

Surf'n'Talk & Surf'n'Talk Vision General Terms and Conditions

TKS Telepost Kabelservice GmbH & Co. KG, Altes Forsthaus 2, 67661 Kaiserslautern (called TKS in the following) provides customer with the TKS Internet access on the basis of a cable connection. TKS also provides the possibility of telephone access over the internet. This product is called Surf'n'Talk or Surf'n'Talk Vision if a Cable TV access is provided additionally.

The following General Terms and Conditions, the price lists, the performance specification as well as the telecommunications law (TKG), which form part of the contract, applies. The telecommunications law is also valid, even though if in the following conditions it is not always referred to.

1. Prerequisites for Utilizing the Services

1.1 TKS accepts only natural adult persons as customers.

1.2 TKS services can only be utilized if customer's premises have access to the TKS multimedia cable network.

2. Conclusion of Contract

The contract is concluded if customer fills out the applicable order form or orders the service via telephone. Contract is deemed concluded after TKS has accepted or confirmed the order, at the latest after the service has been provided.

3. Scope of Service

TKS provides the following services for the product Surf'n'Talk:

3.1 Internet Access

In accordance with customer's order, specifications /PL and these General Terms and Conditions TKS provides access to the Internet via customer's cable connection.

3.2 Access to the TKS Telephone Service.

The scope of the contractual services ensues from the Service Specifications and the contractual partners' stipulations concerning these Specifications.

3.3 For the connection of the telephone terminal equipment to the cable connection, an MTA (Multimedia Terminal Adapter) is required. Only equipment approved by TKS may be used. TKS offers MTA equipment for sale in its TKS Shops.

3.4 Terminal Equipment

3.4.1 If customer purchases terminal equipment via TKS, this terminal equipment will remain TKS property until it is completely paid for. In the event of product deficiencies TKS has the right to refuse the type of supplementary performance chosen by customer if this type of supplementary

performance is only possible at excessively high costs and the other type of supplementary performance does not result in major disadvantages for customer. In the event of product deficiency TKS has the right to provide customer with a replacement product serviced by manufacturer which can be classified as good as new. The decisive factor is that the equipment is fully operational.

TKS provides the following services for the product Surf'n'Talk Vision:

In addition to an Internet access and a TKS Cable Phone Service which TKS provides via customer's Internet connection, TKS also provides Surf'n'Talk Vision customers access to the TKS Cable TV Service. These service conditions are in accordance with the customer's order and the service specifications /Price List Surf'n'Talk / Surf'n'Talk Vision.

3.5 TKS Cable TV

Via the customer's cable connection TKS provides access to the TKS cable TV service as well as to the Movie Channel with monthly changing program contents. The TV channels that can be received are not the same at every location and may therefore vary from location to location.

The programs which are available at individual locations are listed separately

3.6 Availability

The average annual availability of the services provided by TKS is at least 97,5 %. TKS is not obliged to provide any availability beyond this figure. TKS is entitled to interrupt the service temporarily, limit its duration or discontinue service partially or on the whole, if this is necessary for reasons of public security, legal provisions, for reasons of network security operation, for keeping up network integrity, for reasons of data security or the implementation of works which are necessary for operational or technical reasons. Furthermore TKS would like to call attention to the fact that the provision of services may depend on the utilization of third party transmission paths and technical equipment. TKS does not assume any warranty for service impairments caused by third party transmission paths and equipment.

3.7 TKS provides a monthly bill. Upon customer's request an itemized bill for telephone service may be provided. For the Flat Rate Specifications there is no itemized information provided.

4. Customer's Obligations and Responsibilities

Customer has the following responsibilities:

4.1 The agreed prices according to the price list are to be paid within the agreed payment period. Costs for bounced checks or returned direct-debit orders have to be paid by the customer to the extent that customer can be made responsible for the event that caused the costs.

4.2 At customer's own costs customer has to provide TKS service personnel access to customer's premises and buildings to the extent that this is necessary for the implementation of tests, respectively installation and maintenance works.

4.3 Electric energy for installation, operation and maintenance and, if necessary, the required potential equalization and connected grounding are provided by the customer at customer's expense.

4.4 The provided access must not be abused e.g. by making threatening or molesting calls. Furthermore it is not allowed to communicate information with illegal or morally offending contents to other callers or to inform others about such contents.

This includes all information with the purpose of incitement to demagoguery, instructions how to commit criminal acts or information which glorifies or minimizes violence or is sexually offensive in the sense of §§ 130, 130a and 131 StGB, contents which are pornographic in the sense of § 184 StGB or may be morally harmful or damaging to children and teenagers or might harm the reputation of TKS.

