

## General terms and conditions

### 1. Contract partner

Vertragspartner sind die CONSERTIS GmbH (nachfolgend „CONSERTIS“), Am Gestade 3, 1010 Wien (Bezirksgericht Wien) sowie der Kunde. CONSERTIS wendet sich mit seinem Leistungsangebot ausschliesslich an Geschäftskunden, nicht an private Verbraucher. Sollte CONSERTIS Kenntnis davon erhalten, dass ein Kunde privater Verbraucher ist, verfügt CONSERTIS über ein außerordentliches Kündigungsrecht nach Punkt 3.6 des vorliegenden Vertrags.

### 2. CONSERTIS' contractual services/dependency of contractual services on external technical specifications

These General Terms and Conditions, in conjunction with the price list, contain the rules governing the subject matter of the contract. Any provisions deviating from or supplementing these General Terms and Conditions shall only become part of the contract if expressly confirmed in writing by CONSERTIS. CONSERTIS offers its services in the form of the following products, subject to the restrictions also listed below due to possible external technical specifications:

#### 2.1. FLOWphone: the virtual telephone system

Since the customer no longer needs a telephone line to operate his CONSERTIS telephone system and all calls are made via VoIP, CONSERTIS switches all of the customer's telephone connections. The prices for the individual tariff zones can be found in the current price list.

Placing emergency calls via 112 (or any other national emergency number) is not possible in the event of a power failure. Changing the configuration of the components of the voice and data solution preconfigured by CONSERTIS may result in the inability to make an emergency call. Damages and claims arising from the improper placement of an emergency call are to be borne entirely by the customer. CONSERTIS assumes no liability. Dialing a destination number is not permitted if the customer does not want a connection to be established or if it is known that the establishment of the connection is prevented - in particular by technical precautions - by the owner of the destination number or, at his instigation, by third parties. CONSERTIS reserves the right to block individual destination numbers, destination number groups, or country codes, taking into account the interests of the customer. CONSERTIS will provide the customer with a list of the blocked numbers upon request. The establishment of connections to geographical dial-up numbers for access to the Internet is not part of the service owed. The selection of a connection network operator is not possible.

### 3. Conclusion of contract, term of contract and termination of contract

3.1. CONSERTIS has the right to accept the customer's request to conclude the contract within a period of 14 days from the date of the customer's telephone order or dispatch of the order.

3.2. Unless otherwise expressly stipulated in an individual contract, the contract comes into effect upon CONSERTIS' countersignature of the customer's application, but no later than upon CONSERTIS' first act of performance.

- 3.3. Unless otherwise agreed in writing, the contract is concluded for an indefinite period.
- 3.4. If the contract is concluded for a definite period of time or if a minimum contract period has been agreed with the customer, the contract shall be extended in each case by the agreed period of time or by the minimum contract period, but by a maximum of one year in each case, if it is not terminated with a notice period of four weeks to the respective expiry of the definite period of time or expiry of the minimum contract period.
- 3.5. A contractual relationship for an indefinite period of time may be terminated by either party without giving reasons with 30 days' notice to the end of the month.
- 3.6. The right of both parties to terminate without notice for good cause remains unaffected. Good cause for CONSERTIS exists, for example, if the customer is more than 20 calendar days in arrears with the payment of the fees device or if CONSERTIS becomes aware that a customer registered as a business customer is actually to be classified as a private consumer.
- 3.7. Any termination must be in writing in order to be effective, which shall also be deemed to have been complied with by fax.
- 3.8. If the contract has been concluded for a fixed period, all outstanding basic charges up to the expiry of the agreed minimum contract period shall be charged as a down payment in the event of premature termination of the contract.

#### **4. Changes to the contract and the general terms and conditions**

- 4.1. CONSERTIS is entitled to change the content of this contract with the customer's consent, provided that the change is reasonable for the customer, taking into account the interests of CONSERTIS. Consent to the amendment of the contract shall be deemed to have been given unless the customer objects to CONSERTIS's written notification of the amendment within four weeks after receipt of the notice of amendment. CONSERTIS undertakes to inform the customer of the consequences of failing to object when notifying the customer of the change.
- 4.2. Deviating general terms and conditions of the customer do not apply. They do not apply even if CONSERTIS does not expressly object to them. These terms and conditions shall apply exclusively even if CONSERTIS unconditionally performs the services with knowledge of the customer's terms and conditions to the contrary.
- 4.3. These General Terms and Conditions shall also apply to future transactions of the parties.
- 4.4. CONSERTIS may transfer its rights and obligations under this contract to one or more third parties (transfer of contract). The customer does not have the right to terminate the contract without notice in the event of a contract takeover. The customer may not transfer its rights and obligations under this contract to third parties (transfer of contract).

