

Special Terms and Conditions of Business for telegra Centrex of telegra GmbH

1 Contracting parties

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

2 Subject of contract

2.1 The subject of the contract arises from the General Terms and Conditions (“AGB”), these product-specific Special Terms and Conditions of Business (Special Terms and Conditions – “BGB”), agreed price lists, as well as any regulations adopted in specifications and Service Level Agreements (SLA). These product-specific Special Terms and Conditions supplement the General Terms and Conditions and shall take precedence over these if there are conflicting regulations. On placing the order, the customer expressly acknowledges all the provisions applicable to the telegra Centrex product at the time of concluding the contract.

2.2 The product telegra Centrex belongs to the telegra FON PRO product group, which consists of the following (individual) products which can be combined as required:

- a. telegra Centrex – Telephone system in the Cloud, end devices
- b. telegra Access – Connecting the customer’s location via the products telegra DSLAccess, telegra LeasedLineAccess and telegra VPNAccess
- c. telegra Connect – Access to the public telephone network via local network number.

2.3 These Special Terms and Conditions, together with the Telecommunications Act (TKG) govern the hire of telecommunications equipment, such as telecommunications end devices such as hardware and software telephones, analogue converters, routers, patch cables and gateways, including their associated software and telegra installing and maintaining the telecommunications equipment hired. They also govern telegra setting up the customers’ individual virtual telephone system and providing the performance characteristics of that virtual telephone system. The product telegra Centrex, and hence these Special Terms and Conditions, expressly do not cover connecting the customer to telegra, via an IP connection, for example.

3 Coming into force of the contract

3.1 The contract shall come into force on written confirmation of the customer’s order by telegra, and no later than the relevant service is provided by telegra. The customer shall be bound to its order for four weeks. telegra shall remain free as regards acceptance of the order.

3.2 telegra shall be entitled to make the provision of services dependent upon the provision of a security. This shall also apply after the contract has been concluded if the customer is in default with its payment obligations.

3.3 telegra reserves the right to deviate from the services offered for technical reasons after the contract has been concluded.

3.4 Dates or deadlines for the installation, commissioning, etc. shall only be binding if telegra has confirmed these in writing to the customer and the customer on its side has met all the requirements falling under its area of responsibility in good time for the execution of the services by telegra, and has also made all the necessary declarations of intent. Dates or deadlines agreed as binding shall be postponed by an appropriate period in the event of a temporary and unforeseeable impediment to performance for reasons for which telegra is not to blame. Such impediment to performance would especially be if the upstream service provider failed to supply the end devices on time.

4 Services by telegra

4.1 Lease of telecommunications equipment

telegra shall deliver the telecommunications equipment and its associated software for use to the customer and maintain it during the lease period to the extent that maintenance is justified by normal use. The customer shall not be entitled to any new telecommunications equipment. Supplying used (recommissioned) end devices is expressly permitted. The scope of maintenance excludes replacing consumables, such as batteries and patch cables, and standard rechargeable batteries. telegra shall install the telecommunications equipment for the customer as agreed between 08.00 and 18.30 on working days (Mondays to Fridays). Installation includes installing the telecommunications end devices including basic programming required for operational purposes plus handover and instruction.

All maintenance and modification work on the telecommunications equipment provided for the duration of the contractual relationship may only be carried out by telegra or its agents. Maintenance and repair by telegra explicitly does not extend to third-party products and to installations made

by the customer itself, such as the customer's network infrastructure (LAN). During the work, telegra shall be entitled to put the telecommunications equipment out of operation. telegra shall also be entitled to correct faults by means of remote support, insofar as this is technically feasible.

For the duration of the contract the customer shall be granted a simple, non-exclusive and non-transferable right to use the contracted software and hardware as designated. The software producer's terms of licence shall continue to apply to each software.

None of the telecommunications equipment installed by telegra or its agents at the customer's shall become the property of the customer.

4.2 Using third-party devices

The customer may not connect or use any telecommunications equipment, such as end devices, which telegra has not given the customer to use (hereinafter 'third-party equipment') on the network provided without telegra's prior written consent.

If the customer uses third-party equipment, it will not be able to access the standard procurement interface, so it will be unable to use the services of the virtual telephone system in full. The customer may however instruct telegra to extend the interface for these purposes separately, but then assumes the risk of commissioning an end device telegra has authorised and generally regards as commissionable. Even if it consents, telegra shall not guarantee that the telecommunications equipment and other services will work perfectly.

Software telephones may basically only be used via the customer's external Internet access, which is not included in telegra's scope of supply. telegra shall not accept any liability for any problems with this access, nor shall it guarantee that the software telephones and its other services will work perfectly or be liable for that.

