

General Terms and Conditions of MindMatics AG

The following terms and conditions apply to the services offered by MindMatics AG, depending on the contract:

- A. General terms and conditions for all services provided by MindMatics AG
- B. Special terms and conditions for payment services
 - B.1. Mobile payment
 - B.2. Premium SMS
- C. Special terms and conditions for messaging services
- D. Special terms and conditions for advertising inserts
- E. Special terms and conditions for added-value telephone services

A General terms and conditions (T&C) for all services provided by MindMatics AG

1 Validity of the contractual terms and conditions, contract creation

- 1.1 These T&Cs regulate the contractual relationship between MindMatics and its clients (companies).
- 1.2 Only the terms and conditions, the description of services and the price list shown below apply to the contractual relationship (contractual terms and conditions).
- 1.3 An Agreement is also created and constituted when MindMatics accepts a client's request by approving the services.

2 Formats

- 2.1 The transmission of messages (e.g. SMS, MMS or e-mails) is dependent on the client delivering to MindMatics the content of the message (e.g. text, pictures etc.) and the recipient numbers in the contractually specified format in good time, without errors and properly. For this purpose MindMatics makes available to the Client the respective blank forms.
- 2.2 MindMatics does not assume any liability for the delivered content and in particular is not obligated to store it or return it to the client.
- 2.3 MindMatics has the right but not the duty to process the delivered content or make changes and corrections to it, in particular in terms of volume, to the extent that such is required or advisable for optimal transmission.

3 Payments

- 3.1 The payments according to the price list are net amounts. The applicable value-added tax is added automatically.
- 3.2 At the end of each month MindMatics will prepare a statement showing the payment due. The payment is due in full upon receipt of the statement by the client. The client will automatically be in default if he fails to pay within 14 days after receiving the invoice.
- 3.3 MindMatics has the right to offset due payments against each other.

4 Defects

- 4.1 MindMatics will be liable for defects according to the legal regulations. Claims on the basis of defects that impair the efficiency of the service only slightly are not admissible.
- 4.2 Defects must be notified immediately in writing.
- 4.3 If a service to be provided by MindMatics directly is not provided at the originally scheduled time or is not provided completely or properly, MindMatics has the right to provide the proper service properly within a reasonable period. If two attempts at correction fail, the client may assert his legal rights. However, a withdrawal or the assertion of damages requires that a reasonable period be allowed to provide or correct the service.

5 Legal Liability

- 5.1 The client has the sole legal responsibility, in particular the liability under media law and anti-trust law, for the content of his services (i.e. messages, pictures, audio files etc). The client guarantees that rights of third parties will not be infringed by the respective services. The client guarantees not to publish or refer within the framework of his services to any illegal, immoral or pornographic content or content that outs children at risk. Such content is in particular any content
 - 5.1.1 that violates legal regulations, in particular under the criminal code or has other illegal or immoral content, especially content that serves to incite the population as defined in §§ 130, 130a and 131 StGB (Criminal Code), that aids and abets criminal behavior or glorifies and trivializes violence as well as content that is sexually offensive or pornographic in the sense of § 184 StGB or that is apt to morally corrupt children and teenagers or interferes with their welfare;

5.1.2 that violates the Children Protection Act (JöSchG) and, after taking effect, the Child Media Protection Treaty (JMStV);

5.1.3 that represents games of chance;

5.1.4 that disregards or violates the constitution of the Federal Republic of Germany;

5.1.5 that refers to topics and contents with predominantly sexual connotations;

5.1.6 that is of a racist or discriminatory nature and thereby apt to cause and/or promote racial tensions;

5.1.7 that is apt to encourage or abet someone to use harmful substances (also in the sense of the Drug or Narcotics Act);

5.1.8 that is apt to mislead someone regarding the content or the costs of the information offer contrary to the applicable anti-trust legislation;

5.1.9 that violates other legal provisions of applicable law or that might damage the reputation of MindMatics.

5.2 The client also undertakes not to send to consumers unsolicited messages, in particular no undesirable advertising messages, viruses, chain letters or other annoying messages or messages not requested by the customer.

5.3 In terms of content the services and the content of the services are subject to the code of conduct of the "Association for Voluntary Self-Control of Added-Value Telephone Services" (FST) based in Düsseldorf. The code of conduct as amended by the FST is accepted by and is binding on the client.

