

# BOSS Entertainment

## General Terms and Conditions

### 1. Contract Partner

Contract partners are TKS Telepost Kabel-Service Kaiserslautern GmbH & Co. KG (called TKS in the following), Altes Forsthaus 2, 67661 Kaiserslautern (Amtsgericht Kaiserslautern HRB 2682) and the customer.

### 2. Subject Matter of the Contract

The subject matter of the contract is specified in these General Terms and Conditions as well as in the regulations set out in the specifications and price lists, which regulate the provision of BOSS Entertainment products in connection with an Internet access of TKS.

The BOSS Entertainment package contents are intended for private use only and must not be used for any commercial purpose or rebroadcast to the public. (Exception: TKS has concluded a contract with the respective operator and explicitly approves such usage). The TKS BOSS Entertainment package is furthermore only offered to "Single Soldiers" of the US Army that live in "Single Soldier Quarters (SSQ)".

### 3. Conclusion of the Contract

If not agreed otherwise, the contract is concluded upon receipt of the order confirmation but at the latest when the service is provided first.

### 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.

### 5. Protection of Minors and Sweepstakes

#### 5.1. Protection of Minors

TKS concludes contracts for Boss Entertainment Package with adults only. Therefore regulations for programs which may only be made available to adults (adult offers, § 4 section 2 State Treaty for the Protection of Minors in the Media, JMStV) do not apply.

5.1.1. TKS grants access to adult content only to natural persons, whose legal age has been verified via personal identification. In order to verify legal age, customers have to provide an official ID, when signing the contract at the TKSShop.

5.1.2. Customer is obliged to use a PIN or other effective measures to make sure, that children and teenagers of the relevant age group, living in customer's household, or children and teenagers having access to the BOSS Entertainment, must not use development-impairing program offers, which are marked respectively on the user interface. This applies in particular in respect of the (six hours) time shift in the broadcasting of US programs in Germany, which are not suitable for children and teenagers and therefore broadcasted in the USA at a time, children and teenagers usually do not have access to such TV program offers.

#### 5.2. Sweepstakes

5.2.1. The 6-hour time difference in broadcasting of US programs in Germany may cause problems in connection with sweepstake/ lottery programs, which require feedback within a certain time. TKS cannot be held liable for the resulting loss of winnings or prizes.

### 6. Duties and Obligations of the Customer

6.1. The customer has the following duties:

a) Customer has to ensure that there are sufficient funds on the respective account, if an arrangement with TKS was made, to pay bills via direct debit or via credit card debit. For each debit balance not realized or returned unpaid, customer shall reimburse TKS to the extent, that customer is liable, for the event which led to the costs.

b) The services provided must not be misused, particularly not for the purpose of activities, listed in point 2, last paragraph.

Customer shall observe national and international copyright and trademark, patent- and name rights as well as other industrial and personal rights of third parties.

c) The standard way to receive the monthly bill free of charge is via e-mail or online. If customer prefers to receive a paper bill, this is possible, but subject to additional charges. The amount of the extra charge for a paper bill is listed in the TKS BOSS Entertainment price list. In the event that customer pays via online payment, they have to make sure to retrieve the online bill at least once a month via the TKS customer account.

d) Customer has to grant TKS employees or third parties commissioned by TKS access to customer's property and any building located thereon at his own expense to the extent that this is necessary to perform testing, installation and maintenance work.

e) All access maintenance and modification works may only be performed by TKS.

f) Personal access data (e.g. PIN) must not be passed on to third parties and have to be kept at a safe place, where they are inaccessible to third parties. For safety reasons they should be changed, when they are first used as well as in regular time intervals thereafter. If customer has reason to believe, that unauthorized persons have obtained knowledge of the access data, they shall modify them immediately. Access data may only be stored on electronic storage media (e.g. PC, USB-Stick and CD-ROM) in encrypted form.

g) The contents provided by TKS or parts thereof may not be edited, copied or disseminated, shown in public or used for advertising purposes or be employed in any form or for a purpose outside that which has been contractually agreed, unless TKS has given its express prior written consent.

h) TKS and its agents shall be indemnified against any and all claims by third parties that are based on the illegal usage of the provided services by customer or with customer's consent or which arise, in particular from litigation involving data protection, copyright or other laws in connection with the provided services. If customer realizes or becomes aware of the fact that there is an imminent risk of such violation, customer must immediately inform TKS.