#### **5. CONSERTIS' Obligations to Perform**

- 5.1. CONSERTIS guarantees an availability of its services and systems of 99% on an annual average. This does not include times when the systems cannot be reached due to technical or other problems beyond CONSERTIS' control (force majeure, CONSERTIS' pre-service suppliers, etc.). CONSERTIS may restrict access to its services if the security of network operations, the maintenance of network integrity, and in particular the prevention of serious disruptions to the network, software, or stored data so require. CONSERTIS is not liable for force majeure.

- 5.2. The customer selects a specific tariff when ordering. It is not possible to combine different action offers.
- 5.3. In order to use software that CONSERTIS offers with a product for no additional charge, the customer must activate it using the license key provided by CONSERTIS.
- 5.4. If CONSERTIS is in default with performance obligations, the customer is entitled to withdraw from the contract only if CONSERTIS fails to comply with a grace period of at least two weeks set by the customer. The grace period must be set in writing.

## **6. License agreements, copyright**

- 6.1. CONSERTIS grants the customer a non-exclusive right to use the programs (license) for the term of the contract. If CONSERTIS grants the customer multiple licenses of the program, the following terms of use apply to each of these licenses. The term "program" includes the original program, all reproductions (copies) of the same, and parts of the program even if these are linked to other programs. A program consists of machine-readable instructions, audiovisual content and the associated license materials. In all other respects, the license terms of the respective program manufacturers shall apply.
- 6.2. The customer undertakes to ensure that everyone who uses this program complies with this license agreement. The customer may only use the program on one computer at a time. A "use" of the program exists if the program is located in the main memory or on a storage medium of a computer. A program that is installed on a network server merely for the purpose of program distribution shall be deemed not to be used. The customer may carry out data backup according to the rules of technology and create the necessary backup copies of the programs for this purpose. If the manual is available on data media, it may be printed out on paper. The customer may not change or remove copyright notices of CONSERTIS. The customer is not entitled to use, copy, edit and/or transfer the program in any way other than described herein, to convert it into another form of expression (reverse-assemble-reverse-compile), or to translate it in any other way, unless such conversion is indispensably provided for by express statutory regulations. He is not entitled to rent, lease or sublicense the program.
- 6.3. Insofar as CONSERTIS has granted the customer a limited right of use for the programs or advertising materials, or if the right of use ends due to termination, the customer must return to CONSERTIS all data carriers containing programs, any copies, and all written documentation and advertising aids. The customer shall delete all stored programs from its computer systems, unless it is legally obligated to retain them for a longer period of time. The customer's other ancillary contractual obligations to CONSERTIS shall survive any termination or cancellation of the contract.
- 6.4. For each case of violation of the obligations regulated in clauses 6.1 to 6.3, the customer promises CONSERTIS a contractual penalty in the amount of EUR 2,500.00. The customer reserves the right to prove to CONSERTIS that the damage is lower.

## **7. Retention of title**

All delivered hardware remains the property of CONSERTIS GmbH until the purchase price has been paid in full to CONSERTIS GmbH.

