

(This translation is intended solely for informational purposes. The original German text of the Terms shall be legally binding)

1. Scope of the General Terms and conditions

- 1.1 ACN Communications GmbH provides its mobile radio services and products ("Services") through the mobile radio network of E-Plus Mobilfunk GmbH ("E-Plus"). The provision of the Services shall be governed solely by these General Terms and Conditions ("GTC"), which the Customer accepts by placing a respective service order or by using the Service. The application of any other terms shall be excluded even in the event that ACN should not expressly object.
- 1.2 These GTC are supplemented by the service descriptions, including any special contract terms applicable to the respective Services, and the current price lists (collectively "Contract Terms"). Unless otherwise provided for in the aforementioned documents, the applicable statutory provisions, in particular the German Telecommunications Act ("TKG") shall apply. These GTC, the service descriptions and the current price lists can be viewed and downloaded from the Website www.acnmobile.de. These GTC apply to all agreements which are concluded as from 01.09.2006.

2. Conclusion of Agreement, CREDIT STANDING, SECURITY, Transfer of Contract

- 2.1 Each mobile phone number used by the Customer within the scope of ACN's Services shall be the subject of a separate agreement, even if they are combined on one service order. The agreement shall enter into force after ACN has accepted the Customer's service order in written or text form ("Acceptance"). The same shall also apply to any additional Services that the Customer orders after the conclusion of the original agreement by letter or online by using the electronic order form available on the Website www.acnmobile.de (Service: DeinACN Mobile). The Acceptance of the service order by ACN shall be subject to the condition that the Customer is at least 18 years of age. The Customer may cancel his service order in accordance with the provisions of section 3 below.
- 2.2 ACN shall be entitled to reject the order on reasonable grounds and, in particular, to make the conclusion of the agreement contingent upon the satisfactory completion of a credit check against the Customer as well as payment of a reasonable advance against charges or a security deposit, which must be maintained and adjusted on a continuous basis, if
- the Customer has failed to meet his obligations under any existing or previous agreements,
 - the information obtained from one of the credit inquiry agencies listed below raises justified doubts regarding the Customer's creditworthiness,
 - the enforcement of claims against the Customer is expected to involve considerable difficulties, or
 - any other comparable circumstances justify the request for a security deposit.
- 2.3 The preceding provisions shall not apply to advance payments made by the Customer on account of the nature of the Services agreed between ACN and the Customer under the applicable service descriptions and current price list (e.g., in the case of prepayment products).
- 2.4 If ACN has not required payment of an advance against charges or the provision of a security deposit at the conclusion of the agreement, ACN may, during the term of the agreement, make the further provision of the Services contingent upon payment of such a reasonable advance against charges or the provision and continuous adjustment of a reasonable security deposit by the Customer.

For purposes of the credit check, ACN will work with credit rating agencies Schufa, Creditreform as well as the „Fraud Prevention Pool“ of Bürgel prior to and during the term of the agreement to obtain the type of information outlined below. ACN shall be entitled to provide to these credit rating agencies information regarding the request for, the commencement and the termination of the contractual relationship with the Customer. ACN may also report any violation of the terms of the agreement or any suspension of Services to these agencies. The agencies will store the information in order to be able to provide clients who furnish prima facie evidence for the existence of a legitimate interest with information that allows them to verify their customers' solvency or to provide the Customer's address for debt collection purposes. The Customer may inquire the stored data regarding himself at the relevant credit rating agency (a) Schufa Holding AG, Hagenauer Str. 44, 65203 Wiesbaden, (b) Creditreform Experian GmbH, Hellersbergstraße 14, 41460 Neuss sowie (c) Bürgel Wirtschaftsinformationen GmbH & Co. KG, Postfach 50 01 66, 22701 Hamburg. To the extent the information referred to above constitutes personal data, Section 13.4 shall apply.

- 2.5 The contractual relationship with the Customer may be transferred to E-Plus or any other mobile radio service provider. E-Plus or ACN shall give the Customer due notice, in written or text form, of any such transfer ("Transfer Notice"). If the Customer does not accept the transfer, the Customer may terminate the contractual relationship by giving notice of termination within six (6) weeks of receipt of the Transfer Notice. If the Customer fails to give notice of termination within the aforementioned six-week period, he shall be deemed to have given his consent to the transfer of the agreement (Transfer of the Agreement). In the Transfer Notice, ACN shall make specific reference to the right to terminate and to the consequences of any failure to give due notice of termination.

