

## **General Terms and Conditions**

### **Ortel Mobile Switzerland GmbH General Terms and Conditions 1 Scope**

1.1 These General Terms and Conditions (hereinafter referred to as "GTC") apply to all services (hereinafter referred to as "Services") provided by Ortel Mobile Switzerland GmbH (hereinafter referred to as "Ortel") to any natural person, legal entity or partnership (hereinafter referred to as "Customer").

### **2 Ortel's obligations**

2.1 Ortel will provide the Customer with national and international mobile telecommunication services in accordance with the contract concluded with the Customer, the most recent version of the GTCs, any service descriptions, product information, price lists etc. applicable to the Services (hereinafter jointly referred to as the "Agreement"). The most recent versions of all such information shall be made available on Ortel's website, [www.ortelmobile.ch](http://www.ortelmobile.ch).

2.2 Ortel will use reasonable business efforts to provide uninterrupted Services in accordance with the Agreement. As Ortel is a mobile virtual network operator and uses the network of a third party (a network operator) to provide the Services, it can however not give guarantees as to the quality of such Services, in particular regarding network coverage, uninterrupted, interference-free or fault-free operation thereof, nor for an absolute protection of the used network against unauthorized access or interception.

2.3 Ortel may at any time engage third parties for the fulfilment of the Services.

### **3 Customer's obligations**

3.1 The Customer is under an obligation to use the Services in compliance with the law and the Agreement.

3.2 The Customer is responsible for any use, including misuse, of the Services made with the Sim-card provided by Ortel (hereinafter referred to as "SIM-Card"), even if such use or misuse is initiated by third parties. The Customer shall be responsible for any charges incurred in connection with such use/misuse.

3.3 The Customer shall make fair use of the Services. In this respect, 'fair use' shall mean that the Services shall be used in accordance with the reasonably known intentions of Ortel in relation to the Services and the normal telecommunications needs of a consumer. The Customer shall not misuse the Services, or allow the Services to be used contrary to this principle of fair use. In particular the following acts or omissions shall be qualified as misuse or unfair use:

(a) any acts or omissions that cause or can cause disruptions in Services, mobile networks or ICT systems of Ortel or third parties;

(b) any acts or omissions that, contrary to the intentions of the Services and/or Ortel, limit the amounts normally payable by the Customer or any third party to Ortel;

(c) for Services provided at a 'flat rate': permanent use, use far above the use of an average Customer or other than for normal private use.

As the concept of 'fairness' may develop over time, Ortel may, on its website [www.ortelmobile.ch](http://www.ortelmobile.ch), indicate further examples of fair or unfair use, as well as consequences it may give to such use.

3.4 The Customer is responsible for the end devices used, including accessories, particularly in relation to installation, adjustment, operability, compliance with the law and compatibility with the networks and services used.

3.5 The Customer shall refrain from distributing any illegal content and digital content without valid permission or rights.

3.6 The Customer is obliged to keep Ortel informed of his current personal data such as name and address and to notify Ortel of any changes in this respect without delay online or by post.

3.7 Ortel shall provide the Customer with a SIM-Card for the use of the Services. Ortel remains the owner of the SIM-Card. The Customer shall treat the SIM-Card with reasonable care, as SIM-Cards are easily damaged. Ortel will replace free of charge any returned SIM-Card found to be defective through faulty design or workmanship. In any other circumstances, however, Ortel may charge the Customer for its replacement. Ortel is entitled to exchange the SIM-Card provided to the Customer at any time.

3.8 The Customer shall treat as confidential all contractual data such as his PIN code or PUK code as well as any other codes and passwords and in particular procures to store such data in a safe place and not to provide access to anybody. The Customer shall immediately inform Ortel of any unauthorized use or loss of any contractual data. The Customer shall be liable for any and all costs and damages arising therefrom.

3.9 The Customer shall inform Ortel immediately of a loss or theft of his SIM-Card. Ortel shall block the SIM-Card upon receipt of such information. Any remaining credit on the SIM-Card can however not be reimbursed to the Customer.

### **4 Prices**

4.1 The prices and payment conditions of the Services are laid down in the latest Ortel price lists on the internet at [www.ortelmobile.ch](http://www.ortelmobile.ch). The Customer shall owe Ortel the prices that apply at the moment of the actual use or order, as the case may be. All prices are inclusive of VAT, unless otherwise indicated.

4.2 Ortel may amend the prices at any time. Ortel will inform the Customer thereof in an appropriate manner and in accordance with applicable legislation. If the amendment is reasonably to the Customer's detriment, and the Customer does not wish to accept this amendment, the Customer is entitled to terminate the contract with effect of the date of entry into force of the amended prices. If the Customer continues to use the Services after an amendment of prices has entered into force, he will be deemed to have accepted the amendment.

4.3 Amendments of prices due to modifications of taxes or duties or direct regulatory intervention, amendments of prices for Services by third parties, such as roaming, value-added services and short numbers, and amendments of prices in accordance with an irrevocable agreement made at the entry into force of the Agreement (such as automatic price increases in accordance with inflation) shall not entitle the Customer to terminate the contract.

### **5 Payment**

5.1 Payment for Services shall be made through a prepaid system, whereby the Customer purchases a credit ('Prepaid Credit') which is reduced automatically and immediately with the charges owed by the Customer. The credit can be increased at any time through the refill process via the means of payment designated by Ortel. Detailed information on the refill process is available at [www.ortelmobile.ch](http://www.ortelmobile.ch).

