

General Terms and Conditions of EurExcel Telecom Österreich GmbH for Carrier Preselection Telecommunications Services in Austria

- 1. Definitions [in alphabetical order of German version]**
- 1.1 **"Customer Equipment"** means telephone lines and insofar as EurExcel also provides Internet Services, modems and other telecommunications equipment used to access the Service and which is used by or under the control of Customer.
- 1.2 **"Carrier-Preselection-Service" or "CPS-Service"** means the provision of a direct access to the telecommunications service provided by EurExcel, that allows the Customer to choose a default carrier network in advance without dialling an Access Code.
- 1.3 **"Services"** means CPS-Services.
- 1.4 **"Direct Debit/Continuous Authorisation"** means the authorisation of EurExcel to collect payment from Customers by direct debit from a Customer's bank account or via a Customer's credit card.
- 1.5 **"Internet Site"** means the homepage of EurExcel, which can be accessed under www.eurexcel.at.
- 1.6 **"KSchG"** means the Austrian Consumer Protection Act in the applicable version (BGBl. 1979/140 idF BGBl I 2001/48 GewRÄG).
- 1.7 **"Customer"** means consumers as described in § 1 KSchG in Austria, which make use of the Services, or consumers who act under the authority of such consumers.
- 1.8 **"Customer Service Centre"** means the customer support service provided by EurExcel under the toll-free number 0800 1023 10. The postal address of the Customer Service Centre is Bismarckallee 7a, 79098 Freiburg, Deutschland.
- 1.9 **"Service Descriptions"** means the descriptions and explanations of the Services provided by EurExcel, which are published on the Internet Site and which form an integrated part of these General Terms and Conditions.
- 1.10 **"Price List"** means the current list of prices for the Services of EurExcel, including technical support, which is published on the Internet Site from time to time. The Price List can also be requested from the Customer Service Centre.

- 1.11 "**TKG**" means the Austrian Telecommunications Act in the applicable version (BGBl I Nr. 70/2003).
- 1.12 "**Telecommunications Network**" means the telecommunications systems, which are operated in accordance with the Austrian telecommunications law by telecommunications operators and which the Customer Equipment is connected to.
- 1.13 "**Contract**" means the agreement concluded between EurExcel and the Customer with respect to CPS-Services, including these General Terms and Conditions, Service Descriptions and Prices according to the Price Lists as well as any amendments thereto.
- 1.14 "**EurExcel**" means EurExcel Telecom Österreich GmbH, Wagramer Strasse 19, 1220 Vienna registration number FN 231943v, or other affiliated or subsidiary company with the firm name EurExcel Telecom or a company affiliated with these.

2. Subject-Matter of the General Terms and Conditions

- 2.1 These General Terms and Conditions shall regulate the contractual relationship between EurExcel and the Customer concerning the use of the CPS-Services.
- 2.2 EurExcel will provide the Services exclusively in accordance with these General Terms and Conditions as well as the Service Descriptions and the Price List. Diverging terms and conditions by the Customer shall not apply even if EurExcel does not object to them explicitly.
- 2.3 EurExcel is entitled, at its own discretion, to adapt these General Terms and Conditions, Service Descriptions and the Price List, the latter if required in view of technical, organizational or business requirements, in particular in the event of a substantial change in the cost structure of third party networks beyond the control of EurExcel. Changes in the General Terms and Conditions and/or the applicable prices will be published on the Internet Site prior to their coming into force. Changes in the General Term and Conditions and/or the applicable prices which are not exclusively to the advantage of the Customer will be published on the Internet Site at least two months prior to their coming into force. The main content of the changes which are not exclusively to the advantage of the Customer will be notified to the Customer at least one month prior to their coming into force and the Customer shall be notified that the changes will apply unless the Customer gives to EurExcel explicit notice prior to the coming into force of the changes that either
- 2.3.1 the Customer terminates the Contract free of charge; or

2.3.2 the Customer objects to the changes and wishes to maintain the Contract pursuant to the previous terms.

The Customer shall be notified expressly of the meaning of the notice according to Para 2.3.1 or 2.3.2. The Customer will be provided the entire text of the changes on his request without any charge.

2.4 Any and all declarations to EurExcel pursuant to these General Terms and Conditions may be submitted to the Customer Service Centre in writing (mail, fax, e-mail) or by telephone, unless otherwise provided by the General Terms and Conditions.