3. CANCELLATION BY THE CUSTOMER

- 3.1 If the Customer is a private customer, who orders ACN's Services for a purpose that neither be attributed to his commercial activities nor to any independent professional activity ("Consumer", as defined in Article 13 of the German Civil Code), the conclusion of the agreement shall be subject to the following additional terms.
- 3.2 The Customer may cancel his declaration of contract (i.e. the service order) within a period of two (2) weeks, without giving any reasons, by giving notice of cancellation in text form (e.g., by letter, fax). The cancellation period shall begin, at the earliest, upon receipt of this advice.
- 3.3 In case of online orders via the website www.acnmobile.de (Service: DeinACN Mobile), the cancellation period shall begin upon receipt of the Acceptance of ACN (Article 0) by the Customer; in such cases the cancellation period expires prematurely, if ACN has started to provide the Services with the explicit consent of the Customer or the Customer has caused this himself (e.g. by making use of the SIM-Card to obtain the Services).
- 3.4 The cancellation period shall be deemed observed if the notice of cancellation is mailed in due time. The notice of cancellation shall be addressed to Letter: ACN Communications GmbH, Postfach 200532, 47020 Duisburg or Fax: ACN Communications GmbH, 0180-3 000934 (0.09€/Min out of the German fixed network).
- 3.5 In the event of a valid cancellation, each party shall return the Services received from the other party as well as any use made. Restitution of the SIM card is not necessary. ACN will deactivate the SIM-Card and the Customer shall destroy it.

4. Term, Termination, Liquidated damages

- 4.1 The agreement is concluded for a minimum term of twelve (12) months and shall be renewed for further consecutive 12 month periods unless terminated by either party with three (3) months prior notice towards the end of the respective contract term with effect at the end of the respective month. In the event that the service order or the service description provide different minimum terms and/or renewal periods and/or notice periods, then such provisions shall prevail over those in these General Terms and Conditions; however, the effect of an ordinary termination towards the end of a month remains unaffected.
- 4.2 The minimum term starts with the first month, in which the Services are available (i.e. can be used with a SIM card activated by ACN) for a complete calendar-month, i.e. from the first to the last calendar day of the month. This means that only complete calendar months are counted towards the minimum term.
- 4.3 The right of each party to terminate the agreement for cause shall remain unaffected. Due cause for termination by ACN shall exist, in particular,
- (a) if the Customer fails to pay a substantial part of the charges due for two (2) consecutive months, or if the Customer fails to pay an amount equal to the average amount of charges due for two (2) months over any period of more than two (2) months;

- (b) if the Customer fails to pay an advance against charges or to provide a security deposit despite having received a reminder demanding payment or provision of the security deposit within a reasonable period set by ACN;
- (c) if there are objective indications (e.g., credit rating by credit rating agencies) that the Customer's financial condition has significantly deteriorated, if the Customer ceases or threatens to cease to make payments, if the Customer is unable to pay, or if insolvency proceedings are instituted against the Customer;
- (d) if the Customer defaults in payment at least twice over three (3) consecutive accounting periods;
- (e) if the Customer has committed a serious or material breach of the agreement and, if in the particular case a notice of the breach with setting a period for remedial action is required, fails to promptly cease the violation or remedy the breach of the agreement despite having received such notice.
- 4.4 In the event the agreement is terminated for due cause for which the Customer is responsible, ACN may require the Customer to pay, as liquidated damages, the charges fixed prior to the provision and/or independent from the usage volume of the Services (e.g. installation charges, monthly base charges, prepayment charges and bundle charges, monthly minimum usage charges) due for the period up to the next possible date of termination upon due notice. The Customer shall retain the right to prove lower damage while ACN has the right to prove higher damage.
- 4.5 Upon termination of the agreement, the Customer shall be entitled to reimbursement of any unused credit balance pursuant to applicable provisions of the service description and/or the current price lists. Reimbursement shall be made to the account previously indicated to ACN or any other account specified by the Customer. Any reimbursement of unused free minutes, unused voluntary credits granted by ACN (e.g., credits which do not result from payments made by the Customer) or minimum usage charges shall be excluded.
- 4.6 All termination notices must be in written form.

