

INTERNET SERVICES: GENERAL TERMS AND CONDITIONS

1. Scope

1.1 These General Terms and Conditions form an integral part of the contract between the Customer and Finecom Telecommunications AG (Finecom) with regard to the provision of Internet services (service or services). The relevant applicable user guidelines (User Guidelines) and, where appropriate, a Service Level Agreement (SLA), also form part of this contract. No other conditions form part of the contract, even where Finecom has not expressly refuted such condition. Any variant agreements must be in writing.

2. Services provided by Finecom

2.1 Finecom will supply the Customer with the services agreed in the contract. The availability of the services is specified in the respective SLAs. If the Customer informs Finecom no later than five days after the start date of a service that the service is not reaching the level agreed in the SLA, and if the service truly is falling short of the level agreed, Finecom will bring the service to the agreed level within a reasonable period. In the event that, after their start date, the services cease to reach the service level agreed in the relevant SLA, the Customer shall only be entitled to demand the remedies or credit notes from Finecom that are agreed in the relevant SLA in respect of such service failures. Any further claims (cancellation of contract, price reduction, damages, etc.) are excluded insofar as such exclusion is permitted by the relevant legal provisions.

3. Undertakings by the Customer

3.1 The Customer undertakes to pay the fees stated in the contract in accordance with the terms of payment established in these General Terms and Conditions.

3.2 The Customer shall ensure that he/she will not use the services for purposes that contravene the law. The Customer shall conduct himself/herself in accordance with the principles established by Finecom in its User Guidelines.

3.3 The Customer undertakes to use the services provided by Finecom only in conjunction with data networks and equipment (components) whose use has been approved in advance by Finecom. Finecom reserves the right to disconnect any unapproved components from the Finecom network or to suspend the provision of services until the unapproved components have been replaced.

3.4 The Customer shall provide Finecom with the required customer information (personal data, address, phone number etc.) to permit Finecom to provide the services agreed in this contract. The Customer data will be handled in a confidential manner as specified in the confidentiality clauses in these terms and conditions. The Customer is under an obligation to inform Finecom of any changes to such data without delay.

3.5 Where Finecom has not given express prior approval, the Customer is not permitted to provide third party access to any of the services that form the basis of this contract, or to allow them to be used by third parties, whether such is on payment of a fee or not.

4. Fees and Payment Terms

4.1 Finecom shall invoice the Customer with the fees at the intervals stated in the Contract, and all other fees immediately after the service has been performed. The Customer is under an obligation to pay the fees and applicable taxes in full within 10 days from the date of receipt of the invoice. Any credits granted to the Customer by Finecom where appropriate and in accordance with the applicable SLA shall, as far as possible, be credited to the customer on the next monthly invoice.

4.2 Finecom reserves the right to demand from the Customer an appropriate fee for supplementary services that are the direct or indirect consequence of a breach by the Client of contractual undertakings. Finecom shall give prior notice to the customer in writing of its intention to provide such supplementary service.

4.3 In the event that the Customer should be in breach of the above terms of payment, Finecom shall be entitled to charge interest of 8% on the amount in arrears. Finecom is entitled to terminate the contract and, where appropriate, the applicable SLA, in accordance with clause 11. Furthermore Finecom also has the right to withhold its services from the moment that the Customer is in arrears with payment.

4.4 In the event that the Customer should dispute the correctness of an invoice or an item of an invoice from Finecom, the Customer must inform Finecom in writing by return and provide documentary evidence to Finecom. The Customer must pay the undisputed part of the invoice by latest the due date of the invoice. If no objection to the invoice has been lodged by the Customer with Finecom by the due date, the invoice shall be deemed to have been accepted. Should the dispute with regard to the correctness of an invoice be decided in favour of the Customer, Finecom shall credit the Customer with the relevant amount on the next invoice. In the event that the dispute is decided in favour of Finecom, the Customer is under an obligation to pay the relevant amount within 10 days (the due date). In the event that disputes regarding the correctness of an invoice cannot be settled amicably within 30 days, each party is entitled to assert their claim by due legal process.

5. Provision of Hardware

5.1 Where services provided by Finecom include the provision of routers, lines or computers (hereinafter referred to as Hardware), Finecom shall connect the hardware at the agreed sites and on the agreed dates. The Customer is responsible for ensuring that Finecom is able to gain access to all sites in order to carry out the necessary work. Finecom, its agents and sub-contractors are not under an obligation to carry out its services in dangerous conditions. The contractual undertakings by Finecom shall be suspended until such time as the Customer has rectified the dangerous conditions.

5.2 The hardware shall at all times remain the property of Finecom or its sub-contractors. The Customer has the right to utilise the hardware under the conditions set out in this contract.

