

## TKS easyConnect - Italy

### General Terms and Conditions

TKS Telepost Kabelservice GmbH & Co. KG, Altes Forsthaus 2, 67661 Kaiserslautern (called TKS in the following) provides customer with the Internet access on the basis of a basic cable connection from TKS. TKS also provides the possibility of telephone access over the internet. This product is called TKS easyConnect.

The following General Terms and Conditions, the price lists, the performance specification, general terms and conditions of TKS 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 a multimedia outlet or a comparable access to TKS-cable network and TKS finds after a technical examination that a basic cable connection with a sufficient bandwidth can be implemented.

#### 2. Closing of a contract

The contract request is made by the customer by filling out the applicable order form or ordering the service via telephone. The contract is accomplished after TKS has accepted or confirmed the order, or at the latest after the service has been provided.

#### 3. Specification of performance

TKS provides the following services for the product TKS easyConnect.

##### 3.1 Internet access

TKS provides access to the internet via customer's basic cable connection according to the customer's request in combination with, specifications, price list, and the general terms and conditions.

##### 3.2 Access to the TKS Telephone Service.

The customer receives the telephone connection provided from TKS. The complexity for the specification of the contract is covered by the "Specification" description and regarding to the contractual partners agreed request.

3.2.1 For the connection of telephone equipment to the basic cable access a MTA (Multimedia Terminal Adapter) is required. The usage of service is only allowed with a certified device that is marketed by TKS.

##### 3.3 Terminal equipment

3.3.1 If customer purchases terminal equipment via TKS, this terminal equipment will remain TKS property until it is completely paid. 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.

3.3.2 When technical changes on the terminal equipment have been made or revision from none approved firm/software is the statutory liability no long the responsibility from TKS.

##### 3.4 TKS special offers

TKS reserves the right to offer special reductions or free monthly service for their products and services.

The products and services will be charged at standard price after the expiration of the special offer duration. In both of these cases it is the customer's responsibility to cancel 6 working days prior to the end of the special offer duration. If the customer neglects to do so, the service will be continued and the standard price will be charged.

##### 3.5 Availability

The average annual availability of the services provided by TKS is at least 97%. 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.

3.6 TKS provides a monthly invoice that is itemized. For the flat rate specifications there is no itemized information provided. Principally the invoice is delivered via e-mail. On customer request an invoice in paper form is possible for an additional surcharge.

#### 4. Customer's obligations and responsibilities

Customer has the following responsibilities:

4.1 The agreed prices according to the price list are due immediately after the invoice was generated and have to be paid promptly. Costs for bounced checks, returned direct-debit orders, or returned credit card 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. According to the price list TKS will charge a late fee for payments received lately.

4.2 The customer has to provide TKS service personally or the contractor that are delegated from TKS the access to their premises and buildings to the extent that this is necessary for the implementation of tests, respectively installation and maintenance works at their own cost.

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 or the contractors that are delegated from TKS have 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, premium rate services, service numbers, premium billing numbers, 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 TKS must be notified immediately in writing of any change of personal contract data (e.g. names, address, bank connection, e-mail address).

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

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

4.10 Customer agrees to keep their passwords secret and to change them immediately after customer suspects that unauthorized third parties have gained knowledge of their passwords.

4.11 To take all reasonable safety measures, to exclude an unauthorized third party usage of the terminal equipment (For example, third-party usage of wireless routers).

4.12 To ensure by the installation of appropriate software on their device that there is always a updated protection against viruses, worms, Trojan horses as well as to prevent access by third parties via the Internet on data stored in the terminals by using a firewall or similar.

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 customers must 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; the customer is responsible for any and all contents transmits via internet access or otherwise transmitted contents (e.g. e-mail, newsgroups, chat services etc.)

4.16 The 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 The customer commits themselves to take over all charges which have accrued by authorized or unauthorized utilization of the service by third parties, unless the utilization is verifiable that it was beyond customer's responsibility.

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

4.19 The customer commits themselves to refrain from the following:

4.19.1 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),

4.19.2 Distribution of viruses, worms, Trojan horses etc.

4.19.3 Faking of sender information or other header information.

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

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

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

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

4.19.8 To make possible juvenile access to youth-endangering offers.

## **5. Liability of TKS**

5.1 For damage resulting from the provision of telecommunication services to the public, TKS liable under the provisions of the Telecommunications regulation.

5.2 In addition is TKS absolute liable for all damages caused by intent, gross negligence or lack of guaranteed properties.

