

Standard Terms & Conditions for the VTX TELECOM S.A. Group

Standard Terms & Conditions relating to the provision of services (services & products) by member companies in the VTX TELECOM S.A. Group

These standard terms and conditions apply to the provision of services (services and products) by member companies in the **VTX TELECOM S.A. Group** and in particular the following companies: ARCANTEL S.A., BIELSTAR S.A.R.L., SMARTPHONE S.A., VSI VIDEOTEX SVIZZERA ITALIANA S.A., VTX DATACOMM S.A., VTX EDITEL S.A., VTX INTELLINET S.A., DECKPOINT S.A., VTX NETWORK SOLUTIONS S.A., VTX OMEDIA S.A., VTX SERVICES S.A. (hereinafter: the supplier).

In addition, each type of service provided is governed by **special conditions** to which interested parties should refer. These special conditions may create a valid exception to these standard terms & conditions.

The invalidity or nullity of all or part of one or indeed several of the clauses contained in these standard terms & conditions or the said special conditions shall not in any way affect the validity of the said conditions nor that of the other provisions contained therein.

The terms "VTX TELECOM S.A." or "supplier" as used hereinafter shall refer indiscriminately to **VTX TELECOM S.A. Group** or to any of the member companies in the said group.

"Internet services" means the making available of a connection to the Internet enabling exchange via servers of electronic mail, file transfers, access to newsgroups, creation and uploading of Web pages, hosting of sites and servers, etc.

"Telephony services" means a voice-carrying service either over a telephone connection or via access to the supplier's telephone network (switched network or VoIP).

I. THE SUPPLIER

VTX TELECOM S.A. shall at all times have the option to substitute any of its companies for another, in full or in part, in the capacity of supplier of the services agreed under the contract (Internet, telephony, hardware, servicing, etc.) which the customer hereby agrees to accept.

Each company in the VTX TELECOM S.A. Group is entitled to assign the debts owed to it by a customer to another company in the group.

II. GLOSSARY

IP Address

A unique number allocated dynamically or statically which identifies a computer logged onto the Internet or onto a TCP/IP network.

Hacking

Illicit procedures consisting of hijacking an information system or a network with the intention of consulting confidential data or simply as a challenge.

IP Class Address Blocking

Procedure consisting of blocking part of the IP addresses owned by the Internet Service Provider. Customer's equipment using this address may therefore be unable to log on.

Spamming

Multiple postings of unwanted e-mails often containing advertising.

Netiquette

The rules defining conduct on the Internet.

Firewall

A system or software that filters data originating from the Internet destined for a computer or a network. Amongst other things, it can prevent hacking or hijacking.

Antivirus

Software enabling detection and deletion of viruses in a computer.

Domain Name

A domain name combines a name with an IP address which directs it to a Website, e.g., vtx.ch

Special Terms & Conditions

Terms & Conditions relating to the provision of a particular service.

Electronic mail (e-mail)

Message in electronic form that may contain text, images or all sorts of files. E-mails use the Internet for circulation.

Switched Network

Classic telephone network enabling voice transfers via telephone exchanges.

VoIP (Voice over Internet Protocol)

Telephone service enabling phone calls to be made over the Internet.

Call-by-Call

Telephone call procedure involving prior capture by the caller of the operator preselection code in order to set up telephone communication on its own network and in accordance with its pricing conditions.

Preselection

Procedure involving programming of one or more customer numbers within the telephone exchanges of Swisscom so that each call is made automatically on the network of the chosen operator without having to first enter the preselection code.

III. GEOGRAPHICAL LIMITATION OF SERVICES

The supplier offers its services over the whole of Swiss territory.

However, the supplier does not in any way warrant that the whole of its services will be available throughout the

whole of Switzerland, because such services depend on the type of line available, the quality of connections and the customer's computer equipment and resources.

IV. GENERAL OBLIGATIONS OF THE PARTIES

The supplier and the customer both agree to implement all measures to enable the proper performance of this contract in good faith. In particular, both parties agree to spontaneously inform the other of any circumstances that may have an impact on the arrangements for performing the said contract. They also agree to comply with good practice prevailing on the Internet ("Netiquette").

