

**Netstream AG (hereinafter referred to as Netstream) is a telecommunications supplier that renders Internet, land line telephony, Internet telephony, hosting and security services. These General Terms and Conditions of Business apply to all Netstream's services and products – i.e. both charge-based and cost-free.**

### 1. Subject Matter of Contract

1.1 Legal and natural persons who procure services from Netstream as part of a Service Contract are deemed Users of Netstream's services.

1.2 These General Terms and Conditions of Business, the current price list or offer and the Support Level Agreement (SLA) for services rendered by Netstream are deemed integral elements of the Service Contract.

1.3 If the User also procures third-party services via the Netstream services, the User shall be responsible for adhering to the Conditions of Use of such services and in the event of a claim may be rendered liable directly by the third-party supplier. The User undertakes, in particular, to settle the use of third party services directly with the third parties. Subject to a written agreement with Netstream to the contrary.

### 2. Start, Period and End of the Service Contract

2.1 The Service Contract entered into with the User shall come into being, or Netstream shall be bound by such a contract, if Netstream has countersigned and confirmed in writing or by e-mail the application, signed by way of the User's legally binding signature, for a Service Contract. Netstream shall permit the User to specify the time at which use of the service commences. The User is aware that the time at which the use of the services made available for the User by Netstream commences may be delayed due to organisational or technical reasons. The User may not derive any rights from this in respect of dealings with Netstream.

2.2 In the absence of an agreement to the contrary specified in the Service Contract, the Service Contract is entered into for an unlimited period of time.

2.3 Each contracting party may terminate the Service Contract by serving 30 days' notice by way of a registered letter to take effect at the end of the settlement period, initially however to take effect at the end of the minimum contract period agreed upon by the contracting parties and specified in the Service Contract. The contract may also be terminated within other periods, or take effect on another date, by way of mutual consent. In any case the residual credit shall be forfeited to Netstream and as a general rule cannot be reimbursed.

2.4 Both parties may terminate the Service Contract with immediate effect for good cause. This shall apply, in particular, if the services made available by Netstream or the third-party services procured by such a service are procured, used, made available to unauthorised third-parties or forwarded such that they are unlawful, in breach of contract or inappropriate, and if Netstream's Conditions of Use or those of third parties have been ignored.

### 3. Netstream's Obligations

3.1 Netstream shall render the services professionally and with due care in accordance with the current level of technology. As a general rule, the User shall be entitled to use the services 24 hours a day and 7 days a week. However, Netstream cannot guarantee that the services will function without interruption or disruption or that its network will be completely protected against illegal access or illegal monitoring. In the case of disruption in respect of the procurement and use of services, the User shall merely be entitled to withdraw from this contract insofar as he/she has informed Netstream without delay in writing of the disruption and has twice set Netstream a reasonable period in which to rectify the disruption. Announced interruptions of services, in particular as a result of maintenance work by the respective media supplier, are not deemed disruptions.

3.2 The systems and equipment made available to the User for using the services shall remain Netstream's property, and the User shall neither be granted a right of disposal nor copyrights to such systems and equipment. Exceptions are systems purchased by the User from Netstream that are described as such in the service contract. Equipment purchased from Netstream shall remain Netstream's property up until payment in full of the purchase price.

3.3 The guarantee period for purchased equipment is twelve (12) months from receipt. The guarantee is only valid and enforceable in Switzerland. During the guarantee period Netstream shall, at its own discretion, repair or replace faulty equipment (manufacturing, construction or material defects). There is no entitlement to a replacement for the duration of the repair. No extended or renewed guarantee period shall apply to repaired or replaced equipment. If a piece of equipment can no longer be repaired or replaced, the Customer shall be issued with equivalent follow-up equipment. In this respect Netstream reserves the right to determine the equivalent follow-up equipment. Guarantee claims shall not apply in the case of defects that occur due to: improper use and operation that does not correspond with the product specifications; unprofessional, inadequate or inappropriate maintenance; use of accessories and software etc. that have not been manufactured by the manufacturer or authorised by the manufacturer for use with the equipment; unauthorised alterations to the equipment (including the alteration/removal of series numbers, additional codes etc.); misuse, negligence, accidents or loss; unauthorised or improper repairs. This scope of the guarantee is final and replaces all statutory warranty obligations. In particular, Netstream shall not be liable for indirect damage or damage that does not involve the delivery item itself (so-called subsequent damage). To raise a claim under a guarantee, the Customer must send the faulty equipment in its original packaging and a description of the fault to the address specified by Netstream. At the Customer's request Netstream shall provide the Customer with this address.

