

TKS Surf'n'Talk

General Terms and Conditions

1 Validity of Provisions

Apart from the General Terms and Conditions Surf'n'Talk, the following provisions are also valid for the product Surf'n'Talk: „Additional Terms & Conditions TKSSnap! Service“, „General Terms & Conditions T-DSL“ as well as the “TKSSurf! Fair Use Policy“.

2 Contract Matter

The contract matter ensues from these General Terms and Conditions as well as from provisions stated in the Specifications and Price Lists. Together with the Telecommunications Law (TKG) the Specifications and Price Lists regulate the provision of telephone accesses, the utilization of the related connection rate, the international flat rate CountryFlat and of the DSL access of the Deutsche Telekom as well as the utilization of the related TKS Internet rate (TKSSurf!). This service package is provided in the following versions:

- Surf'n'Talk T-Net with T-Net access, DSL 6000 and flatrate for data transmission
- Surf'n'Talk T-ISDN with T-ISDN multi-equipment access, DSL 6000 and flatrate for data transmission

The aforementioned Surf'n'Talk bundles are geared towards customers with private usage profile. Surf'n'Talk does not apply to value-added services and providers of telecommunications services, notably not for providers of fax broadcast services, Call Center and telephone marketing services. Furthermore Surf'n'Talk must not be used for the permanent networking or linking of sites, resp. of customers' telecommunications installations.

3 Conclusion of Contract

Unless otherwise provided, the contract is concluded upon receipt of the order confirmation, but at the latest when the service is provided by Deutsche Telekom.

4 Customer's Duties and Obligations

4.1 Customer has the following obligations:

- a) Surf'n'Talk bills are payable monthly and may be paid via direct debit, credit card, by check, money transfer or in cash at the TKSShop. 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.
- b) The provided services must not be abused, especially not for the following purposes:
 - Activities named under section 2, last paragraph.
 - no illegal, unsolicited information, matters and other services may be transmitted, e.g. undesired and unsolicited advertisements via e-mail, fax, telephone or SMS or dialing-in programs prohibited by law.
 - There must be no illegal contacting via telecommunications equipment (§ 238 Penal Code - StGB).
 - No illegal or morally offending contents must be transmitted or posted on the Internet. Furthermore it is prohibited to inform other 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 severely morally harmful to children and teenager or which may harm the reputation of Deutsche Telekom. The provisions of the Treaty on Youth Media and the Children and Young Persons Act are to be observed.
 - Customer has to make sure that utilization of individual functionalities and especially the posting and mailing of messages does not result in any harm for Deutsche Telekom, other providers or other third parties.
 - No connections must be made which result in payments or rewards/money considerations from third parties to customer.
 - National and international copyright, trademark, patent and labeling rights as well as other third parties' industrial property rights and personal rights must be complied with at all times.

- c) Customer has to provide Deutsche Telekom service personnel access to customer's premises and buildings at customer's expense and to the extent that this is necessary for the implementation of tests, respectively installation and maintenance works.
 - d) 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.
 - e) If customer reports a problem to Deutsche Telekom and no fault can be detected in the technical equipment of Deutsche Telekom, customer has to reimburse Deutsche Telekom for costs incurred if customer could have easily and without much effort detected the problem himself.
 - f) Deutsche Telekom has the exclusive right to perform maintenance and modification works at customer's access.
 - g) Telephone network components/ ISDN must not be utilized in an excessive way which may result in an overload of the access.
 - h) 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.
 - i) Customer agrees not to disclose personal access data (e.g. code/ password) to third parties and to store them out of third parties' reach. For security reasons they should be changed in regular time intervals and when the service is first taken into operation. If customer suspects that unauthorized third parties have gained knowledge of access data, customer is to change them immediately. Access data must be stored in an encrypted way on PCs, USB sticks and CD ROMs.
 - j) Deutsche Telekom and its agents are to be indemnified from any and all third party claims which are based on customer's illegal utilization of Surf'n'Talk and related services or illegal utilization that customer approved of or claims which are a result of disputes in connection with data protection, copyright or other legal disputes in connection with the utilization of Surf'n'Talk. When customer becomes aware of an offence or an imminent offence, customer is obliged to notify Deutsche Telekom immediately.
- 4.2 In case of grave violation of customer's obligations or in the event of reasonable suspicion for Customer's violation of obligations according to paragraph 4.1 b), TKS is authorized to block the respective service at customer's expense. In this case customer is obliged to pay the monthly rates. The provision in § 45o TKG concerning the blocking of call numbers remains unaffected.

5 Accessing of Contents

Contents provided by Deutsche Telekom must not be processed, copied, distributed, publicly broadcast, used for advertising purposes or be used in any other way beyond the contractually determined purpose unless the express prior written approval of Deutsche Telekom has been obtained. Contents can and may be accessed only within the area of the Federal Republic of Germany

6 Utilization by Third Parties

- 6.1 Customer is not authorized to provide Surf'n'Talk to third parties for their sole utilization or to rent the service to third parties.
- 6.2 Customer is obliged to pay all charges which have accrued by authorized or unauthorized utilization of Talk & Surf by third parties, if and to the extent that customer can be held responsible for third party's utilization of the service.