6.2. In case of substantial breaches of the customer's obligations as well as in the event of well-founded suspicions for customer's breach of contractual duties according to point 7.1 g, TKS has the right to block the respective services at customer's expense. In this case customer remains obliged to pay the monthly fee.

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

6.4. 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.

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

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

6.7. 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.)

6.8. 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).

6.9. 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.

6.10. 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.

6.11. 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.

The customer commits themselves to refrain from the following:

6.11.1. 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),

6.11.2. Faking of sender information or other header information.

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

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

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

6.11.6. Distribution of viruses, worms, Trojan Horses etc.

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

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

## 7. Utilization by Third Parties

Customer is not allowed to grant third parties exclusive utilization of TKS BOSS Entertainment Package or to rent TKS BOSS Entertainment Package to third parties.

## 8. Payment Conditions

8.1. 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.

8.2. 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 BOSS Entertainment.

8.3. Starting at the day on which the service is initially provided ready for operation, monthly charges are to be paid for the rest of the month on a pro rata basis. Thereafter charges are to be paid on a monthly basis in advance. In the event that charges are to be paid for parts of a calendar month, charges shall be prorated for each day.

8.4. Payment of charges can be made via direct debit, bank transfer, credit card direct debiting, online payment, or in all TKS shops via cash or credit card. TKS shall debit the agreed account not before the tenth day following the receipt of the bill. Costs for returned direct-debit orders or credit card direct-debit have to be paid by the customer to the extent that customer can be made responsible for the event that caused the costs. If customer has an online payment account, the bill shall be deemed to have been received as soon as it is available on the customer's account.

8.5. Customer shall be entitled to offset amounts only if the counterclaim is undisputed or has been established as legally binding. Customer shall be entitled to enforce the right of detention only if it is based on counterclaims arising from the same contractual relationship.

## 9. Objections

Objections against the amounts of fees charged by TKS are to be submitted to TKS immediately after the bill has been received. Complaints must have been received by TKS within six weeks after receipt of bill. If no objections are made in time, this is regarded as acceptance; on its bills TKS will point out the consequences if customer fails to raise objections in time. Customer's other legal claims for complaints after the deadline shall remain unaffected.

## 10. Amendments of the General Terms and Conditions, Specifications and Prices

10.1. The General Terms and Conditions may be amended, provided that this does not affect essential provisions and regulations of the contractual relationship and that amendments are necessary to be able to adapt to developments which could not be foreseen at the time when the contract was concluded and which would lead to a noticeable imbalance of the contractual relationship. Essential provisions are, in particular, those that deal with the type and scope of the contractually agreed services and the contract term including the termination provisions. Furthermore adjustments or amendments to the General Terms and Conditions may be made to the extent that they are necessary for the elimination of problems in performing the agreement due to gaps in the provisions that have arisen after the conclusion of the contract. In particular this may be the case if legal provisions are changed and one or several clauses of these General Terms and Conditions are affected hereby.

10.2. Specifications may be amended for valid reasons as long as customer is not subjected to any considerable disadvantage compared to the situation as it was when the contract was concluded (e.g. maintenance or improvements of functionalities) and if amended specifications do not deviate significantly from the original specifications. Valid reasons exist e.g. if technical improvements to the services owed under the agreement are available on the market or if third parties contracted by TKS for advance services necessary for the provision of its services change their service offer.

10.3. The agreed prices may be raised to compensate for cost increases. This is e.g. the case if third parties contracted by TKS for advance services necessary for the provision of its services owed under the agreement increase their prices or if such price increases are required by the Federal Network Agency due to regulatory measures.

10.4. If TKS intends to change the General Terms and Conditions or the Specifications or to raise the prices according to paragraphs 11.1 to 11.3, customer must be informed about these changes in writing at least six weeks before they are to go into effect. At the effective date of the changes customer shall have the exceptional right to terminate the contract. If customer does not terminate the contract in writing within six weeks after having been informed about the intended changes, the changes shall become part of the contract at the same time when they go into effect. The customer shall be explicitly informed of this consequence in the change notification.

#### **11. Default**

11.1. If customer is in arrears with at least one monthly payment, TKS has the right to block the BOSS Entertainment service at customer's expense. In this case customer remains obliged to pay the monthly fee.