3.4 Netstream shall support the User in respect of establishing a stable condition for using the services. If the User makes use of support services in this respect that Netstream no longer regards as reasonable or customary in the sector, or if the input on the part of Netstream is attributable to a malfunction of the User's system parts or improper use of such a system, Netstream shall invoice the User for its additional or total costs at Netstream's current rates.

3.5 Netstream undertakes within its customary working hours in place at the Netstream branch office to undertake or institute measures to rectify disruptions and malfunctions of the services. Customary working hours are Monday to Friday from 8.00 a.m. to 6.00 p.m. with the exception of Swiss public holidays and cantonal

holidays in the area where Netstream has its registered office, and the period from 24.12 to 02.01. The Service Level Agreement chosen by the Customer is deemed applicable outside the office hours.

3.6 The User shall only be entitled to reimbursement of the services invoiced by Netstream if this was agreed upon in writing and in advance in an individual Service Level Agreement. In all other cases in which telecommunications services fail, fees that have already been paid shall not be reimbursed.

3.7 Possible restitutionary claims of the User shall expire if Netstream is not notified in writing promptly within 30 days following the end of the respective calendar month and Netstream has been requested accordingly to reimburse the fees. In the event of a justified claim, Netstream shall set off such a claim with a credit for future subscription fees.

3.8 The burden of proof in respect of non-availability lies with the User.

### 4. User's Obligations

4.1 In the case of placing orders, registering and further business contacts with Netstream, the User undertakes to provide truthful details.

4.2 The User undertakes to provide Netstream with its current data such as name and address data at all times and inform Netstream without delay online, by letter or by facsimile of appropriate amendments.

4.3 The User undertakes to ensure that its employees also honour the obligations that apply to the User on the basis of the Service Contract. This provision also applies to third parties upon whose services the User calls as part of an order, Service Contractor or other contractual relationship.

4.4 In using the services, the User undertakes to adhere to the pertinent contractual and statutory provisions, in particular these General Terms and Conditions of Business, the other terms of contract and the valid cantonal and Swiss federal laws such as data protection, telecommunications and copyright. In particular, the services may not be misused to carry out criminal offences. Misuse also includes sending mass mails or advertising circulars via e-mail (Spam) to recipients who have not expressly requested the receipt of such messages.

4.5 Netstream may undertake measures to avoid and rectify disruptions, and place the Customer under obligation to undertake the same measures. Following a prior announcement, the User is to grant Netstream's employees or third parties commissioned in the name of Netstream access to the technical systems made available by Netstream, insofar as this is required to maintain the service quality, or grant them access to the systems that are operated in respect of the use of the Netstream services, and to additional systems that are required for the availability of Netstream's services.

4.6 The User undertakes to inform Netstream immediately of defects, disruptions or non-availability of services or systems of which it gains knowledge and, in particular, use of the services that are illegal or in breach of contract on the part of the User, its employees or third parties appointed by the User and unauthorised third parties (e.g. hackers).

### 5. Fees

5.1 The remuneration for the services made available by Netstream is based on this Service Contract or the respective valid price list. In the absence of details to the contrary, these are to be understood to include value added tax.

5.2 Netstream may adjust the fees at any time, in particular, however, in the case of changed production costs or changed duty rates (value added tax) by serving 30 days' notice to take effect at the end of a month. If such changes result in considerable disadvantages for the Customer, it shall be entitled to terminate the contract at the time at which the new prices come into force. Such a termination right shall expire when the new prices come into force. Floating tariffs may be amended at any time without prior notice.

5.3 The User shall be invoiced in advance on a quarterly, six-monthly or annual basis for basic charges that are independent of use. Invoices shall be written out on a pro rata basis for the use of services over a number of days, as opposed to a full month. Variable fees and those that are conditional on use shall be charged in addition on a monthly basis. Subscriptions described as "Prepaid" shall be charged in advance. In this respect reimbursement or rebooking prepaid credits that have already been credited is excluded in any case. The User undertakes to pay the invoice amount by the due day stated in the invoice form. The User is to use the banking connection stated in the invoice for its payment. The User shall be invoiced by way of the next fee invoice for expenses charged by banks or the Post Office and that may be debited to Netstream.