5. services provided by ACN, Tariff Migration

- 5.1 ACN shall provide its Services to the Customer within the scope of the existing technical and operational capabilities, on the basis of the mobile radio network of E-Plus. To that effect, ACN shall provide the Customer with one or more SIM cards (in the case of private customers up to five (5) cards plus any dual cards), including the necessary personal identification numbers ("PIN") and the personal unblocking key ("PUK"). The SIM card and the PIN are prerequisites for the use of ACN's Services on the mobile radio network of E-Plus.
- 5.2 In terms of territory, the Services provided by ACN shall be restricted to the receiving and transmission range of the mobile radio network of E-Plus in the Federal Republic of Germany and depend on the build out status of the E-Plus network. The E-Plus mobile radio network uses for GSM services the frequency bands 1800 MHz and 900 MHz. Only such terminal equipment which is technically configured for both frequency bands can be used in both such bands. The Customer shall be entitled, within the scope of the respective Service of ACN, to take advantage of international long-distance and roaming services to the extent technically feasible and subject to the existence of appropriate agreements with the respective foreign network operators. The Customer acknowledges that the use of ACN's Services in the border region of the Federal Republic of Germany may result in the use of international roaming connections due to the local conditions.
- 5.3 The provision of the Services depend on network availability in the mobile radio network of E-Plus. In view of the capacity limits on the mobile radio network of E-Plus, the Services may be temporarily unavailable. In addition, there may be temporary malfunctions, restrictions or interruptions of the Service due to emergencies, natural disasters, atmospheric conditions, geographic conditions, obstacles to radio transmission, power failures or technical modifications of the mobile radio system (e.g., technical improvements, relocation of system sites) or other measures (e.g. maintenance work, repairs) required for the proper provision of the Services, or due to events of force majeure.
- 5.4 Further details of the Services of ACN are included in the service descriptions of the tariffs and tariff plans offered by ACN and the respective price lists.
- 5.5 The Customer may migrate from a tariff plan agreed with ACN to another wanted tariff plan offered by ACN only, if the wanted tariff plan is still offered by ACN, if ACN explicitly allows such migration in the service description or price list for the current and/or the wanted tariff plan (if applicable against payment of a migration fee) and if ACN accepts such migration pursuant to section 2.1.
- In case the Customer wishes to migrate pursuant to the conditions above from an ACN tariff plan which has been agreed prior to the validity of these GTC to a new ACN tariff plan, the minimum term for the new tariff plan shall be six (6) months from the expiry (end of a month) of the previous tariff plan. For the contract renewal section 4.1 applies.

6. Numbering / Number Portability

- 6.1 The mobile telephone numbers shall be allocated by ACN, subject to mandatory measures or decisions of the Regulatory Authority or statutory provisions, which may, in certain cases, also result in a subsequent modification of the allocated mobile telephone number.
- 6.2 ACN shall allow the Customer to port his mobile telephone number from another German mobile radio network ("Porting Request"). The Porting Request may be submitted together with the application for an ACN mobile radio service contract not earlier than 120 days before and not later than 21 days after the termination of the Customer's previous mobile radio service contract. The porting of numbers outside of the aforementioned period is not possible. ACN cannot comply with the Porting Request until the mobile telephone number has been released by the previous mobile radio service provider. Porting Requests that cannot be filled due to technical reasons will be cancelled. In such event, ACN shall notify the Customer.
- 6.3 The Customer shall be entitled to port his mobile telephone number to another German mobile radio network ("Porting Inquiry"). The porting of the mobile telephone number must be implemented during the period specified in section 6.3 and is subject to payment of a fee. The flat rate porting charge is stated in the current price list and shall become due upon submission of the Porting Inquiry.
- 6.4 ACN shall be entitled to make the processing of the Porting Inquiry contingent upon the payment of the fixed charge. Should the Customer default in his payment obligations, ACN may refuse to port the mobile telephone number until receipt of full payment.
- 6.5 If a mobile telephone number is ported in accordance with section 6.4, the Service may be unavailable for a period of up to four (4) days prior to the transfer of the mobile telephone number to the other mobile radio network due to technical reasons.
- 6.6 The Customer shall use the mobile telephone number allocated to him strictly in accordance with applicable laws, regulations, orders and supervisory requirements. In particular, the Customer shall be prohibited from using his mobile telephone number(s) to perform any of the activities specified in sections 7.2 (a) to (e).
- 6.7 ACN shall be entitled to change the allocated mobile telephone number if such change is required due to unavoidable technical or operational reasons and provided that the Customer has been given at least two months' notice of the changes in text form (e.g., by email, SMS).