3. Term of the Contract

3.1 The Contract concerning the CPS-Service comes into force from the date that EurExcel successfully activates the Customer's CPS-Service following the written application (Para 2.4) of the Customer. If not otherwise indicated in the Service Description or otherwise individually agreed, EurExcel will activate the CPS-Service no later than eight weeks following the written application. EurExcel may offer to the Customer to be billed with or without a monthly fee. EurExcel shall confirm the activation of the CPS-Service in writing.

3.2 The information necessary for the use of the CPS-Service pursuant to § 5d (1) and (2) KSchG will be provided by EurExcel in an information letter.

The Customer as consumer in the meaning of § 1 KSchG is entitled to withdraw from the Contract in writing within seven business days (whereas Saturdays do not count as business days) after the conclusion of the Contract. The Consumer must send off the notification of withdrawal within the above - mentioned withdrawal period. The right to withdraw from the Contract does not apply if EurExcel commences with the provision of the Services as agreed within seven business days.

3.3 Further, EurExcel and the Customer can both terminate the Contract in writing at the end of each month by giving one month notice prior to the desired date of termination to the respective other party of the Contract. EurExcel reserves the right to charge the Customer an administrative fee according to the Price List, if the Customer terminates the Contract concerning the CPS-Service within six months following activation of the CPS-Service, unless the termination is caused by a substantial breach of Contract by EurExcel (Para 2.3 and 3.5).

3.4 The Customer agrees to pay EurExcel any monies (billed or unbilled) due and owing at the time of termination and that may become due thereafter. In the event that

EurExcel holds a deposit from the Customer, EurExcel shall return the balance of such deposit after the deduction of all invoices payable.

- 3.5 EurExcel reserves the right to terminate the Contract and the provision of the Services with immediate effect, in the event of a substantial breach of the Contract by the Customer, by giving Customer written notice. Para 8.1.3. to 8.1.9. are in particular deemed to be a substantial breach of the Contract. This does not affect the right of the Customer to terminate the Contract in the event of a substantial breach of Contract by EurExcel. In the event of such a termination by Customer, EurExcel shall refund an eventual monthly fee proportionally.

4. Credit Standing of Customers

EurExcel reserves the right to:

- 4.1 collect information concerning the Customer's creditworthiness from the Protective Association for General Credit Protection, from credit rating agencies or credit insurance companies for the purpose of credit rating with regard to the Customer; Customer gives its explicit consent thereto; and/or
- 4.2 require the Customers to make its payments only by direct debit/ continuous authorisation or by credit card.
- 4.3 request from the Customer for use of the Service, to provide a deposit as EurExcel may reasonably decide. EurExcel may use the deposit, in full or in part, towards any amounts owed to it by Customer.

5. Services

- 5.1 The CPS-Customer can establish a direct connection to the network of EurExcel without dialling any access code. The existence of a standard European-wide Emergency Number – 112 – will be notified to Customers.
- 5.2 Directory enquiries, emergency, internet access, freephone and premium rate numbers are excluded from the Services. These calls will be automatically routed and billed through Telecom Austria AG; in the event the Services are used to access any such numbers (except emergency numbers), the Customer will be responsible for payment for such use.

- 5.3 The Customer can override the CPS-Service at any time by dialling the access code 1001 to reach the Telekom Austria AG or an access code of any other network carrier to reach that carrier.
- 5.4 EurExcel uses the telecommunications networks of Telekom Austria AG and other network operators for the provision of its Services. It is possible that the Services are not accessible via certain telecommunications networks, terminal stations, modems or from certain areas. EurExcel shall be entitled to exclude or restrict the completion of connections requested by the Customer in certain areas for technical reasons. International call barring may be overridden by use of an indirect access code.
- 5.5 EurExcel's obligation to perform the Services is limited by the availability of preliminary services, in particular of transmission lines of the network operators participating in the relevant connection. If at all, the network operators will restrict connections only temporarily and only if required for technical reasons, e.g. in order to improve or maintain the operation. EurExcel reserves the right to temporarily limit the Services, in particular in the event of capacity shortages within the telecommunications networks and in the event of malfunctions due to technical changes in the operators' installations. Malfunctions in the quality of transfer cannot be excluded. Any mandatory statutory warranty provisions shall be unaffected.
- 5.6 In the event of longer-lasting, temporary limitations of the Services, EurExcel will inform the Customers appropriately about their nature, extent and duration. In the event of malfunction of the Services, EurExcel will take appropriate measures upon receipt of the notification of malfunction at the Customer Service Centre (Para 6.3) in order to repair the malfunction.
- 5.7 EurExcel reserves the right to offer different kinds of Services to different Customers.