5.3 In cases of slight negligence, TKS liable in case of injury to life, body or health. If TKS is due to slight negligence in default with their performance, or when the provisioning of service has become impossible, or if TKS has breached an essential obligation is the liability of thereby caused property- or financial damages limited to the contractual typical foreseeable damages. A significant obligation is an obligation in which such fulfillment makes the due performance of the contract possible in the first place, which jeopardizes the achievement of the purpose of the agreement and on observance the customer may duly relay.

5.4 For the loss of data is TKS only liable in case of slight negligence under the conditions and within the scope of clause 5.3 if the customer has backed up its data at appropriate intervals, in an appropriate form so that they can be recovered with reasonable effort.

5.5 The liability for all other damages is excluded, in particular for data loss or hardware failures caused by incompatibility of existing components on the customer's PC system with the new or modified hard- or software and responsible for arising system disorders caused by existing misconfigurations or old, disruptive, or not completely removed drivers.

The liability under the provisions of the Product Liability Act shall remain unaffected.

## **6. Disturbance clearance**

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

6.2 If maintenance work is necessary which can cause interference or interruptions, they will be performed in off-peak times where there is little traffic.

6.3 In the event that customer is responsible for the reported problem, e.g. if equipment has been operated incorrectly or

installed incorrectly, TKS is entitled to charge the customer extra for the expenses incurred to TKS in a separate invoice.

## 7. Payment conditions

7.1 The monthly charges start with the operational access and are pro-rated based on the remaining monthly time frame. 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 supply of service.

7.3 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 customer and TKS. Detailed information regarding TKS easyConnect is specified in the service description.

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

7.5 Principally the invoice is delivered via e-mail to the customers specified e-mail address. The customer is obligated to retrieve regularly the invoice data. Only when explicitly requested can the customer receive for a small additional surcharge a paper invoice delivered. The additional surcharge for the paper invoice can be found on the price list for TKS easyConnect.

7.6 Payment can be made via direct debit, bank transfer, credit card direct debiting, online payment or in all TKS shops via cash or credit card. If the customer has chosen as payment for TKS invoice an automatic bank withdrawal the payable invoice amount will be deducted from the provided account. The automatic withdrawal takes place earliest 10 days after the issued invoice. If the customer has an online payment account, the invoice shall be considered received when it is in the customer's account is available. Costs for returned direct-debit orders or credit card debiting have to be paid by the customer to the extent that customer can be made responsible for the event that caused the costs.

## 8. Complaints

Complaints regarding the amount of connection charges or other utilization prices have to be made in writing immediately after receipt of bill. Complaints to TKS must be received by TKS within six weeks after invoice date. If complaints are not made in time, the bill is considered accepted by customer. The customer's legal claims over complaints remain unaffected after the deadline.

## 9. Changes of the general terms and conditions, specification and price list

9.1 The general terms and conditions can be changed, as long as the substantial regulations are not affected from the contractual relation, the adjustment is necessary for the development, was not predictable at the time of the contract agreement, and the non-consideration would noticeable disturb the balance of the contractual relationship. Substantial regulations are in particular over the type and complexity of the contractual agreement these specifications include also the regulations of termination. Furthermore adjustments or additions can be made on the general terms and conditions, as long as the elimination from difficulties at the time of the development of the contract is necessary due to regulation gaps that developed after the contractual agreement was final. This can be the case in particular when

the jurisdiction changes and one or more the clauses are affected from the general terms and conditions.

9.2 The specification of performance can be changed if necessary for a valid reason and the customer thereby does not have objectively a disadvantage compared to the contractual agreement included specification of performance (e.g. retention or improvement of functionalities) and from this not clearly differ. A valid reason is present, when there are technical innovations for the owed specifications on the market or when a third party, from whom the TKS obtains necessary intermediate input to render their service, changes their range of service.

9.3 The agreed upon prices can be increased to reconciliation of increased costs. This may be e.g. in case when a third party, from whom TKS obtains advance work to render owed and necessary services, according to this contract, raise the price. Furthermore price increases are possible in the extent, in which it is compelled by an increase of the value added tax or is obligatorily demanded by the German Federal Network Agency due to adjustment of regulations

9.4 According to paragraph 9.1 to 9.3 intended changes of the general terms and conditions, the specifications as well as price increases, which are caused by an increase of the value added tax, the customer will be informed in a timely matter and in written form before going into effect. At the effected time frame the customer has the extraordinary right of termination. If the customer does not terminate in writing within six weeks after the notifications of revision, the modification will go into effect and become part of the existing contract. The customer is particularly referred to in the notification of change and the consequences.