The customer agrees to provide accurate details on all aspects affecting its capacity to enter into contract and on the quality of the services provided by the supplier.

The customer agrees to use the services made available to it by the supplier and, in particular, Internet access and telephony, strictly in accordance with the Swiss legal system and international conventions. It agrees in particular not to infringe any provisions of the Swiss criminal code and especially the Federal Law on telecommunications and its implementing regulations. The customer shall be solely liable in respect of any civil, criminal or administrative consequences arising out of its use of the services agreed under contract.

V. SUPPLIER'S LIMITATION OF LIABILITY

The customer's attention is drawn to the limits of the Internet and telephone network as well as to the risks connected with use thereof.

Generally speaking, the supplier is not bound by any obligation of result, but merely of the supply of services. Thus, it gives no warranty whatsoever as to the continuous availability of the Internet and telephone network, absence of net split or minimum data transfer rate. The supplier reserves the right to carry out resets or suspend the service for technical reasons.

Generally speaking, the supplier agrees to comply with the notion of "*best effort*", namely that in all circumstances it will implement and deploy its human and material resources in accordance with the level of technical skills acquired as at the moment of intervention. The supplier shall not in any way whatsoever be held liable for the actions, omissions, interruptions in service, problems of quality or delays caused by entities outside of the supplier's control.

The supplier is in no way liable for the nature or content of the data available on the Internet or accessible via the telephone services provided, regardless of the format thereof (text, image, sound, etc.) insofar as such data possibly being of a violent, pornographic, racist or abusive nature. The supplier incurs no liability in respect of calls that might be made to premium-rate numbers (0900-0901-0906). It is the customer's responsibility to take the measures to restrict access that it deems necessary if its Internet or phone connection is used by under-aged, unauthorised or particularly sensitive persons.

The supplier is in no way liable for the consequences of spamming, hacking, virus transmission or any other form of intrusion into the customer's computer over the Internet nor for the destruction, corruption or modification of the data that might result therefrom. It is the customer's responsibility to take preventive action against such procedures by setting the appropriate systems (firewall, antivirus, etc.) in place. The supplier has a certain number of technical solutions which can be made available to the customer, but the supply thereof is neither free-of-charge nor included in its Internet and telephone services contracts unless agreed otherwise.

The supplier cannot be held liable for damage connected to the interruption or slowdown, whether momentary or prolonged, in the services provided or the network such as loss of turnover, unavailability of data, etc. (pecuniary and non-pecuniary damages).

In all cases, the maximum amount of compensation which the customer is able to claim is limited strictly to the fixed amount paid by the customer for its contract or its subscription for the current period of the contract.

VI. CHANGE OF CUSTOMER ADDRESS

The supply of Internet and telephone services and the quality thereof are closely linked to the customer's place of connection at the time the contract is signed and to the accuracy of the details provided by the customer.

The customer therefore hereby agrees to inform the supplier spontaneously, promptly and if possible in advance of any change in its address, even within the same locality or same building. The supplier is entitled to invoice the customer for the cost of researching its address in the event when a change is not notified.

The supplier assumes no liability for the unavailability of any service resulting from the customer's move or for the cessation of any third-party service and reserves the option to substitute the most appropriate service for that which is unavailable, taking the customer's residence into account.

The supplier will invoice the customer for the cost of technical alterations and third-party costs (Swisscom for example) entailed in the move, i.e., especially the amounts paid out for line rental and the costs of line cancellation.

In the same way, it is the customer's responsibility to inform the supplier spontaneously of any change in e-mail address or of any alteration in circumstances likely to impair or jeopardize the supplier's services.

The attention of the customer is drawn to the fact that the e-mail address last known to the supplier shall constitute a valid address for service of notices regarding modifications to the conditions of contract (see figure XI below).

VII. NON-NEGOTIABILITY AND INDIVISIBILITY OF THE SUPPLIER'S SERVICES

The services of the supplier that are the subject of the contract or the subscription are granted as a whole package limited in time. The customer may not terminate its contract for only part of the services it originally subscribed for.

