

**General Terms and Conditions of PFALZKOM GmbH**  
**- hereinafter referred to as PFALZKOM -**

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## **Section 1: General terms**

### **1. Scope of application**

1.1 These General Terms and Conditions (GTC) shall apply to all contracts of PFALZKOM and related services (hereinafter collectively the Services) with the customer.

1.2 These GTC shall also apply to any related information, advice, installations, and the remedy of any faults as well as in the context of contract initiation.

1.3 These GTC shall also apply to future business relationships, even if they have not been explicitly agreed again.

1.4 These GTC shall apply to customers who are entrepreneurs within the meaning of § 14 of the German Civil Code (*Bürgerliches Gesetzbuch*; BGB).

1.5 The customer's GTC shall not become part of the contract, even if the customer refers to its own GTC in the course of initiating the transaction or when placing the order, and even if PFALZKOM does not explicitly object to the reference.

### **2. Relationship of these GTC to any other provisions and order**

2.1 The following terms shall take precedence over these GTC in the following order:

- Individual agreements (e.g., master agreement or any special agreements in the order)

- Service certificates and service description (hereinafter jointly the Special Terms and Conditions) for the Connectivity Services, Colocation Services, and Managed Services,
- Service Level Agreements (SLA) of PFALZKOM for certain products

2.2. Unless explicitly stated in the Special Terms and Conditions, these general terms and conditions shall apply in addition to the superordinate Special Terms and Conditions.

### 3. Entering into of contracts

3.1 Offers from PFALZKOM are non-binding, unless otherwise marked.

3.2 A contract shall only entered into by

- mutual signature of the contract or
- an order placed by the customer (and an acceptance by PFALZKOM. PFALZKOM shall accept an order by way of order confirmation transmitted in writing or electronically or
- actual provision of services and/or a notification of availability from PFALZKOM.

3.3 PFALZKOM may refuse to accept the offer wholly or in part without stating any reasons and/or make it dependent on the provision of certain services (in particular collateral) and acts of cooperation (in particular the provision of a property owner's declaration).

### 4. Amendment of the contract

4.1 PFALZKOM may amend the agreement with the customer and these GTC, including the provisions on services and fees, (hereinafter collectively the "Contractual Agreements") and the Special Terms and Conditions in accordance with the following provisions.

4.2 PFALZKOM may amend the contractual agreements in particular if the statutory standards applicable to provision of the services change to make amendment of the contractual agreements necessary.

4.3 PFALZKOM may also adjust the prices to be paid based on the contractual agreements to the development of the costs that are decisive for the price calculation. A price increase may be considered, and a price reduction shall be applied if relevant costs increase or reduce. Increases in one type of cost must only increase prices as far as they are not offset by any decreases in other areas. If costs reduce, PFALZKOM shall reduce the prices as far as these cost reductions are not fully or partially offset by increases in other areas. PFALZKOM shall pass on any cost reductions to customers to the same extent and based on the same standards as costs increase (equivalence). PFALZKOM shall provide the customer with evidence of the increase or reduction in costs passed on to the customer upon request.

4.4 Any changes shall be communicated to the customer in writing or in text form. The individual changes shall be brought to the customer's attention individually in the notice and shall enter into effect six (6) weeks after notice is given, except if a later date is explicitly specified.

### 5. Energy costs

Energy costs shall be charged to the customer based on consumption. PFALZKOM shall set the price per kWh for the customer. This is made up of the following components: Procurement price, levies and charges, PUE value and handling fee ("Energy Costs"). If the Energy Costs change, PFALZKOM shall have the right to increase costs once per calendar year if the costs increase and the obligation to reduce them if the costs reduce. Such change shall not apply retroactively and must be communicated to the customer in advance, at least in text form. Upon request, PFALZKOM shall disclose to the customer which price components have changed and led to the price change.

### 6. Utilisation agreement

6.1 If a building or property needs to be connected for PFALZKOM's service, the customer must, upon PFALZKOM's request, submit an application from the person authorised in rem to enter into a usage agreement that meets the statutory requirements within one month. Entering into and continuing of the contract of use for the entire term of the contract is a primary obligation of the customer. The provision period of PFALZKOM shall only commence once the customer has submitted the concluded licence agreement to PFALZKOM in at least electronic form.

