

# General Terms & Conditions (GT&Cs)

## 1 Scope of application

- 1.1 These General Terms and Conditions (GT&Cs) apply to all legal relationships between the customer and UPC. These GT&Cs replace all previous versions.
- 1.2 Contracts may contain the following constituent parts:
  - Quotations signed by both parties
  - Service Overview, Prices and Conditions
  - Service Description(s)
  - Service Level Definitions and Service Management
  - General Terms & Conditions (GT&Cs) together with the Acceptable Use Policy (AUP)
- 1.3 The first two documents are signed by both parties, while the remaining parts of contract are also valid without signature. The currently valid version of the last three documents listed above may be inspected at any time on <https://mybusiness.upc.ch> and/or <http://www.business.upc.ch>. Validity shall depend on the sequence of the listing above, should contradictions arise on the application of individual parts of contract.
- 1.4 UPC may amend these General Terms and Conditions as well as other contractual clauses by written notification 30 days prior to the new condition taking effect. Amendments to contract are deemed to be accepted if the customer fails to raise an objection in writing within 15 days of receipt of notification. If an amendment to these General Terms and Conditions and/or other contractual clauses shall be imperative on account of an amendment to applicable legislation, the customer shall not be entitled to raise objection to amendments made for that reason.
- 1.5 UPC shall notify the customer in advance if an amendment shall make a replacement or comprehensive modification of certain installations necessary. The replacement or modification of equipment shall be charged to the customer. A customer may cancel the contract by registered letter with notice expiring at the end of the month in spite of an agreed minimum term, in the event of a material change to the disadvantage of the customer.
- 1.6 Additions and alterations to services shall comply with section 8 of these General Terms and Conditions.
- 1.7 If any language differences or ambiguities exist between this document and the German version of these General Terms and Conditions, then the German version shall prevail.

## 2 Service package

- 2.1 There is no charge for quotations, unless otherwise expressly agreed.
- 2.2 UPC shall remain bound by a quotation given for 30 days from the date of the quotation, unless otherwise stated in the quotation.
- 2.3 Orders, acceptances and demands for delivery of services as well as alterations and additions to these shall be made in writing. The use of faxes and e-mails where the sender may be exactly identified shall have the same effect as written form. Verbal statements or agreements require written confirmation from the other party.
- 2.4 Bandwidth specifications do not represent guaranteed bandwidth notwithstanding any provisions to the contrary. The usable bandwidth can vary from the maximum bandwidth depending on the access technology used. Provisions to the contrary with regard to guaranteed bandwidths are to be found in the particular Service Descriptions.

## 3 Duties of UPC

- 3.1 UPC is responsible for installation of the necessary equipment in regard to correct functioning of the network and the services up to the point of connection to the network, in the absence of agreement to the contrary.
- 3.2 UPC carries out the work with qualified personnel or arranges this to be done by qualified third parties (sub-contractors). The customer shall be solely liable for any defective performance of a sub-contractor, if the customer should instruct UPC to work with that particular sub-contractor.
- 3.3 UPC reserves the right to modify its network at any time and carry out maintenance and repair work considered to be necessary. UPC shall inform the customer in a suitable manner in good time in respect of interruption to services as a consequence of work of modification, repair or maintenance. Excluded from this duty of notification are unforeseeable interruptions to services and the circumstances covered in section 15.3 of these GT&Cs. UPC is not liable for any consequences of interruptions to services occurring by modifying the network or by measures to protect its network.

