

Standard Contract Terms of Voipax GmbH

A. General Part

1. Scope of Application

1.1. The registered office of Voipax GmbH („Voipax“) is at 41564 Kaarst, Girmes-Kreuz-Straße 55. Competent register court is the Amtsgericht Neuss. Voipax offers telecommunications services throughout the territory of Germany. Among other rules and regulations, the German Telecommunications Law and the following Standard Contract Terms of Voipax („Standard Terms“) apply for these services. The Standard Terms consist of both, this General Part and – if existent – the Special Contract Terms for the respective services. These legal rules and regulations apply for all services, even if not quoted explicitly.

1.2. The following Terms apply only if the Special Contract Terms do not provide a dissenting, more specific provision.

1.3. Any Standard Contract Terms of the contractual partner („Customer“) do not apply, even if Voipax does not explicitly disagree to these terms.

1.4. The Standard Terms' current version will be found on the Voipax website (www.voipax.com) or on the website of the respective service, as well as in the office of Voipax.

1.5. Voipax has the right to reasonably change the General Part and the Special Contract Terms anytime in its own discretion, with consideration to the technical and commercial demands.

2. Requirements for the provision of the Services

2.1. In order for Voipax to provide the services to the Customer, the Customer must have access to landline or mobile operator's network and this network must be interconnected with Voipax. Additionally, a factoring agreement must exist between the network operator and Voipax.

2.2. If not explicitly agreed in the Special Contract Terms, Voipax does not offer connections to non-geographic numbers, including the operator-based connection to enquired numbers, enquiry services, Premium Rate services and online services.

3. Conclusion and termination of contract for services without registration/pre-adjustment

3.1. For those services Voipax offers without registration of the Customer or pre-adjustment by Voipax, Voipax and the Customer conclude a contract for every connection as soon as the Customer dialled the respective carrier selection code, enquiry number, or geographical number, and Voipax has successfully established the connection.

3.2. The contractual relationship ends immediately after the completion of the connection. This will not affect any obligations to perform after the contractual relationship.

4. Conclusion and termination of contract for services with registration/pre-adjustment

4.1. Conclusion of contract

4.1.1. If Voipax offers the services only after a registration of the Customer or pre-adjustments by Voipax, Voipax and the Customer conclude a contract as soon as Voipax has confirmed in writing the successful registration or pre-adjustment or transmitted a PIN to the Customer, but under no circum-

stance later than the Customer makes use of the service.

4.1.2. Voipax is not obliged to accept the Customer's registration. In particular, Voipax can refuse the conclusion of a preselection contract if a preselection contract between Voipax and the Customer already exists or existed in the past.

4.1.3. Voipax can decide that an order will only be accepted after a successful credit assessment. In order to perform the credit assessment, Voipax may gather general information at the financial institution that holds the Customer's bank account insofar this is appropriate for the realization of the contract.

4.1.3.1. The Customer agrees that Voipax will transfer data about the application, conclusion, and termination of a telecommunications contract to SCHUFA Holding AG, Kormoranweg 5, 65201 Wiesbaden („SCHUFA“) and will obtain data about the Customer from SCHUFA. Voipax will transfer data about any behaviour contrary to contractual obligations to SCHUFA (e.g.: cancellation based on delayed payment, filed court order to pay for undisputed claim, compulsory enforcement), if this is appropriate with consideration to all affected interests. SCHUFA will save and transfer this data to its contractual partners in the EU domestic market in order to enable natural persons' credit assessment. SCHUFA's contractual partners are primarily credit institutions or credit card and leasing companies. SCHUFA also offers information to any company that provides services for credit. SCHUFA will provide the personal data only if the company has presented a legitimate interest in each individual case. SCHUFA will also provide address data to enable debtors' identification. Supplementary, SCHUFA may provide information arising out of existing data in order to enable companies to evaluate the likelihood of credit risks („Score method“). The Customer has the right to demand information about the data regarding him from SCHUFA. The Customer can get further information about the SCHUFA procedures and Score method in a booklet that will be provided on request. The SCHUFA's address is: SCHUFA Holding AG, Verbraucherservice, Postfach 600509, 44845 Bochum, or SCHUFA Holding AG, Verbraucherservice, Postfach 5640, 30056 Hannover.