5.4 The client will make sure that all incoming messages (e.g. SMS, e-mail) meant for publication (e.g. in public chat rooms) are screened for content to filter out those messages that violate 5.1 above. For the purpose the client has an automatic check performed on incoming messages on the basis of a so-called "bad word" list and also performs an operator-supported check.

5.5 With regard to services apt to pose a substantial moral hazard to children and teenagers or to interfere with their welfare, the client undertakes to offer the services only with an effective access control, thereby making any use by minors impossible.

5.6 The client guarantees that he has all use rights of the contents (e.g. texts, photos, graphics, files, data carriers and videotapes etc.) transmitted by him which are required for using the respective service and that he owns all the necessary copyright, brand, intellectual property protection, personal and other rights. The use rights must include the right to transmit in or convert to the desired format (e.g. SMS).

5.7 MindMatics has the right but not the duty to check the content of the services and messages. MindMatics has the right to refuse to offer services that violate above provisions. No prior announcement is required. MindMatics will immediately inform the client about all actions taken in this context.

5.8 When providing his services the client will notify the end consumer of his name (company) and his address as well as name and address of the authorized representative. The client will meet his obligation to state the price of his service in advertisements and by way of direct information before the beginning of the service. The client must make sure that the legal requirements of provider identification (Art. 1 LuKDGs, § 6 TDG; § 6 MDSIV) are complied with. The client promises to see to it that he will meet his contractual obligations even if he offers contents of other providers or subcontracts other providers. In this case the client will hold such other providers responsible for complying with the conditions mentioned herein.

If the contents prepared, delivered, piped in, transmitted, marketed or offered by the client still contain material described in 5.1 and 5.2 above, MindMatics will have the right but not the duty to close the services or contents and the transmission pathway immediately and to ask for damages or a reduction in compensation, if any is due, in the amount of the losses incurred. In addition, in case of a breach by the client of the above-mentioned obligations, a fine in the amount of 25,000 Euro will be imposed for each breach. The client undertakes to hold MindMatics harmless against all damage, losses and costs (including fees for legal advice and for the lawyers engaged by MindMatics) that MindMatics might incur as a result of pending or current claims or within the framework of legal proceedings against MindMatics and/or the respective telecommunications providers to the extent that they are due to non-observance of the representations made and obligations incurred by the client in and under this Agreement or as a result of the content of the service.

5.9 Within the context of providing his services the client has the right to appoint and commission contractors in order to assure his contractual performance. In the process the client will be liable for violations or breaches of contract by his contractors in same way as for own errors.