## 4 Duties of the customer

- 4.1 The customer undertakes to offer assistance to UPC to the extent necessary for the installation of the required materials for provision of services, and to make the necessary infrastructure available. More particularly, on advance notice from UPC, the customer shall ensure that all required permissions are obtained to enable UPC to gain access to the premises necessary for installation and operation of the services. The customer shall notify the persons instructed by UPC in respect of the position of lines and equipment (for example, gas, electricity, water) and about other risk factors at the premises when carrying out connection work.
- 4.2 The customer shall be responsible for ensuring that suitable space and adequate power are available at all locations where UPC is required to undertake installation work for provision of the services. It shall be the duty of the customer to ensure the good condition of cable ducts and conduits inside the premises which are made available to UPC for provision of services. The customer shall bear the costs of maintenance and repair of the said equipment and pay the expenses of repairs to the connecting cable, if these shall become damaged. UPC reserves the right to give the customer instructions in this respect. UPC shall not be liable for impairment to quality of the services provided by it thereby resulting, if the customer shall fail to fulfil his duty of co-operation.
- 4.3 The customer shall himself be responsible for use of the services provided and the lines, as well as the equipment connected in the interior of the premises. The installation of equipment connected to the network of UPC must comply with the applicable legal and technical requirements and be of a capacity adequate for the requirements of the customer.
- 4.4 The customer shall, on demand by UPC, take all measures necessary in order to eliminate malfunctioning of the network or the services which may be traceable to connection conditions or equipment which do not comply with the said requirements.
- 4.5 The customer undertakes to treat the technical equipment owned by UPC or its suppliers with all due care and follow the instructions of UPC. The location at which the equipment is installed must be adequately protected, in particular, against fire, theft, severe weather conditions and vandalism.

- The customer shall inform UPC without delay in respect of any damage to its property and shall assist UPC (to the extent in his power) in locating the cause. UPC reserves the right to charge the customer for the full amount of costs arising if it should emerge that such damage shall not have been caused by UPC.
- 4.6 The customer shall notify UPC of an impending moving date from the customer premises at least 10 weeks in advance. The moving costs shall be borne by the customer in full.
- 4.7 The customer shall accept sole responsibility for the content of communications (e.g. voice and data transmissions) that are transmitted over the UPC network. He undertakes in this respect to indemnify UPC for and against any claims made by a third party.
- 4.8 The customer shall take reasonable precautions to prevent unauthorised access to his systems and their improper use. In particular, the customer is required to prevent access to his systems via modem or dialup and not to maintain his own interfaces with networks of third parties except if these possibilities for access to his systems shall have been previously approved by UPC.
- 5 Ownership in technical equipment, software and addressing elements**
- 5.1 The complete technical equipment including connections remains in the ownership of UPC or its suppliers, subject to contractual provisions to the contrary.
- 5.2 The customer shall immediately return the property of UPC or its suppliers or ensure that UPC may retrieve or remove the equipment owned by it or that of its suppliers, without delay after termination of the contractual relationship. UPC shall not be liable for re-instatement costs at the premises which may arise under normal conditions in connection with installation or removal of equipment.
- 5.3 Ownership of software remains completely with UPC or its suppliers. UPC grants the customer a non-exclusive and non-transferable right of use of the software.
- 5.4 IP addresses (more particularly «Provider Aggregated IP Addresses») as well as further addressing elements remain in the ownership of UPC.
- 5.5 The customer shall be made liable for all damage arising from breach of rights of ownership of UPC.
- 6 Invoice, credit limit, payments**
- 6.1 The charges to be paid by the customer depend on the services used. One-time (one-off) or recurring charges are normally stated in the quotation or in the contract documents.
- 6.2 The prices for connections are shown in the appropriate price list and are charged on the basis of data obtained by the invoicing system of UPC. It is only this list which provides the evidence that connections have been made via the connection of the customer.
- 6.3 Any objections in respect of bills must be raised in writing within 15 days of the date of the bill (date of post stamp). The objection must be substantiated in particular in respect of the grounds and the extent of the objection. An objection shall not release the customer from the duty to pay the corresponding amount within the period stipulated. The bill is deemed to be accepted by the customer if no objection is made within the stated period, or if an objection is not sufficiently substantiated. The bill is then deemed to be an acknowledgement of debt within the meaning of Article 82 of DCBA.
- 6.4 UPC may revise the tariffs at any time. In the event of a substantial increase in rates which exceeds mere compensation for the rate of inflation, the customer shall have the right to cancel the corresponding contract by registered letter, observing a period of notice of 14 days expiring at the end of a month, notwithstanding an agreed minimum term.
- 6.5 The customer undertakes to pay the bill amounts within 30 days of the date of the bill, subject to an arrangement to the contrary. The customer shall automatically be in arrears in the event of failure to comply with the period for payment. Default interest of 8% per annum will be charged. The customer shall meet the costs arising from the delay in payment, more particularly, processing costs for reminder letters may be charged to him. UPC also reserves the right to set a credit limit individually per customer or to require a prepayment or provision of security.
- 6.6 UPC may suspend provision of services without prior notice if the arrears of payment continue for more than 15 days after the due date for payment. In such a case, the recurring charge shall continue to be owed. UPC may terminate the contract with immediate effect and claim damages if the delay in payment shall continue for longer than 60 days. UPC may not be made liable in any manner for the direct or indirect consequences of discontinuation of the services or cancellation of contract in this connection.
- 7 Liability of UPC**
- 7.1 UPC accepts liability for losses which arise for the customer in connection with the contractually agreed performance, provided that the customer can prove gross negligence or malice on the part of UPC. All further liability is expressly excluded.
- 7.2 UPC does not accept liability, in particular, for losses traceable to software defects, or computer viruses, unauthorised use of services, breach of contract (e.g. breach of the duty of co-operation according to section 4 of these General Terms and Conditions), or careless dealings by the customer with user identification or passwords.
- 7.3 If a contractual penalty shall have been agreed for the event of failure to fulfil a contractual duty by UPC (for example, in a Service Level Agreement), all claims to damages of the customer by reason of non-performance are settled on its payment.
- 8 Additions to or alterations of the services**
- 8.1 Additions to or alterations of the services to be provided are possible at any time and shall be agreed in writing in each case. The additions and changes shall be recorded in the contract documents.
- 8.2 Individual elements of the services, such as for example, a service level parameter or performance characteristics of a SAP, may be altered at the request of the customer in accordance with the terms of these General Terms and Conditions, the applicable Service Description, and the document «Service Level Definitions and Service Management».
- 8.3 Only authorised persons may apply for service changes for the customer. Authorised persons are either
- defined in the <https://mybusiness.upc.ch> portal; or
  - explicitly named in the contract documents (including signatories)
- 8.4 If recurring costs arise for UPC from, in particular, duties entered into with suppliers as a result of changes or cancellations desired by the customer, these costs shall be notified with the confirmation of alteration and charged to the customer.
- 8.5 The amount of the regularly recurring prices shall be adjusted by UPC to the new configuration of services from the day on which the change becomes effective. If such changes lead to an overall reduction in the regularly recurring prices per service, UPC shall not, subject to a written commitment to the contrary, grant any reduction in a price which falls short of the threshold value of 90% of the last maximum.