5.2 Ortel shall take due care in refilling and deducting amounts from the Prepaid Credit and shall endeavour to do such as much as possible in 'real time'. However, if needed, Ortel may correct the Customer's Prepaid Credit at any moment in time.

5.3 Ortel may provide the Customer with an initial Prepaid Credit, or with later special refills. Ortel may attach special conditions to such credits or refills, in particular as to the Services for which it can be used (e.g. excluding value added services)

5.4 Prepaid Credits or any other other account credits shall not be reimbursed to the Customer, and shall not be transferable to another party.

## **6 Customer data**

6.1 For the conclusion and execution of the Agreement Ortel shall process personal data of the Customer. Ortel undertakes to process customer data with due care and to comply with the provisions of the applicable data protection regulations.

6.2 Ortel may provide Services in conjunction with or via third parties within or outside Switzerland. In the course thereof, Ortel may give access to personal data to these third parties insofar as this is necessary for the execution of the Agreement. The Customer's attention is drawn to the fact that the regulations applicable to storage, processing and transmission of personal data may be different or less strict in other countries than in Switzerland.

6.3 Ortel may process the customer data with a view to improving its services, or use such data for marketing or sales purposes (also with the help of third parties), unless the Customer excludes such usage. Should the Customer not preclude such use explicitly, Ortel and/or business partners of Ortel have the right to contact the Customer in writing, by phone, email or by SMS/MMS as part of Ortel marketing activities.

6.4 Ortel may exchange personal data with or transfer data to authorities or enterprises which deal with fraud, legal interception, directory services, debt collection or credit information.=

6.5 Ortel may provide further information on the way it processes personal data, as well as on the Customer's rights in this respect, on its website, [www.ortelmobile.ch](http://www.ortelmobile.ch).

## **7 Limitation of liability**

7.1 Ortel shall be fully liable only for damage to property and financial losses, to the extent that such losses are incurred by actual fault of Ortel with wilful intention or gross negligence as well as in the event of personal injury.

7.2 In the event of damage to property or financial losses caused by Ortel due to anything less than gross negligence, Ortel shall be liable only up to the amount equal to the value of the Services paid for by the Customer during the last 12 months, but in any event liability shall not exceed the maximum amount of CHF 50'000.– per customer and year. Liability for consequential damage and indirect damage (loss of profit, loss of data, savings not achieved, suspension of usage etc.) is – insofar as legally permissible – expressly excluded.

7.3 Ortel shall not be liable for damage resulting from unlawful use of Services or use of Services in violation of the Agreement or any legal regulations. Ortel shall not be liable if Services are temporarily disrupted, restricted in whole or in part or unavailable owing to circumstances for which third parties are responsible or which Ortel cannot reasonably be expected to influence, or as a result of force majeure. Ortel shall not assume responsibility or liability for content or services created by, connected to, or accessible for third parties.

7.4 Ortel must be informed of any damages in writing as soon as reasonably possible and within four weeks of the possible discovery. Damage not reported within this period shall not lead to compensation unless Ortel decides otherwise.

## **8 Term, suspension and termination**

8.1 The Agreement is concluded for an unlimited period and commences upon the date agreed therein or, if no such date has been stated in the Agreement, upon the date of the Customer's signature or confirmation of its online-order, unless conclusion of the Agreement is subsequently rejected by Ortel, and, in any case, at the latest when the customer uses the Services for the first time.

8.2 The Agreement may be terminated in writing by either party by giving 30 days' notice effective at the end of a calendar month.

8.3 Ortel is entitled to suspend the Services or to cancel the contract with immediate effect with good cause, in particular if there is doubt about the use of the Services in compliance with the law or with the Agreement.

8.4 Ortel will be entitled to charge a processing fee in the event that any suspension of Services is subsequently revoked.

8.5 Should the SIM-Card not be used (for charged outgoing calls, sms or data) for a 120 days period, it will be disconnected automatically. The SIM-Card may be reactivated upon the Customer's request within one day of the disconnection. In this case, Ortel will be entitled to charge a processing fee. If the Customer has not requested the reactivation of the SIM-Card within that time, the Agreement is automatically terminated.

8.6 Any remaining credit will expire upon termination or disconnection. The customer is not entitled to reimbursement of any charges paid.

## **9 Conditions and amendments**

9.1 Ortel may unilaterally amend the GTC and/or any other provisions of the Agreement at any time. The Customer will be informed thereof in an appropriate manner and in accordance with applicable legislation. If the amendment is reasonably to the Customer's detriment, and the Customer does not wish to accept this amendment, the Customer is entitled to terminate the contract with effect of the date of entry into force of the amendment. If the Customer continues to use the Services after an amendment has entered into force, he will be deemed to have accepted the amendment.

9.2 For specific offers specific or additional conditions may apply. Ortel shall inform the Customer in an appropriate manner of these conditions.

## **10 Transfer of rights and obligations**

10.1 The Customer is allowed to transfer the Contract or any rights or obligations arising thereunder subject to the prior written consent of Ortel. Such consent may be refused by Ortel for any or no reason.

10.2 Ortel is allowed to transfer the Contract or any rights or obligations arising thereunder without the prior written consent of the Customer.

## **11 Applicable law and jurisdiction**

11.1 The contractual relationship shall be governed by the material laws of Switzerland. The exclusive place of jurisdiction shall be Berne, mandatory places of jurisdiction reserved.

August 2011