## 10. Late payment

10.1 If customer is in default with payments, 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.

10.2 If customer is in default

- a) With the payments or a substantial part of the payments for two consecutive months or
- b) With the payment of an amount that reaches the monthly payment of two months during a time frame of more than two months, TKS has the right to terminate the contract without notice.

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

10.4 If TKS is in default 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.

## 11. Termination

11.1 The product TKS easyConnect is terminable daily. The termination must be made in writing.

11.2 In the event that customer terminates the contractual relationship before the operational access or before the access of additional services has taken place or agreed modification works have been performed, the customer must reimburse TKS for the work 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 can not be higher than the price which was agreed upon before activation or modification.

11.3 By terminating the contract on standard services, the contract for additional services will also be terminated.

11.4 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. TKS is entitled to collect a security deposit in cases of reactivation. The security deposit amount is determined by the default amount that resulted in termination. After the case has been transferred to a collection agency is a reactivation no longer possible.

11.5 TKS reserves the right to charge customers a processing fee at contract termination.

11.6 Regardless if the termination of contract is requested or executed from the customer or TKS, TKS is allowed to deduct from the available credit card or bank information all outstanding invoice amounts, fee for all non-return lent hardware, and processing fees via credit card or bank debiting.

## 12. Final invoice

### 12.1 Payment Upon Cancellation (PUC)

If a customer terminates on the same day or to a date that can be up to five days in advance, an immediate PUC will be provided. The amount of this invoice is based on the average amounts of the invoices during the contract term. An itemized invoice is not possible with this type of invoice (PUC).

If the customer accepts and pays the PUC as the final invoice then principally all demands from the TKS are fulfilled, unless afterwards it turns out that the actual invoice amount considerably higher is as the calculated average amount (PUC) of the past time frame. In these cases TKS reserves the right to hold the customer liable to pay the difference between the PUC and the actual invoice.

### 12.2 Detailed final invoice

If the customer does not accept and pay the PUC, then they will receive with the next billing cycle a detailed final itemized invoice. A request for a detailed final invoice is only possible when the customer leaves TKS a forwarding address for the invoice as well as a request for automatic withdrawal from their bank account or credit card for the invoice amount.

## 13. Move

The customer is obligated to inform TKS when possible two weeks in advance about any upcoming moves and to relay the new address. If the customer requests at the new location again TKS easyConnect, TKS strives punctually to provide service at the new location presuming that all the technical requirements are given. Due to non-geographical telephone number assigned in most cases, an existing telephone number can normally be transferred to a new location. An exchange of telephone number is not necessary, can however take place on customer request (for an addition fee). In exceptional circumstances due to technical reasons in some locations there are geographical telephone number assigned. If a customer in the former location has such a telephone number, or moves to another location where only geographical numbers can be assigned, a change of the phone number will become necessary with a move.

Is no service requested from the customer on the new location, is the new address only used for the delivery of the final invoice.

## 14. Privacy Information

Help us to protect your personal data. Use your data protection rights. You do not want us to use your data for promotional purposes? Then we will change this in accordance with your wishes. You want to know which data we hold on file about you. Or your contact details need amending? Simply get in touch with us. Learn more about privacy at TKS on [www.tksable.com/privacy](http://www.tksable.com/privacy).

## 15. Other conditions

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

15.2 The provisions of the Product Liability Law remain unaffected.

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

15.4 TKS is entitled to make changes in the Price, Specification, or the General Terms and Conditions. Changes are published under [www.tksable.com/agb](http://www.tksable.com/agb). Upcoming changes will be indicated in a timely manner on the monthly invoice.

15.5 The customer explicit renounces the special delivery of changes as a written statement.

The changes are considered approved, if the customer does not contradict in written or e-mail form. The contradiction must be received within a four weeks period after the notification date. Exercises the customer their right of objection, both parties have the right the contract to cancel in written form within the respectively existing deadlines.

15.6 Place of performance for the service is Kaiserslautern.

15.7 Place of jurisdiction and governing law: If the customer is a merchant, legal entity of public law or special fund under public law, or is without general national place for this contract the place of jurisdiction is Kaiserslautern.

15.8 If any provision of these General Terms and Conditions are or become completely or partially invalid, the validity of the remaining provision will remain unaffected. In such a case, the contract participants are obliged to participate in the conclusion of provisions in which the solution shall be achieved to be a legally valid result that comes as close as possible to the commercial intent of the invalid provision.