6 Liability of MindMatics

- 6.1 In cases of intent or gross negligence on the part of MindMatics or its representatives or vicarious agents, MindMatics will be liable according to the legal regulations. In all other respects MindMatics is liable only under the product liability legislation for injury to life, body or health or for a culpable breach of material contractual obligations unless it maliciously concealed a defect or assumed a guarantee for the quality of the service. However, any claim for damages for a breach of material contractual obligations is limited to losses that are typical for this type of contract and are foreseeable. The above provisions include restitution in addition to the service and restitution in lieu of the service, irrespective of the legal reason, in particular for defects, breach of duty under debt obligations or for illegal acts; they also apply to reimbursement for expenses made in vain. However, the liability for default is governed by 6.2, the liability for inability to perform by 6.3.
- 6.2 MindMatics will be liable for any delayed performance of services in case of intent or gross negligence on the part of MindMatics or its representatives or vicarious agents according to the legal regulations. In all other respects the liability of MindMatics for any delayed performance of services is limited to the losses that are typical for this type of contract and are foreseeable. Any further claims of the buyer are excluded, notwithstanding the provision of 4.3. The above provision does not apply to any liability for injury to life, body or health.
- 6.3 MindMatics will be liable for any inability to perform the services in case of intent or gross negligence on the part of MindMatics or its representatives or vicarious agents according to the legal regulations. In all other respects the liability of MindMatics for any inability to perform the services is limited to the losses that are typical for this type of contract and are foreseeable. Any further claims of the buyer for inability to perform are excluded. The above provision does not apply to any liability for injury to life, body or health. The right of the client to rescind the Agreement remains unaffected.
- 6.4 The client may withdraw from the Agreement within the framework of the legal regulations only if MindMatics is responsible for the breach of duty; however, the legal regulations prevail in case of defects. In case of a breach of duty the client must indicate within a reasonable period after being reminded by MindMatics whether he will withdraw from the Agreement because of the breach of duty or whether he will insist on receiving the service.
- 6.5 MindMatics is responsible only for the proper transmission and reception of SMS, but not the actual access at the GSM network operators or at the client. MindMatics will not be liable for any wrongdoing on the part of the GSM network operators or the telecommunications service providers or for force majeure or technical interference falling with the responsibility of other companies (e.g. concerning the transmission paths of telecommunications companies or disruptions at access providers). Any claims under the respective service to which MindMatics is entitled in such cases are assigned herewith to the client. With regard to the GSM network operators or telecommunications service providers MindMatics will only be responsible for the proper selection (referred job order).
- 6.6 If MindMatics is liable on the substance, the damages are limited to the foreseeable loss.
- 6.7 The liability is limited to a maximum of 10,000 Euro per loss event. This does not apply to the willful causation of the event that led to the loss. In case of gross negligence MindMatics is liable according to the legal regulations.
- 6.8 Insofar as the services provided by MindMatics AG are telecommunications services, § 7 of the Telecommunications Consumer Protection Ordinance applies.
- 6.9 The statute of limitations for all claims against MindMatics expires after 12 months. However, in case of intent, injury to life, body or health, in case of claims under the product liability law, in case of grossly negligent breach of duty or in case of a breach of a material contractual obligation the legal regulations will apply. The same applies if MindMatics maliciously concealed a defect or assumed a guarantee for the quality of a service.
- 6.10 If the liability is excluded, it also applies to the personal liability of employees, representatives, subcontractors and other cooperators.
- 6.11 The liability of MindMatics for the recovery of provided data is also limited in the sense that a liability only exists if the client has made sure that the provided data can be recovered at reasonable cost from the data material available in machine-readable form.

The above liability provisions concern contractual claims as well as claims outside the Agreement.

7 Maintenance Work/Disruptions

- 7.1 If scheduled maintenance work is necessary, it will be announced three (3) days beforehand. The maintenance work will be carried out preferably during the hours between 10:00 p.m. and 9:00 a.m. the next day.
- 7.2 If unscheduled maintenance work becomes necessary in order to maintain the functionality of the system, the client will be contacted immediately with an indication of the starting time and likely completion time. If unscheduled maintenance work or troubleshooting becomes necessary for reasons attributable to the environment of the client and if this interferes with the functionality of the systems, the resulting downtimes are not taken into account when calculating the availability due under the Agreement.
- 7.3 The restriction or temporary suspension of services within the framework of maintenance work does not create any liability claims of the client against MindMatics unless MindMatics can be faulted for culpable conduct. In this case § 6 applies.

8 Confidentiality, Data Protection

- 8.1 The contracting parties undertake to keep all information and data received by them from the respective other party in connection with the implementation of this Agreement confidential and not to disclose it to third parties. This applies in particular to price lists and agreements. This obligation will survive the expiration of the Agreement.
- 8.2 The parties may disclose confidential information of the respective other party to their governing bodies, executives, employees, representatives or consultants (hereinafter referred to as "representatives") insofar as these need the respective information for achieving the purpose of this Agreement.
- 8.3 The contracting parties will be liable for any breach of this Agreement by their representatives or by associated companies and their representatives. They undertake to take all necessary actions at their own expense in order to keep their representatives as well as associated companies and their representatives from disclosing or using confidential information in violation of § 8.1.
- 8.4 The client is herewith informed pursuant to § 33 para.1 of the data protection laws that MindMatics stores its data in machine-readable form and processes it mechanically for the purposes of the Agreement. To the extent that MindMatics calls upon third parties to provide its services it has the right to disclose the data if necessary. The client expresses his explicit agreement with such storage, processing and disclosure.

9 Changes to the Agreement

- 9.1 In case of any changes to the costs of the product (e.g. if purchase conditions are tightened) or in case of other cost changes in the telecommunications industry MindMatics reserves the right to adjust the stipulated compensation and the stipulated receivables purchase price. MindMatics will inform the client of the respective changes in good time before they become effective and will have the right to demand a reasonable reduction in the compensation or a change or suspension of service.
- 9.2 MindMatics has the right to change the Agreement if this is necessary because of an overall change in the technical conditions for maintaining the service or because of changed legal requirements, in particular on the part of the courts or the responsible oversight authorities. The changes must be reasonable for the client. MindMatics will inform the principal of such changes four weeks in advance. Changes are deemed approved if the client does not raise a written objection. MindMatics will make it a point to remind the client of the consequences when announcing changes. The client must mail the objection to MindMatics within four weeks after the announcement of the change.