6.2 § 566 BGB shall apply accordingly if title in the property is transferred to a third party. The contract of use entered into with the original beneficiary in rem shall continue to apply to the new beneficiary in rem.

6.3 The customer shall not build over the connection road and shall refrain from any other actions that impair the operation of the system on the property. It may demand the same from the property owners.

### 7. Credit assessment

7.1 PFALZKOM reserves the right to obtain information on the customer's creditworthiness from the customer's credit protection agency, credit reference agencies, or credit insurance companies for the purpose of checking the customer's creditworthiness and to report data to such agencies following non-contractual processing, e.g., if a reminder notice is applied for regarding any undisputed claim, an enforcement order is issued, of enforcement measures are taken. Data shall only be transferred if this is necessary to safeguard the legitimate interests of PFALZKOM and if the customer's interests worthy of protection are not impaired. PFALZKOM shall observe the relevant data protection regulations. The customer may obtain information about the stored data concerning it from the institution responsible for it (PFALZKOM will provide the customer with the address of the companies on request).

7.2 For further information, see the SCHUFA website or the Creditreform website.

7.3 PFALZKOM shall have the right to withdraw from the contract if the credit assessment returns any reasonable doubts regarding the customer's creditworthiness in the period up to 15 days after acceptance of the order. The customer shall be obligated to pay for the services or rental services utilised up to this point in time if PFALZKOM withdraws from the contract.

7.4 Alternatively, PFALZKOM can make compliance with the contract dependent on the provision of a collateral if there are justified doubts about the customer's creditworthiness.

## **8. Collateral**

8.1 PFALZKOM shall have the right to demand adequate collateral from the customer:

- a. if there are any justified doubts about the customer's creditworthiness after performing a credit assessment in accordance with item 7 of these GTC,
- b. if the customer fails to pay a more than insignificant invoiced amount on time and payment arrears have already led to a block no longer than twelve months in the past,
- c. if any court composition or insolvency proceedings have been applied for or opened,
- d. in cases of court-ordered enforcement.

8.2 The collateral may be provided in the form of a letter of guarantee from a credit institution authorised in the European Union. PFALZKOM shall have the right to satisfy itself from collateral provided by the customer for outstanding claims arising from the contractual relationship at any time. If PFALZKOM utilises the collateral while the contractual relationship continues, the customer shall be obligated to replenish the collateral to the originally agreed amount without undue delay. The collateral shall be released following termination of the contractual relationship if the customer has settled all of PFALZKOM's claims.

8.3 PFALZKOM shall have the right entitled to suspend or block the respective service or to terminate the contract without notice if the collateral or guarantee is not provided after issuing a corresponding reminder with reference to the consequences of failure to provide the collateral.

## **9. Services**

9.1 PFALZKOM shall render the agreed service for the customer, in particular regarding type, location, and scope, in accordance with the respective special conditions and service level agreements or written agreement (offer/acceptance, contract or order confirmation) and within the scope of the existing technical and operational possibilities.

9.2 The customer is aware that PFALZKOM's services are subject to changes based on new technical developments and possible new legal and/or official regulations. PFALZKOM may, therefore, customise its service and performance for the customer in accordance with the current state of development. However, this shall only apply as far as the fulfilment of the services agreed in the contract is not unreasonably impaired or impossible and the adjustment is reasonable for the customer, taking into account all circumstances.

9.3 PFALZKOM shall inform the customer of the type, extent, and duration of service cessation in cases of longer, temporary service cessations or restrictions in a suitable form, as far as this service cessation is foreseeable.

9.4 The equipment, devices, software, and documents installed or provided by PFALZKOM to the customer for the provision of the respective service remain the real

and intellectual property of PFALZKOM, unless transfer of title is agreed separately.

9.5 PFALZKOM shall have the right, at the discretion of PFALZKOM, to leave any installed technical equipment, in particular any installed lines, on the customer's premises free of charge upon termination of the contractual relationship, or to remove them at its own expense.

9.6 PFALZKOM shall have the right to have its services provided temporarily or permanently, wholly or in part, by a third party. There shall be no contractual relationship established between the third party and the customer. Invoicing shall take place exclusively through PFALZKOM.

9.7 PFALZKOM has the right to interrupt its services, limit their duration or otherwise temporarily, partly or entirely discontinue the services if this is necessary for reasons of public safety, security of network operation, maintenance of network integrity, and in particular for avoidance of serious disruptions to the network, software, or stored data, interoperability of services, data protection or to perform operational or technically necessary work.