6. Conditions for Use / Customer's Cooperation Duties

- 6.1 The Customer shall be obliged:
- 6.1.1 to observe all statutory laws and instructions by the regulatory authorities with respect to the use of the network and the Services based thereon, in particular, to use only devices approved for this purpose.
- 6.1.2 to use the Services provided by EurExcel exclusively for its own purposes and, in particular, not to re-sell or otherwise make them available to third parties.

The Customer guarantees that these obligations will also be observed by its vicarious agents. The Customer shall indemnify EurExcel for all claims of third parties arising out of an infringement of the Customer's contractual duties hereunder.

- 6.2 The Customer shall pay charges for the use of all Services (Para 1.3) used by itself or used by third parties through the authorised or unauthorised use of Customer Equipment. Premium rate services are not available by using the CPS-Service of Eur-Excel.
- 6.3 The Customer shall immediately inform the Customer Service Centre of any noticeable malfunctions of the Services. If the Customer is itself responsible for the malfunction, it shall bear the costs incurred in connection with the examination and clearance of such malfunction.

7. Terms of Payment / Objections

- 7.1 The charges to be paid to EurExcel by the Customer shall be determined on the basis of the chosen billing system, according to the duration and the extent of the Customer's use of the Services as determined by EurExcel's equipment and an eventual monthly fee according to the applicable Price List. In the event that the Customer does not make payment by means of Direct Debit/ Continuous Authorisation and/or if "e-billing" becomes available and the Customer elects to receive its invoices other than via "e-billing", EurExcel reserves the right to charge the Customer an administrative fee of EUR 1,50.
- 7.2 The charges for EurExcel's Services shall not in any way affect any charges payable by the Customer to Telekom Austria AG for access to the public telecommunications network in Austria.
- 7.3 The Customer will receive a detailed invoice on a regular basis, and in any event not less than every three months, for the charges payable for Services provided by EurExcel in the previous billing period. The charges will be described in an itemized manner, if Customer does not explicitly object. EurExcel shall provide itemized invoices in hardcopy upon the Customer's request. All invoiced charges (unless otherwise stated) are shown exclusive of VAT, then VAT is calculated on the total amount due, at the prevailing rate.
 - 7.3.1 The Customer shall pay all invoices without deductions within fourteen days of the invoice date.

7.3.2 Payments can be made, in accordance with the Customer's selection at the registration process, by direct bank debit, payment slip, electronic banking or by acceptable credit card subject to the conditions stipulated within Para 4.

7.4 The Customer shall raise any objections against the amount of the invoice in writing within fourteen days following receipt of the invoice, otherwise the invoice is deemed approved. EurExcel will notify the Customer in an appropriate manner that the invoice is deemed approved if the Customer does not explicitly object in writing within that time period. In the event that, after review of the invoice by EurExcel, the Customer's objections are not justified from EurExcel's point of view or if EurExcel is in default in replying to the objections, the Customer is entitled to initiate dispute resolution proceedings before the regulatory authority in accordance with § 71 and § 122 TKG within the time limits laid down in the regulatory authority's procedural guidelines for dispute resolution (accessible at www.rtr.at). EurExcel shall provide all information and documents necessary to evaluate the matter in order to make the regulatory authority able to settle the dispute.

In the event that the dispute is brought before the regulatory authority, the disputed amounts cease to be due until the dispute is settled. Notwithstanding the above, EurExcel can charge an amount equal to the average of the amounts charged to the Customer over the last three months. In the event that a mistake is discovered that could have led to a disadvantage of the Customer and the actual amount due cannot be found out, EurExcel shall be entitled to charge a lump sum, based on the average charges for the use of the Services by the Customer.

If during the dispute resolution proceeding no mistake is discovered that results in the re-calculation of the amount of the invoice, the statutory default interest shall be charged as of the due date of the invoice.

7.5 Except as provided in Para 7.4 in the event of late payment, the Customer shall pay the following charges:

7.5.1 5% p.a. default interest; and

7.5.2 a handling fee of Euro 10 per letter; and

7.5.3 reimbursement of all collection costs, expenses and expenditures reasonably incurred in connection with pursuing EurExcel's claims, including legal costs, in accordance with the applicable Ordinance of the Ministry for Economic Affairs (BGBl 1996/141 in the applicable version) and the applicable Attorneys' fees Act (Rechtsanwaltstarifgesetz);

