

General Terms and Conditions of wysiwyn telecommunication gmbh

1 Parties and subject-matter of the contract

- 1.1 The parties are wysiwyn telecommunication gmbh (hereinafter referred to as "wysiwyn"), Edelhoftgasse 10, 1180 Vienna, and the Customer.
- 1.2 These General Terms and Conditions (GTC) apply to contracts with businesses.
- 1.3 The subject-matter of this contract can be seen from these GTC, from the regulations agreed in the specifications regarding the services of wysiwyn (service numbers; conferencing services; call management; virtual telephone systems / telephony; individual solutions) as well as from the individual offers of wysiwyn. In addition, the provisions of the Austrian Telecommunications Act 2003 [TKG 2003] and the relevant regulations apply.
- 1.4 General Terms and Conditions of the Customer shall in no case become part of the contract, not even if requests for an offer, purchase orders, declarations of acceptance, etc. are enclosed with the same and even if they are not objected to.
- 1.5 wysiwyn reserves the right to apply codes of conduct regarding provision of the services being the subject-matter of the contract as part of the relevant contract after announcement.
- 1.6 wysiwyn may use third parties as agents [translator's note: *Erfüllungsgehilfen* as defined by Section 1313a of the Austrian General Civil Code [ABGB]] to fulfil its performance obligations. wysiwyn shall be entitled to change the technical platforms and parameters underlying the services or to use other agents, provided that the services to be rendered for the Customer do not deteriorate substantially and no additional unacceptable burdens arise for the Customer.

2 Conclusion of the contract

- 2.1 Subject to a separate regulation the contract is concluded on the basis of an offer signed by both parties and, if applicable, by use of the relevant order form upon the Customer's receipt of an acknowledgment of order from wysiwyn, and not later than upon provision of the service by wysiwyn or by its agent.
- 2.2 The specifications, the offer and the price lists included in the offer as well as these GTC are integral parts of the contract between the Customer and wysiwyn. The services are provided in the quantity and quality stated in the specifications and in the relevant offer.

3 Duties and obligations of the Customer

- 3.1 The Customer shall, in particular, have the following duties:
- (a) Before using the contractual services it shall be ensured that the owner of the telephone connection to which the calls are to be forwarded agrees thereto.
- (b) The services made available must not be misused, in particular
- no information, items or other services that are prohibited by law and were not requested must be sent, such as unwanted and unsolicited advertising via e-mail, fax, phone or text message or diallers that are not in conformity with the law;
 - no person must be unlawfully contacted via means of telecommunication;
 - no information containing contents that are unlawful or immoral must be sent or posted on the internet and no reference to such information must be made. Above all, this includes information that stirs up hatred against national, ethnic, racial or religious groups, instigates criminal offences or glorifies or plays down violence, is sexually offensive or pornographic, likely to seriously harm the morals of children and young persons or

impair their wellbeing or which may damage the reputation of wysiwyn;

- it has to be ensured that by use of specific functionalities and particularly by posting or sending messages no impairments arise for wysiwyn, other providers or other third parties;
 - no connections that lead to payments or other consideration payable by third parties to the Customer must be set up.
- (c) Personal access data (such as passwords) must not be disclosed to third parties and must be protected from access by third parties. If there is any reason to assume that unauthorised third parties have obtained knowledge of access data, the Customer shall immediately change the same. Personal access data may only be stored on electronic storage media in an encrypted form.
- (d) The customer shall observe the laws, allocation rules for service numbers and codes of conduct applicable from time to time. Information that does not comply with the relevant national regulations must not be offered.
- (e) The Customer shall ensure compliance with all statutory and official provisions, including but not limited to the Regulation on Communication Parameters, Fees and Value-Added Services [KEM-V] and all contractual agreements.
- 3.2 In the case of serious violations of the Customer's duties as well as in the case of well-founded, considerable suspicious circumstances regarding a breach of duties according to this Clause 3, wysiwyn is entitled to block the services that are the subject-matter of this contract at the Customer's cost. In such cases the Customer shall continue to be obliged to pay the monthly charges. The Customer shall indemnify wysiwyn against all claims that arise from violation of the Customer's abovementioned duties and obligations.

4 Use by third parties

- 4.1 The Customer shall also pay charges incurred by third-party use of the contractual services permitted by him.
- 4.2 Charges that have arisen due to unauthorised use of hardware and software systems related to the contractual service shall be borne by the Customer if and insofar as he is responsible for such unauthorised use, in particular if he negligently violated any of the duties listed in Clause 3.

