General Terms & Conditions of NFON AG

Version 5

NFON AG

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1 Ambit

1.1 The business relationship between NFON AG (hereinafter referred to as "NFON"), Zielstattstr. 36, 81379 München (Local Court Munich HRB 168022) and the customer, who is not a consumer as defined by § 13 BGB (German Civil Code) (hereinafter referred to as "customer"), is subject to the following General Terms & Conditions ("T&Cs").

1.2 Deviating General Terms & Conditions of the customer shall not apply. Nor do they apply should NFON not expressly object to them. The T&Cs shall also be solely applicable if NFON, aware of conflicting General Terms & Conditions of the customer, renders services without reserve. The current version of the T&Cs as a general agreement shall further apply to future transactions between the parties without NFON again referencing these in each specific case; in this case, NFON shall promptly notify the customer of change to the T&Cs.

1.3 The T&Cs shall apply in conjunction with the contract, the respective specifications of services, the service level agreement (SLA), the respective current price list (or the terms specified at www.nfon.com) and the Telecommunications Act (TKG). In the event different information is provided on this topic, the contractual documents shall apply in the following descending order of priority:

- Contract (highest priority)
- Specifications of services, Service Level Agreement (SLA), current price lists
- General terms and conditions (lowest priority)

1.4 Any separate written agreements concluded for specific cases shall always override the T&Cs.

2 Conclusion of contract

2.1 The product order by the customer constitutes a binding contractual offer. This can be accepted by NFON in writing (e.g. by countersigning the contractual offer) or by first performance.

2.2 The conclusion of contract for NFON products shall entitle the customer to use certain basic services and possibly optional additional functions. The use of optional additional functions against surcharge constitutes a separate conclusion of contract.

2.3 The customer irrevocably authorises his employees to use all performance components of NFON, including optional additional functions in line with the scope of performance contracted with the customer, irrespective of whether additional charges will be incurred for the services or the services are included in the basic fee.

2.4 A contract is only concluded between NFON and the customer. § 312i(1)(1)(1) to (3) and § 312i(1)(2) German Civil Code shall not apply.

3 NFON Hardware

3.1 The customer ordering technical equipment (e.g. routers, devices) constitutes a binding offer to NFON to conclude a sales agreement. The sales agreement shall be concluded on written order confirmation by NFON or delivery of the equipment. All equipment shall remain the property of NFON until paid in full.

3.2 If the purchased item is defective, NFON is at liberty to choose supplementary performance by correcting the defect (rectification of defects) or delivery of a properly functioning product (replacement). The customer's right to reduce the purchase price or withdraw from the sales agreement for failed supplementary performance shall remain reserved. The basis for liability for defects shall particularly be the agreement on the properties of the purchased item. All product descriptions which are part of the respective sales agreement or published by NFON shall serve as the agreement on the properties of the purchased item. NFON assumes no liability for publications by the manufacturer or other third parties (e.g. advertising messages). A defect in the purchased item shall be determined separate from NFON rendering services in other areas. The customer is excluded from assigning claims for defects. In the case of supplementary performance by virtue of replacement, the customer shall be obligated to return the defective product to NFON at the expense of NFON within one month and shall then receive the properly functioning product. NFON in turn reserves the right to assert damages under the legal premises.

3.3 The customer further has the option to lease the hardware from a third party. NFON can broker a contract between the customer and the leasing provider for this purpose, which may be subject to the General Terms & Conditions of the leasing provider. Additional agreements between NFON, the customer and the leasing provider require written form to be effective.

4 Software, licenses, copyright

4.1 To the extent that NFON provides the customer with software in performance of the contracted services, NFON shall grant the customer a non-exclusive right to use the software (license) for the term of the contract. In the event NFON grants a customer multiple software licenses, the following terms of use apply to each license. The term "Software" covers the original program, all duplications (copies) thereof, as well as parts of the program, even when associated with other programs. A program consists of machine-readable instructions, audiovisual contents and their associated license materials. Incidentally the license terms of the respective program producer apply.

4.2 The customer agrees to ensure that every user of the provided software will comply with this license agreement. The customer shall only use each software on one computer at a time.

4.3 The use of the program exists if the software is located on the primary storage or a data carrier of a computer. Software solely installed on a network server for the purpose of distributing the software is not considered used.