5.3 The Customer undertakes,

- not to hire or lend the hardware, nor to transfer it in material terms (by sale, leasing etc.) nor to encumber it with any form of material charge (mortgage etc.);
- not to remove any identification items (brand names, labels, patent numbers etc.) affixed to the hardware at the time of installation or affixed by Finecom at a later time, or in any way to render the hardware unrecognisable;
- to safeguard the hardware against distraint orders, foreclosure, and other legal procedures (except where initiated by Finecom and its sub-contractors);
- not to remove the hardware and/or to use it in any other way, unless by prior written agreement from Finecom;
- to adapt the surrounding environment to the requirements of the use of the hardware and to ensure that the surfaces are clean and in good condition;
- not to modify the hardware;
- to insure the hardware at its 'as new' value for the entire duration of the contract, and to undertake all necessary repairs at the Customer's own expense, provided that the need for such repair has not been caused by the conduct of Finecom;
- to ensure that Finecom and its sub-contractors shall have access to the hardware, following a reasonable period of notice, in order that Finecom can carry out its obligations as specified in this contract.
- The Customer is under an obligation to return the hardware, in perfect condition, to Finecom on termination of this contract on the final day of the contract period. In the event that the Customer does not return the hardware, the Customer undertakes to allow Finecom access in order to remove the hardware, at the Customer's expense.

6. Guarantees

6.1 Finecom guarantees that its services will be carried out with care and in a professional manner. Finecom accepts no liability for the abuse of its communications structure by third parties or intervention by third parties (this includes so-called computer 'viruses'). Finecom cannot guarantee that its services will be available uninterrupted on the Internet or on other networks (hereinafter referred to as networks) nor that the networks will transmit data as requested by the client correctly and with no time delay. Nor is Finecom responsible for the correctness of the data that the Customer transports over the networks while using the services provided by Finecom. Furthermore, Finecom gives no guarantee that the services provided by Finecom and its sub-contractors will place the Customer in a position to achieve the intended financial purposes of the customer or any other purpose.

