

General Terms and Conditions for Vodafone IT Services for Enterprise Customers (IT GTCs for Enterprise Customers)

Eng 2024: The English version of these General Terms and Conditions is for information purposes only.
The German version is legally binding.

1 Scope of Application, Subject Matter of the Agreement and Conclusion of Contract

1.1 Vodafone GmbH (Ferdinand-Braun-Platz 1, 40549 Düsseldorf, with registered office in Düsseldorf, registry court: Düsseldorf District Court, commercial register entry no. HRB 38062; hereinafter referred to as "Vodafone") will provide IT services to enterprise customers ("Customers") on the basis of these General Terms and Conditions ("IT GTCs"). To each product, the specific product terms and conditions ("BPB") apply additionally.

1.2 In the interpretation of the contractual terms, the provisions of the BPB shall take precedence over the provisions of the IT GTCs. Any deviating provisions must be agreed upon in writing by Vodafone and the Customer ("Party" or "Parties").

1.3 The Contract shall be deemed concluded with acceptance of the Customer's offer by Vodafone, at the latest upon provision of the service by Vodafone.

1.4 Deviating, opposing or supplementary General Terms and Conditions of the Customer shall not be accepted unless Vodafone expressly agrees to the application of such terms in writing. This requirement of approval applies even if the Customer refers to their General Terms and Conditions e.g. in an order or any other correspondence and Vodafone does not expressly object to them.

2 Scope of Vodafone's Services

2.1 Vodafone provides services (Dienstleistungen) for the Customer. Vodafone only provides work products (Werkleistungen) if agreed upon expressly and in writing with the Customer.

2.2 Vodafone is entitled to provide services in whole or in part by subcontracting with third party suppliers (sub-contractors). Vodafone assumes liability for the provision of services by sub-contractors as for its own actions.

2.3 To enhance the functionality of the services or adapt the services to the state of the art or relevant legal provisions or regulations, Vodafone is entitled to unilaterally adjust the services, the deployed technologies and/or the infrastructure used for the provision of the services after conclusion of the Contract and without the Customer's consent, provided that such adjustment does not conflict with legitimate interests of the Customer. In the event of such change, the Customer is obliged to cooperate to a reasonable extent. Such changes do not entitle the Customer to a right to termination for cause.

2.4 Vodafone is entitled to partial delivery and partial performance to the extent reasonable for the Customer.

3 Hardware

3.1 Delivery periods are deemed to have been complied with if the hardware has been shipped within the agreed delivery period. In the event of delays for which the Customer is responsible, the delivery period is deemed to have been complied with if by its expiry readiness for dispatch has been notified. If the Customer falls into default of acceptance for not accepting a delivery albeit being obliged to, or in other cases of delay of delivery for which the Customer is responsible, the products are deemed to have been delivered and the risk shall pass to the Customer. From that point in time, Vodafone's liability is limited to intent and gross negligence. In the event of default of acceptance, the Customer is obliged to carry all related costs, especially storage expenses.

3.2 The following provisions apply if the Customer buys hardware:

- a) Hardware sold by Vodafone remains Vodafone's property until payment of the full purchase price.
- b) In case of shipment of the Hardware, the risk shall pass to the Customer as soon as Vodafone has handed the goods over to the transportation person.
- c) Unless provided otherwise in the following, the Customer's warranty claims for defects of the hardware shall be based on the relevant statutory provisions. The period of limitation for warranty claims of the Customer is one year.

3.3 The following provisions apply to rental agreements and other transfers for use:

- a) The Customer undertakes to treat the hardware with all necessary care and to protect it from use by unauthorised third parties. The Customer will not make any changes to the hardware, especially no damaging or removal of the identification of the manufacturer. If hardware is installed on the premises of the Customer or is otherwise handed over for temporary use, the Customer is responsible for all necessary tests of the German Social Accident Insurance (DGUV) and electricity checkups (VDE) including consequential measures.
- b) Vodafone is entitled to charge the Customer with a security deposit reasonable in relation to the value of the hardware. Vodafone is entitled to offset all claims arising from this Contract against the security deposit.