7. Duties and Obligations of the Customer

The Customer's duties include, in particular, the following:

- 7.1 The Customer shall pay the agreed charges for the agreed Services in due time and in accordance with the current price list. This shall also apply in case the Customer uses the Services inadvertently or if the Services are used by third parties, to the extent the Customer is responsible (e.g., by failing to protect a terminal device against inadvertent keystrokes, allowing third parties to use the terminal device or failing to keep the SIM card(s), passwords, PIN and PUK codes in safe custody).
- 7.2 When using the Services provided by ACN, the Customer shall comply with all applicable laws, regulations, orders and supervisory requirements. In particular, the Customer shall

- (a) prevent any malfunction or failure of the mobile radio network as well as any modification, impairment or interference with the network integrity caused by any equipment, handset, act or omission of the Customer;
- (b) ensure that all equipment and handsets with the mobile radio network are in compliance with generally recognized and accepted technical standards for usage in the mobile radio network of E-Plus and, in particular, that all necessary permits, licenses and certifications have been obtained (e.g., CE-certification, ITU/ETSI-standardization);
- (c) observe copyright and trademark restrictions when using the Services provided by ACN;
- (d) comply with the provisions of the German Criminal Code and the German Protection of Youth Act, e.g., refrain from using the Services for any illegal or immoral purpose;
- (e) refrain from doing any of the following:
- sending unsolicited e-mail messages to third parties for advertising purposes (junk mail, mail spamming),
 - sending messages through newsgroups for advertising purposes (news spamming, excessive multi posting, excessive cross posting), or
 - engaging in unaimed or improper distribution of information in any other form (SMS-Spamming, etc.).
- 7.3 All access codes (passwords, PINs, PUKs) issued to the Customer must be kept strictly confidential. Likewise, the Customer shall keep safely the SIM-Card(s) obtained. Should the SIM-Card be lost, stolen or used by unauthorized third parties, or should any access code be lost or become known to any third party, the Customer shall promptly notify ACN. ACN will then block the access code, or the SIM-Card, respectively, to prevent any further use. To the extent the SIM-Card is lost, stolen or used by unauthorized third parties or an access code is lost or becomes known to a third party due to the Customer's fault, the Customer shall be liable for payment of all Services received or performed through the use of its SIM-Card or access codes as well as for any consequential damage incurred by ACN or any of its contracting parties or other customers as a result of the use of the SIM-Card access code until the SIM-Card or access codes are effectively blocked.
- 7.4 The Customer shall promptly notify ACN of any change in its name, its residential address or place of business or its legal structure. If the Customer uses the direct debit procedure described in section 10.5, the same shall apply with respect to the banking details. Should the Customer fail to comply with this obligation, ACN shall be entitled to charge the Customer a flat fee based on the current price list to cover the necessary costs. The Customer shall retain the right to prove lower damage, while ACN has the right to prove higher damage.
- 7.5 The Customer undertakes to use the SIM card(s) obtained on the basis of this Agreement for the sole purpose of using the agreed Services as an end user. In particular, the Customer may, without the prior written consent of ACN, not use the SIM card(s) to provide switching or interconnection services to third parties (e.g., GSM gateways).
- 8. USE/misuse of the services by third parties**
- 8.1 Any non-gratuitous transfer of the Services to third parties including, without limitation, any resale, shall be subject to the prior written consent of ACN.
- 8.2 The Customer shall be liable for all charges incurred due to the authorized or unauthorized use of ACN's Services by third parties, unless the Customer is not responsible for such use.
- 9. SERVICE SUSPENSION, release from the obligation to perform**
- 9.1 ACN may, at the Customer's expense, suspend the provision of Services in accordance with the applicable statutory provisions, if:
- (a) in the case of Services provided exclusively on a prepayment basis the prepayment account has been used up,
 - (b) ACN is obliged to suspend the provision of the Services to comply with a court order or an obligation imposed by a government agency or supervisory authority,
 - (c) ACN would be entitled to terminate the Agreement in accordance with section 4.2; the right to terminate shall not be affected by the suspension of the Services,
 - (d) the Customer fails to comply with an obligation to make an advance payment or a security deposit or fails to make such payment or deposit when due,
 - (e) a direct debit request is either not honored or refused by the Customer's bank or the Customer has revoked such direct debit request
 - (f) the Customer is in default with the payment of an amount which is not insubstantial despite having received a request for payment and having been granted a reasonable extension of time for payment,
 - (g) ACN determines that any Customer equipment using the E-Plus mobile radio network is not in compliance with the applicable laws and regulations or there is reasonable ground for suspecting that such Customer equipment poses a risk of personal injury or damage to property or damage to the equipment of E-Plus or ACN,
 - (h) the Customer fails to fulfill his duties under section 6.6 or 7 or materially breaches or fails to perform any duties incumbent upon it and, to the extent a warning notice is required in a particular case, fails to promptly cure such breach despite having received a warning notice
