

Special Terms and Conditions of Business for telegra WhatsApp Manager

1 Contracting parties

The contracting parties are telegra GmbH (telegra) and the customer.

2 Subject of the contract

2.1 The subject of the contract arises from the General Terms and Conditions (GTC), these product-specific Special Terms and Conditions (“Special Terms and Conditions”), and the agreed price list. These Special Terms and Conditions shall supplement the GTC and take precedence over these if there are conflicting regulations.

2.2 The following terms and conditions shall govern the contractual relationship established between telegra and the customer for use of the telegra WhatsApp Manager, a software tool that can be used by the customer to create, configure, manage and distribute via WhatsApp digital media content (texts, images, etc.) for use on smartphones and/or tablet PCs.

3 Services provided by telegra

3.1 telegra shall provide the customer with WhatsApp Manager via the administration interface telegra.de/WAM-login, for implementation on the customer’s own home page. The integration of the software tool on the home page shall be at the customer's own responsibility and risk.

3.2 telegra shall enable the customer to send via WhatsApp Manager, inter alia, digital messages, images and links to WhatsApp users selected by the customer and to communicate via WhatsApp. For this purpose, telegra sets up a WhatsApp account with WhatsApp Inc. on behalf of the customer for the duration of the contract and assigns one or more mobile phone number(s) (MSISDNs) to the customer as required, on which the customer can send and receive the digital media content.

3.3 The media content provided by the customer shall be distributed by telegra as individual messages in digital form to the WhatsApp users previously determined by the customer. telegra itself shall not create and distribute its own digital content.

3.4 telegra uses the WhatsApp service, but has no influence whatsoever on the technical and contractual

design and scope of the service provided by WhatsApp Inc., California, USA. Should WhatsApp Inc. change or completely discontinue its scope of services, the corresponding service obligation of telegra shall then also be void.

3.5 The parties agree that telegra shall also have the right to change or discontinue its services to the customer in the event of a deterioration of service caused by changes at WhatsApp Inc. In this case, both the customer and telegra shall have an extraordinary right of termination. In this case telegra shall be released from its contractual obligation towards its customer.

3.6 In the event that WhatsApp Inc. blocks a mobile phone number (MSISDN) assigned to the customer by telegra for the WhatsApp service, telegra shall inform the customer of this immediately after becoming aware.

If telegra offers its services to the customer via a new MSISDN, the recipients of the messages that were assigned to the blocked MSISDN of the customer must re-register with the customer's service.

3.7 telegra grants the customer the non-exclusive, non-transferable right, limited in time to the duration of this contract, to use the software functionalities of WhatsApp Manager within the scope of the services to be provided under this contract. The customer shall not be granted any other rights. In particular, he shall not be entitled to have the software used by third parties or to make it accessible to third parties. Also, he shall not be permitted to reproduce or sell the software or parts thereof.

3.8 The use of the software tool requires that the customer has its own functional access to the Internet for the duration of the contract.

3.9 telegra will use a service provider for the provision of its services.

4 Obligations of the customer

4.1 The customer undertakes to comply with all statutory and official regulations.

Among other things, the customer shall not misuse WhatsApp Manager, in particular,

- not send any legally prohibited or unrequested information or other services, such as unsolicited and unrequested advertising. The customer shall obtain from its customers all consents required under the German Law against Unfair Competition (*UWG*) (e.g. Double Opt-in) on its own responsibility;

- not send any media content via the WhatsApp service to users not registered with WhatsApp Inc.;
- not establish any illegal contacts using telecommunication equipment (Section 238 of the German Penal Code – *StGB*).
- not distribute information with illegal or immoral contents and not refer to such information. This includes, in particular, information that serves to incite hatred within the meaning of Sections 130, 130a and 131 of the *StGB*, that leads to criminal offences or glorifies or trivializes violence, that is sexually offensive, that is pornographic within the meaning of Section 184 of the *StGB*, that is likely to seriously endanger the morals of children or adolescents or to impair their well-being, or that could damage the reputation of telegra. The provisions of the German Interstate Treaty on Youth Media (including Section 4 Para. 1) and the German Youth Protection Act must be observed;
- ensure that the sending of digital media content does not result in any impairment for telegra or other third parties;
- observe the national and international copyrights and trademark, patent, name and trademark rights as well as other industrial property rights and personal rights of third parties.

4.2 The customer grants telegra and its service providers a non-exclusive, temporary right to reproduce, edit, transmit and, if applicable, otherwise use the media contents, insofar as this is necessary for the fulfilment of telegra's contractual obligations.

4.3 The customer assures that it is the owner of all necessary rights to the media contents (e.g. images) in order to grant telegra the aforementioned rights, that the customer can freely dispose of these, and that the media contents are not encumbered with rights of third parties.

4.4 The customer acknowledges the terms of use and privacy policy of WhatsApp (available at [WhatsApp.com](https://www.whatsapp.com)) in the current version and agrees to comply with these in the context of the use of WhatsApp Manager. The customer is aware that the sending of pure advertising content is not permitted by WhatsApp and can lead to the deactivation of the service. WhatsApp may make changes to the terms of use at any time, which may directly affect the services provided by telegra.

4.5 telegra shall be entitled at any time to delete data and content that violate legal regulations.