- c) The Customer may only sublease or otherwise surrender the hardware to third parties in case of Vodafone's specific prior approval in writing. Affiliates of the Customer are deemed third parties for the purposes of this provision.

4 Use of the Services

4.1 Insofar as necessary for the performance of the Contract, Vodafone grants the Customer a simple right to use the subject of service and the Customer grants Vodafone a simple right to use the subject of the cooperation obligations, each limited to the purpose and the term of the Contract.

4.2 Neither the Customer nor users that access Vodafone's services via the Customer in accordance with the terms of the Contract are entitled to use the services

- a) in a manner that is forbidden by law, regulation or an administrative order known to the Customer;
- b) for the transfer of malware, spam, chain letters or other inconveniencing messages;
- c) to violate the rights of third parties, in particular protective rights (e.g. copyrights or trademark rights).

4.3 Violations of the prohibitions of use set forth in section 4.2 as well as other material breaches of contract (e.g. failure to pay undisputed claims when due) entitle Vodafone to take all necessary actions to halt the abuse. Vodafone is entitled to suspend performance of the owed service if the Customer has been set an adequate time limit to end the violations which has expired fruitlessly. As soon as the Customer puts an end to the violation, Vodafone is obliged to immediately resume performance of the service. The Customer's liability for damages and Vodafone's right to termination for cause, if the contractual and/or statutory requirements are met, remain unaffected.

4.4 The Customer may only resell services or transfer them in return for other benefits to third parties after obtaining the Vodafone's prior written consent. Affiliates of the Customer are deemed third parties for the purposes of this provision.

5 Customer's Obligations

5.1 The Customer provides Vodafone employees or sub-contractors with all necessary assistance throughout their work in the Customer's business or premises.

5.2 The Customer undertakes to set up, operate and inspect Vodafone hardware according to instructions by the manufacturer and Vodafone. Accordingly, the Customer particularly undertakes to provide suitable facilities on their premises with adequate power supply, lighting, air-conditioning and, if required, potential equalization including grounding, at no charge to Vodafone.

5.3 The Customer shall report any warranty claim in writing with a comprehensible description of the error indications and shall provide – insofar as possible – all written records, copies or other documents illustrating the defects.

5.4 The Customer shall notify Vodafone without delay of any changes to the personal data that Vodafone has on record.

5.5 The Customer undertakes to ensure that Customer code words, passwords or personal identification numbers (PINs) are kept secret and changed without delay by the Customer or Vodafone if there is reason to believe that unauthorised third parties have gained knowledge of them.

5.6 The Customer is obliged not to infringe statutory provisions or third party rights, in particular protective rights (e.g. copyrights or trademark rights).

5.7 If Vodafone supplies the Customer with intermediary services pursuant to Art. 3 lit. g Regulation (EU) 2022/2065, such as access to the internet, the transmitted content will not be checked by Vodafone. This also applies to content afflicted with malware (e.g. viruses). The Customer is obliged to indemnify Vodafone from third party claims arising out of stored content unless the Customer is not responsible. The Customer shall bear the burden of proving that he is not responsible for the breach.

5.8 The Customer undertakes to ensure that all cooperation obligations are fulfilled in time, to the extent necessary and at the Customer's own charge. If the Customer fails to perform a cooperation obligation in time or in the manner agreed upon, the Customer is obliged to bear all costs arising therefrom (e.g. delay, additional expenses).

6 Payments, Offsetting of Claims, Retention of Payments

6.1 The Customer undertakes to effect all agreed payments in a timely manner.

6.2 The standard procedure for collection of payments is the SEPA direct debit mandate. Vodafone shall inform the Customer at least two days prior to the debit transaction of the amount and date of the debit transaction. Vodafone is entitled to charge an additional processing fee if the Customer declines a direct debit arrangement or if a debit transaction is not honoured by the Customer's bank.