 - (i) the accrual of charges increases significantly and there are facts giving rise to the assumption that if the suspension were put off to a later date, the Customer might not pay all the charges for the Services provided in the meantime or not make payment in due time, and if the security deposit has been used up.
- 9.2 If the Customer is responsible for the suspension and, in particular, in the cases referred to under (a) and (c) to (i) above, the Customer's obligation to pay the charges shall remain unaffected. All other contractual and statutory rights of ACN in connection with the blocking or suspension of the Services shall remain unaffected. ACN shall be entitled to charge the Customer for the costs of blocking or unblocking based on the current price list.
- 9.3 Should any unforeseeable event (e.g., force majeure, governmental measures, war, civil unrest, strike or lock-out) occur that ACN cannot prevent by exercising reasonable care, ACN shall be exempted from its obligation to perform, and the Customer shall be exempted from its obligation to pay non-usage based charges, for the duration of the event. The agreed performance periods, e.g., delivery dates, shall be extended by a period covering the duration of the event as well as a reasonable start-up period.
- 10. Payment terms, EXCLUSION OF OBJECTIONS**
- 10.1 All charges fixed prior to the provision of the Services (e.g. connection charges, monthly base charges, prepayment charges and monthly bundle charges) shall be due in advance (where applicable, on a prorated basis). All other charges shall become due upon performance of the Service; usage charges are generally billed monthly for the preceding month. A monthly minimum usage charge contained in an ACN tariff or tariff plan may be invoiced in advance or in arrears; unless provided otherwise in the respective service description or price list the minimum usage charge will only be credited against call charges in the respective month (not against other charges or fees contained in the price list).
- 10.2 Unless otherwise agreed, the charges due will be collected from the Customer's account by direct debit. To that effect, the Customer shall grant ACN a direct debit authorization. Should the Customer fail to grant or revoke the direct debit authorization, ACN may charge a reasonable processing fee, based on the current price list, to cover the extra administrative effort required to process invoices. The same shall apply in case the Customer's bank rejects or fails to honor any debit or if the Customer revokes a debit.
- 10.3 Invoices shall be issued electronically and made available to the Customer under www.acnmobile.de (Service: DeinACN Mobile). The Customer may request itemized call statements, unless the nature of the Service precludes the issuing of such itemized call statements.
- 10.4 Printed invoices will only be issued on the basis of a separate agreement, or if provided for in the relevant service agreement. ACN shall be entitled to charge a reasonable processing fee, based on the current price list, for the extra administrative effort required to send out printed invoices.
- 10.5 The itemized call statements in the standardized form determined by the Regulatory Authority, which are required by law, will be provided to the Customer free of charge under www.acnmobile.de (Service: DeinACN Mobile).
- 10.6 ACN may correct incorrect invoices retroactively and, in particular, invoice the Customer retroactively for Services provided, even after the invoice for a billing period has been rendered. Any refunds due to the Customer shall be credited to the Customer's account at ACN or set off against outstanding charges. Refunds to the account previously indicated to ACN or any other account specified by the Customer will only be made at the express request of the Customer; in such case ACN may charge a reasonable processing fee, based on the current price list, to cover the extra administrative effort.
- 10.7 All invoices shall be due immediately upon receipt. Any advance payment or security deposit requested by ACN (section 2.2) shall also be due and payable by the Customer immediately. In the case of payment by direct debit, the charges may be collected prior to receipt of the invoice by the Customer.
- 10.8 If the Customer defaults in payment, ACN shall be entitled to a dunning fee in the amount stated in the current price list, without prejudice to any other contractual or statutory rights. The Customer shall retain the right to prove lower damage and ACN shall have the right to prove higher damage.
- 10.9 The Customer shall raise objections to invoices, in particular objections to the amount of usage based charges, immediately in writing upon receipt of the invoice and, in any event, within a preclusive period of two (2) months following receipt of the invoice. Any failure to object within the aforementioned period shall be deemed as acceptance of the invoice. ACN will expressly inform the Customer on each invoice about the consequences of any omission to raise objections within the preclusive period. Statutory claims of the Customer based on objections raised after the expiration of the preclusive period shall remain unaffected.
- 10.10 The Customer may use ACN's Services on a prepayment basis by using appropriate prepayment products. Prepayment products shall be billed in accordance with the provisions of the relevant service description, which apply in addition to and prevail over the foregoing provisions.
- 11. CHANGES to CHARGES; to the Service Description or to these General Terms and Conditions**
- 11.1 During the term of the agreement, ACN shall be entitled to adjust agreed charges and/or agreed price lists in its fair judgment (Article 315 of the German Civil Code) subject to the following provisions: Any increase of charges will be notified to the Customer in text form (e.g., by letter, e-mail or SMS). The notice will state the amount of the increase and the date on which the increase will take effect. The Customer shall be entitled to terminate the agreement with immediate effect within six (6) weeks of receipt of the notice informing it of the increase. If the Customer exercises the right to terminate the agreement within the aforementioned six (6) weeks' period, the increase of charges will not take effect and the agreement will be terminated. If the Customer does not exercise the right to terminate the agreement within the aforementioned six (6) weeks' period, this shall be deemed as acceptance of the increase of charges. In the notice regarding the increase of charges, ACN will expressly inform the Customer of the Customer's right to terminate the agreement and specify the consequences of any failure to terminate the agreement in a timely manner.
