

## General Terms and Conditions BotTalk UG (haftungsbeschränkt)

### 1. Scope of application /General

- 1.1. For the business relationship between BotTalk UG (haftungsbeschränkt), Am Sandtorkai 27, c/o Next Media Accelerator Beteiligungsgesellschaft mbh & Co. KG, 20457 Hamburg, Germany, (hereinafter referred to as the Provider) and the User (hereinafter referred to as the Publisher) the following General Terms and Conditions apply exclusively in the version valid at the time of conclusion of the Agreement. Differing terms and conditions of the Publisher or third parties will not be recognized unless the Provider expressly agrees to their validity in writing.
- 1.2. Unless otherwise agreed, the General Terms and Conditions, in the version notified as a framework Agreement, shall also apply to similar future Agreements, without the Provider having to refer to them particularly.
- 1.3. The product offer under the domain [www.bottalk.io](http://www.bottalk.io) is directed exclusively at Publishers who have reached the age of 18, are fully contractually capable and are entrepreneurs. "Entrepreneurs" in the sense of these terms and conditions are natural or legal persons or partnerships with legal capacity who are acting in the exercise of their commercial or independent professional activity when concluding the Agreement.
- 1.4. The language of the Agreement is German. This version is solely a convenience translation. In case of contradictions between different language versions, the German language version applies.
- 1.5. The Provider is solely the Provider of BotTalk and has no economic or legal connection with customers of the Publisher's Offer. The Provider is neither a vicarious agent of the Publisher nor a party to Agreements concluded between the Publisher and third parties.

### 2. Subject matter of the Agreement

- 2.1. The Provider is a web service provider and operates a specially developed internet and KI-based text-to-speech software solution for the conversion of text content into audio files for a fee (hereinafter referred to as BotTalk). Access is granted exclusively online via interfaces which can be implemented both in the Publisher's own software and via technologies of the Provider. The subject of this Agreement is the temporary provision of the software application hosted on servers of the Provider or in computer centers commissioned by the Provider for the use of its functionalities via the Internet,

- the granting of corresponding mutual rights of use, and
- the provision of storage space for the data generated by the Publisher through the use of BotTalk (hereinafter "audio files") and/or the web content data required for the use of BotTalk (hereinafter "content")

to the agreed extent against payment of the agreed remuneration.

The integration of BotTalk into his own CMS is carried out by the Publisher. The specific scope of functions of BotTalk is set out in the service description at [ww.botalk.io/tiers](http://ww.botalk.io/tiers). The service description serves to present the service offered and does not constitute a warranty.

- 2.2.** The Provider's area of responsibility begins at the transfer point. The transfer point to the Publisher is the interface between the medium of the Internet and the BotTalk environment, which is hosted on the Provider's servers or in computer centres used by the Provider.
- 2.3.** The Provider uses third-party technologies within the scope of its services. The availability of these technologies is beyond the control of the Provider. The provision of services by the Provider is therefore subject to the technical and/or legal availability of the third-party technologies.
- 2.4.** The Provider offers to the Publisher the opportunity to test BotTalk free of charge within the framework of a test phase by providing his registration data and opening a customer account. Upon activation of the account by the Provider, an Agreement free of charge shall come into being. The test phase shall cover the use of BotTalk to the extent of 10 articles with a maximum of 10,000 characters per article and ends automatically 2 months after the account has been activated, without any entitlement to extension or entitlement to the conclusion of the Agreement for which a fee is payable. During the free test phase, the Provider is entitled at any time and without stating reasons to cancel the activation of the customer account, to terminate its use and thus unilaterally terminate the Agreement without notice. The customer account will be deleted 6 months after the end of the test phase at the latest, unless the customer concludes an Agreement against payment or requests the premature deletion of his account.
- 2.5.** Alternatively, the Publisher has the option of concluding unlimited Agreements with the Provider for a fee. The Publisher reserves the right to reject offers to conclude fee-based Agreements without giving reasons.

### **3. Availability/Response times**

- 3.1.** BotTalk is available 24 hours a day, seven days a week (operating time). Within the framework of the operating time, the Provider warrants an availability of 99.5% per month minus agreed maintenance windows as well as minus such downtimes for which the Provider is not responsible. The Provider will inform the Publisher of any downtime.
- 3.2.** The Provider shall be entitled to carry out care and maintenance work and to discontinue or restrict the provision of BotTalk for this reason (so-called downtime). The Provider shall inform the Publisher hereof no later than 14 days prior to the commencement of such care and maintenance work and, if possible, mutually agree any maintenance windows with the Publisher. There shall be no claim to a reduction in remuneration, termination of this Agreement or the assertion of claims for compensation on account of this downtime.
- 3.3.** Irrespective of the availability quota, the liability of the Provider according to clauses 9.3. and 9.4. of these GTC remains unaffected.