6.3 The Customer may only offset claims of Vodafone with undisputed, legally valid or recognised claims. A right of retention or refusal of performance may only be exercised by the Customer in respect of undisputed, legally valid or recognised claims. The limitations set out in clauses 6.1 and 6.2 do not affect the offsetting of payment claims – or the assertion of rights of retention or refusal of performance – under the same contractual relationship.

7 Contract Term and Termination

7.1 The Contract has a minimum term of 24 months as of the date of order confirmation by Vodafone resp. mutual signing of the contract or, at the latest, the date of service commencement. The Contract is automatically renewed for one further year in each case unless terminated with three months' notice prior to the expiry of the minimum term or a later term. Notice of termination must be provided in writing.

7.2 This in no way affects the right to termination for cause.

7.3 If, when notice of termination is given, Customer data is contained in storage space that has been made available to the Customer, the Customer is required to back up this data before the effective date of termination.

8 Vodafone's Liability

8.1 Vodafone's liability for simple negligence is limited to the breach of material contractual obligations. A material obligation is an obligation which is essential to the proper performance of the Contract, which, if breached, jeopardises the achievement of the purpose of the Contract and which the Customer may expect to be met. Vodafone's liability for any material damage or pecuniary loss occurring during the term of contract due to breach of material contractual obligations is limited in total to the compensation for typical and foreseeable damages, which regularly – unless otherwise agreed between the Parties in the BPB or in individual provisions – shall not exceed the sum of the total net compensation paid by the Customer for the entire contract term (contract value) (overall limitation).

8.2 Vodafone is liable for the loss of data through simple negligence subject to the provisions of and within the scope of section 8.1 only and to the extent that the Customer has backed up the data for the relevant application at appropriate intervals and in a suitable means that permits restoration at reasonable cost and effort.

8.3 The limitations of liability stipulated in sections 8.1 and 8.2 do not apply to claims resulting from intent, fraudulent intent and gross negligence, in cases of guarantee promises, in the event of injury to life, body or health and to liability under the German Product Liability Act (Produkthaftungsgesetz)

8.4 Vodafone's strict liability for defects already existing at the time of the conclusion of the Contract (section 536a of the German Civil Code (Bürgerliches Gesetzbuch, BGB)) is excluded.

8.5 The aforementioned limitations of liability apply to Vodafone's legal representatives and vicarious agents insofar as claims are asserted directly against them.

9 Confidentiality

9.1 A Party's Confidential Information, which is disclosed to the other Party, shall be kept confidential by the receiving Party.

9.2 "Confidential Information" of a Party shall mean economic, engineering, legal, tax or other information which will be regarded as worthy of protection by a reasonable third party, which is labelled as confidential or which has to be considered confidential under the circumstances. Information shared in an oral presentation or discussion may also be confidential. Especially, prices and conditions agreed upon in this Contract shall be deemed Confidential Information.

9.3 The following information is not confidential. Information that

- a) has demonstrably been in the possession of the other Party before its disclosure, or has been known to the public before its disclosure, or has been generally available, or
- b) becomes known to the public or generally available after its disclosure without contribution or fault of the receiving Party, or
- c) is substantially equivalent to information disclosed or made accessible to the receiving Party by an authorised third party.

9.4 The receiving Party shall not disclose Confidential Information of the other Party to third parties. Disclosure to affiliated enterprises of the receiving Party, the receiving Party's vicarious agents, distributors and consultants or those of its affiliated enterprise remains permissible if necessary for the purpose of the Contract and if the receiving Party and the affiliated enterprise, vicarious agent or consultant are bound by obligations of confidentiality which are no less stringent than those agreed upon here.

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9.5 The obligation of confidentiality does not apply if the disclosure of Confidential Information is prescribed by law or by order of a court or public authority.

9.6 Obligations under the German Business Secrets Act (Gesetz zum Schutz von Geschäftsgeheimnissen, GeschGehG) remain unaffected.

10 Data Protection

The Parties shall adhere to data protection provisions and will conclude additional agreements as necessary, e.g. for order processing. Vodafone's current information on data protection is available at www.vodafone.de.