## **8. Prices and payment**

- 8.1. Prices are fixed.
- 8.2. To the extent that the customer's main obligation to perform, i.e., the obligation to pay the basic fee not dependent on use, is not affected, CONSERTIS shall determine the fees by means of the current price list at its reasonable discretion.
- 8.3. CONSERTIS has the right to make changes in prices or services. CONSERTIS shall give advance notice of the change. If such a change is detrimental to the customer, the customer may terminate the service affected by the change in writing. Such termination shall be effective as of the date of implementation of the relevant change. CONSERTIS will inform the customer of this extraordinary right of termination in the notice of change. The right of termination shall expire if the customer does not exercise this right within six (6) weeks after notification. The right of objection or termination under this clause does not exist to the extent that changes are made solely for the benefit of the customer, or to the extent that CONSERTIS adjusts prices in the event of a change in the statutory rate of value-added tax. The customer does not have a right of termination in the cases of clauses 8.4 and 8.5.
- 8.4. In the event of price adjustments in the area of regulated charges (e.g., interconnect prices, local loop charges) by more than 5% to the disadvantage of CONSERTIS or in the event of fundamental changes to regulated charges due to judicial or regulatory decisions (e.g. CONSERTIS has the right to adjust the monthly and usage-dependent charges as well as the one-time charges accordingly with a notice period of one (1) month before the regulatory change takes effect. In this case, the customer shall have no right of termination.
- 8.5. Furthermore, the customer has no right to terminate the contract if the valid fees between CONSERTIS and the customer are legally redefined as a result of regulatory decisions (e.g., determinations by Rundfunk und Telekom Regulierungs-GmbH (RTR) in the area of premium services, mass transit services, etc.). In this case, the fixed charges apply immediately. CONSERTIS will inform the customer immediately about these determinations.
- 8.6. Invoices are due for payment immediately after they are sent (usually by e-mail) and are collected by SEPA company mandate. The customer also separately authorizes CONSERTIS to collect any fees incurred via his specified account. The period for advance notification (prenotification) is reduced to 3 (three) days. The mandate number can be found on the respective invoice. The customer cannot object to the debit. CONSERTIS's creditor ID is: **AT56ZZ000001450**. If the banking institution rejects the payment, the debtor is immediately in default. The legal default occurs in all cases when the payment has not been credited to CONSERTIS's account within five working days. The statutory default interest rate is in any case the minimum interest rate. CONSERTIS reserves the right to assert further claims due to default of payment.
- 8.7. In the event of a change in the statutory rate of value added tax, CONSERTIS is entitled to adjust the charges for goods or services supplied or rendered within the scope of continuing obligations accordingly from the time the change in the rate of value added tax takes effect.
- 8.8. If the charges or their components change at a point in time within the billing period (e.g. increase in sales tax), the service period from the beginning of the billing period to the change point in time and the service period from the change point in time to the end of the billing period shall be billed separately.
- 8.9. In the event that bank collections or direct debits are not executed by the bank to which they relate, CONSERTIS is entitled to charge the customer a lump-sum compensation in the amount of € 20,- per returned transaction. The customer retains the right to prove

that no damage or a significantly lower amount of damage was incurred and that the customer is not responsible for the damage.

8.10. CONSERTIS is entitled to activate services only after payment of the fees agreed upon for the connection.

8.11. The customer may offset CONSERTIS's claims only against undisputed or legally established claims.

## **9. Blocking**

If the customer is 14 days in arrears with a payment, CONSERTIS is entitled to block the use of the PBX and consequently also the switching of telephone calls. The customer will then no longer be able to make telephone calls via CONSERTIS. For the duration of the blocking, the customer is still obligated to pay the usage fees.

## **10. Limitation of the liability of CONSERTIS**

10.1. Insofar as the Telecommunications Act should be applicable, the liability provisions therein shall remain unaffected.

10.2. CONSERTIS is liable for damages only if CONSERTIS or one of its vicarious agents has violated an essential contractual obligation (cardinal obligation) in a manner that endangers the purpose of the contract, or if the damage can be attributed to gross negligence or intent on the part of CONSERTIS or one of its vicarious agents, or to the absence of a characteristic guaranteed by CONSERTIS. If the culpable breach of an essential contractual obligation (cardinal obligation) is not due to gross negligence or willful misconduct, CONSERTIS' liability is limited to the damage that was reasonably foreseeable for CONSERTIS at the time of the conclusion of the contract, but at most to the amount of the customer's sales for the last month under this contract.

10.3. In cases of slight negligence, CONSERTIS has unlimited liability only for injuries to life, limb, or health. If CONSERTIS is in default of performance due to slight negligence, if the performance of CONSERTIS has become impossible, or if CONSERTIS has breached an essential contractual obligation, the liability of CONSERTIS for property damage and financial loss attributable thereto is limited to the foreseeable damage typical of the contract. Material contractual obligations within the meaning of this provision are all those obligations whose fulfillment is indispensable for the proper performance of the contract, whose non-fulfillment endangers the purpose of the contract, and on whose fulfillment the customer relies. CONSERTIS is liable for damages resulting from a loss of data in the case of slight negligence, provided that the customer fulfills its duty to mitigate damages in accordance with clause 11.9. Otherwise, CONSERTIS is liable only in cases of gross negligence or intent.

10.4. CONSERTIS is not liable for any other damages, especially consequential damages (e.g. lost profits, indirect damages).

10.5. The liability according to the product liability law remains unaffected

10.6. CONSERTIS is generally not liable in cases of force majeure, even under clause 5.1.

## **11. Duties and obligations of the customer**

11.1. The customer warrants that telephone numbers which he commissions CONSERTIS to take over are free of third-party rights.