### **4. Rights and obligations of the Provider**

- 4.1.** The Provider shall provide the Publisher with BotTalk for the duration of the Contractual relationship in return for payment. The content and scope of this shall be derived from the functional description at [www.bottalk.io/tiers](http://www.bottalk.io/tiers). On activation of the user account BotTalk shall be deemed to have been made available in an operational form.
- 4.2.** The Provider shall provide, maintain and service the necessary technical server landscapes for the provision of the services. In this respect, the Provider is entitled to use third party companies as subcontractors.
- 4.3.** During the term of the Agreement, the Provider shall back up the data stock of the servers daily with an up-to-date data backup medium. There is no contractual obligation to archive the data backup media. The Publisher has no claim to the return of the data backup medium.
- 4.4.** The Provider is entitled to modify and optimize BotTalk to an extent that the contractual purpose of this Agreement is not significantly impaired or threatened. With regard to services offered free of charge, the Provider is entitled to discontinue these at any time without prior notice.
- 4.5.** The Provider is entitled to use Publisher content processed via BotTalk for the purpose of improving the quality of audio files by means of machine learning. Any knowledge,

expertise or findings gained through machine learning may also be used beyond the term of the Agreement.

## **5. Rights and obligations of the Publisher**

- 5.1.** The Publisher warrants that the information provided by him is correct and complete. He will inform the Provider immediately of any changes to the data required for the execution of the Agreement. He shall only use BotTalk to the contractually agreed extent and shall fulfil all of the obligations necessary for the performance of this Agreement in a timely, complete and technically correct manner, in particular he shall pay the agreed remuneration in due time.
- 5.2.** The Publisher protects the usage and access authorizations assigned to him or the authorized users as well as identification and authentication safeguards against access by third parties and shall not pass them on to unauthorized users. As soon as the Publisher obtains indications that the access authorization was obtained illegally by a third party, he is obliged to inform the Provider immediately.
- 5.3.** The Publisher shall refrain from accessing information or data without authorisation, either himself or through unauthorised third parties, or from interfering with or interfering via third parties with programs operated by the Provider or from penetrating the Provider's data networks without authorisation.
- 5.4.** The Publisher must ensure that the necessary hardware and software for Internet use and the necessary Internet access are available and kept up to date. The provision of these requirements and the telecommunications services for the transmission services from the server to the equipment used by the Publisher are not the subject of this Agreement but are the responsibility of the Publisher.
- 5.6.** It is the Publisher's responsibility to take appropriate data backup precautions in accordance with the due care and diligence of a responsible businessman, so that the contents of the data stocks, which are kept available in machine-readable form, can be reproduced at reasonable expense.
- 5.7.** The Publisher shall be obliged to check content for viruses before using BotTalk, to use state-of-the-art virus protection programs and not to upload any malware and/or data containing viruses or to take any other measures liable to disrupt the operation of BotTalk or the Provider.

- 5.8. When using BotTalk, the Publisher shall observe all applicable laws and other legal provisions of the Federal Republic of Germany. The Publisher warrants that BotTalk will not be misused.
- 5.9. The Publisher is not entitled to transfer rights and obligations under the Agreement to third parties without the written consent of the Provider.
- 5.10. After blocking and / or termination, the Publisher is prohibited from opening a new Customer Account.
- 5.11. In order to fulfil its data protection obligations, the Publisher is obliged to inform users of the use of BotTalk.

## 6. Permissions of use

- 6.1. The Publisher and the users (employees) authorised by the Publisher receive the non-exclusive right, limited in time to the term of the Agreement and subject to remuneration, to access BotTalk via telecommunications and to use the functionalities associated with BotTalk in accordance with this Agreement. The Publisher will not receive any further rights, in particular to software applications, source codes or the operating software.
- 6.2. The Publisher is not entitled to use BotTalk beyond the use permitted under this Agreement. In particular, the Publisher is not permitted to duplicate, sell or temporarily transfer, rent or lend BotTalk or parts thereof. The rights in accordance with §§ 69 d, 69 e UrhG (*German Copyright Act*) remain unaffected.
- 6.3. If the Publisher breaches the provisions in Clauses 6.1. and 6.2. for reasons for which he is responsible, the Provider may, after prior written notification of the Publisher, block the Publisher's access to BotTalk if the breach can be demonstrably remedied by this. Should the Publisher continue to breach or repeatedly breach the provisions in Clauses 6.1. and 6.2. despite receiving a corresponding written warning from the Provider, and should the Publisher be responsible for this, the Provider may terminate the Agreement without notice by way of extraordinary termination.
- 6.4. In the event of a culpable and unauthorized transfer of use or exploitation, the Publisher shall pay the Provider an immediately payable contractual penalty amounting to three times the monthly transfer price. The Publisher reserves the right to assert claims for damages. In this case, the contractual penalty shall be credited against the claim for damages.