11 Force Majeure

11.1 "Force Majeure" is an external event which has no operational connection and is unavoidable despite the application of utmost reasonable care. Force Majeure especially encompasses strikes and labour disputes, lock-outs, riots, fire or emergency, war, terrorist attacks, administrative orders, pandemics, epidemics, vandalism, as well as third party interferences with Vodafone network infrastructure.

11.2 Insofar as a Party is prevented from performing its obligations due to Force Majeure, the party shall be relieved from its obligations and its liability for the duration and in the extent of the disruption. This also applies if the events occur at a time when the Party concerned is in default. If a specific date has been set for the performance of an obligation, the duration of the period of interruption will not be considered in the calculation of the deadline. With regard to Vodafone, the above clauses apply accordingly to services of third parties that Vodafone employs for the performance of its obligations.

11.3 The Parties agree that this includes delays in delivery that affect Vodafone's delivery of hardware and/or components and for which Vodafone is not responsible.

11.4 The Parties are obliged to notify each other of such impediments caused by Force Majeure if possible and not generally known; they will adapt their obligations to altering conditions in good faith. If the event persists for a period longer than 90 days, both Parties have the right to terminate the Contract with immediate effect.

12 Sanctions and Export Control

12.1 Each Party shall be obliged in the context of the performance of the Contract

- a) to comply with all legal provisions applicable to the Party with respect to the respective applicable export control and sanctions law. Compliance with the sanction-related obligations referred to in sentence 1 shall only apply to the extent that it is permissible to provide corresponding guarantees and assurances in accordance with German and EU law;
- b) to not knowingly take any action that would cause the other Party or any member of the corporate group to violate such applicable sanctions and/or export control laws;
- c) to provide assistance, documentation and information to the other Party when reasonably requested by the other Party in connection with export control and sanctions issues; notify the other Party in writing as soon as it becomes aware of any loss of license/permit or any current or potential investigation or possible violation of any applicable law relating to export control and sanctions law or any change in its sanction status, e.g. inclusion on a sanctions list.

12.2 Breaches of any of the obligations set forth in section 12.1, which constitute good cause, shall entitle the other Party to terminate this agreement without notice. If one Party breaches any of the obligations set forth in section 12.1, the other Party may claim compensation for the loss thereby incurred.

13 Additional Provisions

13.1 The Customer may only transfer rights and obligations arising from this Contract or transfer the contractual relationship in its entirety to third parties after obtaining Vodafone's prior written consent. Affiliates of the Customer are deemed third parties for the purposes of this provision.

13.2 Affiliates of Vodafone are Vodafone Group Plc as well as any company in which Vodafone Group Plc owns (directly or indirectly) 30% or more of the issued share capital, and any company identified as a Vodafone operating company or partner company on the „Where we operate“ page at www.vodafone.com. Affiliates of the Customer are the Customer's ultimate holding company and any company in which the Customer's ultimate holding company owns (directly or indirectly) 50% or more of the issued share capital.

13.3 The courts of Düsseldorf have jurisdiction over all legal disputes if the Customer is a public sector corporation, a public authority or a merchant and the Contract forms part of the commercial enterprise. Vodafone also may assert claims at the Customer's general legal venue.

This does not affect any exclusive legal venue. All legal relationships between Vodafone and the Customer shall be governed by the laws of the Federal Republic of Germany excluding UN Sales Law (CISG).

13.4 For the purposes of these IT GTCs, "in writing" or "written consent" requires at least text form pursuant to § 126b of the German Civil Code (Bürgerliches Gesetzbuch, BGB) with simple electronic signature (e.g. E-Mail signature, scanned signature, or signature on a tablet computer).

13.5 In the event that a provision under these IT GTCs and/or its modification or amendment proves to be invalid, void, or unenforceable, the effectiveness of the remaining provisions of the IT GTCs remains unaffected. If a provision is invalid, void, or unenforceable, the Parties are obliged to negotiate a valid and appropriate substitute provision that comes closest to the purpose pursued by the Parties with the invalid provision and adequately considers the legitimate interests of both Parties.