4.3 Virtual telephone system

During the term of the contract, telegra shall make available to the customer the characteristics of a telephone system via a virtual telephone system on the net, to the extent technically and operationally possible. In particular, telegra's services shall include setting up the virtual telephone system, providing and delivering the telephone system's agreed performance characteristics and providing a web-based administrative interface for the customer to manage that telephone system.

Should the customer order the optional extra Unified Communication (UC) feature from telegra, it will also have at its disposal a web-based administrative interface for the UC

workplace and apps for the iOS and Android operating systems respectively with limited functions as compared with the web interface. To be able to use the browser-based web interface, it will need current browser versions as stated in the technical specifications.

4.4 Access to Centrex service

The customer's location may be connected to the virtual telephone system either via the products telegra DSLAccess, telegra LeasedLineAccess and telegra VPNAccess or via a connection via the public Internet (voice over Internet – VoIP) for which the customer alone is responsible. If connecting via the public Internet, telegra shall merely provide the access to the extension via which the customer can register its telephones.

telegra cannot guarantee that the telecommunications equipment and its other services will function properly when connecting the customer's location either via the telegra VPNAccess product or purely via a voice over Internet (VoIP) connection.

4.5 telegra may engage third parties as agents to assist it in meeting its service obligations. They will not be contract partners to the customer.

4.6 telegra shall be entitled to block the respective services at the customer's expense in cases of serious breaches of the obligations incumbent upon the customer, as well as in cases of reasonable significant suspicions of a breach of obligation under point 7 of these Special Terms and Conditions. The customer shall in this case remain under an obligation to continued payment of the monthly prices. This is without prejudice to the provisions of § 45 o TKG.

5 Limitation of service obligation – Self-supply clause

telegra's service obligation is subject to correct and timely self-supply of goods (e. g. telecommunications equipment) or upstream services. However, this shall apply only to the extent that telegra has concluded a matching cover transaction with the upstream service supplier with the necessary due care, and the incorrect or late delivery is not due to any fault of telegra's. If the service is not provided on time, telegra shall inform the customer of this fact immediately. The foregoing shall also apply to continuing obligation contracts and failure of upstream services during the contractual period.

6 Other services by telegra

Subject to its technical and operational capability at any time, telegra shall also provide additional services, as agreed, for a separate charge based on prices agreed at the time the order is issued, as follows:

- a. Rectifying damage or disturbances to telecommunications end devices leased, provided these are not attributable to improper use of the telecommunications equipment or a breach of its obligations under point 6 of these Special Terms and Conditions by the customer, or to other effects for which the customer is liable.
- b. Disconnecting and recovering telecommunications equipment once the contract has terminated.
- c. Checking the customer's LAN connection as a condition for using the telegra Centrex service.

7 Duties of the customer

The customer shall have the following duties in particular:

7.1 The customer undertakes to pay the prices agreed for telegra's services in due time.

7.2 The customer shall use the leased telecommunications equipment (especially the end devices) of and the services provided by telegra with due care for their intended purpose, properly and within the framework of the applicable laws. To operate the telecommunications equipment it shall use only equipment and accessories which are recommended by telegra or the manufacturer of the end devices.

7.3 The customer shall provide appropriate support to telegra during the installation of the telecommunications equipment and the provision of services. In particular, the customer shall provide access to the necessary premises for suppliers and other agents. This shall also apply for maintenance and repair work. In addition, his obligations shall also include, but not be limited to, tasks such as plugging in devices into the power supply at the location and plugging in ready-made cables. If the customer culpably fails to fulfil its cooperation obligations or seriously refuses them, the service shall be considered as provided as from that date. In this case, telegra shall agree a new date and invoice any additional journey that may be required.

7.4 Furthermore, the customer shall ensure that the basic supplies (e. g. electrical power) are available on an ongoing basis during operation at the activating address. The customer shall ensure that the location has sufficient electrical power available during installation and during the con-

tractual term, is adequately air-conditioned and is sufficiently secured against fire, lightning and overvoltage, theft, vandalism and improper handling (business contents insurance and/or electronics insurance). The customer shall provide the electrical power for the installation, operation and maintenance of the telecommunications equipment at its own expense.

7.5 All maintenance work on leased telecommunications equipment may only be carried out by telegra or a third party commissioned by telegra, unless telegra is in default of the correction of faults.

7.6 The telecommunications equipment leased may only be installed at a location different from the agreed location upon approval by telegra. Also, the customer shall not be allowed to replace any end devices etc. provided with its own end devices without telegra's approval. If the customer does not stick to this, telegra shall neither be obliged to provide the agreed characteristics of the virtual telephone system nor to rectify damage or disturbances in the telecommunications equipment installed by the customer on its own responsibility.