The right to change the Agreement under the legal regulations remains unbridged.

10 Miscellaneous Provisions

- 10.1 Side agreements, changes and additions require the written form to be effective. This also applies to the waiver of the written form requirement itself.
- 10.2 The client is allowed to offset a claim against MindMatics only if the claim of the client has been found to be undisputed or legally effective. The same applies to the exercise of a retention right by the client. However, the exercise of a retention right is possible for defects if the service is manifestly defective. In the latter case the client has the retention right only if the retained amount is in reasonable proportion to the defects and the expected costs of the remedy.

General Terms and Conditions of MindMatics AG

- 10.3 MindMatics has the right to assign the performance of its contractual obligations in part or in full to third parties.
 - 10.4 The laws of the Federal Republic of Germany apply to all legal relationships of the parties, with the U.N. Convention on the International Sale of Goods being excluded. The place of performance is Munich. Munich is the exclusive venue for all disputes arising from the contractual relationship if the client is a business entity with all rights and duties under the Commercial Code, a legal person under public law or an autonomously operated public enterprise of if he has no general jurisdiction in Germany.
 - 10.5 Should one of the above provisions become invalid, the remaining conditions will not be affected. The invalid provisions will then be replaced by mutual agreement with another provision that comes closest economically and in its intention to the invalid provision.
 - 10.6 MindMatics reserves the right to change these general terms and conditions. Any such changes will be notified to the client in electronic form per e-mail. They are considered as approved if the client does not object by mail or e-mail. MindMatics will make it a point to remind the client of the consequences when announcing the changes. The client must mail his objection to MindMatics within four weeks from the announcement of the changes. If the client does not exercise his right to object, the new general terms and conditions will become effective with the expiration of the objection period. If the client does object, MindMatics may terminate the Agreement four weeks after receiving the objection, effective two weeks later.
- B. Special Terms for Payment Services**
- B.1. Mobile payment**
- 1 Scope**
 - 1.1 These special terms and conditions for mobile payment regulate, beside the general terms and conditions in part A of these T&Cs, the contractual relationship between MindMatics and its clients for the implementation of mobile payment services (e.g. mopay™).
 - 1.2 Mobile payment services include the settlement of on one hand cell phone-related services as well as contents from the Internet, WAP contents and other contents by sending a cell phone invoice to the end user which is generated via the direct payment interfaces of the network operators.
 - 2 Sale of receivables to MindMatics**
 - 2.1 Insofar as cell phone customers use cell phone-related services of the client or his contractors (hereinafter: "contracting parties") via the T-Mobile, Vodafone D2, e-Plus and/or O2 networks using the mobile payment services, the client or the contracting party acquires thereby its own claim against the cell phone customer in the amount of the gross payment share less the payment share for the telecommunications service. If the holder of the claim under clause 1 is the contracting party, the client ensures, by way of a suitable agreement with the contracting party, that he acquires this claim as well as the resale rights to MindMatics mentioned in item 2.4, clause 2.
 - 2.2 The client undertakes to offer for sale to MindMatics all receivables from cell phone customers as defined in item 2.1 created after the execution of this Agreement. MindMatics will accept the purchase offers of the client and resell the receivables to the respective telecommunications service provider. It is not necessary to send the acceptance declaration to the client. The legal validity of the acceptance declaration is under the suspensive condition that
 - 2.2.1 the qualified cell phone customer has actually ordered the cell phone-related services on which the respective claim is based ,
 - 2.2.2 the cell phone-related services on which the claim is based have actually been delivered as required to the cell phone customer,
 - 2.2.3 the receivable can actually be sold to the respective telecommunications service provider who asserts the claim against the cell phone customer, and that the client himself, or through the contracting party, provides to MindMatics the following information about the transaction underlying the claim: time stamps of the performance, transaction ID, MSISDN of the cell phone customer, gross amount in €, net amount in €, value-added amount in €, value-added tax rate as applicable, indication of the added-value service, classification of the contents,
 - 2.2.4 the respective cell phone-related services on which the claim is based were provided in compliance with in the pertinent legal requirements and the requirements of this Agreement and
 - 2.3 the authorization of the transaction - if necessary - was confirmed electronically to MindMatics beforehand by the respective telecommunications service provider.
