

# GENERAL BUSINESS TERMS AND CONDITIONS (GTCs)

## § 1 Scope of application

1. toplink GmbH (hereinafter known as toplink) provides its services exclusively based on these contractual conditions and excluding any customer business or purchasing terms and conditions. Should the customer be trader in terms of § 310 section 1 BGB (German Civil Code), then these business terms and conditions shall also apply for all future business transactions even if they have not been expressly reiterated and agreed. Should the customer be an entrepreneur in terms of § 310 section 1 BGB (German Civil Code), then the terms and conditions shall be considered accepted at the latest on first use of the toplink services.
2. Deviations from these GTCs shall only be rendered effective after written confirmation by toplink.

## § 2 Subject matter of contract

1. toplink facilitates for its customers the access to Internet services and related services. The performance characteristics of these services shall result from the product descriptions of the respective service.
2. toplink shall provide its services subject to the provision of the fixed and dial-up connections through third parties.
3. toplink shall reserve the right to make changes to basic characteristics of the services within an appropriate framework, taking into account the interests of the customer. toplink shall report such changes an appropriate period of time in advance. If the customer does not wish to continue the contract under the changed conditions, they shall be authorised to execute an extraordinary termination in writing with a period of notice of two weeks from the time of the change. Any other claims which may result from this by the customer shall be excluded.
4. The abovementioned change authorisation shall apply accordingly, also for fees.
5. The waiting periods and support services shall result from the Service Level Agreement for the respective service. In order to avoid downtime periods, parallel provisions of up to one month may prove operationally necessary in case of product changes/adjustments.

## § 3 Performance dates and deadlines

1. Within 10 working days after order receipt, toplink shall declare whether it will accept or reject the customer order. If the customer does not receive such a declaration within this deadline, then the order shall be considered accepted. The customer's order is binding until toplink accepts or rejects the order.
2. Deadlines and dates for the execution of contract shall only be binding if they have been confirmed by toplink.
3. Unforeseeable events such as force majeure, official measures, failure of telecommunications connections, restrictions in the availability of necessary technical installations as well as any other malfunctions due to reasons for which toplink cannot be held responsible shall release toplink from any obligations for on-time services for their duration and for the duration of a necessary and appropriate deadline required to reinstate operational readiness. This shall apply irrespective of the regulations with regard to warranty and liability (§§ 6, 7). If the impairment lasts longer than two weeks, the customer may withdraw from the contract after setting an appropriate period of notice with threat of refusal.
4. Should toplink default on services, then the customer shall not be authorised to withdraw from the contract until they have issued a warning and until the appropriate period of grace they have stipulated has expired, unless the warning and/or period of notice are rendered unnecessary in accordance with the statutory provisions.

## § 4 Customer obligations

1. The customer shall be obligated not to misuse the services and not to carry out illegal actions. In particular, they shall be obligated to the following:
  - Not to distribute or to retrieve content, or to refer to content through hyperlinks, which violates the legal provisions or rights of third parties, in particular their copyrights and brand rights
  - Not to over-exploit the network infrastructure through the untargeted or improper distribution of data (e.g. mail spamming), and to prevent inappropriate additional costs being incurred for toplink or third parties
  - To take into consideration the basic principles of data security, in particular by keeping access codes secret and causing them to be changed immediately if it is suspected that unauthorised third parties have obtained knowledge of these
  - To ensure the fulfilment of legal regulations and official regulations and the issue of official permits if these prove necessary for use of the services now or in the future.
2. Any directly or indirectly independent use of the service through third parties is expressly only permitted subject to written permission through toplink. The costs incurred through the use by third parties shall be borne by the customer unless they are able to prove that the use by third parties was possible due to reasons for which toplink is responsible.
3. The data mediated via toplink cannot be checked regarding their content unless this data is marked otherwise by toplink.
4. The customer shall bear responsibility for the customer content for which toplink mediates or provides the access for use. If toplink receives notifications stating that the customer content is unethical, illegal or contrary to the contract, then toplink shall be authorised to

view the content provided via the service. toplink reserves the right to block access to illegal content.

5. In the case of a major violation against these obligations, toplink shall be authorised to completely or partially temporarily terminate their services after setting an unsuccessful period of notice with immediate effect, or to terminate the contractual relationship without notice. The customer may only derive claims for damages from an unjustified block or termination if these have taken place with intent or through gross negligence.
6. If the customer is responsible for a breach of duty, then they shall be obligated to reimburse all damages resulting for toplink and shall indemnify toplink from all claims which can be asserted against toplink due to such legal violations by the customer.