- 11.2 ACN shall also be entitled to adjust charges during the term of the agreement:
- a) to incorporate any change in the statutory VAT rate or in order to comply with statutory or regulatory requirements and/or
 - b) in the event of any increase in its cost burden, e.g., due to an increase in the cost of living, increases of standard wages, higher labor costs or increases in transmission costs and/or in the cost of investments in the telecommunications network.
- 11.3 In the aforementioned cases, ACN will also notify the Customer of the increase of charges in writing (e.g., by letter, e-mail or SMS), stating the amount of the increase and the date on which the increase will take effect. However, the Customer shall not be entitled to terminate the agreement unless the increase of charges is due to an increase in ACN's cost burden (see b above) and exceeds five (5) percentage points per calendar year passed since the last adjustment of charges. In the latter case, the Customer shall be entitled to terminate the agreement with immediate effect within six (6) weeks of receipt of the notice informing it of the increase. If the Customer exercises its right to terminate the agreement within the aforementioned six (6) weeks' period, the increase of charges will not take effect and the agreement will be terminated. If the Customer does not exercise the right to terminate the agreement within the aforementioned six (6) weeks' period, this shall be deemed as acceptance of the increase of charges. In the notice regarding the increase of charges, ACN will expressly inform the Customer of its right to terminate the agreement and specify the consequences of any failure to terminate the agreement in a timely manner.
- 11.4 ACN shall be entitled to reasonably modify the Services during the term of the agreement, provided that the modified Services substantially conform to the Services owed pursuant to the Service Description. Such modifications shall include, without limitation, technical improvements and innovations.
- 11.5 ACN may alter the agreement by incorporating amended general terms and conditions or an amended service description, unless the Customer raises objections in accordance with the following provisions:
- 11.6 ACN will notify the Customer of the amendments in text form (by letter, e-mail or SMS), using typographic means to emphasize the respective changes. ACN will expressly advise the Customer that any failure to raise an objection in writing within six (6) weeks of receipt of the notice concerning the amendments shall be deemed as acceptance of the amendments, and that mailing the notice within the prescribed period will suffice to comply with the time limit.
- 11.7 Should the Customer not object or fails to observe the time limit despite having been informed and expressly advised of the consequences of such failure, the Customer shall be deemed to have accepted the change. The change shall take effect upon expiration of the six (6) week period, unless a later effective date is expressly specified.
- 11.8 If the Customer objects to the change, the then current GTC and the then current service description shall continue to be in force unchanged. The foregoing shall not affect either party's right to terminate the agreement.
- 11.9 All changes of agreed charges or agreed price lists must be made in accordance with the provisions of sections 0 and 0.
- 12. Limitation of liability**
- 12.1 ACN shall only be liable for damages that have been caused by a grossly negligent or willful act of ACN or any of its legal representatives, employees or vicarious agents. ACN's liability for violations of essential contractual duties (cardinal duties) due to simple or slight negligence shall be limited to the amount of the typically foreseeable damages.
- 12.2 Typically foreseeable damages shall cover damages up to the amount of EUR 25,000.00.
- 12.3 Any liability for violations of other contractual duties due to simple or slight negligence shall be excluded.
- 12.4 As regards the provision of telecommunications services for the public, ACN's liability towards the Customer for financial losses caused by negligence shall be limited to EUR 12,500.00 per customer. ACN's liability towards all customers in total shall be limited to EUR 10 million per damaging event. If the damages payable to several parties having suffered damage due to the same event exceed the maximum limit, the damages shall be reduced in proportion to the difference between the total amount of damages and the maximum limit. The aforementioned limits shall not apply if the damage was caused intentionally.
- 12.5 The Customer shall take all reasonable measures to prevent or minimize damage.
- 12.6 Mandatory statutory provisions such as the German Product Liability Act and liability for personal injury shall remain unaffected.
- 13. Data privacy, Telecommunications secrecy, Data privacy agreements, Confidentiality**
- 13.1 The activities to be carried out in the course of the business relations will include the electronic processing of the Customer's data, including but not limited to personal data and data protected by telecommunications secrecy such as master data (e.g., Customer's name and address), traffic data (e.g., calling party number, called party number, IP addresses, date, time and duration of the voice or data connection), billing data and other data containing personal information or information concerning the Customer, the Customer's employees or end users, or the authorized users of ACN's Services, which is protected by telecommunications secrecy and which has been