The contract or the subscription entered into may not be transferred, re-sold, sub-contracted, etc., to any third party without the supplier's express prior agreement.

At no time does ownership of the *public Internet addresses* (IP address for example 175.72.1457.9) that may be made available by the supplier pass to the customer. Such addresses remain at all times the property of the supplier, officially registered with the RIPE Database.

The customer hereby acknowledges that it is aware of the restrictions that apply in the matter of acquisition, especially as a trade mark, and of ownership of *domain names* ownership that cannot be definitively acquired in accordance with current legislation (see in particular ORAT, RS 784.104, the Federal implementing regulations on addressing resources in the field of telecommunications).

In case of any doubt, it is the customer's responsibility to apply to the regulatory bodies (switch.ch, internic.com). First line extensions or domain names (.com, .ch, .org, .et, etc.) handled by the supplier are those recognised by ICANN (*Internet Corporation for Assigned Names and Numbers*). Here again it is the customer's responsibility to obtain details from this organisation (www.icann.org).

VIII. STORAGE AND MAINTENANCE OF EQUIPMENT

To the extent that the supplier makes equipment available to the customer, the customer agrees to use it in accordance with normal practice, to store it in an appropriate location and in particular to protect it from heat sources and from damp. The customer is responsible for the care of its day to day maintenance.

At all times this equipment remains the property of the supplier. The customer is not entitled to lend it either free of charge or for consideration, neither may it dispose of it either in full or in part nor may it assign it in security for a pledge.

In the event of loss, theft or damage, the customer will be liable for all replacement costs.

IX. FORMATION, RENEWAL AND TERMINATION OF THE CONTRACT

A. Types of subscription

There are three types of contract or subscription:

A1. Short-term contracts or subscriptions are those where the initial term is shorter than one year (month, quarter, etc.)

A2. Long-term contracts or subscriptions are those where the initial term is equal to or longer than one year.

A3. Fixed-term contracts are those defined specifically as non-renewable in the special conditions.

The type of contract or subscription that applies is defined by the special conditions. It impacts on the arrangements for renewal and termination.

The supplier is entitled to refuse the formation of a subscription without having to give grounds.

B. Renewal of contracts and subscriptions

With the exception of fixed-term contracts (A3 above), all contracts and subscriptions are automatically renewed on their anniversary date unless terminated by signed written notice given by either party and received no less than three months prior to expiration for the end of a month. In the case of termination of a contract included in a package deal, any rebate linked to the latter will be cancelled and standard conditions will apply.

Short-term contracts and subscriptions (A1) are renewed each time for a period of time identical to the initial period (month, quarter, etc.).

Long-term contracts and subscriptions (A2) are renewed each time for a period of one year.

C. Early termination

Early termination is possible in five cases:

- in the case of prolonged unavailability of the contract service (C1);
- in the case of late payment by the customer (C2);
- in the case of illicit, inappropriate or unfair behaviour by the customer (C3);
- at the customer's request (C4);
- in the case of non-compliance with the special conditions specific to the products.

C1 Prolonged unavailability of the contract service

In the event total prolonged unavailability of the agreed contract service is established, without the customer being found liable, the supplier and its affiliated companies will refund the portion of the fee paid by the customer relating to the unexpired period of the contract or subscription running from the occurrence of the said unavailability (calculated in proportion to time). It is expressly reserved that the supplier shall be discharged in the case of Force Majeure.

In terms of the preceding paragraph, "prolonged unavailability" shall mean a period in excess of five consecutive working days once the customer has informed the supplier in writing of the interruption to the service.

The limitation of supplier's liability clause shall apply (see figure V above).

C2 Late payment by the customer

In the event of late payment of the supplier's invoice by the customer, a reminder shall be sent.

The supplier may invoice the customer for each reminder sent. The supplier is also entitled to invoice the customer for interest at the standard rate of 5% (article 73 Swiss Code of Obligations) with effect from the due date of the invoice.