4.6 telegra and its service provider will not make any special backup copies of the media contents and will delete media content at the latest after the expiration of the contract period. It is the customer's responsibility to make

backup copies of the media content independently.

4.7 telegra will charge the customer monthly (calendar month) for the agreed services after the service has been rendered.

4.8 Furthermore, the customer shall be obliged to pay the agreed fees for the services of telegra in due time. The customer shall also have to pay the prices if these have been incurred through authorized or unauthorized use of the software by third parties and the customer is responsible for such use.

4.9 Contrary to clause 9.3 of the GTC of telegra, objections to the invoice must be raised in writing within four weeks after receipt of the invoice; otherwise the invoice shall be deemed approved in respect of the invoicing of the telegra WhatsApp Manager product. Legal claims of the customer in case of objections after expiry of the deadline shall remain unaffected.

4.10 The customer shall indemnify telegra from all claims of third parties, including reasonable costs of legal defense, which are based on an illegal use of WhatsApp Manager by the customer or with the approval of the customer, or which result, in particular, from data protection, copyright or other legal disputes in connection with the use of telegra WhatsApp Manager. If the customer recognizes that there is an impending damage or is able to recognize such an impending damage, the customer shall be obliged to inform telegra immediately.

5 Liability

5.1 telegra shall be liable for damages in the provision of telecommunications services to the public in accordance with the provisions of the German Telecommunications Act (*TKG*, in particular Section 44a *TKG*).

5.2 In all other cases telegra shall be liable without limitation for all damages caused by intent or gross negligence as well as for the absence of a warranted feature.

5.3 In case of slight negligence telegra shall be liable without limitation in cases of injury to life, body or health. If telegra is in arrears with its performance due to slight negligence, if its performance has become impossible or if telegra has violated an essential obligation, the liability for material damage and financial loss attributable to this shall be limited to the foreseeable damage typical for the contract. An 'essential obligation' is one the fulfilment of which is essential for the proper execution of the contract, the breach of which endangers the achievement of the purpose of the contract, and on the observance of which

the customer may regularly rely.

5.4 Liability for all other damages shall be excluded, in particular for damages caused by incompatibility of the components existing on the customer's PC system with the new software and for system malfunctions that may arise due to existing misconfigurations.

6 Data protection

6.1 telegra and the service providers shall store and process personal data only to the extent necessary for the execution of the contract between the parties and permitted under the relevant provisions.

6.2 telegra will store inventory and traffic data. The customer's inventory data shall be blocked for use at the end of the calendar year following termination and deleted after a further 10 years. Traffic data shall be stored for a maximum period of 180 days, insofar as they are required for billing purposes. Section 97 Para. 3 TKG shall apply. Digital content sent or received by the customer via the administration interface shall be stored by telegra on behalf of the customer and deleted after 180 days at the latest. The customer shall be solely responsible for managing the messages during this time.

6.3 telegra has taken technical and organizational measures to protect stored personal data from misuse and unauthorized access. However, third parties, under certain circumstances, may technically be in a position to monitor the communication traffic without authorization, especially in the case of data transmission via the Internet outside the access area of telegra.

6.4 telegra expressly points out to the customer that data protection and data security for data transmissions in open networks such as the Internet cannot be guaranteed according to the current state of the art.

6.5 telegra points out that the disclosure of customer and order-related data of the customer as well as of media content to the service provider, in particular for the purpose of proper planning, processing and delivery of all services, is necessary and that the transfer of media content from the customer to the end customer and vice versa is carried out by WhatsApp.

6.6 telegra has no influence on the handling of media content and profile information by the provider of the WhatsApp Inc. product.

7 Term of contract and termination

7.1 The customer shall be permitted to use WhatsApp Manager for the duration of the contract term agreed with telegra.

7.2 Unless otherwise agreed, the contract of use is concluded for an indefinite period of time and can be terminated in writing by giving one month's notice to the end of the month.

7.3 The right to terminate for good cause shall remain unaffected. In particular, telegra shall be entitled to terminate for good cause if the basic functions of WhatsApp Manager are no longer available, for example because WhatsApp restricts the service as such or blocks individual MSISDNs. In this context, the contracting parties expressly acknowledge that a complete shutdown of WhatsApp Manager by telegra, which is not caused intentionally or by gross negligence, shall not create any liability for damages by telegra towards the customer.

7.4 After expiration of the contract period, the customer will no longer be able to access the WhatsApp account, the MSISDN assigned to the customer, and the WhatsApp Manager. The WhatsApp account and the media content stored by the customer shall be finally deleted at the latest one month after the end of the contract period.

8 Service quality and service times

Notwithstanding Clause 16 of the GTC, the following shall apply to WhatsApp Manager with regard to service quality and service times:

telegra shall not assume any liability for the provision of services by WhatsApp Inc.

For support services, telegra shall be available to the customer by telephone on weekdays during business hours - Mon-Thu from 8:00 a.m. to 6:00 p.m. and on Fridays from 8:00 a.m. to 4:30 p.m. Outside business hours the customer can reach telegra by e-mail.

9 Other provisions

If one or more of the provisions set out in these Special Terms and Conditions are ineffective due to legal provisions, the effectiveness of the remaining provisions shall remain unaffected. The parties undertake to replace the ineffective provisions by provisions equivalent to them in their economic result.