9.8 PFALZKOM shall have the right to interrupt or suspend its services in any other manner temporarily, partly or entirely if two consecutive direct debits within the meaning of item 19 of these GTC by customer's bank due to lack of sufficient funds or for any other reasons, or if payment cannot be collected for any other reasons.

## **10. Dates and deadlines**

10.1 Deadlines for provision of services by PFALZKOM shall only be binding if PFALZKOM confirms them as binding in writing.

10.2 Agreed dates and deadlines shall be delayed by a reasonable period of time if a temporary and unforeseeable impediment to performance arises for which PFALZKOM is not at fault, as well as in cases of force majeure.

10.3 Furthermore, all deadlines shall be subject to the proviso that the customer complies with all conditions incumbent upon it for the provision of the service in time. The provision periods shall be extended, without prejudice to PFALZKOM's rights from default on the customer's part, by at least the period during which the customer fails to meet its obligations towards PFALZKOM.

10.4 PFALZKOM's obligation to render or provide a service in accordance with the contract shall be subject to the proviso that necessary preliminary services or third-party authorisations are provided in time and in the appropriate quality. This shall also include services provided by other network operators, service providers or other third parties. PFALZKOM shall not be liable or obligated to perform if it has acted with gross negligence or wilful intent with regard to the advance services not rendered.

10.5 If any unforeseeable hardware or software extensions are required during installation at the customer's premises, the provision time also depends on the delivery times of the corresponding upstream suppliers.

10.4 If PFALZKOM defaults on the service owed, the customer must first set a reasonable grace period of at least four weeks with a threat of refusal. The customer shall only have the right to withdraw from the contract if PFALZKOM does not comply with the reasonable grace

period set by the customer. The limitations of liability in item 23 of these GTC shall apply in the event of compensation for damages.

10.7 If the customer is in default or culpably breaches other duties to cooperate, PFALZKOM may demand compensation for the damages it incurs, including any additional expenses.

10.8 If PFALZKOM has done everything necessary to render the service until the time at which PFALZKOM is unable to render the service due to circumstances for which the customer is at fault (e.g., approvals not obtained on time), PFALZKOM shall have the right to invoice the customer for the monthly usage-independent remuneration after the expiry of a grace period of 10 days set in writing.

### **11. Right of withdrawal due to non-availability of the service**

PFALZKOM reserves the right to withdraw from the contract if the infrastructural or technical prerequisites for the provision of services are not or only partially available, in particular if it is unable to lease a telecommunications line from a third party company or if this third party no longer provides a line in the future and PFALZKOM is not responsible for this.

### **12. Acceptance**

12.1 The customer must accept a rendered service, any provided economically separable service parts, extensions, and additions within 2 working days after notification of provision at least in text form to PFALZKOM. Any insignificant deviations from contractual specifications shall not entitle the customer to refuse acceptance.

12.2 PFALZKOM's service shall be deemed accepted unless acceptance is refused by the customer, at least in text form, within 2 working days of receipt of the notification of provision in accordance with item 12.1 of these GTC. Timely dispatch of the refusal of acceptance shall be sufficient for compliance with the deadline. PFALZKOM shall explicitly draw the customer's attention to the significance of its behaviour at the start of the period.

12.3 Acceptance or notification of provision shall document that the service provided by PFALZKOM is in accordance with the contract.

### **13. Terms of use and the customer's obligations of cooperation**

13.1 The following cooperation obligations by the customer shall be primary performance obligations; they form the essential basis for successful implementation of PFALZKOM's services.

13.2 The customer must create all conditions in its area of responsibility (company, house, flat, etc.) without compensation and free of charge as necessary for the proper execution of the service. PFALZKOM will inform the customer of its requirements in this regard. Customer obligations are in particular:

- The customer is obligated to ensure that all necessary permits and authorisations have been obtained and that the preparatory work has been completed before starting the installation

work. The customer shall bear any costs resulting from this.