 - 2.4 If the number of the purchased and invoiced receivables is in dispute, the parties will try to arrive at a mutually agreeable solution. However, in case of doubt the statement prepared by the respective telecommunications service provider is decisive unless the client can prove that the statement is incorrect.
 - 2.5 The client herewith assigns to MindMatics the payment claims sold on the basis of item 2.2. Furthermore, the client hereby also assigns to MindMatics, insofar as legally permitted, all other rights and claims from contractual relationships of the client or the contracting party with the cell phone customers, in particular all independent rights to alter legal relationships, all dependent rights to alter legal relationships that are not of a highly personal nature or that serve to enforce the sold payment claims as well as all claims for damages of the client or the contracting party against the cell phone customer including all collateral provided for the purpose. If following that any rights to alter legal relationships remain with the client, the client will obtain the approval of MindMatics before exercising them, or exercise them or cause them to be exercised upon the request of MindMatics. MindMatics accepts the assignment.
 - 2.6 The client assumes the risk for the existence, transferability and freedom from exceptions and objections against the sold claims up to the time of their fulfillment. He also assumes the risk that the claims might be changed later in their legal existence or extinguished through a legal challenge or an offset and/or that the goods and services provided by the client to the cell phone customer are not in compliance with the contract and that the cell phone customer therefore is able to demand a replacement, price reduction, contract cancellation, damages for breach of duty or assert retention rights. If one of the above-mentioned risks materializes, the client must reimburse MindMatics for all legal costs incurred by necessity by MindMatics in this context.
 - 2.7 In case the cell phone customer refuses to pay for one of the reasons mentioned in item 2.5, MindMatics has the right to cancel the respective receivable purchase contract and assign the respective claim back to the client against payment of the purchase price.
- 3 Setting up the Services**
- 3.1 Before beginning a service, the client must provide to MindMatics a service description for each individual service.
 - 3.2 After the client places an individual order, MindMatics will advise the client when and on which network the requested service is likely to be provided. There might be delays caused by the telecommunications service providers in particular when awarding the Short IDs within the framework of the SMS reception. The approval of the requested services lies within the discretion of the telecommunications service providers. The service may be offered to the respective cell phone customer of the telecommunications service providers only after the approval has been granted. MindMatics will not be liable for any delays on the part of the telecommunications service providers.
 - 3.3 The client is obligated to actually provide the indicated and approved service. The utilization of a mobile payment service is not permitted if an offer is made to the cell phone customer under false pretences or if the latter receives nothing in return.
 - 3.4 The client undertakes to handle and offer via the provided connections only the services stipulated and described in the service description. If he directly or indirectly offers services other than the services described in detail via the mentioned connections, the client is guilty of improper conduct and will not receive any compensation from MindMatics for such services.
 - 3.5 In offering participation in games of chance the client also undertakes to offer, aside from the chance to participate per SMS, a generally recognized, alternative way to participate from which he will not derive any income, e.g. by postcard, for answering of the respective game question.
 - 3.6 In case of subscription services and mobile payment services the client undertakes not to resell these services to third parties.
 - 3.7 If a service makes it necessary to send SMS or MMS (SMS-MT or MMS-MT) to cell phone customer, these must be sent directly via the cell phone network of the respective telecommunications service provider (direct scheduling). In this case the client will provide each MT with the speed dial number as the sender number.
 - 3.8 The client guarantees an availability of his applications during the course of a year of 99 % on average. Downtimes caused by the Internet service provider, maintenance work or other circumstance beyond the control of the client are not considered.

General Terms and Conditions of MindMatics AG

4 Information Obligation of the Client

- 4.1 The client undertakes to comply with the communications guidelines of MindMatics AG as amended. These may be inspected under www.MindMatics.de.
- 4.2 The obligations of the client under the Price Indication Ordinance (PAngV) are not affected by the above. Should the service provider, as a result of future requirements, be obligated to indicate prices in a way that is in conflict with the communications guidelines, it is made clear that the observance of the legal requirements must be given priority by the service provider.