11.2. If customer is in arrears with the payment of fees or a considerable part thereof for two consecutive months or over a period of more than two months, customer is in arrears with the payment of monthly fees to the amount corresponding to the monthly basic price for two months, TKS is entitled to terminate the contractual relationship without notice.

11.3. TKS reserves the right to assert any other claims arising from a default in payment.

#### **12. Liability of TKS**

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

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

12.3. In cases of slight negligence, TKS is 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, the liability of thereby caused property- or financial damages is 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 rely.

12.4. For the loss of data TKS is only liable in case of slight negligence under the conditions and within the scope of clause 13.3, if the customer has backed up its data at appropriate intervals, in an appropriate form, so that they can be recovered with reasonable effort.

12.5. 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.

#### **13. Move**

The customer is obligated to inform TKS – if possible two weeks in advance – about any upcoming moves and to relay the new address. If the customer requests BOSS Entertainment

again at the new location, TKS strives punctually to provide service at the new location, presuming that all the technical requirements are given. A move with the complete BOSS Entertainment package is only available with a move to another Single Soldier Quarter (SSQ).

Customers that move to a none Single Soldier Quarter can only keep the TKS easyTV portion of the package. For the use of this service, the customer requires a stable internet connection with sufficient bandwidth and without data limitations. To avoid high costs through the use of the easyTV service, it is recommended to check, if the contract with the Internet service provider includes unlimited data usage, before signing the contract. Costs incurred for Internet use are fully liable by the customer. The TKS easyTV contract is specified in the TKS easyTV General Terms and Conditions as well as in the regulations set out in the specifications and price lists.

#### **14. Contract Term/Termination**

The contract term starts at the day the operational provision of BOSS Entertainment service takes place. The service contract may be terminated daily. The termination must be made in writing.

In the event that customer terminates the contract before the operational provision of the access or provision of additional services have taken place or before contractually agreed modifications have been performed, customer has to reimburse TKS for modifications that have already been carried out. However, such reimbursement shall not exceed the agreed amount for the provision or modification.

14.1. If the contract is not terminated, the contract term will be extended indefinitely.

14.2. In the event that TKS terminates the contract, because customer is in arrears with payments, the access may be reactivated within a certain period of time. This period depends on the customer administration system. Prerequisite for a reactivation of the access is, that customer has paid all outstanding amounts. If applicable, TKS may charge an additionally calculated fee for the reactivation of services. In the event of reactivation TKS is furthermore entitled to request payment of a security down payment. The amount of this down payment depends on the amount with which the customer was in arrears with payments and which led to the termination of the contract. After the case has been handed over to a debt-collection agency, reactivation of the account will no longer be possible.

14.3. Contractual relationships concerning the provision of additional services may be terminated by either party in writing with a notice period of six workdays. Saturday is not considered a workday.

The termination of the contract concerning the provision of standard services has the effect that, contractual relationships on additional services will also end.

14.4. The contractual parties' right to terminate the contract without notice for cause remains unaffected. For TKS termination for cause is especially justified in cases, when customer commits a serious breach of contractual duties. Furthermore contract partners have the right to terminate the contract without further notice, if – for reasons that neither TKS nor customer can be held responsible for – services can no longer be provided, due to problems with the terminating line. In this case the relevant legal provisions shall govern the additional enforcement of claims for damages.

14.5. In the event, that TKS realizes during operational provision, that customer's terminating line is not suitable for the provision of a BOSS Entertainment access, TKS will immediately inform customer of this fact. In this case both contract partners have the right to withdraw from the contract. Charg-

es that may already have been paid by customer shall be reimbursed immediately.

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

14.7. 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-returned lent hardware and processing fees via credit card or bank debiting.

## **15. 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.tkscable.com/privacy](http://www.tkscable.com/privacy).

## **16. Other Conditions**

16.1. The reception of mobileTV part of the package will be interrupted immediately, if the Internet connection gets lost.

16.2. TKS is entitled to commission third parties to carry out services as sub-contractors. TKS is liable for the provision of services provided by sub-contractors as if they were its own.

16.3. Customer shall have the right to transfer the rights and obligations arising from this contract to a third party, only with the prior written consent of TKS.

16.4. Contractual relations of the parties are governed by German law.

16.5. Place of performance for the service is Kaiserslautern.

16.6. 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.

16.7. 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.