4.4 The customer is permitted to make the necessary backup copies of the software for data backup purposes in accordance with the rules of technology. A manual provided on a data carrier may be printed out on paper. The customer shall not modify or remove the NFON copyright notices. The customer shall not be permitted to use, copy, edit and/or transmit the software, convert it into any other form of printout (Reverse-Assemble-Reverse-Compile) or otherwise translate the software in any form not specified in the contract documents and in the manual unless such conversion is indispensably permitted by law or expressly permitted by NFON by prior written consent. The customer shall not be entitled to rent out, lease or sub-license the software.

4.5 Upon expiration of a temporary software license or upon effective termination of the license, the customer shall return all data carriers containing software, any copies and all written documentation and advertising tools to NFON. The customer shall delete any programs saved from the customer's computer systems unless legally obligated to longer storage. The remaining contractual secondary obligations to NFON shall remain in effect beyond the expiry of the contract.

4.6 For each infringement of the obligations stipulated under items 5.1 to 5.5 the customer agrees to pay NFON a contract penalty in the amount of EUR 2,500.00 unless the customer is not responsible for said infringement. NFON shall be entitled to assert the contract penalty in addition to performance. Further claims and rights remain uneffected. NFON particularly reserves the right to assert damages under the applicable provisions of the law.

5 Customer duties and obligations

5.1 The customer shall be obliged

a) to provide NFON with correct and complete data required to provide the services and promptly notify NFON of any changes to the data provided and on request from NFON to re-confirm the data's currentness and correctness within 14 days from receipt of the request. This particularly applies to the customer's name, legal form, business location, banking information, billing address, and the postal address, as well as the name, postal address, e-mail address, telephone and fax number of the technical contact person;
b) to continuously update his master data, particularly pertaining to locations and their influence on emergency calls (see service description), insofar as they have an influence on the services to be provided by NFON;
c) not to misuse the services and/or allow them to be misused. Within the scope of his possibilities, he shall in particular ensure that no illegal content is sent using the services provided by NFON. This prohibition for example applies to sending unsolicited advertising, and illegal or immoral contents. In the event of reasonable suspicion of infringement of this provision, NFON shall be entitled to disconnect the contractual service;

d) to keep access information and/or passwords provided by NFON to access its services strictly confidential and to promptly notify NFON if he becomes aware that unauthorised third parties have gained access to the access information and/or the password. In the event third parties use the services of NFON through misuse of the access information and/or passwords due to the customer's fault, the customer shall be liable to NFON for user fees and damages;
e) to grant NFON and its subcontractors access to the service and technical facilities inside the building if and to the extent necessary to provide the contractual services. The service and technical equipment provided to the customer by NFON shall only be used at the customer's agreed location. It shall be provided with electricity and, if necessary, potential equalised and earthed at his expense;
f) to make backup copies of data that are at risk of loss at regular short intervals, in order to ensure the data can be recovered with the least possible effort in the event of loss.

5.2 The customer warrants that telephone numbers he is commissioning NFON to take over are not subject to third party rights.

5.3 To continuously improve voice quality, NFON shall be entitled to select and change the telephone network provider at its own discretion. Where required by regulated processes, the customer authorises NFON to issue the respective declarations of intent on behalf of the customer to facilitate the switch. Upon request, the customer is obliged to confirm these declarations of intent, if necessary in writing.

5.4 In the event the customer commits a serious infringement of the above duties or does not remedy such an infringement by a third party despite NFON's request within a reasonable period of time, although he would be in a position to do so, NFON shall be entitled to disconnect the contractual service.

6 Dates and default

6.1 The dates (e.g. implementation dates) specified by NFON for provision of the contractual service are approximate unless expressly indicated as binding by NFON in writing. In the event NFON is unable to meet a date, NFON shall promptly notify the customer and provide a new expected date.

6.2 In the event the customer does not accept the contractual service provided by NFON (e.g. by not carrying out necessary cooperation actions), NFON shall be entitled to request the customer to do so by setting a deadline. If the customer is in default of acceptance, NFON may charge the agreed one-off and/or monthly fees and possibly assert additional rights under §§ 300 ff. BGB (German Civil Code).

6.3 After setting an appointment for a service technician to visit the customer, the customer shall be available during the window specified by NFON. If another service appointment is necessary for reasons for which the customer is responsible, the customer is obliged to compensate NFON for the additional expenses incurred.

6.4 If NFON is in default of performance, the customer shall only be entitled to terminate the contract if NFON fails to meet a reasonable grace period set by the customer. The grace period must be set in writing.

7 Prices and payment terms

7.1 The customer selects a specific tariff when placing the order. Special offers cannot be combined.

7.2 The amount of the use-independent basic fee is determined according to the price list in effect on conclusion of contract (or the terms specified at www.nfon.com). The amount of the usage-based fee is subject to the respective price list in effect when using the service (cf. item 10).