7.7 Obligation to notify faults or malfunctions

The customer undertakes to notify telegra immediately of recognisable faults of the telecommunications equipment or malfunctions of the telecommunications equipment and/or the other services and to support telegra to a reasonable extent in correcting the fault. The assertion of alleged rights by third parties shall also be notified to telegra forthwith, especially if a precautionary measure for the protection of the telecommunications equipment against an unforeseen risk is required.

The customer shall refund to telegra any expenses incurred by submitting a fault notification if it turns out after verification that the fault was not in the area of responsibility of telegra. In particular, faults in the customer's LAN cabling and the associated active and passive components (e. g. switches, patch panel, electrical power supply) lie within the customer's area of responsibility. The same shall apply in case of improper use of the telecommunications equipment.

7.8 Virtual telephone system

The customer shall observe the data protection regulations on commissioning telegra to set up conference calls, record telephone calls, etc.

Subject to the data protection regulations the customer shall be obliged to regularly hold available data backups of voice files coming in automatically and backups of files the customer itself installs.

7.9 The customer undertakes not to disclose to third parties any personal access data made over to him (e. g. for Internet access, for the registration of the end devices or for the configuration of the service) and to keep it protected from access by third parties. As far as this is possible for the customer itself, the access data should be changed at regular intervals. If there is reason to suspect that unauthorised persons have gained knowledge of the access data, the customer shall inform telegra forthwith and change the access data, or have it changed by telegra. Access data may be stored on the PC, a USB flash drive or a CD-ROM only in encrypted form.

7.10 The customer shall indemnify telegra from all claims by third parties that are based on an unlawful use of the technical systems, equipment and services of telegra by the customer or which are carried out with its approval, or that arise in particular from data protection, copyright or other legal disputes which are associated with the use of one of telegra's products. If the customer becomes aware of an imminent violation or if it can become aware of such violation, immediate notification by the customer shall be required.

8 Prohibition of transfer to third parties

The customer shall not be entitled to make available, sublet or sell to third parties for their sole use the services provided to it (e.g. telecommunications end devices) without the prior written permission of telegra.

9 Service disruptions

9.1 telegra shall provide its services within its existing technical and operational capability and shall make a hotline service available to its customers for fault notifications.

9.2 Rent

If the customer has fulfilled its obligation of notification, regardless of its statutory claims to a reduction in the rent and the payment of damages, it shall have a claim against telegra for remedial measures to correct the defect, provided that the leased telecommunications equipment has faults which have a not merely negligible negative affect on its contractual use.

The remedial measures shall be considered as a contractually agreed right to supplementary performance. Only if the remedial measures have not been successful within a rea-

sonable period shall the customer be entitled to assert further claims against telegra.

Instead of correcting faults telegra may replace the telecommunications equipment. Should the correction of faults or a replacement delivery fail, the customer shall not be obliged to pay for the end device concerned.

The liability of telegra for damages irrespective of culpability (§ 536a German Civil Code (BGB)) shall be excluded for faults existing upon conclusion of the contract.

9.3 Telecommunications services via virtual telephone system

telegra shall immediately correct malfunctions of its technical equipment within its existing technical and operational capability when providing the performance characteristics of the virtual telephone system.

9.4 telegra shall assume no liability for the proper functioning of the telecommunications equipment and its other services if the customer has connected third-party products to the leased telecommunications equipment. This shall apply even if this has been done with the permission of telegra. The customer itself shall be responsible for the maintenance of third-party devices. If third-party devices interfere with the functioning of the leased telecommunications equipment or other services provided by telegra, telegra shall be entitled to shut off third-party products at the customer's expense. telegra shall not warrant the proper functioning of the telecommunications equipment and its other services either if the customer uses third-party lines for connecting the end devices.

10 Blocking the connection

10.1 telegra shall be entitled to prohibit the use of the service by the customer fully or partially (block),

- a. the customer, after deduction of any down payments, is in arrears with payment obligations totalling at least 75 euros on all ordered products in the telegra FON PRO product group,
- b. as soon as the termination of the contract takes effect, or
- c. if, because of a particular increase in calls in comparison with the previous six billing periods processed, the amount of telegra's claim for charges rises significantly and facts justify the assumption that the customer will complain about this demand for payment.

10.2 In the event that the customer falls into arrears

with payment, the block shall be notified to it in writing, giving a period of notice of at least two weeks, with a simultaneous warning and indication of the possibility of legal protection before the ordinary courts. The customer shall remain under an obligation to continued payment of the monthly fees even after the block has been set in place.