- The customer is obligated to support PFALZKOM free of charge and in time to the extent necessary for the operation and installation of the technical equipment, in particular to provide its own facilities and suitable installation rooms and cable routes as well as electricity and earthing and to keep these in a functional and proper condition for the duration of this contract. The customer shall provide any necessary electricity, earthing, and – if required – air conditioning at its end points at its own expense.
- The customer shall be obligated to provide PFALZKOM with all information required to process the provision of services. In particular, the customer shall inform PFALZKOM of any existing technical or other equipment, utilities, objects, and substances (e.g., water, electrical, and gas pipes or asbestos) that may be damaged during the installation of systems or that may endanger or injure the persons responsible for the installation. The customer shall inform PFALZKOM of any subsequent changes to this information without undue delay. The customer shall indemnify PFALZKOM against any third-party claims based on a breach of these information obligations.
- The customer shall be obligated to support PFALZKOM in obtaining all authorisations that are to be obtained by PFALZKOM and that are required for the provision of services. In addition, the customer shall ensure compliance with the conditions and requirements attached to the authorisations.
- The customer shall be obligated to inform PFALZKOM in time of any new applications or changes to existing applications that affect the provision of services.
- The customer shall nominate a sufficiently qualified contact to PFALZKOM, who shall be available to PFALZKOM at all times within the scope of its abilities to answer technical enquiries of any kind, provided that the customer can reasonably be expected to do this.
- The customer is obligated to treat PFALZKOM objects, systems, devices, hardware, and software brought into the customer's premises with care and to keep them away from harmful influences such as external electrical voltage or magnetic effects. Any access to the technical system (e.g., by opening) or modifications must only be performed by PFALZKOM.
- The customer shall be obligated to adequately secure the facilities within its premises against loss, theft, damage, or destruction and to insure them to the extent that an act of infringement is attributable to possible culpable behaviour on the part of the customer.
- The customer shall be obligated to allow PFALZKOM employees or vicarious agents access at all times (365 days a year, 24 hours a day) to the customer connections installed by PFALZKOM, as far as this is necessary for the

fulfilment of the contract, in particular for the installation, maintenance, removal of faults, or disassembly of the system. The customer shall grant this right of access PFALZKOM or any third parties charged by PFALZKOM even after termination of this contract, regardless of the legal grounds, for the purpose of disassembly and removal the systems, as far as these are the property of PFALZKOM or PFALZKOM can assert claims for surrender, irrespective of the legal grounds.

- The customer shall be obligated to provide PFALZKOM's employees and vicarious agents with the information and documents required for their work. In particular, it must take all reasonable measures necessary to determine the defects and damage and their causes.
- The customer is obligated to introduce new applications or changes to existing applications that could have an impact on the provision of services only with the prior consent of PFALZKOM.
- The customer is obligated to keep its personal customer passwords, login IDs and passwords secret and to change them without undue delay or have them changed by PFALZKOM if it suspects that any unauthorised third parties have gained knowledge of them.
- The customer is obligated not to perform any work of any kind on any equipment brought in, on the line network or network connections and data transmission equipment provided by PFALZKOM. These are reserved exclusively for PFALZKOM or persons authorised by PFALZKOM.

13.3 The customer shall not misuse PFALZKOM's services. Apart from this, the customer shall not make any changes that could jeopardise the safety of the network operation. The customer further commits to not making any changes to PFALZKOM's connection facilities. The customer further commits to not using equipment or applications that may bring about any changes in the physical or logical structure of the PFALZKOM network.

13.4 The customer is obligated to connect only those devices and applications to the PFALZKOM network that comply with the relevant statutory regulations, in particular the regulations of the regulatory authority in accordance with the Telecommunications Act (*Telekommunikationsgesetz*; TKG) and the technical regulations.

13.5 The customer shall inform PFALZKOM without undue delay of any circumstances of which it becomes aware that could impair the functioning of the PFALZKOM network. The customer must inform PFALZKOM without undue delay of any recognisable damage to the PFALZKOM systems located on the customer's or owner's property and to the termination equipment.

13.6 The customer shall be responsible for any damage to and loss of the technical equipment, as far as this occurs within the customer's sphere of risk and responsibility. The customer must compensate PFALZKOM for any resulting damage, unless PFALZKOM is responsible for the damage/loss.

13.7 The customer may use the services provided by PFALZKOM as intended and in accordance with the laws as amended from time to time and must refrain from any unlawful actions. The customer shall be fully responsible for ensuring that PFALZKOM's services are only used within the scope of what is legally permissible and in compliance with all relevant statutory regulations and official requirements. PFALZKOM shall have the right to block access to an offer with illegal or immoral content at any time without prior notice.