8.6 The «Service Desks» (Single Point of Contact) of the customer and the transfer of entitlements are given, where requested, in the contract documents. The contact person for technical questions is personally responsible for ensuring that the appropriate contacts for the Service Desk are recorded in the customer portal after he has received the corresponding information from UPC.

## 9 Restrictions in use and liability of the customer

9.1 The customer accepts liability for the content of all information which is passed on, or processed by him or a third party via UPC. Illegal information as listed below may neither be distributed nor called up by way of the customer connection. This includes the following information in particular:

- instructions for or incitement to criminal behaviour or its promotion
- illegal gambling (in particular contrary to the law concerning lotteries)
- information which infringes the copyright or other industrial property rights of third parties
- breaches of individual personal rights
- displays and contents contrary to criminal law

9.2 Swiss and foreign legislation shall be observed when using the services provided by UPC. This applies in particular to laws relating to crime, data protection and copyright.

9.3 Only Wholesale services are allowed to be on-sold by the customer. Undertakings which are controlled by the customer (e.g. companies in which the customer holds a majority interest) shall not be deemed to be a third party within the meaning of this provision.

9.4 In particular, UPC reserves the right to take action against infringements of the protection of minors.

9.5 Otherwise, the rules of behaviour defined in the Acceptable Use Policy (AUP) apply. UPC accepts no liability for any infringement or omission of the duties detailed in the AUP.

## 10 Use of UPC support

10.1 The customer shall endeavour to limit the cause of malfunctioning as far as possible, prior to engaging UPC support, in order to reduce the number of causes of faults to a minimum.