## § 5 Prices, payment and settlement conditions

1. The respective valid toplink price list shall apply when taking advantage of its services. All prices shall be understood plus the current value added tax.
2. toplink shall issue an invoice for its services every month. Fees shall be paid on the day of provision of the operationally-ready service; in case of parts of a month, on the appropriate fraction of a calendar month. Should flat rates have been agreed, the fee shall not be reduced if the customer does not or only partly makes use of the agreed scope of use. If the customer exceeds the agreed scope of use, they shall be obligated to pay the appropriate additional fee. Fees for services according to settlement time periods shall be invoiced monthly in advance.
3. The sum invoiced by toplink shall be due for payment without deductions within 10 days after the date of invoice. The value date on the account stated by toplink shall represent the decision factor for the timeliness of payment.
4. If the customer defaults on a payment, then toplink shall be authorised to calculate, subject to verification of minor damages, default interest to the sum of 8 percent points per year over the basic interest rate acc. § 247 BGB (German Civil Code). The assertion of any damages over and above this shall remain reserved.
5. Should the customer default on a substantial part – at least 25 % - of a due, undisputed invoice sum, then toplink has the right, after a written prior announcement, to refuse all services from the contract with a period of notice of 10 calendar days.
6. If toplink hears of a decline in the financial circumstances of the customer, for example through an application for the opening of insolvency proceedings or litigation regarding a bill of exchange, or if other matters mean it is to be feared that the customer cannot fulfil their payment obligations or cannot fulfil them in time, or the customer has already defaulted on payments, then toplink shall be authorised to demand prepayment or sureties. If the advance payments or sureties are not performed even after expiry of an appropriate period of grace of two weeks, then toplink can terminate the contract without notice. The assertion of further rights shall remain reserved.
7. Bills of exchange and cheques shall only be accepted for the purposes of fulfilment and free of costs and expenses for toplink. toplink shall only accept bills of exchange subject to specific arrangement.
8. The customer shall only be authorised to offset costs if the counterclaim remains undisputed or has been legally determined. The customer shall only be authorised to assert their right of retention if the counterclaim arises from the same contractual relationship, remains undisputed or has been legally determined.
9. Objections to the sum of the fees shall be made in writing; these shall be excluded after the expiry of 80 days after dispatch of invoice.

## § 6 Guarantee

1. The customer is aware that the services by toplink can only be provided in accordance with the provision and availability of networks and/or transmission methods provided by third parties. For this reason, toplink shall bear no liability for the consistent availability of the services and thus for the provision of their service at any time, unless toplink is responsible for the lack of availability. The carrier commissioned by toplink to provide the access line must guarantee an annual availability average of at least 98.5 %. toplink shall assign any guarantee claims against the carrier to the customer, who acknowledges this declaration of assignment.
2. toplink shall bear no liability for disruptions to services caused:
  - By interventions on the part of the customer or third parties into the toplink IP network
  - By incorrect, improper or careless installation, operation or treatment of the devices or systems required for the use of toplink services if these can be traced to the customer or third parties.
  - If toplink cannot be held culpable for these disruptions.
3. toplink shall guarantee the removal of disruptions in accordance with toplink's own technical and operational possibilities. If the customer is responsible for the malfunction, or if no disruption has in fact occurred, then toplink shall have the right to invoice unsuccessful troubleshooting or remedial procedures caused by the customer.
4. Any further claims shall be excluded if toplink cannot be held liable for them in accordance with § 7.

## § 7 Compensation for damages and liability limitations

1. toplink can be held liable for compensation for damages in case of:
  - Damages caused with intent or through gross negligence by toplink or their vicarious agents
  - Minor negligent breaches of contractual obligations, but limited to contract-typical and foreseeable damages
  - Mandatory legal liability regulations in accordance with Product Liability Law provisions
  - Damage caused by defects due to a lack of assured characteristics and consequential damage caused by defects against which the assurance was designed to protect the customer
  - toplink shall only be held liable for the reacquisition of data if toplink has caused its destruction with intent or through gross negligence, and the customer has ensured that this data can be reconstructed at reasonable expense from data material provided in machine-readable form.
2. If none of the cases stated in No. 1 apply, then toplink cannot be held liable for damage compensation.
3. Paragraph Nos. 1 and 2 above shall apply for all claims for compensation of damages, whatever the legal reason, in particular also for the liability due to unpermitted actions, positive violations of contract and culpability with regard to contractual negotiations.
4. The customer shall be obligated to take appropriate measures for the prevention and mitigation of damages.
5. The liability of toplink, their legal representatives and their vicarious agents for financial losses caused through negligence is limited to EUR 12,500 per customer, and towards all injured parties to EUR 10 mio per damage-causing event. If the indemnities to be paid to several customers due to the same event exceed the maximum limit, the claims for damages shall be reduced in proportion to the ratio between the sum of all claims for damages and the maximum limit.
6. Claims by the customer from the contract must be legally asserted, with reasoning of the actual circumstances, within one year after they have come to the attention of the customer; otherwise they shall be statute-barred.