13.8 The customer is solely responsible for the corresponding fulfilment of the obligations of use and cooperation by any third parties. This includes not only vicarious agents and assistants, but also third parties who operate within the customer's area of risk and responsibility.

13.9 The customer shall indemnify PFALZKOM against any third-party claims that may result from a breach of the aforementioned obligations.

13.10 The customer must maintain public liability insurance with a minimum cover of €1 million per damaging event at all times; this must be presented to PFALZKOM on request.

13.11 The customer is obligated to inform us or to have an authorised representative inform us of any changes to its name (for companies: also changes to the legal form, billing address, or registered office), its address, its bank details, fundamental changes to its financial circumstances (e.g., application for or opening of insolvency proceedings, foreclosure), its phone number or phone number block, and any other details essential to the contract without undue delay. If the customer culpably fails to communicate the change in its contractual data, it shall bear the costs for determining the data required to perform the contractual relationship.

#### **14. Transfer to third parties**

14.1 The services provided are intended for the customer. The customer must only pass on the services to be provided by PFALZKOM to third parties against payment or free of charge, in particular resell or sublet them, with the prior written consent of PFALZKOM. Third parties within the meaning of this provision are also affiliated companies of the customer within the meaning of §§ 15 et seq. of the German Stock Corporation Act (*Aktiengesetz*; AktG). Transfer to third parties may be objected to.

14.2 The customer must ensure that all customer obligations continue to be complied with by the third party within the scope of the authorised use of the respective service by third parties (whether for a fee or free of charge).

14.3 The customer must also reimburse any fees incurred as a result of authorised or unauthorised use of a service by third parties. The customer shall reimburse any fees incurred as a result of unauthorised use of the service if and as far as the customer is responsible for the unauthorised use. The customer shall be responsible for the behaviour of the third party as if it were its own in this case. The customer shall bear the burden of proof that it is not responsible for such use.

14.4 The customer shall be liable for any damage that arises from the authorised or unauthorised use of the services by third parties, as far as the customer is responsible for such use.

## **15. Warranty and claims for defects**

15.1 As far as the provisions of the Service Level Agreements on remedy of faults, penalties, and credit notes apply in the event of a service disruption, these provisions shall take precedence over the following provisions. The following shall apply apart from this.

15.2 PFALZKOM shall provide the service within the scope of the individual agreement, the special conditions and service level agreements, as well as these General Terms and Conditions, including their Special Terms and Conditions.

15.3 The customer must inspect the service provided by PFALZKOM without undue delay for obvious and recognisable defects upon handover/acceptance. The customer must inform PFALZKOM of any obvious defects within a period of no more than five working days following delivery.

15.4 The customer must inform PFALZKOM of any non-obvious defects without undue delay after they become known to it, but at the latest within one year of handover/acceptance.

15.5 Notification of defects shall require written form and must state the precise time of occurrence, the form of appearance and, if available, the error message.

15.6 The deadlines for notification of defects shall be preclusive deadlines; if the notification is not made in time, the customer shall no longer be heard with any claims arising from this.

15.7 If a service supplied by PFALZKOM is defective, PFALZKOM reserves the right to improve the service within a reasonable period of time. If the improvement fails within a reasonable period of time, the customer may choose to demand a corresponding reduction in the payment/rental fee for the duration of the poor performance or a credit note in accordance with the provisions of the respective service level agreement for the individual service.

15.8 The customer shall also have the right to termination of the respective defective service for cause if the improvement of defects has failed in spite of two reasonable grace periods being set. Further claims shall be excluded.

15.9 Representations or guarantees of individual services must be explicitly designated as such by PFALZKOM in writing.

15.10 PFALZKOM does not assume any warranty for defects due to unauthorised changes by the customer, its personnel, or vicarious agents or other third parties and not attributable to the sphere of PFALZKOM. Warranty shall be excluded in particular in cases of improper use, maintenance, or installation by the customer or in the event of extension, modification, or connection of the contractual product with other programmes. If PFALZKOM performs the removal of faults or remedy of defects in such a case, the associated costs shall be reimbursed in accordance with PFALZKOM's usual billing rates.

## **16. Fault clearance service**

16.1 As far as the provisions of the Service Level Agreements on remedy of faults, penalties, and credit notes apply, these provisions shall take precedence over the following provisions. The following shall apply apart from this.

