

## Preamble

The company mediahelden GmbH, Theodor-Lipps-Str. 4, 80997 Munich (hereinafter referred to as "mediahelden") operates an online wallet configurator on the Internet under the URL [www.passcreator.com](http://www.passcreator.com), which customers can use to configure wallet passes (digital tickets, coupons, vouchers, customer cards) for smartphones and then make them available to their (end) customers. The customer is enabled to use the software stored and running on the servers of mediahelden or a service provider commissioned by mediahelden via an Internet connection during the term of this contract for his own purposes and to store and process his data with the help of the software.

## 1. Scope / General

- 1.1. The use of the online portal offered by mediahelden at [www.passcreator.com](http://www.passcreator.com) by the customer is subject exclusively to these General Terms and Conditions ("GTC") in the version valid at the time of registration. The GTCs can be called up online at any time.
- 1.2. Individual contractual agreements take precedence over these GTC. General terms and conditions of the customer shall not apply in this context, regardless of whether mediahelden expressly objects to them.
- 1.3. The GTC shall also apply to contracts concluded with customers from countries other than Germany.
- 1.4. The offer of mediahelden under [www.passcreator.com](http://www.passcreator.com) is directed exclusively at businesses. Businesses within the meaning of these terms and conditions are natural or legal entities or partnerships with legal capacity who, when concluding the legal transaction, act in the exercise of their commercial or self-employed professional activity. In the following they are referred to as "customers".
- 1.5. In order to be able to use the offering of mediahelden under [www.passcreator.com](http://www.passcreator.com) to the full extent, the possession of a so-called Apple developer account (<https://developer.apple.com/>) is a prerequisite. This is required to create the corresponding certificate and Pass-Type-ID.

## 2. Registration / Contract conclusion

- 2.1. To use the online portal at [www.passcreator.com](http://www.passcreator.com) for the creation of so-called Wallet passes, the conclusion of a usage contract between the customer and mediahelden is a prerequisite. The necessary registration as a customer is done by submitting the online application form at [www.passcreator.com](http://www.passcreator.com).
- 2.2. Registration may only be made by businesses within the meaning of section 1.4 of this document and only in their own name. There is no right to register.
- 2.3. The customer can register for either a free or a paid version of the online portal at [www.passcreator.com](http://www.passcreator.com)
- 2.4. The data requested during registration must be complete and correct. The customer is solely responsible for the completeness and correctness of this information. Input errors during the login process can be corrected at any time by clicking on the "Back" button marked with an arrow pointing to the left in the browser and then making the corresponding change. You can cancel the entire sign up process at any time by closing the Internet browser.
- 2.5. By submitting the sign up form, the customer makes a binding offer to conclude a contract regarding the use of the online portal at [www.passcreator.com](http://www.passcreator.com) for the stated number of users (licenses). This is done by clicking the button "Register now" when registering for the free version and by clicking the button "Complete registration with costs" for the paid versions. The customer will then receive a confirmation e-mail from mediahelden, in which he will also be asked to verify his registration by clicking on a link. Only after this verification the contract of use between the customer and mediahelden comes into effect and the customer can use the available offering of the Internet portal of [www.passcreator.com](http://www.passcreator.com).
- 2.6. If and to the extent that the customer provides one or more users with personal data (e.g. personalized e-mail addresses) during registration in order to obtain the desired number of licenses, he expressly agrees to conclude the data processing agreement in addition to these GTC in accordance with Art. 28 para. 3 of the European General Data Protection Regulation (GDPR) of mediahelden. This is already available upon registration and then also in the customer area under

"Data processing agreement" and becomes part of the contractual relationship between the parties through acceptance by the customer or user.

- 2.7. "User" means any natural person who is entitled to use the Software in accordance with these GTC. Only persons who are in an employment, work or training relationship with the customer at the time the contract is concluded may be entitled. Direct or indirect use by other persons is not permitted. The customer assures to have obligated every user to comply with these terms and conditions and releases mediahelden from all claims in this respect.
- 2.8. Switching Between Versions / Adding Additional Options  
After successful registration, the customer can change the ordered version to another version and/or order further chargeable services under "Additional options" via the menu item "Account settings" and there under "Change pricing plan". By confirming the button "Order with costs" the customer then submits a binding offer to conclude a modified/extended usage contract. The customer will then receive a confirmation e-mail from mediahelden, in which he will also be asked to verify his registration by clicking on a link. Only after this verification the modified/extended usage contract between the customer and mediahelden comes into effect and the customer can use the corresponding offers of the [www.passcreator.com](http://www.passcreator.com) Internet portal.
- 2.9. The contract text is stored by mediahelden and sent to the customer together with these general terms and conditions together with the confirmation e-mail.