5 Terms of payment

- 5.1 The consideration and ancillary costs are generally net prices exclusive of statutory taxes and charges.
- 5.2 Commencing on the day of ready-for-operation provision of the service, monthly charges shall be paid pro-rata for the rest of the month. The charges shall be paid monthly in arrears. If the price needs to be calculated for parts of a calendar month, it shall be calculated on a pro-rata basis.
- 5.3 Other charges, including but not limited to connection charges, shall be paid after the service has been provided.
- 5.4 The invoice amount shall be paid into the account advised on the invoice. The amount must be credited to the account not later than on the fourteenth day after receipt of the invoice. If the Customer has given a direct debit authorisation, wysiwyn shall debit the invoice amount from the agreed account not earlier than on the fifth day after receipt of the invoice.
- 5.5 In the case of default of payment the Customer shall be charged default interest at a rate of 4% p.a. above Euribor. The Customer shall also reimburse all costs, cash expenses and out-of-pocket expenses incurred in connection with appropriate assertion of claims by wysiwyn.
- 5.6 Irrespective of a different purpose stated by the Customer wysiwyn shall be authorised to use payments received first to cover costs, out-of-pocket expenses, cash expenses and default interest accrued and last to settle the invoice amount outstanding.
- 5.7 Upon conclusion of the contract wysiwyn may ask for advance payment or collateral security if it has to be feared that the Customer might not be able to fulfil his payment obligations at all or in time.
- 5.8 Claims may only be offset against outstanding claims vis-à-vis wysiwyn if wysiwyn is insolvent or if the mutual claims are

- legally related, the counterclaim has been ascertained by a court or was accepted by wysiwyn.
- 5.9 If an error is noticed on the invoice of wysiwyn which might have had a detrimental effect on the Customer and if the correct amount cannot be determined, the Customer shall make a lump-sum payment that corresponds to average use of the service. This amount will be calculated on the basis of average use of the wysiwyn service during the last six months. If the contract was concluded less than six months ago, the lump-sum to be paid will be calculated on the basis of the actual duration of the contract.
- 6 Objections**
- Objections to the amount of charges must be received by wysiwyn in writing within 3 month of receipt of the invoice. Failure to raise timely objections shall be considered acceptance of the charges listed on the invoice. The provision of Section 71 *TKG* 2003 shall not be affected thereby.
- 7 Provision and scope of services; interruptions**
- 7.1 The Customer is aware of the fact that the services of wysiwyn can only be rendered subject to provision and availability of transmission channels and exchange systems by the network provider and/or subject to the transmission channels and exchange systems provided by third parties. The quality of the services is assessed on the basis of ITU standards. However, transmission channels and the availability of performance features may be restricted due to technical circumstances. wysiwyn only warrants provision of its own systems that are necessary for rendering the contractually agreed services. Insofar as systems are not subject to wysiwyn's control, wysiwyn shall only owe proper rendering of the contractually agreed services within the scope of their technical and operational possibilities.
- 7.2 wysiwyn shall be entitled to limit its services in part to the extent that this is necessary for carrying out work that is necessary for operational reasons or for preventing network failures.
- 8 Lease and purchase of equipment**
- 8.1 Depending on availability, the Customer may lease from wysiwyn equipment that is needed for using the telecommunication services provided. The said equipment shall hereinafter be referred to as Leased Equipment. The Customer shall be liable for damage to or loss of Leased Equipment from the date of delivery, unless the damage or loss was caused by wysiwyn or by third parties instructed by wysiwyn. The existence of the lease agreement and the Customer's obligation to pay the rent shall not be affected by damage to the Leased Equipment for which the Customer is responsible. The Customer shall maintain the Leased Equipment in the condition in which it was received.
- 8.2 The Customer shall be obliged to notify wysiwyn of risks to the Leased Equipment or to title to the same without delay.
- 8.3 wysiwyn shall retain title to equipment and systems sold to the Customer until full payment.
- 9 Default**
- 9.1 In case of default of payment wysiwyn shall be entitled to block access to the contractual service at the Customer's cost after a fruitless written warning including a grace period of two weeks and a simultaneous warning to the effect that the connection will be blocked after expiration of such period. In that case the Customer will continue to be obliged to pay the monthly charges.
- 9.2 If the Customer is in default
- (a) of payment of charges for at least two consecutive months or of a significant part of the charges or
- (b) of payment of charges in an amount equal to the monthly basic charge for two months during a period of more than two months,
- wysiwyn shall be entitled to terminate the contract early for important reason (cause) without notice after a fruitless written warning including a grace period of two weeks and a simultaneous warning that the contract will be terminated for cause without notice. In the case of