10.2 UPC reserves the right to charge the customer for the expenditure thereby arising in the event of repeated use of cablecom support for faults which lie outside the area of responsibility of UPC as defined in the particular Service Description.

## 11 Force majeure

11.1 Performance of contract or the fixed date for performance of contract shall be suspended appropriate to the event occurring, if a party shall be unable to fulfil its contractual obligations by reason of force majeure, in particular, as a consequence of natural phenomena of particular intensity, war, insurrection, strike, unexpected official orders etc. Any liability is excluded.

## 12 Transfer, assignment and encumbrance

12.1 The parties may only assign the rights and duties arising under this contractual relationship to a third party with the written consent of the other contracting party.

## 13 Maintenance of confidentiality

13.1 The parties undertake to keep facts and data confidential, including the accompanying documentation and data carriers, which shall have been made known to them in connection with this contract, and which are neither obvious nor generally accessible. This duty shall also be imposed on third parties instructed as representatives.

13.2 Analyses, summaries and extracts which shall have been prepared on the basis of confidential data are also deemed to be confidential data. Facts and data shall be treated in confidence in the event of doubt. The duty to maintain confidentiality shall already exist during the quotation phase before conclusion of contract and shall continue to exist after termination of the contractual relationship for three years. Statutory or administrative duties of disclosure shall remain reserved.

## 14 Customer information

14.1 UPC undertakes to treat customer data in conformity with the applicable Swiss legislation, in particular in the area of data protection and the law concerning telecommunications.

14.2 UPC may use customer data within these limits in order to improve the quality of its services and to ensure charging and payment for its services. More particularly, UPC may communicate details of new customers to credit rating agencies for clarification of creditworthiness. Communication of customer data within the Group (e.g. to holding companies) shall also be possible across country borders.

## 15 Duration and termination of the contract; suspension of contractual services

15.1 The contract comes into force on the date of signing by both parties or retrospectively at the date of use of the services, depending on which occurs the earliest, subject to conditions contained in another contractual document to the contrary. If the contract shall have been agreed by telephone, it shall come into force on verbal agreement, which shall be confirmed by UPC within five working days in writing.

15.2 Either of the parties may terminate the contract by notice in writing observing a period of notice of three months expiring at the end of a month. The minimum contractual term amounts to 12 months following activation of the services, in the absence of agreement to the contrary. If a different minimum contract term has been agreed, the earliest point that this can be terminated is at the end of this period by adhering to the contractual period of notice. The minimum term shall be calculated from the date of activation of the services in the absence of agreement to the contrary. The contract shall continue in force for an indefinite period if neither of the parties shall terminate the contract by notice at the end of the minimum term. Where several services are in use, the minimum contractual term begins when all the services are activated.

If there is an increase in services at a later date (such as the activation of a new location) this does not lead to an extension in the minimum contractual term.

15.3 UPC may suspend, temporarily block or cancel the contract with immediate effect in the event of compelling reasons, in particular if

- the customer causes interruptions to operation of the network of UPC;
- the customer uses the services from UPC for illegal purposes;
- UPC establishes telephony behaviour that leads it to suspect misuse (such as unusual excessive calls to international destinations);
- the customer fails to observe his contractual duties despite having received a warning period in this respect from UPC of 10 days, sent by registered letter,
- the customer becomes insolvent or justified indications of impending inability of the customer to pay are present;
- regulatory or statutory changes take effect which substantially adversely affects the operations of UPC.

**16 Set-off**

16.1 The customer expressly waives set-off of his debts against claims he shall make against UPC.

**17 Applicable law and place of jurisdiction**

17.1 The substantive law of Switzerland shall apply to the contractual relationship.

17.2 The place of jurisdiction shall be Zurich subject to mandatory statutory provision to the contrary.

# Acceptable Use Policy (AUP)

## 1 Scope of application of this Acceptable Use Policy

- 1.1 This Acceptable Use Policy (AUP) forms an integrated part of the General Terms & Conditions (GT&Cs) from UPC. It provides for the use of the IP and Internet services offered by UPC. This AUP replaces all previous versions.