4.1.3.2. The Customer repealable agrees that Voipax may transfer data about the application, conclusion, and termination of this contract to credit agencies and credit insurance companies, and may receive data about the Customer. Voipax may give notice to these companies about any behaviour contrary to a contract. These companies may save the data in order to provide information to their connected companies in order to assess the credit worthiness of the Customer. The Customer's address can be provided in order to identify debtors. On request of the Customer, Voipax will provide the addresses of these companies and these companies will give information about any data collected and saved about the Customer.

4.1.4. Voipax reserves the right to make the registration or further provision of the services subject to payment of a security in Euro. The amount can be reasonably defined by Voipax. The security will particularly be requested if

a) there is a reason to believe that the Customer will not or not duly pay the fees for the services,

b) the Customer has not duly paid an invoiced amount and the Customer has already been blocked during the past 12 months due to outstanding payments,

c) within the past month the Customer made use of the services in considerable degree above the average use within the three months prior to the past month, or

d) compulsory enforcement into the Customer's legal estate has been ordered.

If the Customer does not provide the required security and Voipax has given written notice about the consequences of non-payment of the security, Voipax may cancel the contract without further notice. Voipax has the right to use the security to satisfy outstanding claims resulting from this contract. The security will be refunded if the Customer has satisfied all claims resulting from the contract after termination of the contract or the conditions requiring its provision cease to apply.

4.2. Right of revocation

4.2.1. If the Customer transmitted his registration or PIN application to Voipax by means of remote communications and if the Customer is a consumer, the Customer has the right to revoke his contract declaration in textual form (e.g. letter, fax, e-mail) within two weeks without any reasons. To meet the deadline, timely mailing shall suffice. The mailing shall be addressed to: Voipax GmbH, Girmes-Kreuz-Straße 55, 41564 Kaarst.

4.2.2. The right of revocation will cease if Voipax started the provision of the services with the Customer's explicit authorisation before expiry of the revocation period, or the Customer initiated the services.

4.3. Duration and termination

4.3.1. Contracts that according to Sec. 3.2 do not end immediately after the completion of the connection are concluded for an indefinite period of time, and any party may terminate the contract with a previous 2 days' written notice if not otherwise agreed in the Special Contract Terms.

4.3.2. If Voipax changes the prices to the disadvantage of the Customer, the Customer has a right of extraordinary cancellation. The price changes shall be deemed as approved by the Customer, if Voipax does not receive a written cancellation notice within two weeks after the announcement of the price changes (Sec. 5.2.1).

4.3.3. Voipax has the right of extraordinary cancellation for a cause without previous notice. A cause shall be existent if a continuation until expiry of the cancellation period cannot be reasonably accepted by, giving consideration to all circumstances of the individual case and to both parties' interests. This shall particularly be the case if

a) any insolvency proceedings have been opened or the Customer filed an application for insolvency proceedings,

b) the Customer uses the services with fraudulent intent,

c) the Customer infringes any criminal law by using the services, or

d) the Customer has not duly paid an invoiced amount in whole or in part for two consecutive months, if the non-payment accumulates to at least 75 EUR.

5. Fees

5.1. Duty of payment

The Customer is obliged to pay the connection fees. The Customer will pay for every connection he is responsible for. This includes calls made by third persons with the approval of the Customer. The Customer will pay fees caused by unauthorised third persons as far as he is responsible for the unauthorised use. The Customer must take all necessary and common measures within his sphere against third persons' unauthorised and abusive use of his landline or mobile connection. The Customer must prove that he is not responsible for any unauthorised and abusive use within his sphere.

5.2. Price list

5.2.1. The fees payable by the Customers depend on the volume of Customer's usage and on the price list that is valid during the connection. The price list is published on the Voipax' or respective service's website. If Voipax offers different rates for a service, the Customer may choose between these rate options when placing the order. If not otherwise agreed, all tariffs contain VAT. If Voipax offers a dial-in via geographical numbers, an additional fee by the fixed line or mobile provider might accrue besides the fee stated in the price list.

5.2.2. Voipax has the right to reasonably change the prices of the services with effect for the future, giving consideration to the general development of the market, such as the internal termination and origination costs.

5.2.3. If Voipax offers an amount of free minutes for a specific duration of the contract or for a specific handling of payment, there will not be any charging for this amount of free minutes. There will not be a payout of the free minutes. Voipax reserves the right to limit the usage of accumulated free minutes to a certain amount per month.

5.3. Price announcement

If the automatic free price announcement at the beginning of the connection differs from the price list, the price announcement shall be valid. The price announcement does not consider any additional fees. The Customers accept the announced price by continuing the connection, irrespective of the fact if he actually heard or otherwise took notice of the announcement.