### **3. Scope of services**

- 3.1. The customer can create a wallet pass according to his ideas and requirements on the portal at [www.passcreator.com](http://www.passcreator.com) and then make it available to his customers for example as digital tickets, coupons, vouchers or customer cards for use on the smartphone.
- 3.2. The pricing plans differ in the number maximum number of active passes that can be used. The current prices can be viewed at <https://app.passcreator.com/customer/register>. An active pass is a version of a pass stored on a smartphone. A pass can be saved multiple times.
- 3.3. The number of passes that can be created by the customer is limited to ten times the number of active passes booked. If this number is exceeded, mediahelden has the right to delete passes exceeding the limit after the customer has been offered another subscription.
- 3.4. In addition, the customer has the option of ordering and subsequently using further chargeable additional options within the scope of his account settings.
- 3.5. The created pass can be sent by the customer to his customers by e-mail and/or via a so-called landing page at [www.passcreator.com](http://www.passcreator.com). In addition, the pass can be offered by the customer on his website for download or made available via so-called API call.

### **4. Compensation / Terms of payment**

- 4.1. The prices quoted are net prices excluding value-added tax.
- 4.2. Payment is made on account. Invoices are issued monthly.

### **5. Rights and obligations of mediahelden**

- 5.1. mediahelden makes every effort to ensure an undisturbed service. Nevertheless, it cannot be ruled out that there may be functional interruptions, especially in the event of overload or technical faults. mediahelden endeavours to restore functionality as quickly as possible but cannot guarantee trouble-free operation.
- 5.2. mediahelden is entitled to put individual services of the online portal or the online portal at [www.passcreator.com](http://www.passcreator.com) completely or partially offline, provided this is necessary for maintenance and repair purposes and reasonable for the customer.

### **6. Obligations of the customer**

- 6.1. During registration, the customer must specify a password for his customer account in addition to his e-mail address. The customer must ensure that his credentials (in particular the password) can't be accessed by third parties. In particular, he is also prohibited from making the credentials available to third parties without the corresponding written consent of mediahelden. For his own protection and security on the Internet, the customer must change his password at regular intervals.
- 6.2. The customer is obliged to inform mediahelden immediately about any misuse of his password or customer account as well as any other violation of security regulations. He is liable to mediahelden for misuse of his customer account caused or permitted by him.

- 6.3. The customer is obliged not to use the mediahelden Internet platform at [www.passcreator.com](http://www.passcreator.com) for purposes other than those described in section 3.
- 6.4. Furthermore, the customer is obliged to use the services offered at [www.passcreator.com](http://www.passcreator.com) only in such a way that it does not violate any rights of third parties, personal rights of others or other laws and regulations. In particular, he must observe the regulations listed below under item 7.