7 Payment Conditions

- 7.1 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.
- 7.2 Other charges, especially connection charges, are to be paid after provision of the service.
- 7.3 Payment for charges can be made as described in paragraph 4.1 section a).
- 7.4 Customer only has the right to set off payments if customer's claim has been legally established or is undisputed. Customer can only claim the right to detention due to cross-claims resulting from this contractual relationship.

8 Complaints

Complaints regarding the amount of utilization charges or other utilization-dependent Deutsche Telekom prices have to be submitted to TKS in writing immediately after receipt of bill. Complaints 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; on its bills TKS will point out the effects of complaints which are not made within the required time frame. The customer's legal claims in connection with complaints remain unaffected and can still be made after expiration of the time limit.

9 Modifications of General Terms and Conditions, Specifications and Prices

9.1 TKS notifies customer in writing about modifications. In the event of price increases and other modifications at customer's disadvantage, customer may terminate the contractual relationship at the point of time when modifications go into effect. TKS will notify customers of this special right of termination in the letter informing about envisaged changes. Termination must be received by TKS within six weeks after notice has been received.

9.2 In the event that TKS intends other modifications of the General Terms and Conditions, Specifications of Prices, customer will be informed about these modifications at least six weeks before they are to go into effect. In case of modifications of the General Terms and Conditions, Specifications or in case of rate increases, customer has a special right of termination at the point of time when modifications go into effect. TKS will notify customers of this special right of termination in the letter informing about envisaged changes. If customer does not terminate the contract in writing within six weeks after the letter informing about envisaged changes has been received, changes will become part of the contract at the point of time when they go into effect.

10 Late Payment

If customer is in arrears with payments, TKS sends a reminding letter on the 15th working day after generation of bill. In this reminder customer is requested to pay within a further period of six working days. Furthermore a penalty charge for late payment (3 Euro) becomes payable at this time. If no payment is made, the access will be blocked at the date stated in the reminding letter. The blocking affects outgoing calls only. The charge for this blocking amounts to 8 Euro. If no payment is made after outgoing calls have been blocked, customer receives a second letter after six working days in which customer is informed that the service will be terminated without notice after a period of another six working days (the exact date of termination is also stated in this letter). In the event that no payments have been received by this date, TKS will terminate the contract without notice. Customer's obligation to pay monthly charges remains unaffected. TKS' right to make further claims due to default of payment also remains unaffected.

11 Liability

11.1 Deutsche Telekom assumes liability for damages due to utilization of telecommunications services for the public according to the provisions of the Telecommunications Law (TKG).

11.2 Apart from this Deutsche Telekom is only fully liable for all damages resulting from willful actions or gross negligence and for damages that have arisen due to the absence of a warranted property.

11.3 In the event of slight negligence, Deutsche Telekom assumes unlimited liability in case of injury to life, body or health. If due to slight negligence Deutsche Telekom falls behind with the provision of services, if provision of services has become impossible or if Deutsche Telekom has substantially violated its duties, liability for resulting material and property losses is limited to foreseeable damage for this type of contract. A substantial obligation is an obligation whose fulfillment is crucial for the execution of the contract, whose violation endangers the realization of the contractual purpose and it is an obligation whose regular fulfillment customer can count on.

11.4 In the event of data loss Deutsche Telekom is only liable in case of slight negligence to the extent and under conditions of paragraph 11.3 if customer has secured customer's data in application-adequate intervals in a suitable way, i.e. that data can be restored with reasonable effort.

11.5 Liability for all other damages is excluded, especially for data losses or hardware problems which are caused by incompatibility of the new hard- and software with existing components on customer's PC system, respectively incompatibility with the hard- and software that is to be changed. The same applies to system failures which may be caused by existing misconfigurations or older, interfering, not completely removed drivers.

Liability according to the provisions of the Product Liability Law remains unaffected.

12 Contract Term/Cancellation

- 12.1 The minimum contract term for the standard service of Surf'n'Talk is 12 resp. 24 months. It begins on the day of operational provision of the service. The contractual relationship may be terminated in writing by the contract partners with a period of one month; the earliest termination time is at the end of the minimum contract term. TKS must receive the termination in writing at least one month prior to the day on which it is to go into effect. If no termination is received, the contract term is extended indefinitely and the contract may be terminated with one month's notice.
- 12.2 Contractual relationships on additional services can be terminated by both contract partners at the end of each working day. 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.
In case customer terminates the contractual relationship concerning additional services earlier than one month after operational provision, customer has to pay the full monthly rate. By terminating the contract on standard services, the contract for additional services will also be terminated.
- 12.3 In the event that customer terminates the contractual relationship before the end of the agreed minimum contract term, the monthly basic charge for the Surf'n'Talk bundle has to be paid until the end of the minimum contract term.
- 12.4 The contract partners' right to terminate the contract for cause remains unaffected. For TKS an important reason for termination is customer's non-compliance with customer's obligations according to these General Terms and Conditions. Additional claims for damage are governed by the respective legal provisions.

13 Other Conditions

- 13.1 Customer may assign customer's rights and obligations from this contract to a third party only after prior written consent from TKS has been obtained.
- 13.2 A generally accessible, complete and valid price list can be accessed under www.tkscable.com/agb.
- 13.3 If in case of a dispute with Deutsche Telekom in cases mentioned in § 47a TKG, customer intends to initiate an arbitration procedure at the Federal Network Agency (Bundesnetzagentur) in Bonn, the respective request has to be filed in Bonn.
- 13.4 The contractual relations of the contract partners are governed by German law.