If the reminder fails to produce the desired effect, the supplier and its companies are entitled to suspend their services without further notice. The customer assumes full liability for the consequences of such an interruption and shall not be entitled to claim any kind of compensation from the supplier.

Notice to pay will then be sent to the customer. If the customer pays the outstanding invoice(s) the services will be reinstated on receipt of payment. The costs of reinstatement will be invoiced to the customer. In the contrary event, the supplier is entitled to terminate the contract or subscription early. **The consequences of early termination are as follows: the supplier is no longer bound to supply its services. The customer remains liable for outstanding invoices as well as the fees due up until the next contract date .**

These amounts are payable immediately on receipt of the notice of early termination.

The supplier is entitled to make reinstatement of its services conditional upon receipt of a financial guarantee from the customer, in particular where the supplier has made equipment available to the customer.

C3 Illicit, inappropriate or unfair behaviour by the customer

In the current state of the art, Internet performance and the quality of telephone connections are limited by physical constraints connected to the method and media of data transmission. The proper functioning thereof is also closely connected to appropriate behaviour and moderation observed on the part of every user.

As suppliers of Internet and telephone services, it is the responsibility of the companies in the VTX TELECOM S.A. Group to ensure proper functioning and to cause all inappropriate or unfair conduct to cease – within the limits of what is possible intervention by them.

In particular, the following is considered inappropriate or unfair behaviour:

- unfair use of unlimited connection (for example: continuous down- or uploading by one or more computers);
- unfair [numbers of] telephone calls;
- unreasonable and / or abnormal use of the telephone connection;
- any use that jeopardizes proper Internet functioning and security (hacking, etc.);
- mass advertising, soliciting funds, etc. by systematic and / or aggressive mailing (spamming);
- mailing messages, files or other items of a violent, pornographic, racist, abusive or other similar nature;

- the making available of Websites, or information (blogs) of a violent, pornographic, racist, abusive or other similar nature;
- the disposal or poor maintenance of equipment made available by the supplier that put the supplier's rights thereto at risk.

In all cases, it is up to the supplier to decide (in particular on the basis of complaints from other users) if there is a case of illicit, inappropriate or unfair conduct. In such a case, the supplier may as it sees fit either send the customer a warning or suspend its services without notice, until such time as the customer has given an undertaking to refrain forthwith from the type of behaviour concerned. In the event the customer refuses or omits to give such an undertaking or in the event of repeated illicit, inappropriate or unfair behaviour, the supplier is entitled to terminate the contract or subscription immediately. The consequences thereof are the same as those for non-payment by the customer (see paragraph C2 above).

In the event of conduct established as being in serious breach of the rules of Netiquette and / or likely to constitute a criminal offence, in particular due to the content of the information transmitted or made available, the supplier is entitled to terminate the contract or subscription early without prior notice. The consequences thereof are the same as those for non-payment by the customer (see paragraph C2 above).

C4 Early termination at the customer's request

The customer is able to cause early termination of its contract, to the extent that it is a long-term contract (see A2 above).

In this case, the customer must pay the disconnection fee charged by Swisscom plus an early termination charge calculated by the supplier as follows: the customer must pay the whole of the fee for the current annual period. If it has a subscription for more than a year, the current annual period is due in full, the next year for up to 50% and all following years for up to 25% In addition, any rebate on the service granted for contracts of more than one year together with any discount granted within the framework of a package deal must be repaid in full to the supplier.

Early termination implies immediate suspension of the supplier's services.

X. LIMITATION OF SERVICES

In accepting these standard terms & conditions, the customer agrees to use the resources and capacities made available by the supplier in a reasonable manner and even in the case of contracts or subscriptions offering permanent connection or unlimited access.

The customer's attention is also drawn to the fact that in no circumstances may it rely on an unlimited capacity for storing data. It is the customer's particular responsibility to read its e-mail and to empty its mailbox regularly, failing which any mail that exceeds the storage capacity of its mailbox will be rejected and returned to sender.