7.3 The fees demanded by NFON are due immediately upon receipt of the invoice (usually by e-mail). The customer authorises NFON to debit all due fees and other payment obligations due from his account by means of the SEPA Direct Debit Scheme. For this purpose, the customer shall grant NFON a SEPA Direct Debit Mandate. The customer shall be in default if payment is not credited to the NFON account within five (5) business days from receipt of invoice unless the late payment is outside the control of the customer. In the event of default, the customer shall pay the statutory default interest in the amount of nine (9) percentage points above the base lending rate. The customer’s obligation to pay default interest does not preclude NFON from asserting further damage caused by default.

7.4 The customer is entitled to object to the accuracy and completeness of the fees invoiced to them by NFON. Objections must be communicated to NFON in writing within eight (8) weeks of receipt of the respective invoice. Failure to raise an objection within the specified period does not constitute acceptance of the fee claim.
NFON shall examine objections raised within the deadline and provide the customer with the evidence and documentation necessary for verification, which shall demonstrate the validity of the fee claim.
The customer's payment obligation shall remain in force. However, if obviously incorrect or incomprehensible fee items are objected to, the customer is entitled to withhold payment of these items until final clarification.
If the customer does not agree with the result of the invoice review, they may initiate arbitration proceedings with the Federal Network Agency (BNetzA) or submit a complaint there within the framework of the statutory provisions. Further information can be found at www.bundesnetzagentur.de.

7.5 The customer shall only be entitled to offset claims of NFON against undisputed or legally established claims. The customer shall likewise only be entitled to a right of lien for claims arising from the same contractual relationship which are undisputed or legally established.

7.6 In the event fees or components thereof change during the billing period (e.g. sales tax increase), separate invoices shall be issued for the service period from the start of the billing period until the time of the change and the service period from the time of the change until the end of the billing period.

7.7 In the event that SEPA Direct Debit Mandates are not executed by the bank being to which the SEPA Direct Debit Mandate has been issued, NFON shall be entitled to charge the customer liquidated damages in the amount of EUR 20.00 per rejected transaction. The customer reserves the right to prove that NFON did not suffer any damage at all or that the damage was lower or that the customer is not responsible for the damage.

7.8 NFON shall be entitled to only activate services upon payment of the agreed activation fee.

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7.9 Invoices are only sent by e-mail; if the customer wishes to receive invoices by letter post, NFON will charge a fee in accordance with the price list.

8 Disconnection

8.1 If the customer is two (2) weeks in arrears with payment obligations of at least EUR 75.00, NFON shall be entitled to disconnect the telephone connection at the customer's expense and in accordance with § 45k TKG (Telecommunications Act). In compliance with the Telecommunications Act, telephone calls will then be restricted or unavailable. NFON will charge liquidated damages in the amount of EUR 25.00 for the disconnection. The customer shall remain entitled to claim lesser damages, likewise NFON shall be entitled to claim demonstrably higher damages. The customer shall remain obliged to pay the use-independent fees during the disconnection. This shall not affect the right to assert further claims for default of payment

9 Changes to T&Cs, service description and prices

9.1 NFON is entitled to amend or supplement the General Terms and Conditions, service descriptions and prices with reasonable notice, provided that the amendment is reasonable for the customer, taking into account the interests of NFON. The customer will be notified of the amendment in text form within the meaning of Section 15.4 one month in advance. The customer has the right to object to the change if, for example, they consider it unreasonable. In this case, the objection must be made in text form within one month of receipt of the notification by the customer in accordance with Section 15.4. The date of receipt by NFON shall be decisive in this respect. If the customer does not object within the specified period, the changes and/or supplements shall be deemed to have been approved. NFON shall inform the customer of the consequences of failing to object to the change notification. In the event of an objection, NFON shall be entitled to terminate the contract for cause.

9.2 In case of price adjustments to regulated fees (e.g. interconnect prices, local loop charges) of more than 5% to the disadvantage of NFON or in the event of fundamental changes to regulated fees based on court or regulatory decisions (e.g. abolition of the fee approval obligation, introduction of additional fees) and resulting changes to the purchase prices of NFON of more than 5 % to the disadvantage of NFON, NFON shall be entitled to adjust the monthly and usage-based fees as well as the one-off fees accordingly, with a notice period of one month prior to the regulatory changes becoming effective. In this case the customer has no right of termination. Furthermore, the customer has no right of termination if the applicable fees between NFON and the customer are redetermined by regulatory decision (e.g. assessments by the Federal Network Agency for electricity, gas, telecommunications, post and railways ("Federal Network Agency") for premium services, mass calling services, etc.). In this case the assessed fees shall apply immediately. NFON shall promptly notify the customer of these assessments.