6. Billing and conditions of payments

6.1. Billing of postpaid services

Services that depend on an advanced payment by Voipax will be billed by the Customer's provider of the landline or mobile connection or by Voipax.

6.1.1 Billing by the provider of the landline or mobile connection

In case of billing by the Customer's provider of the landline or mobile connection, payments owed to Voipax will be listed on the invoice as connections via Voipax. Payment to the invoicing party shall have a discharging effect in relation to Voipax. If the billing has been unsuccessful, the invoicing party will transmit the necessary contractual data and the utilization and accounting data to Voipax in order for Voipax to take over the enforcement proceedings. If an itemised bill is provided to the Customer, all

connections via Voipax will be listed in detail. The Customer can declare his right to receive an itemised bill only towards his provider of the landline or mobile connection.

6.1.2 Billing by Voipax

In case of billing by Voipax, the Customer will receive the invoice monthly via letter post or e-mail, if not agreed otherwise. The way of payment shall be specified by Customer before conclusion of the contract.

6.1.2.1. If the Customer chooses to pay via bank transfer, he will state his current address on the registration form.

6.1.2.2. If the Customer chooses to pay via direct debit, he will authorise Voipax to collect the due invoice amount from the bank account indicated on the registration form. The Customer must maintain sufficient cover of his bank account. The invoice will be collected approximately one week after due date (Sec. 7). The Customer is obliged to indemnify Voipax from all costs resulting from returns of debit notes by his bank.

6.1.2.3. If the Customer chooses to pay the invoice amount via credit card, he will state the name of the credit card holder, the expiry date, and the credit card number on the registration form, and will authorise Voipax to collect the due invoice amounts. The invoice will be collected from the credit card account approximately one week after due date. The Customer is obliged to indemnify Voipax from all costs resulting from charge backs.

6.2. Billing of prepaid services

The Customer may choose between different methods of payment offered by Voipax for those services that depend on an advanced payment by the Customer.

6.2.1. If the Customer chooses to pay via bank transfer, he will state the reference number transmitted by Voipax via e-mail and/or SMS as reason for payment with no additions on the remittance slip. Payments received by Voipax without or with incorrect reasons for payments will not be considered for charging of the Customer's prepaid account or for the transmission of a PIN to the Customer. If the reference numbers are incorrect, the payment might be allocated to another Customer's account, and might be used by the other Customer for the services. Voipax is not liable for any damages resulting from incorrect reason for payment on the remittance slip (e.g. other Customer uses payment accidentally allocated to his account). The Customer will promptly inform Voipax about any incorrect reasons for payment. In this case Voipax will refund the amount that is existing in the moment of the notification. If the reference number is incorrect but not assigned to another Customer's account, the Customer may choose if the payment shall be remitted or transferred to the correct account.

6.2.2. If the Customer chooses to pay via credit card, he will indemnify Voipax from all costs and damages resulting from charge backs by the credit card company, as far as the damages are not yet balanced due to other rules or regulations.

6.2.3. Payments via telephone (VOICEPAY) are provided only from landline connections of Deutsche Telekom AG. The amount chosen by the Customer will be announced at no charge. If the Customer

does not terminate the connection after this announcement, a respective payment will be billed by Deutsche Telekom AG from the owner of the calling party's landline or mobile telephone connection. Voipax reserves the right to block the respective account if the Customer does not duly paid the amount invoiced by Deutsche Telekom AG.

7. Due date and delay

The invoice amounts are due with the Customer's receipt of the invoice. Without prejudice to the obligator's delay according to § 286 Abs. 3 of the German Civil Code (BGB), the Customer is put in default if he fails to perform within 21 days after receipt of the invoice. Interest of 5 % above the valid basic interest rate of the European Central Bank or equivalent successive tariff will be charged from the day of default. Voipax reserves the right to claim further damages resulting from the default (e.g. costs for reminders after default).

8. Objections

8.1. Objections against the invoice amounts are limited to the time period that will be explicitly indicated in the invoice. The invoice will refer to the fact that objections will be precluded after this period. Objections against debits from a prepaid account are limited to eight week after the debit. If the Customer does not raise an objection within this time, the omission shall be deemed as acceptance of the invoice, without prejudice to any existing legal claims. If the billing party is Voipax, the Customer will be explicitly informed about the legal consequences of an omission of a duly objection. The omission does not affect the due date of the connection fees.