## § 8 Termination

1. If not otherwise stated in the contract, the contract shall be concluded with a minimum runtime of 12 months.
2. It shall automatically extend by a further 12 months if it is not terminated at the latest three months prior to expiry of the minimum runtime or the respective extended contractual runtime.
3. The minimum runtime shall begin from provision of the service.
4. Should a third party commissioned by toplink with the provision of the fixed or dial-up connections, or with other technical services significant for fulfilment of contract, cease their services completely or in part without toplink being responsible, then toplink can implement an extraordinary termination of the contract with a period of notice of 14 days.
5. toplink can also implement an extraordinary termination of the contract if:
  - The customer defaults on payment of a substantial part of the fees owed over two consecutive months
  - The customer defaults over a time period lasting longer than two months with a sum which accords with the average fees owed for two months
  - The customer is rendered unable to pay or if an application is made for the opening of insolvency proceedings on the customer's assets
  - The customer, in spite of an unsuccessful warning by toplink, severely violates contractual obligations
  - In particular the telecommunications law or technical framework conditions on which the contract is based change so fundamentally that the service or debts owed by a party can no longer be paid or rendered
  - The costs incurred by toplink during the provision of the services in accordance with the contract increase substantially due to a change in contract or other circumstances in proportion to those of their contractual partners, and no agreement can be reached between the contractual parties as to an appropriate adaptation of the contract
6. In case of an extraordinary termination through toplink due to reasons for which the customer is responsible, then toplink can demand a lump sum compensation for damages immediately to the sum of the basic fees incurred up until expiry of the regular contract runtime. The compensation for damages is to be applied lower or higher depending on whether toplink is able to verify a higher level of damage or the customer a lower one.
7. Terminations of contract shall require the written form.

## § 9 Local number porting

1. In case of a service provider change, toplink shall permit the customer to retain the phone number (porting) within the scope of the technical and operational possibilities.
2. The porting service from the toplink network (Outport) is fee-based. toplink shall in such cases charge one processing fee per connection (SIP trunk) to the sum of EUR 9.61 (plus legal VAT) for the porting of all phone numbers which are assigned to the respective connection, with the exception of special and premium phone numbers.

## § 10 Limitation of emergency call functions

Because a nomadic use of VoIP cannot be excluded, the customer bears responsibility for only using the emergency number / hotline after timeout at the location stated on the appli-

cation form. In particular, they shall be obligated to have the location information altered in case of relocation.

## § 11 Data protection

1. toplink shall process personal data (master and usage data) in accordance with the pertinent legal data protection regulations and maintaining the confidentiality of telecommunications.
2. toplink shall observe all applicable data protection provisions and shall design their technical installations accordingly. The toplink personnel shall be obligated accordingly.

## § 12 Credit assessment

The customer hereby consents to toplink issuing and receiving information regarding this communications contract to the SCHUFA corporation responsible for the customer's headquarters or to other credit agencies (Bürgel, Creditreform amongst others). The abovementioned credit agencies shall only transmit objective data; subjective value assessments, personal income and financial circumstances are not included within the scope of this information.

## § 13 Changes to the GTCs

toplink shall be authorised to alter these terms and conditions of use if the changes are acceptable, taking the interests of toplink and the customers into account. toplink shall refer to the changes on their homepage ([www.toplink.de](http://www.toplink.de)). The changes shall take effect if toplink does not receive any objection from the customer within 6 weeks of publication.

## § 14 Transfer of rights through toplink

toplink is authorised to transfer the rights and obligations resulting from this contract onto a third party.

## § 15 Final provisions

1. No verbal ancillary agreements have been concluded. Any changes and supplements to this contract, including this provision, shall require the written form.
2. The contractual relationships between the parties shall be subject to the law of the Federal Republic of Germany, excluding the UN Sales Law.
3. The exclusive place of jurisdiction for any disputes arising from the contractual relationship is the location of the toplink headquarters, which is currently Darmstadt.
4. Rights and obligations from the contract shall remain unaffected by form transformations or restructuring of the operational organisation of the contractual parties, even if this leads to the spin-off of parts of the company or to the creation of new legal entities.
5. The English language version of the terms and condition is a translation of the German language version. In case of discrepancies between the two language versions, the German version shall prevail.