- 11.2. The customer warrants that the data provided to CONSERTIS is correct and complete. The customer undertakes to inform CONSERTIS without delay of any changes in the data provided and, upon CONSERTIS's request, to reconfirm the current accuracy within 15 days of receipt of the request. This applies in particular to the name and postal address of the customer as well as the name, postal address, e-mail address, and telephone and fax numbers of the technical contact person.
- 11.3. The customer undertakes not to use the services improperly and/or to allow them to be used improperly. Within the scope of his possibilities, he shall in particular ensure that no unlawful content is sent using the services provided by CONSERTIS. This prohibition applies, for example, to the sending of unsolicited advertising and to content with illegal or immoral content. In the event of a reasonable suspicion of a violation of this provision, CONSERTIS may block the service that is the subject of the contract.
- 11.4. In order to continuously improve voice quality, CONSERTIS is entitled to select and change the telephone network operator at its own discretion. If regulated processes require it, the customer authorizes CONSERTIS to issue corresponding declarations of intent on behalf of the customer in order to enable the changeover. The customer is obligated to confirm this declaration of intent in writing, if necessary, upon request of the parties involved.
- 11.5. The customer shall retrieve incoming messages in its voice mailboxes at regular intervals of no more than four weeks. CONSERTIS reserves the right to delete incoming personal messages for the customer if the capacity limits provided for in the respective tariffs are exceeded.
- 11.6. The customer undertakes to keep access data and/or passwords received from CONSERTIS for the purpose of accessing its services strictly confidential and to inform the provider immediately as soon as it becomes aware that unauthorized third parties have become aware of the access data and/or password. If, as a result of the customer's fault, third parties use CONSERTIS's services through misuse of the access data and/or passwords, the customer is liable to CONSERTIS for usage fees and damages.
- 11.7. The Customer undertakes to inform its employees that it can view call logs and that calls to social counseling centers are also displayed therein.
- 11.8. The Customer undertakes to inform its employees that, in the case of spatially unbundled or distributed use of telephony terminals, emergency calls will only ever be transferred to the emergency call acceptance point responsible for the number used.
- 11.9. The customer undertakes to create backup copies of data at risk of loss at short regular intervals in order to ensure that the data can be restored with the least possible effort in the event of loss.
- 11.10. If the customer commits a serious breach of the foregoing obligations, or if the customer fails to remedy such a breach by a third party despite CONSERTIS's request to do so after the expiration of a reasonable period of time set for this purpose, although the customer would be in a position to do so, CONSERTIS is entitled to block the service that is the subject of the contract.

## **12. Data Privacy**

- 12.1. A storage of inventory data such as name, company name, address, etc. is only carried out as far as it is necessary for the establishment, change or processing of a contractual relationship. A transfer of this data to third parties is excluded or occurs

only for contractual relationships with suppliers explicitly authorized by the customers concerned. If the contractual relationship is terminated, this data will be deleted at the end of the calendar year following the termination.

- 12.2. Traffic data is collected, processed and used only for the purposes and to the extent specified in the TKG. All traffic data will be deleted after 6 months unless a pending objection requires the continued retention of a customer's connection data.
- 12.3. The storage of invoice data is limited to 10 years and takes place in separately secured systems. Access to invoice data after the end of the respective calendar year is only possible for special reasons and upon official request.
- 12.4. Any other customer-related data (e.g. paper-based or electronic correspondence, trouble tickets) will be deleted or anonymized upon termination of the contractual relationship at the end of the calendar year following the termination.
- 12.5. CONSERTIS expressly points out to the customer that data protection for data transmissions in open networks such as the Internet cannot be comprehensively guaranteed according to the current state of technology. The customer is aware that other participants in the Internet may also be technically capable of unauthorized intervention in network security and of controlling or intercepting message traffic.
- 12.6. CONSERTIS GmbH uses technical, organizational and operational security measures to ensure the security of inventory and traffic data at all times and to protect it from accidental or intentional manipulation, loss or destruction by third parties. The security measures and precautions used are continuously improved and adapted in line with the state of the art. Despite all efforts to ensure the highest level of data security, CONSER-TIS cannot accept any liability for unlawful interference by third parties.
- 12.7. CONSERTIS GmbH uses service providers for the disposal of paper-based documents and electronic data storage devices that offer certified destruction in accordance with the security standards of the DSGVO.

### **13. Jurisdiction, Applicable Law**

The exclusive place of jurisdiction for all disputes arising from this contract is St. Polten. CONSERTIS is furthermore entitled to sue the customer at his general place of jurisdiction. Contracts concluded by CONSERTIS on the basis of these General Terms and Conditions and claims of any kind arising therefrom shall be governed exclusively by the laws of the Republic of Austria, to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflict-of-law rules.