8.2. Due to the fact that Voipax and the billing party are legally obliged to delete all utilization and accounting data the invoice is based on, any objections raised after the expiration of this period cannot be considered. This is also true as far as the Customer requested early partial or complete deletion of the data.

9. Data protection

9.1. The handling of the Customer's personal data is, among other laws, stipulated in the Federal Data Protection Act and the Telecommunications Act. Personal Data will only be collected, processed or used if the data subject has consented, or if this is permitted or prescribed by the Federal Data Protection Act, the Telecommunications Act, the Teleservices Data Protection Act or any other legal provision. The processing of data is particularly allowed if this is necessary to establish the contractual relationship ("contractual data") or to provide and bill the telecommunications services ("utilization and accounting data").

9.2. Voipax has the right to collect, process and use the Customer's contractual data, if this is necessary to fulfil its obligations resulting from a contract between Voipax and another service provider.

9.3. Contractual data of the Customer will be completely stored for a period of 6 months after shipping date of the invoice or the date of debit from prepaid account, if the Customer did not in writing request the storage without last three digits in the period, or the deletion immediately after shipping date.

9.4. The Customer agrees that Voipax uses the Customer's telephone number and address in order to send textual or picture messages to a telephone or postal address for the purpose of marketing, market research and consulting. The Customer can dissent anytime in writing or electronically against the sending of textual or picture messages.

9.5. The Customer agrees that Voipax may transfer data regarding the registration, conclusion and termination of this contract to its holding company, Callax Telecom Holding GmbH ("Callax"), for credit assessment purposes, and also receives information from Callax. The Customer also agrees that Voipax GmbH may transfer personal data about any behaviour contrary to contractual obligations (e.g. outstanding payments, filed court orders) to Callax, if this is appropriate with consideration to all affected interests. Callax will store the data transferred by Voipax. Callax will provide personal data to other companies only if the other companies are affiliates in terms of § 15 of the German Stock Companies Act (Aktiengesetz) and if a legitimate interest is satisfactorily presented. Callax will provide address data for the purpose of debtors' identification. The Customer will obtain information about his data stored by Callax: Callax Telecom Holding GmbH, Leopoldstraße 16, 40211 Düsseldorf.

9.6. Voipax will keep the secrecy of telecommunications according to the legal obligations.

10. Impairment of obligations

10.1. The telecommunication network operated by Voipax in order to establish the connection will be available 97,5 % over a period of 365 days.

10.2. Voipax will correct any breakdowns without undue delay within its technical and operational conditions during normal business hours and usually within 12 hours. Voipax shall not be responsible for the operation of the Customer's landline or mobile connection.

10.3. Voipax will inform the Customer about any predictable longer limitations of the services, if the Customer has stated in writing reasons why he is dependent on an all-time availability. This information cannot be provided due to objective circumstances or if this would delay the clearance of a breakdown.

10.4. Voipax is not obliged to provide the services in cases and for the duration of force majeure (e.g. natural disaster, war, internal riots, fire, stroke of lightning, flooding) that fundamentally aggravate the provision of the services or make the provision impossible. The provision will be resumed after the force majeure has ended, plus an adequate start-up time. Strike and lockouts shall be treated as force majeure if these incidents were unpredictable, severe, and not caused by Voipax.

11. Obligation to co-operate of the Customer

11.1. The Customer will give notice to Voipax about any changes of data that are necessary for the implementation of this contract, including but not limited to changes of the landline telephone connection, the landline telephone number, the name, address and bank account. If the Customer fails to give such notice, he will bear all costs for the collection of the data necessary for the implementation of the contract.

11.2. The Customer will promptly give notice to Voipax (address as in Sec. 1.1) about any breakdown or disruption of the services.

11.3. The Customer may only use the services of Voipax in accordance with these General Contract Terms as well as the Telecommunications Act in the relevant version.

11.4. The Customer declares that he will not use any mechanisms or applications that in any way might cause changes to the physical or logical structure of the network provided by Voipax. In particular, the Customer will not use any technical mechanisms that shall automatically establish a connection to the services. The Customer will not use the service in any way that might be harmful for the provision of the services to other customers or for the security of other telecommunications networks. Voipax reserves the right to block the Customer's landline or mobile numbers and to cancel the contract with the Customer without previous notice, if a continuation of the contractual relationship is not reasonable for Voipax. The Customer is obliged to pay liquidated damages of 100 EUR for each termination due to the aforementioned reasons and the barring of the Customer. Any existing prepaid credit will be off-set. The Customer is entitled to prove that Voipax has sustained lower damages, Voipax is entitled to prove that it has sustained higher damages. The compensation is also due if the neglect of duty is caused by a third person and is attributable to the Customer according to the legal rules and regulations.