## 2 Amendment of the AUP

- 2.1 UPC reserves the right to amend this AUP at any time. Such amendments shall be published on the portal <https://mybusiness.upc.ch> and <http://www.business.upc.ch>. Any substantial changes shall be notified to the customer directly in a suitable manner.

## 3 Acceptance and duties of the customer

- 3.1 The customer undertakes to abide by the rules stated here as well as the guidelines for conduct known under the term «netiquette».
- 3.2 UPC services may be used solely within the scope of applicable international and Swiss laws and other regulations (e.g. Requests for Comment [RFCs] of the Internet Society [ISOC], Memorandums of Understanding of the International Telecommunication Union [ITU]).
- 3.3 The customer shall take suitable precautions against unauthorised access to his systems, as well as their improper use.

## 4 Improper use within the terms of this AUP

- 4.1 Improper use of IP and Internet services is prohibited. The following are deemed to be improper use within the terms of this AUP in particular:
- unauthorised access, or attempt for that purpose, to data, systems or external networks, all techniques such as scanning or probing other systems or networks with so-called «port scans» as well as their monitoring and analysing (so-called «sniffing»);
  - intentional overloading of other systems or networks with the object of adversely affecting their operation, or rendering this impossible (so-called «flooding»);
  - falsifying network packages, more particularly of TCP/IP header information (so-called «spoofing»);
  - sending unrequested commercial advertising and unrequested information by mass e-mails, text messages (SMS), e-mail lists and Usenet discussion groups, as well as sending chain mails according to the pyramid selling principle;
  - sending e-mails with annoying content;
  - unauthorised use of other mail servers as a relay without the prior consent of their owner;
  - all other uses which may be damaging or annoying to third persons.

## 5 Illegal material and criminal actions

- 5.1 The customer bears the responsibility that use of services obtained from UPC by him or by users associated with him (employees, members of family, ultimate customers etc.) is made within the scope of applicable statutory provisions.
- 5.2 The content of IP traffic from or to the location of the customer must not infringe applicable legislation. The customer shall ensure that no unauthorised persons receive access to such contents, if access to certain contents is reserved for certain persons only.
- 5.3 Where financial transactions are processed by way of IP or Internet services from UPC, the customer is obliged to observe all regulations in this connection, in particular, duties of care in relation to the identity of persons participating and the origin of the funds.

## 6 Provocation of network attacks

- 6.1 The offer of contents which cause excessively heavy network traffic and consequently thereby endanger the security of the computer systems of UPC, as well as the announcement of publications which are capable of influencing the image or business activities of UPC, are prohibited. UPC reserves the right to remove such contents without prior warning and where necessary, have access to the network blocked.

## 7 Notification of improper use to UPC

- 7.1 The customer is obliged to notify UPC without delay, giving details of information as required (authorship, nature of the improper use) if he shall discover an improper use of services, equipment or software.

## 8 User identification and passwords

- 8.1 The passwords notified to the customer are intended for personal use and are to be protected against misuse by unauthorised persons. If there is a suspicion that a third party knows the password, it must be changed immediately. A new password must be requested from UPC where necessary. The customer will be charged for the costs connected with changing a password.
- 8.2 The customer bears all risks which arise from use of his user identification and his password, subject to proven gross negligence on the part of UPC.

## 9 Consequences of infringement of the AUP

- 9.1 UPC reserves the right to check stored and communicated contents at random, as to their propriety. UPC shall have the right to take measures that appear appropriate against improper use (e.g. blocking access to certain services, contents, systems or resources; interrupting the ability of the customer to make a connection), on justified suspicion of the presence of a use which infringes applicable law or the basic principles of this AUP, whether by the customer, a user associated with him or a third party who makes use of his system services from UPC with or without the permission of the customer. UPC shall only give advance warning prior to taking such measures, if this appears sensible in the particular circumstances.
- 9.2 If necessary, UPC may make known the identity of the fallible customer to a third party in the event of an infringement against this AUP.
- 9.3 The costs involved with clarification of such infringements may be charged to the customer.