16.2 If a network and/or other service disruption occurs, the customer must inform PFALZKOM of the disruption without undue delay; PFALZKOM shall initiate measures to remedy the disruption within the scope of its technical operational possibilities upon receipt of the disruption report by the Service Desk without undue delay.

16.3 Any further claims of the customer due to service disruptions shall be excluded. Liability in accordance with item 23 of these GTC shall not be affected by this.

16.4 If the customer is responsible for a fault, or if the fault reported by the customer does not actually constitute a fault, PFALZKOM shall have the right to charge the customer for any costs incurred by it for troubleshooting, remedy of the fault, or removal of the fault.

## **17. Offsetting and rights of retention**

17.1 The customer must only offset any undisputed or legally established claims against claims of PFALZKOM.

17.2 The customer must only assert a right of retention on the basis of undisputed or legally established counterclaims arising from the same contractual relationship.

## **18. Assignment**

18.1 PFALZKOM may transfer rights and obligations arising from the contract to a third party. The customer shall not have any right to terminate the contract in such a case.

18.2 The customer must only assign or transfer the rights and obligations arising from the contract or even just its claim to individual services from it to third parties if PFALZKOM has given its prior written consent.

## **19. Payment terms and objections**

19.1 The prices to be paid by the customer to PFALZKOM shall be determined in accordance with the agreed prices, otherwise in accordance with the valid prices or price lists. All prices are quoted in euros and subject to VAT at the applicable rate.

19.2 Usage-independent and flat-rate fees payable monthly are due within 14 days of receipt of the invoice unless a different payment term is specified in the invoice. This shall not apply to the first billing month; invoices for this month will be issued retrospectively. The customer's payment obligation shall commence on the day PFALZKOM first renders the service. If monthly fees are payable for parts of a calendar month, each day of the month for which payment is due shall be calculated at 1/30 of the monthly fee. Any other fees shall be payable after the service has been provided. All fees shall be due and payable upon receipt of the invoice.

19.3 Unless otherwise explicitly agreed in writing, the fee shall be collected from the customer's account by SEPA core direct debit in accordance with the customer's authorisation. The customer commits to ensuring that sufficient funds are available in the account specified by it for the settlement of the invoice amount at the time of the direct debit, which shall generally take place ten days after the invoice is sent. The customer must reimburse all costs incurred as a result of a returned direct debit, unless it can be proven that the customer exercised due care or that the loss would have been incurred even if this care had been exercised.



19.4 The customer must raise any objections to the invoice amount in writing within eight weeks of receipt of the invoice to the PFALZKOM customer service department specified on the invoice. Failure to lodge an objection in time shall be deemed authorisation. PFALZKOM shall make special reference to the objection period and the legal consequences of failing to raise an objection in time together with the demand for payment.

19.5 Deliveries and services for other expenses that are outside of the agreed service shall be invoiced in accordance with the actual cost of materials used as well as labour and travel times in accordance with PFALZKOM's price list valid at the time the service is provided.

19.7 Any refund claims of the customer shall be credited to the customer's invoice account and offset against the next due claim of PFALZKOM.

## 20. Customer's default

20.1 Interest shall be charged at a rate of 9% p.a. above the applicable base rate in accordance with §§ 247, 288 II BGB if the customer is in default, subject to the assertion of further damages caused by default.

20.2 PFALZKOM shall also have the right to charge a lump sum of €5 for any reminder costs incurred due to late payment, and a lump sum of €10 for the second reminder stage. The customer reserves the right to prove that PFALZKOM has suffered no or less damage in individual cases.

20.3 PFALZKOM reserves the right to demand advance payments or the provision of collateral in accordance with item 18 of these GTC or to terminate the contract for cause in accordance with these GTC in the event of repeated default of payment by the customer.

20.4 PFALZKOM reserves the right to assert further claims due to default in payment – irrespective of the legal reasons.

## 21. Force majeure

21.1 Cases of force majeure

- shall release PFALZKOM from its obligation to perform,
- shall release the customer from its obligation to pay remuneration for the duration of the force majeure, and
- shall exclude any liability of PFALZKOM.