- contracts with a minimum term wysiwyn may claim liquidated damages that are immediately payable in one sum in the amount of the remaining monthly charges to be paid until the end of the regular term of contract.
- 9.3 The right to assert further claims on grounds of default of payment shall be reserved.
- 10 Amendments to GTC and specifications**
- 10.1 wysiwyn will announce amendments to these GTC in an appropriate form. The Customer shall be informed in writing of the essential content of amendments that are not exclusively beneficial to him at least one month before the amendment enters into force. At the same time the Customer will be informed of the date at which the amendments will enter into force and of the fact that he may terminate the contract free of charge until that date. The full text of the amendments will be sent to the Customer upon request.
- 10.2 The specifications may be amended if an amendment is necessary for a valid reason, if from an objective point of view the Customer is not put in a position that is worse compared to the specifications included at the time of conclusion of the contract (e.g. maintaining or improving functionalities) and if there are no material deviations. Valid reasons include technical innovations on the market for the services owed, or situations where third parties from which wysiwyn purchases upstream services that are necessary to provide the services owed under the contract change their service range.
- 10.3 Amendments to the GTC which are not exclusively beneficial to the Customer shall be advised to the Customer in writing at least one month before they will enter into force. The Customer shall have a special right to terminate the contract at the time the amendment becomes effective. If the Customer does not terminate the contract in writing within one month of receipt of the amendment notice, the amendments shall become part of the contract at the date they become effective. The Customer shall specifically be informed about this consequence in the amendment notice.
- 11 Term of contract; Termination; Discontinuation of services**
- 11.1 Contracts with no minimum term of contract
- Contracts to which no minimum term of contract applies may be terminated by either party as of the end of any month. A written notice of termination must be served on the other party at least one month before the day on which it is intended to become effective.
- 11.2 Contracts with an individually agreed minimum term of contract
- The minimum term of contract shall be agreed individually and shall commence on the day on which the Customer has received wysiwyn's acknowledgment of order but not later than on the day of ready-for-operation provision of the relevant service. The contractual relationship may be terminated by either party by giving three months' written notice, however, only after the minimum term of contract. If no notice of termination is given, the term of contract shall always be renewed for another year, unless it is terminated by giving three months' written notice.
- 11.3 If the Customer terminates a contractual relationship before the contractual service has been provided ready for operation or before the agreed changes have been made, he shall reimburse wysiwyn the expenses for work that has already been carried out and for dismantling telecommunication equipment that has already been installed which has to be dismantled due to termination of the contract.
- 11.4 The right of termination for cause shall remain unaffected. For wysiwyn cause means, in particular, cases in which the Customer grossly breaches his duties under these GTC and continues the conduct in violation of the contract despite a warning and having been granted a reasonable grace period.
- 11.5 wysiwyn shall be entitled to discontinue all or parts of its performance or services without prior termination of this contract without notice if:
- (a) the Customer is in default of payment of the charges after fruitless threatening of service interruption or disconnection and having been granted a grace period of two weeks;
- (b) insolvency proceedings are opened over the Customer's assets or if a petition for opening of such proceedings is dismissed for lack of assets to cover the costs;

