.e., using scripts, robots, posting automatism), to make electronic attacks (i.e., hacking attempts, brute-force attacks) of any kind on the chocoBRAIN network or on individual users or to load defective data/programs (i.e., virus programs, Trojans or spyware) or use the services in ways negatively affecting the availability of the portal.

(2) If the user violates these terms of service, especially the obligations in Article 2(4) to (6) and Article 5(1), cB is authorized, but not obligated to exclude the user from further use, to delete the user account without advance notice and to refuse a renewed registration. Furthermore, in line with the applicable laws, cB is authorized in such cases to pass on the information about the user, including the IP address, if stored, to the law enforcement agency.

(3) Furthermore, cB is authorized, but not obligated to delete or to alter to a legally permissible extent the users' contents, data, messages or information that violate these terms of service and, in particular, violate the rights of third parties or applicable law. It is sufficient for this purpose that third parties present the corresponding offenses convincingly; cB is not required to do a comprehensive legal check. In such cases, cB is also entitled to pass on the information about the user to a third party within the framework of the applicable laws to enable such third party to assert his claim.

(4) Claims of the user against cB based on the measures listed in (2) and (3) are ruled out unless there has been a breach of duty towards the user for which cB is responsible.

(5) In the event of claims by third parties due to violations of these terms of service by the user, particularly of the obligations listed in Article 2 (4) to (6) and Article 5 (1), the user is solely liable and indemnifies cB from all claims asserted by third parties in this regard and from any losses and costs incurred. This indemnity obligation does not apply if the user is not responsible for the violation. This has no effect on further compensation claims raised by cB against the user.

(6) Users may report violations of these terms of service by other users by sending an email message to webadmin@chocobrain.com.

6 Liability Towards Users

- (1) cB is liable without limitation for all referable damages caused by an intentional act or gross negligence or if a guaranteed feature is absent,
- (2) cB is liable without limitation in the event of injury of life, body or health caused by simple negligence. If cB fails to provide its service because of simple negligence, if its service has become impossible or if cB has breached an essential obligation, its liability for material damage and financial loss attributed to such negligence is limited to the damage that is foreseeable in such contracts. An essential obligation is one that makes the proper implementation of the contract possible and that if breached imperils the purpose of the contract and that the user can as rule rely on to be complied with.
- (3) Liability for all other types of damage is ruled out, with the exception of liability under the German Product Liability Act (*Produkthaftungsgesetz*).
- (4) cB reserves the right to raise the defense of contributory negligence.
- (5) All legal liability privileges, for example, under the German Teleservices Act, remain unaffected by the aforementioned provisions.

7 Changes to Terms of Service and Services

- (1) These terms of service may be changed as long as such changes do not affect any essential provisions of the contract and such changes are necessary to adapt to developments that were not predictable at the time the contract was concluded and the non-consideration of which would noticeably disrupt the balance in the contractual relationship. Furthermore, amendments and additions to the terms of service may be made provided that this is essential to rectify difficulties in performing the contract due to loopholes that developed after the conclusion of the contract. This can be the case, in particular, if there is a change in prevailing case law and this affects one or more clauses from these terms of service.
- (2) Changes to the terms of service will be communicated to the user via email at least four weeks prior to their coming into force. Until they come into force, the user will be entitled to a special right to termination. Should the user not terminate in writing within four weeks after receiving the notification of change, the changes will become components of the contract upon coming into force. The user's attention will specifically be called to this consequence in the notification of change.
- (3) cB also reserves the right to change or deactivate the features provided for the user on its website and to change, add to or delete the contents, data, messages or information provided. The user is not entitled to a retention or continuation of the online services provided by cB.
- (4) cB also reserves the right to provide parts of the services, in particular, individual features, in return for payment in the future. This can result in a restriction of the hitherto free services. No participation of the user in the services that are no longer free of charge will take place until the user has explicitly given his consent.

8 Contract Duration, Possibility of Termination at Any Time, Consequences of Termination

- (1) The present agreement is concluded for an indefinite period.