collected or obtained by ACN or its affiliates (Article 15 of the German Stock Corporation Act) or their respective subcontractors in connection with the provision of the Services (collectively: "Protected Data").

Unless otherwise provided for in these GTC, ACN will collect, process and use all Protected Data in accordance with ACN's special provisions on data privacy, which can be viewed on the Website www.acnmobile.de. ACN will use and process the Protected Data in compliance with the statutory provisions under data protection law and will preserve the confidentiality of communications.

- 13.2 With respect to traffic data, the Customer may decide whether and how the Customer wants ACN to store the number of the party called ("Called Party Number"). The Customer may decide that ACN shall a) store the complete Called Party Number; or b) store all but the last three digits of the Called Party Number; or c) delete the Called Party Number completely upon mailing of the invoice. The Customer may exercise these options through the Website www.acnmobile.de (Service: DeinACN Mobile). If the Customer decides that the Called Party Number shall be deleted or shall not be stored, or if the Customer demands that any other traffic data shall be deleted or not be stored, ACN shall, in case the Customer objects to an invoice, not be obliged to submit proof of the (call connection) services provided or to provide call itemization or results of technical verifications of the calls processed.

If the Customer requests storage of all but the last three digits of the Called Party Number, ACN shall, in case the Customer objects to an invoice, not be obliged to submit proof of the (call connection) services provided, if ACN can no longer verify them due to the fact that the stored number is incomplete, e.g., calls to 0900 value-added service numbers.

If the Customer decides that ACN shall store the entire Called Party Number; or if the Customer fails to exercise its right to choose an option, ACN will store the complete Called Party Number for a maximum period of six (6) months from the mailing of the invoice. Upon expiration of this period, at the latest, the Called Party Number and all other traffic data will be deleted, unless the Customer has raised objections to the relevant invoice within the prescribed period in accordance with section 10.7.

- 13.3 ACN may use the Customer's subscriber number, postal and electronic address (e.g., e-mail address) to provide advisory services to the Customer, to advertise its own products or to conduct market research to the extent required for the aforementioned purposes. The Customer may object to any such use of its data at any time by sending a letter or an electronic message to ACN.

In addition, the Customer acknowledges and agrees that ACN may use and process Protected Data

- to inform the Customer by voice, letter, fax or e-mail about the products and services of ACN and its affiliates (as defined in Article 15 of the German Stock Corporation Act), and
- to perform analysis of revenues generated by the Customer as well as reporting, market and customer use analysis, including preparation of customer use profiles and advertising measures based on billing and traffic data (the Protected Data used for marketing purposes do not include any traffic data of end users or parties called except in anonymized form).