5 Customer Hotline

- 5.1 All questions from cell phone customers regarding the content of a certain service are answered by the client.
- 5.2 The client undertakes to install a hotline for customer inquiries. The client must guarantee that the hotline can be reached around the clock and 365 days per year 80% of the time with a 30 second pick-up time.
- 5.3 The hotline must be a toll-free number without cost to the caller.

6 Fine/Termination

- 6.1 If the client culpably violates one of the afore-mentioned obligations under item 3-5, he is liable to pay a fine in the amount of 10,000 Euro per violation. This does not affect any other claims for damages by MindMatics against the client.
- 6.2 MindMatics also has the right to terminate the Agreement early if the client has culpably violated the obligations regulated in the special terms and particular conditions for mobile payment. This does not affect any other termination rights of MindMatics.

7 Compensation

- 7.1 MindMatics determines the number of the billing records, for which MindMatics has received a compensation claim from the respective telecommunications service provider for the respective month. The number of these billing records forms the basis for the respective monthly settlement of the compensation (distribution to the client).
- 7.2 Contrary to the above, no billing records are reimbursed for which MindMatics has not received compensation from the telecommunications service providers and operators. This applies in particular to a lack of compensation because of a courtesy allowance, exceptions, objections or retention rights such as offsets, challenges, price reductions, cancellations, damages or upgrade claims.
- 7.3 At the end of each month MindMatics will prepare a statement. All payments are due within 7 days after MindMatics has received payment from the telecommunications service providers.
- 7.4 Any remaining balances under 7.1 will be settled in the following month.

8 Courtesy allowance

- 8.1 In the event of an end user claim the parties agree on a courtesy limit for complaints per telephone number up to a gross amount of 15 Euro per invoice period. Up to that amount MindMatics will undertake all actions and arrangements with the cell phone customer that it considers appropriate; in particular it will grant deferrals and discounts and conclude out-of-court settlements. If complaints exceed this courtesy limit, the parties will seek a practical solution on a case-by-case basis.
- 8.2 The client will indemnify MindMatics for all expenses incurred in this context, and in particular for the respective claim amount; MindMatics has the right to deduct the respective amounts from the compensation on the occasion of the next settlement.

B. Special terms and conditions for payment services

B.2. Premium SMS

1 Scope

- 1.1 These special terms and conditions for mobile payment regulate, in addition to the general terms and conditions in part A of these T&Cs, the contractual relationship between MindMatics and its client for the operation of the Premium SMS Services by means of the for-pay Premium SMS numbers.
- 1.2 Premium SMS Services include the settlement of cell phone-related services through special-rate SMS.

2 Setting up the Premium SMS services

- 2.1 The reception of SMS (SMS-MO) from the cell phone customer by MindMatics is currently only technically possible if the respective cell phone customer has set up the short message center (SMSC) of the respective network operator (e.g. T-Mobile, Vodafone, E-Plus or O2) or of a telecommunications service provider (e.g. debitel, MobilCom, Talkline, Phonehouse or VICTORVOX) - hereinafter referred to collectively as "telecommunications service providers" - in his terminal device with the respective Premium SMS offer. If the short message center of a telecommunications service provider does not offer the Premium SMS service, an SMS sent there may not be received properly or may not be rated at the premium price.
- 2.2 If the service makes it necessary to send SMS (SMS-MT) to the cell phone customer, it is necessary to schedule them via the cell phone network of the respective telecommunications service provider. In this case the client will provide each SMS-MT with the speed dial number as the sender number in order to enable an unambiguous allocation of the SMS-MT to the respective SMS-MO or the rate associated with it. Other arrangements can be stipulated separately in the agreement.
- 2.3 The transmission of SMS (e.g. text, pictures etc.) is dependent on the client delivering to MindMatics the content of the SMS (e.g. text, pictures etc.) and the recipient numbers in the contractually specified format in good time, without errors and properly. MindMatics provides the client with a blank form for this purpose.
- 2.4 MindMatics has the right but not the duty to process the delivered content and, insofar as it is necessary or advisable for optimal transmission, to make changes and corrections, in particular in terms of size.
- 2.5 MindMatics owes only the proper transmission and reception of SMS, but not the actual access at the telecommunications service providers.
- 2.6 The provisions under part B (special terms and conditions for mobile payment), items 3.1 to 3.5 apply accordingly.