XI. E-MAIL ADDRESS

Within the framework of certain services, the supplier allocates one or even several e-mail addresses. The supplier is authorised to de-activate / cancel any mailbox without notice, as well as the e-mail addresses attaching thereto, that have not been used by the customer for a period of six months and to erase the messages contained therein.

XII. KIOSK CREDITS

When opening certain services, the supplier grants the customer access to Web-based services known as Kiosk. A system of credits, the amount of which varies depending on what services the customer has signed up for, enables the customer to access the services that are part of Kiosk. These credits are usable throughout the whole period of the contract. Any credits unused at the end of the contract accrue to the supplier and are neither refundable nor returnable.

XIII. PROVISION OF FUNDS

The supplier is entitled at any time to require funds to be provided intended to ensure payment for its services, in particular when making equipment available, when there is an unusual increase in traffic, or delay in payment, etc. If this facility is not provided by the customer within the agreed time limit, the supplier is entitled to refuse or suspend services without notice; the customer assumes full liability for the consequences of such a refusal or suspension of services and shall not be entitled to claim any form of compensation from the supplier. The consequences are the same as those provided at figure IX, C2 of these standard terms and conditions.

The supplier may offset these funds against the amount of unpaid invoices. As the supplier sees fit, the supplier may agree to a bank guarantee being set up, payable at first demand.

XIV. CONSULTATION, ALTERATION TO TERMS OF CONTRACT, NOTICES

These standard terms and conditions, the special conditions and the price lists in respect of each service provided may be consulted on-line on the Websites of the companies in the VTX TELECOM S.A. Group at the following address: <http://www.vtx.ch/cgv> It is the customer's responsibility to consult the site regularly. The on-line version of the standard terms and conditions, the special conditions and the price lists for each service provided prevail over the printed versions of the conditions and price lists.

These standard terms & conditions may be cancelled or modified by the supplier. The same applies to the special conditions specific to each type of contract or subscription and their tariffs (price lists). **The customer is deemed to have accepted such cancellation or modification, if it has not given notice of refusal within one month from receipt of the communication sent by e-mail, or by any other means deemed appropriate by VTX TELECOM S.A.** In the event of refusal, the old

standard terms & conditions shall continue to apply until the next contract date.

The supplier determines the manner of serving notice of cancellation or modification of the conditions of contract (standard terms & conditions, price lists) that seems the most appropriate (letter-post, e-mail). Any change of address (e-mail) must be communicated to the supplier. In any event, the customer acknowledges that notice served by electronic mail to its e-mail address last known to or allocated by the supplier shall constitute valid notice.

In accordance with article X above, it is the customer's responsibility to consult and empty its electronic mailbox regularly and thus to be able to receive notice of new conditions of contract.

XV. INFORMATION & DATA-PROCESSING

By signing this contract, the customer agrees to receive e-mail alerts from the supplier regardless of whether these relate to information on conditions of contract (modification of standard or special terms & conditions), or are of a technical or sales nature (new products).

Unless the customer has specifically withheld its agreement in writing, the customer agrees that the supplier may use its reference in sales promotions.

For all other matters not covered here, all data and information disclosed by the customer to the supplier will be treated as strictly confidential.

XVI. LEGAL SCOPE OF THE CONDITIONS OF CONTRACT

By signing this contract, the customer hereby declares that it has read the standard terms & conditions and the special terms specific to the agreed services and accepts the same without restriction.

Signature of the contract amounts to an acknowledgement of debt (in terms of article 82 LP) in respect of the services invoiced and calculated according to the price list attached to the contract (and which the customer hereby declares it fully understands) or according to the modifications that will have been communicated to the customer in accordance with the conditions of contract.

In the event of conflict between the French and English versions hereof, the French version shall prevail.

XVII. APPLICABLE LAW AND JURISDICTION

For any dispute relating to the performance or the interpretation of this contract, the parties agree expressly that sole competence shall be attributed at the choice of the applicant to the courts in whose jurisdiction the contracting supplier has its registered office or to the court at Pully (Vaud/Switzerland) and that any dispute between them shall be governed solely by Swiss law.

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