## **7. Contents of the created wallet passes and the so-called landing page.**

- 7.1. The customer is informed that as the sender of advertising e-mails and as the operator of a landing page, he must observe certain legal regulations. In this context, mediahelden refers the customer in particular to the Telemediengesetz (TMG) and the imprint obligation contained therein as well as the provisions of § 7 UWG.
- 7.2. Furthermore, the customer is expressly informed that the contents published in the context of the Wallet passes as well as on the so-called landing page may not violate applicable law, official orders or morality. In particular, the customer may not use the services of mediahelden under [www.passcreator.com](http://www.passcreator.com) for: storing, publishing and/or transmitting data, texts, images, videos, files, links, software or other content which is illegal, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, hateful, racist or in any other way objectionable under the relevant legal provisions or which can cause damage in any way, in particular pornographic, glorifying violence or otherwise endangering minors; Storing, publishing and/or transmitting content that infringes the rights of third parties, in particular patents, trademarks, copyrights or ancillary copyrights, trade secrets, personal rights or property rights; storing, publishing and/or transmitting content that contains software viruses or other information, files or programs that are intended to interrupt, destroy or restrict the functioning of computer software or hardware or telecommunications devices; Storing, publishing and/or transmitting content that they are not authorized to distribute; impersonating another person, falsifying data or otherwise manipulate identifiers to disguise the origin of content transmitted as part of the offer; storing, publishing and/or transmitting unsolicited advertising, promotional material, junk or mass e-mails ("spam"), chain letters, pyramid schemes or other advertising; violating national or international laws in connection with the use of mediahelden offerings; harassing, insulting, threatening, defaming, distressing or embarrassing anyone, be it a natural or legal entity or a company; claiming or disseminating false facts in relation to a natural or legal entity or a company; collecting, storing or transmitting personal data about other users if the persons do not agree.
- 7.3. Furthermore, the customer is expressly advised that he must comply with Apple's terms and conditions for Apple developers. In particular, according to these, the customer is also obliged to ensure that the customer's contact information (e-mail and telephone number) must be displayed on the Wallet passes.
- 7.4. Should the customer violate applicable law with a created Wallet pass and/or through the contents on the so-called Landing Page, mediahelden is entitled to withdraw the issued license from the customer and to block the corresponding Wallet passes and/or the corresponding Landing Page in this respect.
- 7.5. The responsibility for all content published by the customer within the framework of the Wallet passes and via a landing page lies exclusively and without restriction with the customer, i.e. the customer has to bear the sole, exclusive and unlimited responsibility for this content.
- 7.6. mediahelden does not control contents posted by the customer and therefore does not guarantee the correctness, appropriateness and quality of such contents.
- 7.7. mediahelden stores and publishes the contents entered by the customer only during the duration of the contractual relationship. After completion of this contract, the data will be deleted.
- 7.8. If the justified suspicion of a violation of these regulations, in particular 7.2, mediahelden has the right to terminate the customer account and/or to block the affected contents according to clause 9.

## **8. Indemnity**

The customer indemnifies mediahelden regarding claims or claims of any kind on first demand and holds mediahelden harmless from these claims which third parties assert against mediahelden due to the violation of their rights due to contents that the customer stores, publishes and/or transmits

in the context of the online portal of [www.passcreator.com](http://www.passcreator.com). This also includes the reimbursement of the legal defense costs incurred in the amount of the statutory fees.

## **9. Term of the contract and termination/blocking**

- 9.1. The usage contract is initially concluded for a period of one month. It will be extended by a further month automatically unless it is terminated by one of the parties two weeks before the end of the respective contract.
- 9.2. Cancellation by the customer is possible by clicking the button "Account cancellation" in his user account under the menu item "Customer settings" on the Internet platform [www.passcreator.com](http://www.passcreator.com) and subsequent confirmation of the cancellation. A cancellation by mediahelden is done via e-mail to the e-mail address given by the customer.
- 9.3. mediahelden reserves the right to delete information from the system, to revoke a customer's access or to reject the registration or to temporarily block the customer's access in whole or in part if the customer uses the online portal at [www.passcreator.com](http://www.passcreator.com) illegally or violates the present General Terms and Conditions, in particular the obligations contained in sections 6 and 7 of these General Terms and Conditions. The customer will be informed immediately by mediahelden by e-mail of a withdrawal of the access or the rejection of the registration as well as the blocking of access. In case of violation of applicable laws, mediahelden is entitled to pass on the relevant information to the responsible state authorities.

## **10. Retention of title**

- 10.1. The created digital passes remain the property of mediahelden until the complete payment has been received.
- 10.2. With the assertion of the retention of title, the customer's right to reuse/sell the created Wallet passes expires.

## **11. Granting of rights**

- 11.1. mediahelden holds the rights to the database and the contents of the website at [www.passcreator.com](http://www.passcreator.com), which have been created by mediahelden. With the exception of the content entered by the customer, all copyrights, trademark rights or other protective rights to the database, the content, data and other elements - unless otherwise identified - are exclusively entitled to mediahelden. This shall not affect any rights of the customer to the content posted by the customer.
- 11.2. mediahelden grants the customer and/or its users the simple, non-transferable right for the duration of the contract to use the offerings available on the Internet portal under [www.passcreator.com](http://www.passcreator.com) in the according to this contract.