11 Breach of obligations

If the customer is in significant or sustained breach of its obligations (in particular under points 7 and 8 of these Special Terms and Conditions), telegra shall be entitled to stop the customer from using the service, to terminate the contract without giving a period of notice, and, in addition, to demand a single lump-sum payment of damages in the amount of three quarters of the remaining rental payments payable until the end of the regular term of contract, which shall be due immediately. If telegra can prove that the amount of damage is higher or if the customer can prove that the amount of damage is lower, the proven damage shall be paid.

12 Term of the contract

12.1 All contracts for products of the telegra FON PRO product group which are concluded for a location in relation to articles including hardware components (such as lines, end devices, routers, VPN Connect, DECT base stations, fax connections) are concluded as fixed-term contracts and subject to a uniform contractual term (hereinafter "term-dependent contracts"). Such contracts shall end at the end of the term agreed for the location, regardless of the date on which the individual contracts are concluded.

12.2 The contractual term for each location shall be agreed in writing between the parties on placing the order for the first telegra FON PRO product ordered for this location as a minimum contractual term. It shall be at least 24 months.

12.3 All other contracts within the telegra FON PRO product group in relation to individual services and/ or location-independent services, e.g. extensions contracted within the telegra Centrex product or access to the public telephone network (telegra Connect product), are concluded for an unlimited term.

12.4 The beginning of the minimum contractual term for all term-dependent contracts for the location shall be on the first day of the month in which the last contractual components necessary for the transfer and termination of calls

from and into the public telephone network was made available in serviceable condition. At the latest, the term shall start on the 1st of the month in which the system was used for the first time for incoming and/ or outgoing calls in the public telephone network via extensions of the location.

12.5 The telegra Access products shall be considered as having been made available in operational readiness on completed installation; the telegra Centrex product on provision of serviceable end devices and/ or extensions. The minimum contractual term of end devices delivered shall be determined by the minimum contractual term of the location for which the respective end device was commissioned for the first time. This shall apply even if the end device is used at another location later.

13 Termination

13.1 Term-dependent contracts may be terminated, in writing, for the first time at the end of the minimum contractual term agreed for the location, giving a notice period of three months. If no contracts of any contracting party are terminated at the end of the minimum contractual term, the contractual term for all term-dependent contracts for telegra FON PRO products commissioned for the location shall be extended for another year in each case.

13.2 Unless otherwise provided for by agreements, non-term dependent contracts for services and mobile services may be terminated in writing at any time to the end of the month without giving a period of notice.

13.3 The right of cancellation for good cause shall remain unaffected by these regulations. telegra shall be especially entitled to terminate a contract for good cause if the customer

- a. makes abusive use of services or violates penal provisions in their use;
- b. is in arrears with the payment of fees or a significant proportion of the fees for two consecutive months or, in a longer period of time, for a sum amounting to the monthly price for two months;
- c. gives up the location prematurely and no longer uses the services permanently (e. g. due to relocation).

13.4 If telegra terminates the term-dependent contractual relationship for the location before the end of the regular contractual term for a good cause attributable to the customer, the customer shall be obliged to pay to telegra, as a lump sum due immediately, damages to the amount of three-quarters of the remaining monthly prices for all term-

dependent contracts for the location concerned payable until expiry of the agreed contractual term. The amount of damage shall be assessed as higher or lower if telegra proves a higher amount of damage or the customer proves a lower amount of damage.

13.5 If the customer terminates the term-dependent contractual relationship for good cause before the services have been provided in serviceable condition or before agreed modification work was carried out, it is to compensate telegra for the expenses already incurred for work carried out and for the dismantling of already installed telecommunications equipment rendered necessary by the cancellation, however, this shall not exceed the amount of the price agreed for the provision or modification.

14 Return of the telecommunications equipment

The customer undertakes to return all leased telecommunications equipment (routers, base stations, patch cables etc.) in due form within 14 days after the end of the contract. If the telecommunications equipment is not received by telegra within this period, telegra shall be entitled to demand from the customer the new price for a comparable telecommunications end device. If uninstalling and return transport on behalf of the customer is carried out by telegra, telegra shall bill the customer for the expenses incurred in accordance with the agreed prices.

15 Final provisions

15.1 The customer may institute arbitration proceedings in a dispute with telegra as to whether telegra has fulfilled the obligations towards the customer as provided for in §§ 43a, 45 to 46 para. 2 and § 84 of the German Telecommunications Act (TKG) by an application to the Federal Network Agency. Applications to the Board of Arbitration of the Federal Network Agency may be submitted electronically in the online process or in writing by letter or fax. The Rules of Procedure may be obtained from the Federal Network Agency or on <http://www.bundesnetzagentur.de>.

15.2 If one or more of the conditions listed in these Special Terms and Conditions are ineffective based on the legal provisions, the effectiveness of the remaining conditions shall not be impaired. The parties undertake to replace the ineffective conditions by conditions equivalent to them in their economic result.