3 Compensation/Payments

- 3.1 The compensations and payments according to the price list are quoted net plus the applicable value-added tax.
- 3.2 Compensation as referred to in this Agreement, these T&Cs and the Price List is:
 - 3.2.1 either the purchase price for buying claims against cell phone customers who use the respective Premium SMS Service of the client via the short message center of the telecommunications service provider as defined in item 4;
 - 3.2.2 or the commission for intermediating the telecommunications turnover between the respective telecommunications service provider and the cell phone customers who use the respective Premium SMS Service via the short message center of the telecommunications service provider as defined in item 5.
- 3.3 At the end of each month MindMatics will issue an invoice for the previous month for the compensation or payment. All payments are due within 14 days after the invoice is issued.
- 3.4 MindMatics determines the number of SMS for which MindMatics has received compensation from the respective telecommunications service provider for the respective month. The number of these SMS forms the basis for the respective monthly invoice of the compensation (distribution to the client). Of relevance is the number of SMS for which MindMatics has actually received compensation irrespective of whether they were properly sent or received by the cell phone customer unless MindMatics is responsible for not sending or receiving them.
- 3.5 The calculation of the payment to be made to MindMatics is determined based on the monthly number of SMS that the client has sent to MindMatics for relay to the cell phone customer or that MindMatics has received from the cell phone customer irrespective of whether these were sent to the cell phone customer or to the client unless MindMatics is responsible for not sending them.

4 Sale of receivables to MindMatics/compensation

- 4.1 Insofar as cell phone customers use Premium SMS Services of the client via the short message centers of Vodafone, O2, debitel, Phonehouse, VICTORVOX or Talkline, the client herewith acquires his own claim against the cell phone customers in amount of the gross payment share (see price list).
- 4.2 The client undertakes to offer for sale to MindMatics all receivables from cell phone customers as defined in item 4.1 created after the execution of this Agreement according to the price list. This purchase price corresponds to the

General Terms and Conditions of MindMatics AG

compensation under item 3. MindMatics will accept the purchase offers of the client and resell the receivables to the respective telecommunications service provider. It is not necessary to send the acceptance declaration to the client.

- 4.3 The client herewith assigns to MindMatics the sold payment claims. Furthermore, the client hereby also assigns to MindMatics, insofar as legally permitted, all other rights and claims under contractual relationships with the cell phone customers, in particular all independent rights to alter legal relationships, all dependent rights to alter legal relationships that are not of a highly personal nature or that serve to enforce the sold payment claims as well as all claims for damages of the client against the cell phone customer including all collateral provided for the purpose. If following that any rights to alter legal relationships remain with the client, the client will obtain the approval of MindMatics before exercising them, or exercise them or cause them to be exercised upon the request of MindMatics. MindMatics accepts the assignment.
- 4.4 The client assumes the risk for the existence, transferability and freedom from exceptions and objections against the sold claims up to the time of their fulfillment. He also assumes the risk that the claims might be changed later in their legal existence or extinguished through a legal challenge or an offset and/or that the goods and services provided by the client to the cell phone customer are not in compliance with the contract and that the cell phone customer therefore is able to demand a replacement, price reduction, contract cancellation, damages for breach of duty or assert retention rights.
- 4.5 In case the cell phone customer refuses to pay for one of the reasons mentioned in item 4.4 MindMatics reserves the right to assign this claim back to the client. In this case, any services received must be returned.

5 Commission/Compensation

- 5.1 Insofar as cell phone customers use Premium SMS Services of the client via the short message centers of T-Mobile, E-Plus and MobilCom, the preceding companies acquire thereby the entire claim against the cell phone customers in the amount of the total gross end user price (see price list).
- 5.2 For each SMS for which MindMatics receives compensation from the respective telecommunications service provider the client receives from MindMatics a commission for the mediated telecommunications service according to the price list. This commission corresponds to the compensation under item 3.
- 5.3 Item 4.4 applies accordingly. In this case the client does not receive any compensation.

6 Information Obligation on the part of the Client, Hotline, Fine/Cancellation, Courtesy Allowance

- 6.1 Items 4, 5, 6 and 8 of Part B.1 (Special terms and conditions for mobile payment) apply accordingly.