11.5. The Customer takes all appropriate measures within his sphere of responsibility to prevent abuse and fraudulent use, and he is insofar solely responsible for any abuse. Voipax is not obliged to take any special measures against abusive use of the services that is not within its sphere of responsibility. The Customer ensures that any obligations stipulated in the General Contract Terms will also be met by his auxiliary persons and servants or any other third user. The Customer indemnifies Voipax from any third person's claims that result from or are connected to an infringement of these General Contract Terms and that are attributable to the Customer.

11.6. The Customer is obliged to keep secret any personal number assigned by Voipax (e.g. customer number, reference number, PIN) and to prevent any abusive use by third persons. The Customer guarantees that any other user of these numbers will also keep this obligation. The Customer will inform Voipax immediately after he receives notice of an abusive use. Without prejudice to Sec. 4.3.3., Voipax has the right to cancel the contract without previous notice if a number assigned to the Customer has been used abusively. The Customer is liable for any abuse within his sphere of responsibility.

11.7. The reselling of the services without Voipax's explicit consent is prohibited.

12. Barring of connection

12.1. Voipax has the right to block numbers or groups of numbers of the called party, if this is necessary to prevent fraudulent use or for the purpose of consumer protection. A detailed record of all blockings will be provided on enquiry.

12.2. Voipax has the right to refuse provision of such services in full or in part (“barring”) the services without previous notice or waiting period if:

a) the Customer gave reason for an extraordinary cancellation according to Sec. 4.3.3 or Sec. 11.4, or
b) Voipax’s facilities, such as the network, are endangered due to retroactive effects of terminal equipment, or public safety is about to be endangered.

Voipax will restore the barring without undue delay as soon as the reason is not applicable.

13. Limitations of liability

13.1. Voipax is liable for a pecuniary damage of the Customer up to a maximum of 12,500 EUR per user and each event causing liability; the liability in relation to all claimants collectively is limited to ten million EUR for each event causing damage. If the compensation payments due to several claimants on account of the same event exceed the maximum amount payable, the amount of compensation shall be reduced by the ratio of the total of all claims for compensation to the maximum amount payable. Limitation of liability by amount shall not apply if the damage was caused wilfully.

13.2. Voipax or its auxiliary persons are liable for other damages of the Customer (e.g. property damage or pecuniary loss not due to telecommunications services) only if a fundamental contractual obligation (“cardinal obligation”) has been neglected culpably in a manner that endangered the purpose of the contract, or if the damage is caused by gross negligence or intention. If a cardinal obligation has been neglected with slight or average negligence, Voipax’s liability is limited in amount to those damages that are typical for this type of contract and were reasonably foreseeable at the time of conclusion of the contract.

13.3. Any liability according to laws, such as the German Product Liability Act, or for claims arising out of death, injury to body, health, or liberty will remain unaffected.

13.4. Voipax is not liable for Customer’s damaged arising out of force majeure or out of a breach of these Standard Contract Terms that is attributable to the Customer, particularly the obligation to cooperate. Voipax is not liable for damages arising out of acts or omissions of third persons, particularly providers of publicly available telecommunications services, that supported Voipax for the provision of the services or Voipax was dependent on.

13.5. Insofar the Voipax’s liability has been excluded or limited and this limitation is legally effective, this shall also apply for the personal liability of Voipax’s employees, other assistants, organs, representatives or auxiliary persons.

14. Final Clauses

14.1. The court of jurisdiction is Düsseldorf if the Customer is a businessman according to the German Commercial Code, a legal person governed by public law or a special fund governed by public law.

14.2. This contract shall be governed exclusively by the laws of Germany. The stipulations of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are not applicable.

14.3. The Customer may assign the rights and obligations arising out of this contract to a third person only with the written previous consent of Voipax.

The set-off or right of retention is limited to claims that are undisputed or have been declared final and absolute.

14.4. The Customer has the right to request for arbitration at the Bundesnetzagentur if he is of the opinion that Voipax did not fulfil the obligations according to §§ 43a, 45 through 46 Sec. 2 of the Telecommunications Act.

14.5. Ineffectiveness of a single or several determinations of the Standard Terms do not touch the efficiency of the other determinations.