9.3 In the event of a change in the statutory value added tax rate, NFON shall be entitled to adjust the fees for goods or services provided or rendered under continuing obligation accordingly as of the date the change in the VAT rate becomes effective.

10 Contract term, termination and early termination

10.1 Contract term
The contract term is specified in the respective individual contract.
If no fixed contract term or minimum contract term has been agreed in the individual contract, the contract shall run for an indefinite period.

10.2 Automatic renewal
If the parties agree on a fixed contract term or a minimum contract term, the contract shall be automatically renewed for 12 months after its expiry, unless it is terminated by one of the parties with 3 months' notice to the end of the respective term.

10.3 Ordinary termination of indefinite contracts
A contractual relationship of indefinite duration may be terminated by either party without giving reasons with 30 days' notice to the end of the month. Notice of termination must be given in text form; the customer must send the notice by email to vertrieb@nfon.com.

10.4 Early termination by the customer
If the customer terminates a fixed-term contract or a contract with a minimum contract term before the end of the agreed term, NFON is entitled to demand lump-sum compensation.
This shall not exceed the outstanding monthly basic fees until the regular expiry of the contract term, plus any services already used but not yet invoiced.
The customer reserves the right to prove that less damage or no damage was incurred.

10.5 Termination of individual components or bundled offers
If the customer terminates any individual optional services, modules or components of a bundled offer prematurely, clause 10.4 shall apply. The remaining components of the contract shall not be affected.
NFON shall be entitled to recalculate the fees for the remaining services; in particular, any bundle or package discounts shall be waived on a pro rata basis.
The adjustment shall be communicated to the customer in writing or in text form and shall take effect from the date on which the partial termination takes effect.

10.6 The right of both parties to terminate the contract without notice for good cause remains unaffected. Good cause for NFON shall include, for example, if the customer is more than 20 calendar days in arrears with payment of fees or if NFON becomes aware that a customer registered as a business customer is in fact a private consumer.

11 NFON liability

11.1 The liability of NFON for

- damages to the customer for lack of guaranteed properties,
- damages to the customer for willful or grossly negligent conduct of NFON or its vicarious agents,

- damages to the customer for injury to life, body or health, or
- damages to the customer under the product liability act shall be unlimited according to the provisions of the law.

11.2 NFON shall only be liable for material damage or financial loss due to slight negligence if such damage or loss is due to a breach of material contractual obligations. Contractual obligations are deemed essential if the fulfilment is essential for the proper execution of the contract and if the contracting party should be able to rely on their fulfilment.

11.3 The liability of NFON for ordinary negligence is further limited to compensation of foreseeable damages typical for the contract. NFON shall not be liable for any other remote loss.

11.4 If compensation for so-called pure financial losses is considered according to item 12.2, this shall in any case be limited to the net amount of the customer's turnover of the previous month of this contract; if the monthly turnover is less than EUR 2,500.00, the limit of liability shall be EUR 2,500.00.

11.5 In principle, NFON shall not be liable in case of force majeure, including for impairment or preclusion of his obligations due to technical or other problems outside the control of NFON (e.g. system failures at upstream suppliers of NFON AG). NFON shall further not be liable for access restrictions enforced by NFON where required for the security of network operation, maintaining the network integrity, particularly preventing serious disruption of the network, software or stored data.

11.6 NFON shall be liable for financial losses due to data loss even in case of slight negligence, to the extent that the customer has fulfilled his obligations under item 6.1f). Liability shall be excluded for data loss due to system malfunctions, incompatibilities or misconfiguration of the customer's hardware or software.

11.7 The above does not affect the limitation of liability under § 44a Telecommunications Act.

11.8 NFON shall solely be liable for services specified in the respective service description, but not for e.g. the necessary network infrastructure.

11.9 Exclusions and limitations of liability according to these provisions shall also apply to customer claims against legal representatives, employees and vicarious agents of NFON.

12 Promise of guarantee

12.1 In the event of a guarantee assumed by NFON, NFON shall be liable regardless of culpability. The extent of liability for material damage and financial losses covered by the guarantee, however, shall be limited to the foreseeable damages typical for the contract, not to exceed the customer's turnover during the previous month according to this contract

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13 Privacy

13.1 Master data such as name, company name, address, etc., shall only be stored where necessary for the establishment, change or execution of a contractual relationship. This information will not be disclosed to third parties unless necessary for performance of the contractual relationships with suppliers explicitly authorised by the customer. Upon termination of the contractual relationship, these data shall be deleted at the end of the following calendar year.