5.4 If the User does not honour its payment obligation following the payment period, it shall be deemed in default without further ado and undertakes to pay interest on arrears of 5%. If payment is not effected after a reminder has been issued or upon expiry of the reminder period, Netstream shall be entitled to discontinue all services to the User without further notification. Netstream is entitled to charge an additional fee of CHF 50.00 for blocking the service.

5.5 Fees that are independent of use such as basic charges are also payable in the case of blocked services. Netstream may at any time demand that the User provide a security (deposit) in the case of justified doubts regarding adherence to the terms of payment as per contract.

5.6 The User may request in writing that it be provided with the basis for calculating invoice amounts. Netstream shall provide the User with the basis for calculation insofar as this can be worked out by way of acceptable technical input. If the bill of charges is correct, the User is to remunerate Netstream, at Netstream's current rates, for the labour input required to prepare the basis for calculating invoice amounts.

### 6. Liability

6.1 Netstream undertakes to professionally render the services with due care in accordance with the Service Contract signed by the User and the valid and current General Terms and Conditions of Business.

6.2 Netstream and the assistants it employs in respect of executing the contract are excluded from any liability for direct and indirect damage and for consequential damage insofar as this is legally permissible.

6.3 Netstream is not responsible for content created by third parties or such that can be called up by third parties. Netstream cannot make any assurances regarding such content and not accept any liability or give any guarantees that such content is accurate, complete, up-to-date, legally permissible or expedient or regarding the availability or timely provision of such content.

6.4 It is the concern of the User to protect the IT systems and equipment that it owns and such which are used for the Netstream services and the data used in this respect or such that is accessible via the Netstream services, including program data, against unauthorised access, viruses, any kinds of attacks and manipulation.

6.5 The User may be made responsible or held liable for all damage that Netstream or third parties sustain due to its use of the Netstream services.

6.6 In the case of nomadic use of the Internet telephony, the User undertakes to enter the current location in the account settings at all times, even in the case of temporary use. Solely the User shall be fully liable for the consequences of emergency calls that are forwarded to the wrong emergency switchboard due to incorrect location details.

6.7 If Netstream cannot honour its contractual obligations due to force majeure such as natural occurrences of a particular magnitude, strikes, unrest, war, disruptions to third-party services, unforeseeable official requirements etc, executing the contract shall be postponed as long as the case of force majeure lasts. In such cases liability on the part of Netstream is excluded.

### 7. Data Security and Data Protection

7.1 In respect of processing personal data, Netstream undertakes to give due regard to the Swiss laws on data protection, data security and the telecommunications act.

7.2 Netstream may forward customer data to selected third parties in respect of invoicing, collecting and rendering the services as per agreement. Netstream shall ensure that such third parties also abide by the statutory provisions in respect of data protection.

7.3 Netstream may use the User's personal data for its own marketing or make them available to selected partners. Netstream hereby assures that it and possible third parties shall treat the personal data in confidence and that data protection is guaranteed.

### 8. Final Provisions

8.1 Amendments or supplementary information regarding the Service Contract are subject to the written form, reference to the provision that is to be amended and the legally valid signature of the contracting parties.

8.2 In the event of contradictions between the versions of the individual contractual documents in different languages, solely the German version is deemed authoritative. Netstream reserves the right to make the performance sheets available to the User in a German version only as the authoritative version.

8.3 In the event that a provision of the contract entered into with the User becomes void or legally invalid, this shall not affect the validity of the other provisions. In such a case the void or legally invalid provisions should be replaced by a valid provision that comes as close as possible in a legal sense to the economic effect of the invalid provision.

8.4 Netstream reserves the right to amend these General Terms and Conditions of Business at any time. The Customer shall be informed of amendments in writing or via the Internet at [www.netstream.ch](http://www.netstream.ch) and such amendments shall replace the General Terms and Conditions of Business that were in place to date. If the amendment of provisions has a considerable detrimental effect on the Customer, the Customer shall be entitled to terminate the contract at the next possible date by adhering to the conditions in place to date. The right to terminate shall expire once an amendment comes into force.

**8.5 Applicable law and place of jurisdiction: The Service Contract is subject to Swiss Law. Zurich is deemed the place of jurisdiction. Subject to mandatory legal venues.**

**Status: 1 November 2006**