- 13.4 The Customer acknowledges and agrees that ACN may use, process and transfer Protected Data (including transfers to companies located in countries such as the USA, in which personal data is not subject to statutory protection in accordance with EU standards):

- (a) in connection with the provision of Services; and
- (b) to incorporate the Protected Data into databases and to process the Protected Data for the purpose of:
 - Providing the Services, administration, billing, collection and accounting,
 - Verification of the customer's identity and creditworthiness, including the purposes described in section 2.2,
 - Maintenance, support and advisory services for customers and further development of ACN's Services,
 - Detection and prevention of any misuse of ACN's Services.

For the aforementioned purposes, the Protected Data may be stored for the entire term of the agreement as well as up to the end of the calendar year following termination of the agreement. To the extent ACN is obligated to delete the Protected Data prior to such date, such obligation shall remain unaffected.

- 13.5 The Customer may withdraw its consent to the use, transfer and processing of Protected Data granted in section 13.3 and/or 13.4 by sending a written notice to ACN. Even if the Customer withdraws its consent, ACN may continue to use, transfer and process the Protected Data to the extent such measures are permitted by law and required to provide, administer or issue invoices or account for the Services or to detect or prevent any misuse of ACN's Services, or to the extent required in order to comply with laws, regulations or court orders or to respond to written inquiries from authorities.

- 13.6 The Customer warrants that it has obtained or will obtain all legally required consents and permissions from all relevant parties (including the data subjects, e.g. family members or employees, depending on the Customer) for the use, transfer and processing of the Protected Data.

14. General Provisions

- 14.1 The contractual relationship between ACN and the Customer shall be governed by the laws of the Federal Republic of Germany, excluding CISG. If the Customer is a merchant, venue for all disputes arising out of or in connection with the contractual relationship shall be Frankfurt am Main, otherwise the statutory venue provisions shall apply.

- 14.2 If the Customer wishes to institute conciliation proceedings to settle any dispute between ACN and the Customer as to whether ACN has fulfilled its obligations vis-à-vis the Customer in accordance with the provisions of the TKG, the Customer may address a request to that effect to the Regulatory Authority for Telecommunications and Post, Ref. 216, Schlichtungsstelle, Postfach 80 01, 53105 Bonn. Further details are available on the Regulatory Authority's Website www.regtp.de under "Verbraucherservice".

- 14.3 The Customer may not assign any rights or obligations under this Agreement to any third party without the prior written consent of ACN. The Customer acknowledges and agrees that ACN may assign its rights and obligations under this agreement, in whole or in part, to any of its affiliates (Article 15 of the German Stock Corporation Act). As regards any assignment of this Agreement by ACN to any other third party, the procedure described in section 11.4 shall apply mutatis mutandis, unless otherwise provided in section 2.5.

- 14.4 To the extent that the Contract Terms foresee written form for notices, statements or declarations given or made by the Customer vis-à-vis ACN, these shall only be valid unless made in writing and addressed to: ACN Communications GmbH, Postfach 200532, 47020 Duisburg. Otherwise all notices, statements or declarations may be given or made electronically or in text form to the following ACN contacts: ACN Communications GmbH, Fax: 0180-3 000934 (0,09€/Min out of the German fixed network) or via www.acnmobile.de (Service: DeinACN Mobile)]

- 14.5 Any right of retention of the Customer is excluded unless its claim is based on the same contractual relationship.

- 14.6 Any offsetting against counterclaims shall be permissible only to the extent that the same have not been contested or have been established by a final, non-appealable judgment. The same shall apply to any right of retention.

- 14.7 Reimbursements and credits from ACN to the Customer are carried out pursuant to section 10.4 of these GTC. In the event of contract termination, section 4.4 of these GTC is applicable herefor.

- 14.8 Any amendment to these GTC must be made in writing. The same shall apply to any waiver of this written form requirement. The preceding provisions shall not apply to any change of charges or any modification of the service description or of these GTC which is made in accordance with section 11.

- 14.9 In the event that any provision of these GTC shall be or become invalid or unenforceable, in whole or in part, the remaining provisions shall remain in full force and effect. The invalid or unenforceable provision shall be replaced by a new provision that comes as close as possible to the purpose of the old provision. The same shall apply to any omission.

ACN Communications GmbH, September 2006