21.2 Any external, unusual, third-party, unforeseeable events and events the effects of which on fulfilment of the contract could not have been foreseen by either contracting party, in particular not by PFALZKOM, and/or for which PFALZKOM is not at fault, are deemed to be force majeure. These events shall include, in particular, industrial action, including in third-party companies, interruption of the power supply, official measures, war, sabotage, natural disasters, disruption of telecommunications networks, and gateways, as far as they are beyond the control of PFALZKOM.

## 22. Liability

22.1 PFALZKOM shall be liable without limitation for any damage from violation of life, body, or health PFALZKOM.

22.2

a. PFALZKOM shall be liable without limitation and in accordance with statutory provisions for property damage and financial loss if and as far as it was caused wilfully or through gross negligence.

b. Subject to individual agreements with the customer and the provisions of §§ 69, 70 TKG and the Product Liability Act (*Produkthaftungsgesetz*), PFALZKOM shall otherwise be liable as follows:

- i. The amount of damages per damage event is limited to 10% of the annual price paid by the other contractual partner in the contractual year in which the damage event occurs, but in the case of several damage events to a maximum of 25% of this annual price per contractual year for any damages caused by the negligent breach of material contractual obligations that jeopardise the achievement of the purpose of the contract.
- ii. Liability shall be excluded for negligent breaches of contractual obligations that do not jeopardise the achievement of the purpose of the contract.
- iii. The limitation of liability in accordance with sentence 1 of this paragraph (in the event of negligent breach of material contractual obligations) and the exclusion of liability in accordance with sentence 2 of this paragraph (negligent breach of other obligations) shall not apply to gross negligence and not to damages in accordance with item 21.1. The provisions on liability in accordance with item 21 shall also apply to the legal representatives, employees, vicarious agents, and assistants of PFALZKOM.

22.3 Liability for the consequences of force majeure and for other causes for which PFALZKOM is not at fault is excluded as well.

22.4 Liability in accordance with the provisions of the Product Liability Act and mandatory statutory provisions shall remain unaffected.

22.5 PFALZKOM shall only be liable in terms of the reason for liability and the amount of liability to the extent assumed in the warranty in cases of non-compliance with warranty obligations explicitly agreed and assumed in writing.

22.6 PFALZKOM is always entitled to the defence of contributory negligence. PFALZKOM shall only be liable for the loss of data and programmes and their restoration if such loss could not have been avoided by the customer taking appropriate precautionary measures, in particular the daily creation of backup copies of all data and programmes.

22.7 If PFALZKOM's liability also gives rise to customer claims against PFALZKOM under the Service Level Agreement, the credits and penalties there shall be offset against the liability amount.

### 23. Contract term and termination

23.1 The term of contract shall commence upon the actual provision of the service and/or the notification of provision by PFALZKOM.

23.2 The contract is entered into for the contractually agreed duration (minimum contract term). The minimum contract term is 24 months unless otherwise stipulated in individual contracts or in the special conditions.

23.3 Contracts with a minimum term of contract may be terminated by either contracting party at the earliest at the end of the agreed minimum contract term. Notice of termination must be given to the other contracting party at least three months before the end of the minimum contract term, at least in text form. If the contractual relationship is not terminated, the contract shall extend by 12 months from case to case, with a period of notice of three months to the end of the respective term, unless § 56 of the TKG applies. 23.5 This shall not affect the right of either party to terminate the contract without notice for cause. Cause for PFALZKOM shall in particular be if the customer

- misuses the services of PFALZKOM,
- ceases its normal business activities or files for insolvency; the same shall apply if insolvency proceedings are opened against the customer's assets or compulsory enforcement measures are ordered against the customer's assets,
- has entered arrears with payment of the fee owed or a not insignificant part thereof for two consecutive months,
- has entered arrears with payment of the monthly recurring remuneration in a period extending over more than two payment dates in an amount equal to the remuneration for two months,
- does not fulfil or only partially fulfils PFALZKOM's request to provide collateral,
- does not submit an application for the conclusion of a contract of use from the person entitled in rem in accordance with item 6.1 of these GTC at the request of PFALZKOM within one month or the contract of use is terminated by the person entitled in rem,
- has committed a material breach of contract. This shall include tampering with the technical equipment or fraudulent behaviour.

Otherwise, PFALZKOM reserves the right to assert claims for damages.