4.5 TKS has the exclusive right to perform maintenance and modification works at customer's access.

4.6 Telephone network components must not be utilized in an excessive way which may result in an overload of the access. This applies especially to free calls within the TKS network and to countries with contractually agreed upon Flat rate included service – permanent connections are not allowed and may be cut off by TKS, if necessary. The Flat rate offer is addressed to customers with private usage profile. The Flat rate is not valid for value-added services, telecommunication services and not for providers of mass communication services, in particular providers for Fax broadcasting service, call centres and telephone marketing service.

Furthermore the Flat rate does not apply for the permanent networking or connection of locations or telecommunications installations from the customer.

4.7 Call numbers with geographic reference may only be used at the location where they were assigned. TKS must be notified immediately of any move involving a change of MTA location. In case of non-compliance TKS has the right to cancel the access immediately. In this case TKS also rules out any and all liability regarding misdirected emergency calls.

4.8 Before the utilization of call forwarding it must be ensured that the owner of the access to which calls are to be forwarded to agrees.

4.9 Customer agrees to keep Personal Identification Numbers (PINs) secret and to change them resp. have them changed by TKS immediately after customer suspects that unauthorized third parties have gained knowledge of PINs.

4.10 TKS must be notified immediately in writing of any change of personal contract data (e.g. names, address, bank connection, e-mail address).

4.11 Customer agrees to protect Internet access as well as other services provided via cable connection from unauthorized third party access, e.g. by using a computer password.

4.12. Customer agrees to deny young people under 18 access to offers which are liable to have an undesirable influence on young people's moral development.

4.13 Furthermore customer agrees not to use the Internet access to operate a server.

4.14 Customer also agrees not to interfere with, modify or damage the TKS network or other networks.

4.15 Customer agrees not to abuse TKS services and, as far as utilization of TKS services is concerned, to comply with general laws, especially penal laws and notably trade practice rules etc. and to comply with third party rights, notably copyright laws, licence rights, utilization rights etc.; also customer undertakes to make sure that contents posted via customer's Internet access or otherwise made available do not infringe upon third party rights and are not punishable by law, morally offensive or in any way illegal; customer is responsible for any and all contents customer transmits via the TKS Internet access or TKS services or otherwise transmitted contents (e.g. e-mail, newsgroups, chat services etc.)

4.16 Customer agrees not to utilize the services agreed upon with TKS for business purposes or to make these services available to third parties in customer's own name and at customer's expense.

4.17 Above all customer undertakes to refrain from the following:

4.17.1 Dispatch of unwanted advertising e-mails, junk e-mails, other unwanted messages, so-called mail bombs etc. to individual persons, distribution lists or several news groups (Spamming),

4.17.2 Faking of sender information or other header information.

4.17.3 Collecting information on persons and their e-mail addresses without owners' consent.

4.17.4 Access to, respectively sampling of an operating system and/or network (Scanning) and unauthorized monitoring of data traffic flows without owner's consent.

4.17.5 Utilization of external mail servers (Relay) for the dispatch of messages without owner's consent.

4.17.6 Distribution of viruses, worms, Trojan horses etc.

4.17.7 Making equipment provided by TKS available to unauthorized third parties outside customer's own premises or other contractually agreed premises.

4.18 Customer undertakes to pay all charges which have accrued by authorized or unauthorized utilization of the service by third parties, unless utilization was beyond customer's responsibility.

5. Fault-clearing

5.1. A TKS hotline to report problems is available to customers every day.

5.2. If maintenance works with ensuing system impairments or interruptions are necessary, those will be performed in times with little traffic, as a rule during 2.00 and 5.00 am or between 9.00 and 11.00 am.

5.3. In the event that customer is responsible for the reported problem, e.g. if equipment has been operated incorrectly, TKS is entitled to charge extra for the costs arising to TKS.

6. Payment Conditions

6.1. Starting with the day of operational provision, monthly charges are to be paid on a pro rata basis for the remaining month. Thereafter monthly charges are to be paid one month ahead of time.

If the price is to be calculated for parts of a calendar month, the exact number of days for which the service is used will be calculated.

6.2 Other charges, especially connection charges, are to be paid after provision of the service.

6.3 TKS is entitled to monitor the accruing connection charges on a permanent basis. If a certain threshold value has been reached, customer may either be notified or access may be disconnected. This is a protective measure for both TKS and customer.

6.4 Upon conclusion of contract TKS may ask for a security payment. This security payment will be set off against the customer's final bill after termination of the contract.

7. Exclusion of Complaints

Complaints regarding the amount of utilization charges or other utilization-dependent TKS prices have to be made in writing immediately after receipt of bill. Complaints to TKS must be received by TKS within eight weeks after invoice date. If complaints are not made in time, the bill is deemed accepted by customer. The customer's legal claims in connection with complaints remain unaffected and can still be made after expiration of the time limit.