C. Special terms and conditions for messaging services

1 Scope

- 1.1 These special terms and conditions for messaging services regulate, beside the general terms and conditions in part A of these T&Cs, the contractual relationships between MindMatics and its customers for the operation of the messaging services.
- 1.2 Messaging services include e.g. the transmission and reception of SMS, MMS and e-mail.

2 Setting up the messaging services

- 2.1 Before beginning the service, the client must provide MindMatics with a service description for each individual service.
- 2.2 When MMS are delivered to the respective cell phone customers, the contents are adapted by the respective MMSC of the telecommunications service provider in accordance with the capabilities of the receiving terminal device (for example cell phone). To some extent only terminal devices sold by the respective telecommunications service provider are supported. The client will remind the cell phone customer of this circumstance in advertising for the contents.

D. Special terms and conditions for advertising inserts

1 Scope

- 1.1 These special terms and conditions for advertising inserts regulate, beside the general terms and conditions in part A of these T&Cs, the contractual

relationships between MindMatics and its client for booking advertising campaigns and for creative services.

2 Advertising inserts

- 2.1 The material must be available at MindMatics at the latest two working days before the insert.
- 2.2 MindMatics does not assume any responsibility for the delivered material and in particular is not obligated to store it or forward it to the client.
- 2.3 If the client wishes to make changes after the fact to the respective advertising material during an ongoing job MindMatics will try to take the changes into consideration. In this case MindMatics reserves the right to charge for any additional expenses.

3 Ordering individual campaigns

- 3.1 The client may decide with each individual campaign which target groups to reach and which maximum range to cover.
- 3.2 Upon the client's request MindMatics will calculate the maximum coverage obtainable for the planned campaign taking into consideration the desired filters. All data regarding reach are to be understood as projected values.
- 3.3 The client may freely choose the individual timing of the advertising inserts in consultation with MindMatics and taking into consideration the available capacities.
- 3.4 MindMatics has the right, at its reasonable discretion, to reject advertising inserts for editorial or other reasons. In this case, no compensation is due for the rejected advertisement.

4 Discounts

- 4.1 Discounts are granted only on the pure media inserts.
- 4.2 MindMatics grants a 15% AE commission against proof of agency activity and invoice.

E. Special terms and conditions for added-value telephone services

1 Scope

- 1.1 These special terms and conditions for telephony / IVR and audiotext regulate, beside the general terms and conditions in part A of these T&Cs, the contractual relationships between MindMatics and its customers for the operation of the service call numbers (0137, 0180, 0190, 0900, 0800) and the operation of the associated added-value telephone services.

2 Services to be provided by MindMatics

- 2.1 Within the framework of the technical and operational possibilities, MindMatics will,
- 2.1.1 set up the service call number assigned to the client,
- 2.1.2 establish the connection between the caller and the service call number and
- 2.1.3 forward the incoming calls for the service call number to the target(s) indicated by the client.

3 Obligations of the client

- 3.1 The client makes sure that the holder of the connection to which the incoming telephone is to be forwarded has approved the call forwarding.

- 3.2 The client makes sure that the telephone calls are not forwarded to a connection at which incoming calls are also forwarded.
- 3.3 The client makes sure that at least 50% of the calls forwarded to the target indicated by the client are accepted at the target. If less than 50% are accepted, MindMatics may limit the number of the simultaneously possible call attempts or forward the calls to a standard announcement.

4 Compensation

- 4.1 MindMatics determines the number of the billing records, for which MindMatics has received a compensation claim from the respective telecommunications service provider for the respective month. The number of these billing records forms the basis for the respective monthly settlement of the compensation (distribution to the client).
- 4.2 Contrary to the above, no billing records are reimbursed for which MindMatics has not received compensation from the telecommunications service providers and operators. This applies in particular to a lack of compensation because of courtesy allowances, exceptions, objections or retention rights such as offsets, challenges, price reductions, cancellations, damages or upgrade claims.
- 4.3 At the end of each month MindMatics will prepare a statement. All payments are due within 7 days after MindMatics has received payment from the telecommunications service providers.
- 4.4 Any remaining balances under 4.1 will be settled in the following month.

5 Reselling/Cession

- 5.1 The client undertakes to use the contractual service telephone numbers only for his own purposes. The client may therefore not allow third parties to use the contractual service telephone numbers or the services of MindMatics.

Status: 25 January 2006