- 6.5. If the Provider offers new versions, updates, upgrades or other new deliveries with regard to BotTalk during the term of validity, the abovementioned rights also apply to these.
- 6.6. The Publisher grants the Provider the non-exclusive, free of charge, unlimited and irrevocable rights of use to the content to be processed via BotTalk which are necessary for the execution of this Agreement. In particular, without limitation, the Provider is entitled to use the content during the term of the Agreement for training purposes by way of machine learning.
- 6.7. The Publisher can use the "Dictionaries" function to interactively correct and improve the pronunciation of individual words. If the Publisher uses this function, he grants the Provider the non-exclusive, free of charge, temporally, spatially and content-wise unrestricted and transferable right to use content held in dictionaries for the purposes of improving the quality of BotTalk, and in particular to make it accessible to third parties.

## **7. Third-party rights**

- 7.1. The Provider is not responsible for the content provided by the Publisher. In particular, the Provider is not obliged to check the content for possible infringements of the law. Insofar as content is transmitted or made available, the Publisher warrants that it is free from third-party rights, in particular copyrights, name and trademark rights, which restrict or exclude use / processing in accordance with the scope agreed here. The processing of infringing, right-wing extremist, pornographic, racist, immoral content is prohibited, as is the transmission of content that violates the sense of decency of all those who think in a reasonable and fair manner. If a third-party asserts claims against the Provider that are based on the culpable infringement of its intellectual property rights by the Publisher, the Publisher indemnifies the Provider from all costs and damages upon first request. In the event of a legal dispute, the Publisher will bear all necessary costs in this regard. The parties must notify each other immediately of the assertion of the claim by the third party.
- 7.2. The Provider is obliged to indemnify the Publisher from any fees and costs of collecting societies that may be incurred, insofar as such fees are justifiably claimed against the Provider.

## **8. Prices / terms of payment**

- 8.1.** Unless otherwise agreed, prices are net in EURO plus the statutory value added tax.
- 8.2.** The prices of the Provider applicable at the conclusion of the Agreement apply.
- 8.3.** Invoices are created electronically and sent via e-mail. The Publisher hereby accepts this. The Publisher will be informed by e-mail about each new invoice and the date of SEPA direct debits (SEPA pre-notification).
- 8.4.** Remuneration is based on the performance commissioned and the remuneration model chosen (Basic, Performance and Ultimate). Details can be found in the respective mandates. Depending on the remuneration model, the Publisher acquires an activated transaction credit each month, which he can use up within one month.  
  
Unused credit expires at the end of the month in which the credit was activated, without the need for notification by the Publisher.
- 8.5.** Invoicing is transaction-based at the end of each month. A transaction comprises the data processing (conversion) of an article into an audio file, whereby articles may not exceed 10,000 characters. In addition to the transaction costs, there may be further costs depending on the web service required. Details can always be found in the individual orders and the valid price list.
- 8.6.** Compensation claims of the Provider become due immediately upon provision (activation) of the transaction credit.
- 8.7.** If the Publisher is in default of payment in the amount of at least 2 months' remuneration, the Provider is entitled, following an unsuccessful reminder, to provisionally block access to BotTalk following a warning by e-mail until payment has been made in full. The Provider shall inform the Publisher of the date notified for the temporary suspension as part of the warning. The temporary suspension of services shall not affect the Publisher's payment obligation.
- 8.8.** Invoices are payable within 30 days from receipt of invoice.

## **9. Warranty and liability**

- 9.1.** The Provider's warranty does not extend to such damages and/or disruptions caused by the Publisher's culpable violation of the provisions of this Agreement. Upon request, the Publisher will support the Provider to the best of its ability in identifying and eliminating errors.
- 9.2.** If a defect occurs in the services offered by the Provider, the Provider shall, within a reasonable period of time and at his own discretion, either remedy the defect or provide the service complained about again without defects (in total, subsequent performance).

**9.3.** The Provider is liable for damages or compensation for wasted expenditure without limitation

- in case of intent or gross negligence,
- for injury to life, limb or health,
- according to the regulations of the product liability law and
- to the extent of a guarantee assumed by the supplier
- in case of malice of the Provider.

The same applies in case of a debtor's delay of the Provider for claims for default interest, for the default lump sum according to § 288 para. 5 BGB as well as for compensation of the damage caused by delay, which is based on the legal prosecution costs.

**9.4.** In the case of a simple negligent breach of an obligation that is essential for achieving the purpose of the Agreement (cardinal obligation), the liability of the Provider is limited in amount to the damage that is foreseeable and typical for the type of business in question. The same applies in the case of debtor's delay on the part of the Provider or the impossibility of performance for which the Provider is responsible.

**9.5.** The liability for loss of data is limited to the typical restoration effort that would have been required if backup copies had been made regularly and in accordance with the level of risk, unless one of the prerequisites in sections 9.3. and 9.4. applies.