## **12. Liability**

- 12.1. mediahelden assumes no liability for direct or indirect damages, as far as these are not based on intent or gross negligence. This exclusion of liability also extends to the liability of the employees, legal representatives and vicarious agents of mediahelden. The liability due to properties/guarantees guaranteed by mediahelden or due to product liability remains unaffected.
- 12.2. The liability of mediahelden due to slight negligence is only assumed insofar as it concerns the violation of obligations, the fulfilment of which is essential for the proper execution of the contract, the violation of which endangers the achievement of the purpose of the contract and on whose compliance the customer regularly relies (so-called cardinal obligations). As far as it concerns the violation of such contractual obligations, liability for indirect damages, especially profit and consequential damages, is excluded.
- 12.3. Furthermore, the liability of mediahelden is limited to contract-typical, foreseeable damages which were foreseeable at the conclusion of the contract and are controllable by mediahelden.
- 12.4. The above exclusions of liability shall not apply in the event of injury to life, limb or health or in the event of intent or gross negligence. Liability under the Product Liability Act remains unaffected.

## **13. Privacy Policy**

- 13.1. The personal data provided by the customer within the scope of registration shall only be collected, stored, processed and used by mediahelden insofar as this is necessary for the fulfilment of contractual obligations, in particular for the provision and use of the services offered, as well as for billing purposes, or the customer has given his explicit consent.
- 13.2. mediahelden commits to comply with the applicable regulations of data protection, in particular the regulations of the Federal Data Protection Act (BDSG) and the European General Data Protection

Regulation. Regarding data protection measures the privacy policy of mediahelden, available at [www.passcreator.com](http://www.passcreator.com) applies.

13.3. With regard to the data stored by the customer on the provided storage space, the customer is responsible for compliance with the regulations of the Federal Data Protection Act, the European General Data Protection Regulation (GDPR) and, if applicable, other relevant data protection laws. If and to the extent that the customer processes (e.g. stores) personal data of third parties on the IT systems for which mediahelden is technically responsible, it is exclusively the customer's responsibility to ensure the basis required for the compliance with regulations of this processing (e.g. consent) in accordance with Art. 6 GDPR. In these cases, a contract for order processing must also be concluded between the customer and mediahelden (cf. Art. 28 para. 3 GDPR). Therefore, in the event that the customer processes personal data of third parties using the services offered by mediahelden, he undertakes to inform mediahelden immediately and to conclude data processing agreement available at registration and afterwards in the customer area under "data processing agreement" in accordance with Art. 28 para. 3 GDPR. The contract becomes part of the contractual relationship between the parties by the acceptance of the customer or user. The processing of special categories of personal data within the meaning of Art. 9 GDPR (e.g. disease data) with the software is strictly prohibited. If this is desired, please contact us directly.

#### 14. Other terms

14.1. Amendments and supplements to these contractual conditions must be made in written form. This also applies in particular to a waiver of this written form clause.

14.2. Should individual provisions of these contractual conditions be or become invalid, this shall not affect the validity of the remaining clauses. The parties commit to replace the invalid clauses by a clauses that comes closest to the economic intention of the invalid clause in a legally permissible manner. The same applies to gaps in the agreement.

14.3. mediahelden reserves the right to change the terms of this contract at any time without giving reasons unless this is unreasonable for the customer. mediahelden will inform the customer about changes to this contract in a timely manner. If the customer does not object to the validity of the new contractual conditions within 14 days after notification, the amended contractual conditions shall be deemed accepted by the customer. mediahelden shall inform the customer of his right of objection and the significance of the objection period in the notification.

14.4. Unless otherwise agreed, the customer can send all declarations to mediahelden in any case by e-mail, using the contact form available on any mediahelden website or letter to mediahelden. mediahelden for its part can send declarations to the customer or user by e-mail, or letter to the address that the customer or user has provided as current contact information in his user account.

14.5. The law of the Federal Republic of Germany shall apply exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

14.6. The parties agree that the place of jurisdiction for disputes arising from the contract shall be the registered office of mediahelden if the customer has no general place of jurisdiction in Germany, the customer's place of residence or habitual abode is unknown at the time the action is filed or the customer has moved his place of residence or habitual abode abroad after conclusion of the contract.

14.7. The contractual language is English.

Valid as of May 2018