13.2 Traffic data shall only be collected, processed and used for the purposes and to the extent specified in the Telecommunications Act (TKG). All traffic data – unless a pending objection requires the continued provision of the customer's connection data – shall be deleted after six (6) months.

13.3 The retention of billing data is limited to ten (10) years and shall take place in separately secured systems. Upon expiration of the respective calendar year, billing data can only be accessed under special circumstances and at the request of authorities.

13.4 Upon termination of the contractual relationship, all other data related to the customer (e.g. paper-based or electronic communication, trouble tickets) shall be deleted or anonymised at the end of the following calendar year.

13.5 NFON shall be permitted to list the customer as a reference and also use its company logo for this purpose. The customer may object to such naming and use at any time.

13.6 NFON expressly makes the customer aware that data protection cannot be universally guaranteed under the current state of technology for data transmitted over public networks such as the internet. The customer is aware that other internet users could potentially have the technical ability to breach network security without authorisation, and inspect or monitor communication.

13.7 NFON uses technical, organisational and operational security measures to always ensure the security of master or traffic data and to protect said from accidental or deliberate manipulation, loss or destruction by third parties. The security measures and safeguards used are continuously improved and updated to the state of technology. Despite all efforts to ensure maximum data security, NFON cannot assume liability for illegal breaches by third parties.

14 Change of provider, number porting and data transfer speed

14.1 When switching to another provider, the customer may port the geographical and non-geographical numbers assigned to them to the new provider in accordance with the statutory provisions. This requires the customer to submit a corresponding porting request to the new provider.

14.2 Upon receipt of a valid porting request, NFON shall transmit the data required to carry out the change of provider to the new provider and shall support the porting in accordance with the statutory requirements.

14.3 Porting shall take place on the date requested by the customer, provided that this is technically possible and the statutory deadlines can be met. If this is not the case, the next possible porting date will be used.

14.4 The existing contract between NFONand the customer shall remain unchanged until the porting has been successfully completed and the termination has taken effect. In particular, the agreed fees for all services shall remain payable until this point in time.

14.5 In the event of the porting of individual telephone numbers or blocks of telephone numbers, the remaining services and telephone numbers of the customer contract shall remain in place unless the customer expressly terminates them. NFON shall be entitled to adjust fees accordingly, in particular package or bundle discounts that no longer apply.

14.6 NFON shall not be liable for delays or failures in porting due to circumstances beyond NFON's control, in particular incorrect or incomplete information provided by the customer or refusals by the transferring or receiving provider. The customer's statutory claims remain unaffected.

14.7 The customer is hereby advised that brief interruptions in availability cannot be technically ruled out during the porting process.

14.8 The customer can measure upload and download speeds and response times at any time using the tools described on the BNetzA website, which can be accessed at Bundesnetzagentur - Breitbandmessung.

15 Miscellaneous

15.1 NFON shall be entitled to have services rendered by third parties (vicarious agents). This does not constitute a contractual relationship between the third party and the customer.

15.2 NFON shall be entitled to transfer its rights and obligations arising from this contract to one or more third party/ies. This shall not entitle the customer to terminate the contract. The customer shall not be entitled to transfer or assign his rights and duties arising from this contract to third parties without the prior written approval of NFON.

15.3 NFON shall be entitled to have billing and payment transactions (so-called billing relationship) rendered by third parties on behalf of NFON based on direct debit authorisation or on behalf of the third party based on assignment.

15.4 Deviations from these General Terms and Conditions or other contractual agreements must be made in text form within the meaning of Section 126b of the German Civil Code (BGB). The waiver of the formal requirement is also subject to text form.

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15.5 The place of fulfilment and sole place of jurisdiction for all disputes arising from this contract is Munich. NFON shall further unilaterally be entitled to bring action against the customer at his place of general jurisdiction.

15.6 Contracts concluded by NFON based on these T&Cs and all claims arising from said are solely subject to the law of the Federal Republic of Germany with exclusion of the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).

15.7 Individual stipulations within these T&Cs being invalid shall not affect the validity of the contract and the remaining stipulations of the T&Cs in accordance with the will of the parties. The invalid stipulation shall be replaced, through supplementary interpretation of contract, by one that corresponds to the economic purposes of the invalid stipulation as much as possible.