**9.6.** The Provider is neither liable for the functionality of the telecommunication connection (telephone / ISDN / DSL lines etc.) to the own server in case of power failures nor for failures of servers which are not within the Provider's sphere of influence. Furthermore, the Provider is not liable for damages caused by force majeure or comparable events. Comparable events include in particular strikes, pandemics, official orders, the failure of telecommunication networks or gateways of other operators as well as disruptions in the area of other telecommunication or service Providers.

**9.7.** The strict liability of the Provider for damages (§ 536 a BGB) for defects existing at the time of conclusion of the Agreement is excluded. Clauses 9.3. and 9.4. of these GTC remain unaffected.

**9.8.** A further liability of the Provider does not exist.

**9.9.** The above limitation of liability also applies to the personal liability of employees, representatives and organs of the Provider.



## **10. Data collection / Confidentiality**

- 10.1.** Information on data collection by BotTalk can be found in the data protection notice at [www.bottalk.io/privacy](http://www.bottalk.io/privacy).
- 10.2.** If the Publisher collects, processes or uses personal data itself or through BotTalk, he is responsible for ensuring that he is entitled to do so in accordance with the applicable provisions and, in the event of a breach, shall indemnify the Provider against claims by third parties upon first request.

## **11. Term of Agreement / termination / deletion of the user account**

- 11.1.** Agreements begin with the acceptance of the order by the Provider. The minimum term is one month.
- 11.2.** Agreements are automatically extended by the initially agreed minimum term unless the Publisher or the Provider terminates the Agreement in writing with a notice period of 30 days to the end of the Agreement term.
- 11.3.** The right to terminate for good cause remains unaffected. Important reasons are in particular - but not exhaustively - listed:
  - (a) the culpable violation of essential Contractual obligations if, despite a warning, remedial action is not taken within a reasonable period of time
  - (b) technical obstacles that were not predictable when the Agreement was concluded, and which make it impossible to continue the services.
- 11.4.** The right to terminate in accordance with § 543 Para. 2 No. 1 BGB (German Civil Code) due to failure to grant the Contractual use is only permissible if the Provider has been given sufficient opportunity to remedy the defect and this has failed.
- 11.5.** Terminations require the text form (e.g. e-mail).
- 11.6.** User accounts will be closed upon termination of the Agreement. Any user account and related content will be ultimately deleted after 14 days following the termination of the Agreement. During the aforementioned period, Publishers may request to receive any audio files hosted in the user account as an archive in a common electronic file format.

## **12. Subject to change**

- 12.1.** The Provider reserves the right to unilaterally change these terms and conditions if this appears objectively justified. Objectively justified changes are, for example, in the event of a change in the legal or statutory situation (e.g. if a clause is declared invalid by the courts) or if unforeseeable changes, which are not initiated by the Provider and over which the Provider has no influence, disturb the equivalence relationship existing at the time of conclusion of the Agreement to a not insignificant extent. The prerequisite for a change is always that it is reasonable for the Publisher. The current version of the GTC is available and can be saved at [www.bottalk.io/agb](http://www.bottalk.io/agb).
- 12.2.** Registered Publishers will be notified of changes to the terms and conditions. They are deemed to have been approved if the Publisher has not objected to the validity of the amended GTC in writing or by e-mail to the Provider within six weeks and the Provider has pointed out the legal consequences of failure to object.

## **13. Miscellaneous**

- 13.1.** The Publisher may only offset against undisputed or judicially established claims.
- 13.3.** The Publisher will assign its rights under this Agreement to third parties only with the prior consent of the Provider; § 354 a HGB remains unaffected.
- 13.4.** Agreement texts are not saved. The general terms and conditions are available at any time at [www.bottalk.io/agb](http://www.bottalk.io/agb) and can be saved.

## **14. Final provisions**

- 14.1.** The Publisher agrees that he may be named as a reference customer by the Provider in written and electronic form one month after signing the Agreement. The Publisher may revoke this consent at any time with effect for the future.
- 14.2.** German law applies to the entire Contractual relationship between the Provider and the Publisher, subject to other individual Agreements.
- 14.3.** The place of performance for all claims of the Provider is the Provider's registered office.
- 14.4.** Hamburg is agreed as the place of jurisdiction, provided that the contractual partners are businesses, legal entities under public law or special funds under public law. However, the Provider is also entitled to sue the Publisher at its general place of jurisdiction. This does not apply if mandatory statutory provisions within the meaning of Articles 24, 25 or 26 of the EuGVVO in the version dated 12 December 2012 conflict with this.

- 14.5.** Should a provision be wholly or partially invalid or later lose its legal validity, the validity of the remaining provisions shall remain unaffected. If the Agreement contains a loophole, the same applies.

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