- 7.5.4 In the event that the Services are blocked in accordance with Para 8. and if the blockage is attributable to Customer, a) a charge of Euro 10 for the notification that the Services will be blocked; and b) a reactivation fee of Euro 20, in the event the Services are re-commenced.
- 7.6 EurExcel will deliver all information and invoices to the registered Customer address unless a different address for invoicing is announced in writing. Customer is obligated to provide EurExcel with immediate notice of a change in address. Mailings to companies can also be delivered to their respective place of registration. The relevant address of EurExcel appears on the respective last item of mailing received by the Customer, or by separate mail, specifically sent for this purpose. Sent mail is deemed received within 48 hours of being dispatched; mailings to Customers as consumers in the meaning of § 1 KSchG (Austrian Consumer Protection Act), which have not been received, shall only be deemed received if the mailings were sent to the last address announced by the Customer and if the Customer did not notify EurExcel of a change in address.
- 7.7 In the case a Customer is – in breach of Para 1.7 – not a consumer as described in § 1 KSchG, the Customer may only set off against claims of EurExcel which are undisputed or have become res judicata. The Customer is not entitled to any rights of retention.
- 7.8 In the event of non-performance or substandard performance of the Services, the Customer shall be entitled to claim compensation or refund only in accordance with the mandatory statutory warranty and damages provisions, and only to the extent such claims have not been contractually restricted to the statutory permissible extent, as further detailed in these General Terms and Conditions.

8. Blockage

- 8.1 EurExcel reserves the right at any time and at its discretion to block the use of its services in whole or in part in exceptional circumstances. Exceptional circumstances are in particular:
- 8.1.1 technical or quality reasons;
 - 8.1.2 legislative and/or regulatory reasons;
 - 8.1.3 if EurExcel reasonably believes that the services are being misused; if this appears reasonable, EurExcel shall give a warning to the Customer before discontinuation of the services and give the Customer the opportunity to terminate the misuse; in the event the use of the services is blocked without

prior warning, the Customer is entitled, upon his written request, to obtain a subsequent written explanation for the blockage.

- 8.1.4 the submission of invalid payment information to EurExcel;
 - 8.1.5 insolvency and over-indebtedness of the Customer;
 - 8.1.6 termination of business activity or bankruptcy proceedings;
 - 8.1.7 exceeding of the credit line set according to the Customer's creditworthiness (Para 4.); upon written request, the Customer is entitled to obtain a subsequent written explanation for the blockage;
 - 8.1.8 if the Customer is in default with payment, provided that EurExcel has given a warning to the Customer at least two weeks prior to the blockage, that, in the event of non-payment, blockage will be installed;
 - 8.1.9 if jeopardy of EurExcel's installations, in particular of the network, from repercussions of terminal equipment is impending or if public safety or other users of the network or service are disadvantaged or endangered, and if EurExcel has unsuccessfully requested the Customer to disconnect interfering or non-approved terminal equipment immediately from the network;
 - 8.1.10 the increase of the Service charges by an unusual amount, so that the assumption can be made that an unauthorised use of the Services has occurred; upon written request, the Customer is entitled to obtain a subsequent written explanation for the blockage.
- 8.2 The costs incurred for the blockage/unblocking shall be borne by the Customer if the blockage was caused by circumstances for which the Customer is accountable (Para 7.5.4 shall be unaffected).
- 8.3 In order to limit fraudulent use of the Service (Para 8.1.3), EurExcel will establish undisclosed usage limits with respect to individual Customers or Customer Groups. These limits are based on a history of usage of EurExcel's services and other factors, and if exceeded will trigger the Service to block a Customer's calls. If Customers believe that their calls are not connecting for reasons of having been blocked, Customers may contact the Customer Service Centre.

9. Liability

- 9.1 EurExcel is only liable for damages that have been caused by gross negligence or intent on the part of EurExcel and/or its vicarious agents and is not liable for damage caused by Customer Equipment. This restriction of liability shall apply to all claims for damages, irrespective of their legal grounds. Any liability of EurExcel for indirect and consequential losses, including lost profit, are excluded. With regard to Customers as consumers in the meaning of § 1 KSchG, EurExcel shall be liable for personal injuries also in the event of minor negligence.
- 9.2 The liability of EurExcel in the event of pecuniary losses shall in any case be limited to the maximum of Euro 1,000 per case of loss. This limitation does not apply in the event that the Customer is consumer in the meaning of § 1 KSchG.
- 9.3 The liability vis-à-vis all parties collectively, shall be limited to a maximum amount of Euro ten million per loss-causing event. If the sum of all individual damages suffered by several parties due to the same event exceeds the maximum of Euro ten million, the claim for damages shall be reduced in the same proportion as the sum of all claims for damages is related to the maximum amount.
- 9.4 In all other respects, liability is excluded. Only mandatory statutory liability shall remain unaffected, in particular according to the Product Liability Act (Produkthaftungsgesetz) and for bodily injuries.
- 9.5 The Customer shall indemnify and hold EurExcel harmless against all liabilities, losses, claims or impending claims arising in connection with the use of the Services by the Customer or third parties.
- 9.6 Events caused by force majeure, which significantly impede or make impossible the performance of the Services, give EurExcel the right to delay the fulfilment of its duties for the duration of the impediment and an appropriate starting period. EurExcel shall not be liable in such cases. The same shall apply to strikes, lock-outs or other circumstances insofar as they are unpredictable, severe and caused without fault on the part of EurExcel. EurExcel shall inform the Customer immediately about the occurrence of such an event to the extent possible and reasonable under the circumstances.