23.6 If the customer terminates the contractual relationship before the contractual service has been handed over or accepted, or if the customer prevents the installation of a connection wholly or in part with the result that PFALZKOM terminates the contract, the customer must reimburse PFALZKOM for the expenses for work already performed and for the dismantling of telecommunications equipment already installed as a result of termination. Alternatively, PFALZKOM shall have the right, at its discretion, to demand a lump-sum compensation from the customer in the amount of 75% of the agreed fee for the minimum term. The customer shall have the right to prove that PFALZKOM has incurred no or only a lesser damage. Further claims for damages by PFALZKOM shall not be affected by this.

23.7 In the case of termination for cause by PFALZKOM, PFALZKOM may demand an immediately payable, flat-rate compensation of 75% of the fee that would have been payable by the customer up to the time of the next possible ordinary termination of the contract. The parties reserve the right to provide evidence of lower or higher damages.

23.8 If and as far as PFALZKOM has a right to terminate the contract without notice, PFALZKOM may also temporarily block the service. This block shall not affect the customer's obligation to pay.

### 24. Secrecy

24.1 The contracting parties commit to treating any information of the other contracting party obtained within the scope of the contractual relationship and designated as confidential by the other contracting party or to be regarded as confidential under the circumstances as confidential.

24.2 Information shall be deemed confidential in particular if any documents are handed over to the recipient with the declaration that the recipient must treat the information contained therein as confidential and contain a corresponding confidentiality notice. Apart from this, any knowledge PFALZKOM gains when rendering services for the customer and the facts relating to the provision of services for the customer and their results are considered confidential.

24.3 The confidentiality obligation shall not apply to such information that demonstrably

- was known or made accessible to the partner transmitting the information before the other partner became aware of it, or
- is lawfully disclosed to the partner to whom the information has been transmitted by third parties who are not subject to a confidentiality obligation, or
- subsequently becomes generally and publicly accessible.

24.4 The parties must not pass on or disclose any confidential information to any third parties until five years after termination of the contract unless the requirements of item 24.3 of these GTC are met.

### 25. Debt collection

25.1 PFALZKOM shall also have the right to transmit the customer's inventory and connection (traffic) data to the contractually bound debt collection companies for the purpose of assignment and collection of the claim.

25.2 The customer shall receive the addresses of the respective companies as well as more detailed information on data protection upon request.

### 26. State of the art and certifications

26.1 PFALZKOM shall render all services in line with the state of the art and adapts services as quickly as possible if the state of the art requires this.

26.2 The customer shall not have any claim to any PFALZKOM certifications that are not mandatory for PFALZKOM. This being said, PFALZKOM is free not to have certifications performed in the future. Such certifications do not constitute an integral part of the contract and their termination shall not give rise to any claims by the customer.



## **27. Final provisions**

27.1 These GTC and the Special Terms and Conditions and service level agreements apply in the version valid at the time the contract is concluded; PFALZKOM is authorised to amend or supplement these GTC with a reasonable period of notice. In this case, the customer shall have the right to object to such a change or addition. If the customer does not object within one month of receipt of the notification in this case, the amended or supplemented GTC shall apply from this point in time. The customer shall be informed about the possibility of objection and the deadline in connection with the notification of change.

27.2 This contract shall be subject to the law of the Federal Republic of Germany for domestic contracting parties to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

27.3 The place of fulfilment for PFALZKOM's services and the customer's payment debt shall be Ludwigshafen.

27.4 The place of jurisdiction shall be Ludwigshafen. Notwithstanding this, PFALZKOM may also assert claims at the customer's general place of jurisdiction. Any exclusive place of jurisdiction shall remain unaffected.

27.5 Deviations from these GTC or other contractual agreements shall require written form.

27.6 If any provision of these Terms and Conditions is invalid, this shall not affect the validity of the remaining provisions. The contracting parties shall strive to agree another condition in place of the ineffective condition which comes as close as possible to the ineffective condition in terms of meaning, technical, economic, and financial aspects.

27.7 PFALZKOM is prepared to participate in dispute resolution proceedings at the following consumer arbitration board: Consumer Arbitration Centre for Telecommunications of the Federal Network Agency P. O. Box 80 01, D-53105 Bonn.

## **Section 2: Special Terms and Conditions**

PFALZKOM offers the following product range:

- Managed Services
- Connectivity Services
- Colocation services

Further provisions are contained in the Special Terms and Conditions for the respective product booked by the customer. The provisions of item 2 of the General Section shall apply with regard to the order of precedence.