- (c) wysiwyn asks the Customer to immediately remove disturbing factors and the Customer fails to do so immediately, in particular even though the network or a service of wysiwyn is impaired or persons are in danger;
 - (d) the Customer misuses services provided to him or if there is a well-founded suspicion to that effect (paragraph 3.1 (b));
 - (e) the Customer violates provisions of the *TKG 2003* and/or the *KEM-V*;
 - (f) wysiwyn is no longer able to continue the service for regulatory and/or commercial reasons.
- 12 Data protection; Protection of trade and business secrets**
- 12.1 In accordance with the Austrian Data Protection Act 2000 [*Datenschutzgesetz/DSG*] and the *TKG 2003* master data will be collected and processed by wysiwyn exclusively for the purposes of conclusion, performance, modification or termination of the contract, billing and, if applicable, for drawing up a directory of subscribers. Master data shall be deleted after termination of the contractual relationship and at the Customer's request, subject to exceptions permitted by law (Section 69 (5) *TKG 2003*).
- 12.2 Traffic data, in particular subscriber number, date, time and duration of a connection, shall be anonymised or deleted by wysiwyn immediately after termination of the connection. This shall not apply where storing and processing is necessary for billing or handling of complaints, in particular where a court of law or regulatory authority is resorted to or for asserting a claim for payment.
- 12.3 After the objection period defined in Section 71 (1a) *TKG 2003* communication data shall in any case be deleted or anonymised. Content data shall not be stored unless it has to be stored for a short period for technical reasons. To the extent that wysiwyn is obliged to forward data under the *TKG 2003* wysiwyn shall fulfil this statutory obligation.
- 12.4 Furthermore, the parties agree to maintain secrecy about technical, commercial and personal affairs of the other party and not to disclose related information to third parties. This shall not apply to third parties instructed by wysiwyn to provide telecommunication services.
- 12.5 The Customer agrees that traffic data may be used to market telecommunication services offered by wysiwyn, including but not limited to further development, demand analysis, planning and improvement of solution proposals and offers of wysiwyn, which consent may be revoked by the Customer at any time. The Customer also agrees to receive offers and advertising from wysiwyn via e-mail, which consent may also be revoked at any time.
- 12.6 With respect to all data collected in accordance with this Clause 12 the statutory retention duties shall remain unaffected thereby.
- 13 Default in performance**
- 13.1 The Customer shall notify any default in performance in writing within a reasonable period of time but in any case within 14 days. If he fails to do so the service of wysiwyn shall be deemed rendered free from defects.
- 13.2 The Customer shall be entitled to compensation if the services are not provided in the quality owed and provided that the defect was notified. The compensation claim shall be limited to the order value.
- 13.3 Warranty claims of the Customer vis-à-vis wysiwyn shall be limited to improvement and provision of missing parts.
- 13.4 The following periods shall not be included in the service levels:
- (a) failures or delays during repair of failures for which the Customer is responsible or failures for which third parties are responsible, in particular due to transmission channels rented from third parties,
 - (b) failures due to force majeure,
 - (c) interruptions of operations that are necessary for carrying out work that is necessary for operation
- or to prevent network failures and which have been reported to the Customer at least 48 hours in advance and necessary maintenance work.
- 13.5 If a trouble report has been made and it turns out that there was no failure of the technical systems of wysiwyn or its contractors and if the Customer should have been able to notice this if he had reasonably looked for the error, wysiwyn shall be reimbursed the expenses incurred in connection with the check of its technical systems.
- 14 Liability and exclusion of liability**
- 14.1 wysiwyn assumes no liability for unauthorised access to information of the Customer, except for wilful intent and gross negligence.
- 14.2 In the case of merely slight negligence wysiwyn's liability for damages shall be excluded, except for personal injuries. wysiwyn shall only be liable for damage caused by wilful intent or gross negligence by its officers, contractors or agents. Liability for force majeure, consequential damage or lost profit shall be excluded. If the Customer has taken no suitable, usual state-of-the-art security measures, liability for data loss or damage to data shall be excluded. Claims for damages shall be limited to EUR 7,000 per loss, except for personal injuries.
- 14.3 The Customer shall use equipment and telecommunication services provided by wysiwyn or third parties instructed by it according to their designated purpose. The Customer shall be liable vis-à-vis wysiwyn for damage suffered by wysiwyn by loss of or damage to its systems or provision of systems to third parties. The Customer's liability for damages shall be excluded if the Customer and the third party exercised the care necessary in the circumstances of the specific case in all respects.
- 15 Other provisions**
- 15.1 These GTC shall apply to all, including future, business relationships between the parties in the telecommunication sector and even if not expressly agreed again in specific future contracts. Agreements which derogate from these GTC shall apply only upon wysiwyn's express written approval.
- 15.2 Modifications of or amendments to the contract and integral parts of the contract shall be made in writing. A waiver of this requirement may only be made in writing.
- 15.3 Ineffectiveness of any provisions of the contract and its parts, including these GTC, shall not impair effectiveness of the remaining provisions. The ineffective provision shall be replaced by an effective provision which comes as close as possible to the meaning and purpose, i.e. the will of the business partners, of the ineffective one.
- 15.4 The Customer may transfer rights and duties under this contract to a third party only upon wysiwyn's prior written approval. wysiwyn shall be entitled to have the services rendered through third parties at any time.
- 15.5 Notwithstanding jurisdiction of the courts of law the Customer may present disputes or complaints about the quality of the service, payment disputes which have not been settled to his satisfaction or an alleged violation of the *TKG 2003* to RTR-GmbH in accordance with Section 122 *TKG 2003*. wysiwyn shall be obliged to participate in such proceedings and to provide all information necessary for assessing the situation and to present the necessary documents.
- 15.6 The contractual relationships of the parties shall be governed by Austrian law unless a different law applies in a specific case.
- 15.7 Reference is made to the existing standard European emergency call number 112. Pursuant to Section 104 *TKG 2003* reference is made to the fact that a subscriber of a public communication network may use the option of not displaying numbers of incoming or outgoing calls (except for emergency calls).
- 15.8 Vienna shall be the place of jurisdiction for all disputes arising out of or in connection with this contract.