(2) The user may unsubscribe from further use by issuing a statement in text form (i.e., via email, letter or fax) at any time – without compliance with any notice period and without giving reasons.

(3) This possibility of termination applies to cB analogously.

In particular, cB reserves the right to delete accounts that have been inactive over a long period (no login within one year and no response to notification of deletion to the email address given at registration).

(4) After termination, the user may no longer use cB's services. We explicitly point out to the user that in such case the contents, data or information uploaded by the user will be deleted, so that he can no longer access them unless explicitly otherwise agreed. The messages made publicly available by the user (i.e., public conversations) remain accessible after the user has been deleted – but without the user's name and with the information that this message was written by a user who has been deleted.

9 Right of Revocation

Besides their option of termination at any time under Article 7 of these terms of service, users in terms of §13 of the German Civil Code (*BGB*) – meaning individual persons who conclude transactions with a purpose that cannot be attributed to their commercial or self-employed occupational activity – have a one-month right of revocation.

Revocation Instruction

Right of Revocation

You have the right to revoke your contractual statement in text form (i.e., letter, fax, email) within one month without stating reasons. This period begins upon receipt of this instruction in text form, but not prior to the conclusion of the contract and not until we fulfill our obligations to inform under article 246 §2 of the Civil Code in conjunction with §1(1) and (2) of the Introductory Law to the Civil Code (EGBGB) and our duties under §312e(1), first sentence, of the Civil Code in conjunction with article 246 §3 of the Introductory Law to the Civil Code (EGBGB). The deadline is deemed met if the revocation is sent in due time. The revocation is to be addressed to:

chocoBRAIN GmbH & Co. KG (hereinafter “cB”), Uferstraße 20, 69120 Heidelberg, Germany

Fax: +49 6221 / 1879469, email: info(at)chocobrain(dot)com

Consequences of Revocation

In the event of a valid revocation, cB will immediately delete or block the access data of the user and the data sets collected on the basis of this contract.

Special Notices

Your right of revocation expires earlier, should the contract be completely fulfilled by both sides at your explicit request, before you exercise your right of revocation.

End of Revocation Instruction

10 Data Privacy

(1) cB is aware of the fact that data privacy is a very important and sensitive topic. cB will comply with the data protection regulations, particularly those set out in the German Federal Data Protection Act (*Bundesdatenschutzgesetz*) and the German Teleservices Act (*Telemediengesetz*).

(2) For more detailed information, see the privacy policy at <http://www.chocobrain.com/about/privacy>.

11 Consents

(1) The user consents that at least the following information will be shown on his public profile.

For persons, this is: first name, last name, profile picture.

For companies, this is: company name, corporate logo, address, telephone number, company details, confirmed contacts.

(2) The user consents that cB may show advertisements and particularly that advertising is temporarily superimposed on the contents, data, information or messages uploaded by the user or that the reproduction is interrupted by pop-ups.

(3) The user consents that other users – after having viewed the contents, data, information or messages uploaded by him – can send him contact requests. He can confirm or ignore these requests, or the corresponding users can be blocked from further interaction.

12 Transfer of Rights, Written Form Requirement, Applicable Law, Place of Jurisdiction

(1) Only with cB's prior written consent, which may not be unreasonably withheld, may the user transfer the rights and obligations from this contractual relationship to a third party.

(2) All amendments and additions to this contract and declarations and messages relating to this contract must be in written form to be valid. For the user and cB, it is sufficient that documents are sent in text form, particularly via fax or email, unless otherwise specified for certain declarations.

(3) The law of the Federal Republic of Germany is applicable. This does not affect the legal provision in §3 of the Teleservices Act.

(4) The place of jurisdiction for any disputes arising from and relating to this contract is Karlsruhe, as long as the user is a merchant, legal entity under public law or a special fund under public law. This also applies if the user does not have a general place of jurisdiction or if his place of residence is unknown or is abroad. This does not apply if in individual cases opposing coercive consumer protection or European laws exist.

Effective 04/2010