- 6.2 The Customer is under an obligation to ensure that the Customer data provided to Finecom is correct, sufficient and reliable, so that it can be utilized by Finecom to provide the contractually agreed services. The Customer guarantees that the Customer data contains no information that is in breach of the law, nor indecent information. The User Guidelines apply in this regard.
- 7. Licenses and Intellectual Property**
- 7.1 Where the contractual services provided by Finecom include the provision or development of software, Finecom shall grant to the Customer a non-exclusive right of utilization, restricted as to time and as to location, for the software components that are the basis of this contract. The Customer is entitled to use the software components within the Customer's own Company and within any subsidiary companies over which the Customer has capital and voting control. The right to utilize the software components shall expire on termination of this contract. The software components shall at all times remain the property of Finecom.
- 7.2 The Customer shall grant to Finecom non-exclusive, free-of-charge, global utilization rights over the Customer data in order for Finecom to be able to provide the agreed services.
- 7.3 If the provision of the contractually agreed services requires the use of legally protected matter (copyright, ancillary copyright, trademark rights, patents, design rights, database rights and others) and third party software (third party matter), the Customer undertakes to furnish the necessary utilization rights to such third party matter and to inform Finecom of the conditions of such utilization rights. Finecom can advise the Customer on how to furnish such utilization rights against reimbursement of costs.
- 7.4 The Customer can agree with Finecom that Finecom should handle the obtaining of utilization rights to third party matter. In such cases the Customer shall issue a relevant order to Finecom to do so.
- 8. Confidentiality**
- 8.1 Finecom and the Customer undertake on behalf of themselves and of their employees, their agents and sub-contractors, mutually to maintain confidentiality with regard to all documents and information not in the public domain, that relate to the business activities of the other partner, and that have been provided in the course of preparing and executing this contract. This obligation shall remain for as long as a legitimate interest shall exist, including after termination of the contractual relationship. The Customer states that he/she is aware and agrees that the provision of services may make it necessary to send such data overseas. However the duty of confidential treatment applies neither to information that is in the public domain, nor to that which is already known, nor to information that can be obtained by third parties in the public domain or under statutory provisions, without the involvement of the recipient of the information. The statutory obligation to provide information is reserved.
- 9. Liability**
- 9.1 Finecom shall be liable for damages that can be traced to conduct in breach of contract by Finecom or by its agents to a total only up to the amount of reimbursement payable by the Customer for the service in breach, but to a maximum amount of sFr. 50,000 for each event, provided that there is evidence of gross negligence. Finecom, its sub-contractors and agents are expressly not liable for the reimbursement of direct, indirect or subsequent damage such as loss of profits, loss of earnings or production, loss of data nor are they liable for incidents of minor negligence. Imperative statutory liability provisions are reserved.
- 10. Duty to provide assistance**
- 10.1 Finecom undertakes to assist the Customer in protection against attacks from third parties (attack), and to asset breaches of its intangible asset rights (patents, copyright, trademark and design rights and business secrets) based on Finecom services. The Customer undertakes to inform Finecom accordingly immediately upon becoming aware of an attack or an imminent attack.
- 10.2 In the event that a Finecom service should become the object of an attack by a third party or there exists the threat of an attack on a service by a third party, Finecom shall have the right, at its own choice, (i) to continue to grant the Customer to right to use the Finecom service, (ii) to adjust the service to the extent that a possible breach of third party rights can be excluded without significantly reducing the performance of the service or (iii) to provide an alternative service that will exclude any possible breach of the rights of third parties.
- 10.3 With regard to the breach of intangible asset rights, Finecom's obligations are restricted to the remedy in law set out in sub-section 1 and the rights of the Customer are restricted to the remedy in law set out in sub-section 2 of this clause. Sub-section 1 is not applicable in this respect if the breach of intangible assets rights has occurred because the Customer (i) is making unauthorised use of the services in breach of the terms of this contract, (ii) is using the service or the networks in a manner that is in breach of the User Guidelines or (iii) continues to use the service despite a request by Finecom to cease such use.
- 10.4 The Customer shall indemnify Finecom and its employees, agents, staff, sub-contractors or its management etc. for any costs arising (i) that are a direct result of claims and complaints by third parties, that relate to the use of customer data and to software supplied and sent by the customer, or customer communications received and stored, (ii) that relate to services provided by the Customer, (iii) that are traced back to a breach of contract and conduct in breach of the User Guidelines, (iv) that are the result of damage to the hardware provided by Finecom and not caused by Finecom, (v) that are the consequence of a claim for breach of intellectual property, raised by the Customer against unauthorised use of the service in conjunctions with third party software, data and trademarks, (vi) that are the consequence of continue use of the services by the Customer, even though the Customer has been requested by Finecom to cease using the service and (vii) that are the consequence of action or omission by the Customer resulting in fatal or physical injury, or material damage.
- 10.5 The Party demanding support and indemnity from the other Party based on an attack is under an obligation immediately to inform the other Party of the attack, and to assist in resolving the attack in an amicable manner.
- 11. Duration of Contract and Amendments to the Contract**
- 11.1 This Contract is made for an undetermined period, however for a minimum of the period stated in the contract. The contract may be terminated by either party giving three months' notice at the end of a month (for the first time at the end of the minimum period of contract), unless otherwise stipulated in the contract. The contract must be terminated by means of a letter.
- 11.2 Finecom is entitled to terminate the contract with immediate effect if the Customer does not meet significant contractual obligations and the breach of contract is not corrected within 30 days. The following circumstances represent a breach of significant contractual obligations. The list is not exhaustive:
- Functional errors in Customer data having an influence on the functional capacity of Finecom servers;
 - Breach of the User Guidelines applicable within the framework of this contract;
 - Breach by the Customer of the terms of payment.
- 11.3 In the event that bankruptcy proceedings are taken out against the Customer, or the Customer is granted a stay of bankruptcy, or a certificate of loss is issued against the Customer or it becomes public knowledge by some other way that the Customer is no longer able to meet his/her payments, or if the Customer's Company goes into liquidation, Finecom has the right to terminate the contract with immediate effect, unless, within five days, the customer furnishes a bank guarantee to pay at least three months' fees.
- 11.4 Finecom reserves the right to amend these terms and conditions and the User Guidelines as and when necessary. Such amendment shall become effective at the first possible termination date from the moment the Customer is informed of the amended conditions.
- 11.5 The Customer may transfer this contract to a third party only with the prior written agreement of Finecom, however, as a general rule, Finecom will only refuse such permission if the third party is a competitor of Finecom.
- 12. Partial invalidity / Contestability**
- 12.1 In the event that a responsible Government Authority should consider one or more clauses of this contract to be invalid or ineffective, the obligations of the remaining clauses shall not be affected thereby. In such an event Finecom shall replace the invalid or ineffective clauses with equivalent, legal clauses that come as close as possible to the intention of the original clause.
- 13. Applicable Law/Place of Jurisdiction**
- 13.1 The contractual relationship between the Parties is subject exclusively to Swiss law. The Parties agree that the Place of jurisdiction for any disputes arising from the contract shall be the locality in which Finecom's head office is situated. Finecom is entitled to sue the Customer at his own place of residence.