8. Late Payment

8.1 If customer is at least 10 Euro in arrears with payments and no security deposit has been made, TKS may block customer's access according to § 45k TKG at customer's expense. In this case customer's obligation to pay monthly charges remains unaffected.

8.2 If customer is in arrears

- a) With the payments or a substantial part of the payments for two consecutive months or
- b) Is in arrears with payments for more than two months, but the amount due corresponds to the monthly rates for two months, TKS has the right to terminate the contract without notice.

8.3 TKS' right to make further claims due to default of payment remains unaffected.

8.4 If TKS is in arrears with the services to be provided, liability is governed by the provisions of the Telecommunications Customer Protection Regulation (TKG). Customer only has the right to cancel the contract if TKS does not comply with the minimum grace period of two weeks set by the customer.

9. Termination

9.1 The minimum contract term for Surf'n'Talk and Surf'n'Talk Vision products is 12 months. At the end of the minimum contract term the contract will be extended indefinitely and may be terminated by both contract partners at the end of each month. The termination must be made in writing and TKS or customer must receive termination at least six working days before it is to go into effect. Saturday is not considered a working day.

9.2 In special cases (providing of valid military orders) it is possible for customers to terminate the contract immediately. In this case the termination will take effect to the end of the month the termination was done. For this month the monthly basic fee will be charged in full. In this case TKS is entitled to invoice an additional charge.

9.3 Is the remaining duration of stay in Germany (according to the military orders) restricted for less than 12 month, or if the duration of stay is (according to the military orders) restricted from beginning for less than 12 months, the customer can still get the product TKSSurf'n'Talk or Surf'n'Talk Vision, but the customer needs to purchase the MTA and a subsidization is not possible.

9.4 In case customer terminates the contractual relationship earlier than one month after operational provision, customer has to pay the full monthly rate.

9.5 In the event that customer terminates the contractual relationship before the operational provision of the access or before provision of additional services has taken place or agreed modification works have been performed, customer has to reimburse TKS for works performed up to that point of time as well as for the deinstallation of already installed telecommunications equipment which has become necessary due to the cancellation, however the amount must not be higher than the price which was agreed upon for provision or modification.

9.6 In case customer terminates the contractual relationship before the end of the agreed minimum contract term, customer will be charged the monthly basic charge until the end of the minimum contract term.

9.7 By terminating the contract on standard services, the contract regulating additional services will also be terminated.

9.7 In case TKS terminates the contractual relationship because of outstanding payments the access may be reactivated within a dedicated time frame which depends on the used customer care and billing system. Prerequisite for the reconnection of the access is the complete payment of all owned amounts inclusive any additional fees TKS may charge in these cases for a reconnection. This will not take any influence on the contract term.

10. Move

In case of a move of the customer the following cases will be distinguished.

10.1 Moving from on base to another place on the same base having the opportunity to use Surf'n'Talk / Surf'n'Talk Vision service further on.

In this case the customer is bounded to fulfill the contractually service agreements.

In case customer terminates the contractual relationship before the end of the agreed minimum contract term, customer will be charged the monthly basic charge as penalty until reaching the end of the minimum contract term.

10.2 Moving from on base to another place on base without having the opportunity to use Surf'n'Talk / Surf'n'Talk Vision service further on.

In this case it is to be examined whether TKS can offer an alternative product with comparable specifications. In this case, the customer has to accept (signup for) this service for at least the remaining time frame of the Surf'n'Talk or Surf'n'Talk Vision contract.

If TKS cannot offer an alternative product with comparable specifications, the customer is not bounded to fulfill the contractually service agreement.

In this case of early termination, the customer will not be held liable for monthly basic fees for the remaining contract term.

10.3 Moving from on base to off base with having the opportunity to use Surf'n'Talk / Surf'n'Talk Vision service further on.

In this case the customer is committed to fulfill the contractually service agreement.

If customer terminates the contractual relationship before reaching the end of the agreed minimum contract term - customer will be held liable for the monthly basic fee until the minimum contract term has been fulfilled.

10.4 Moving from on base to off base without having the opportunity to use Surf'n'Talk / Surf'n'Talk Vision service further on.

For this case is valid the regulation under 10.2

11. Other Conditions

11.1 If customer uses the contractually agreed services as provider of telecommunications services for the public, the „Additional Conditions for Providers of Telecommunications Services for the Public“ will apply.

11.2 Customer may only assign rights and obligations of this contract to a third party after written approval by TKS.

11.3 The provisions of the Product Liability Law remain unaffected.

11.4 The contract parties' contractual relations are governed by German law.