10. Data Protection

- 10.1 EurExcel may collect, process and use personal data (personal data and connection data and location data) of the Customer in connection with the Contract, in accordance with the provisions of the TKG in connection with the Austrian Data

Protection Act 2000 (Datenschutzgesetz 2000), to the extent the data is necessary to provide and charge the agreed Services and to comply with the law. By entering into this agreement the Customer acknowledges and agrees that the Data will be processed and stored outside of Austria and allows EurExcel's associated companies, contractors and agents to process such Data for purposes connected with providing the Service (e.g. billing, debt collection, credit control, support, quality control and research). In processing Data, EurExcel will comply with the applicable Data Protection laws and regulations.

- 10.2 Personal data as described in the TKG will be stored and deleted in accordance with § 97 TKG.
- 10.3 Connection data, as described in the TKG, will be collected and stored by EurExcel for billing purposes and, subject to the statutory provisions, will be stored until the end of the period during which the invoice can be challenged or the claim for payment can be asserted. In the event a proceeding regarding the amount of the charges is initiated, the data will not be deleted until the final decisions of the respective proceeding. EurExcel will limit the extent of the stored data to the minimum amount absolutely necessary.
- 10.4 Personal and connection data, as described in the TKG, can be used by EurExcel for internal, business-related purposes, such as business analysis, planning of the network infrastructure, Customer advice, debt collection purposes and direct marketing activities by EurExcel. The Customer hereby expresses his explicit consent which is revocable at any time.
- 10.5 The Customer further explicitly agrees to receive advertisements via telephone, by e-mail as well as mass mailings per e-mail. This consent to receive advertisements can be revoked at any time. The revocation of the consent does not, in any way, affect the Contract.
- 10.6 The Customer may make use of the opportunity of calling line identification and of suppression of the display of his own number.

11. Final Provisions

- 11.1 The transfer of rights and duties resulting from this Contract by the Customer to third parties shall be subject to the prior written approval of EurExcel.
- 11.2 Customer expressly consents that EurExcel retains the right, without prior approval by the Customer, to assign or otherwise transfer the Contract, in whole or in part, to

subsidiaries of EurExcel, or to other affiliated companies as indicated in the Service Description and on the Internet Site (accessible at www.eurexcel.at).

- 11.3 Where the Customer is a corporate entity it undertakes to ensure that all employees and contractors comply with the Contract.
- 11.4 These General Terms and Conditions and all amendments thereto, the Service Description and applicable Price List will be accessible in EurExcel's branch offices and will be published on the Internet Site and can be requested from the Customer Service Centre.
- 11.5 In the event the Customer is a businessman entered into the Commercial Register, a public law entity or a legal person of separate estate under public law, or if the Customer does not have any domestic place of jurisdiction in Austria, Vienna, First District, shall be the exclusive place of jurisdiction.
- 11.6 The business relationship between the Customer and EurExcel shall be exclusively governed by Austrian Law, excluding the conflict of law rules and the UN Convention on the International Sale of Goods.
- 11.7 Should one or several terms and conditions be deemed invalid due to statutory provisions, the validity of the other terms and conditions shall not be affected. Failure by either party to exercise or enforce any right conferred by this Contract shall not be deemed to be a waiver of any such right and does not operate so as to bar the exercise or enforcement thereof, or of any other right on any occasion. If any provision of this Contract is held to be unenforceable, illegal or void in whole or in part, the remaining portions of the Contract shall remain in full force and effect. EurExcel and the Customer commit themselves to replace the invalid condition by a condition that comes closest to the economic purpose of the invalid condition.
- 11.8 If Customers encounter problems or are dissatisfied with EurExcel's Services for any reason, Customers are asked to inform EurExcel's Customer Service Centre free of charge on 0800 1023 10.
- 11.9 To the extent of any inconsistency between these General Terms and Conditions and the German translation of these General Terms and Conditions, the German translation will prevail.