

## General Terms and Conditions of 1NCE GmbH for M2M/IoT mobile communications services (version as of 07/2018)

### 1. Scope of application

- 1.1 The following General Terms and Conditions (hereinafter referred to as "GTC") shall govern any and all contracts relating to the provision of mobile communications services for machine-to-machine (M2M) and Internet of Things (IoT) applications and related services (hereinafter altogether referred to as the "Services") concluded between 1NCE GmbH, Sternengasse 14-16, 50676 Cologne, Germany, Local Court of Cologne, HRB 92529 (hereinafter referred to as "1NCE") and the Customer.
- 1.2 The provision of the Services by 1NCE shall be carried out exclusively under the application of these GTC. The application of any terms and conditions of the Customer which contradict or deviate from these GTC is excluded.
- 1.3 The offer of the Services through 1NCE is addressed exclusively to businesses within the meaning of Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch*, hereinafter referred to as "BGB").

### 2. Conclusion of contract

- 2.1 The offers made by 1NCE regarding the provision of the Services are non-binding. Such offers do not constitute a binding offer to conclude a contract, but merely a request for the submission of an order by the Customer in accordance with 1NCE's offer.
- 2.2 As a general rule, the Customer places its order via the 1NCE web shop. However, 1NCE reserves the right, in individual cases, to also allow the Customer, upon a request of the Customer declared in text form, to submit a completed and signed order form to 1NCE; however, the Customer is not entitled to claim such form of ordering. With its order, the Customer submits a binding offer to conclude a contract.
- 2.3 The Customer undertakes to only provide true and correct information in the context of its order. In particular, the Customer shall ensure that the Customer's billing address indicated by the Customer corresponds to the address for which the Customer has been assigned the stated VAT identification number. Furthermore, the Customer undertakes to provide to 1NCE in connection with the order all documents required in accordance with Section 111 para. 1 sentence 3 of the German Telecommunications Act (hereinafter referred to as "TKG") or – if offered by 1NCE – to participate in any other identity verification procedure suitable in accordance with Section 111 para. 1 sentence 4 TKG; this obligation applies accordingly in the event that a change occurs with regard to the data provided by the Customer before or after the conclusion of the contract (Section 111 para. 3 TKG).
- 2.4 A contract is only concluded when 1NCE accepts the Customer's order by issuing an order confirmation or at

the latest when 1NCE commences with the performance of the Services (i.e. activation of the Chip Card).

- 2.5 Text form is sufficient for all declarations of the Parties referred to in this Section 2.

### 3. 1NCE's performance obligations / Right to modify

- 3.1 The Services include the following service elements:
  - a) the provision of access to mobile communication for M2M/IoT applications with which the Customer can use low-bandwidth mobile data connections and additional network services as well as other related services – this is done through derivative allocation of a mobile number and an additional identification number (e.g. International Mobile Subscriber Identity [IMSI], Mobile Subscriber Integrated Services Digital Network Number [MSISDN], Integrated Circuit Card Identifier [ICCID]) as well as the provision of a chip card encoded with the allocated number, currently in the form of a SIM card (in these GTC in each case referred to as the "Chip Card") to the Customer;
  - b) the provision of low-bandwidth mobile data communications services in the Federal Republic of Germany and – where available on the basis of existing roaming agreements between the relevant mobile network operators – in certain other EU Member States or third countries specified in the Service Description; and
  - c) the provision of additional network services and other related services, in particular including the possibility of receiving and sending SMS (Short Message Service) messages and the provision of a software-based connectivity management platform; 1NCE shall provide the Customer with access to this platform either via a customer web portal or – provided that the Customer ensures full compatibility of its Customer systems within its sphere of responsibility – such access may be integrated by the Customer itself at its own expense into these Customer systems by using 1NCE's application programming interfaces (APIs).The exact scope of the Services in accordance with this Section 3.1 shall be determined in each case by the [service description](#) attached to these GTC as an **Annex** (in these GTC in each case referred to as the "Service Description").
- 3.2 1NCE performs the Services within the boundaries of its technical and operational capabilities. The mobile communications services referred to in Section 3.1 lit. a) and b) of these GTC are provided by 1NCE on the basis of wholesale services provided by licensed mobile network operators. 1NCE also uses subcontractors as technical

service providers for the provision of individual parts of the additional network services and other related services referred to in Section 3.1 lit. c) of these GTC. 1NCE expressly points out that the type and scope of such services of the respective mobile network operators, in particular also the respective available transmission technologies (e.g. no permanent use of 2G/3G in individual countries), may vary and, in addition, individual available transmission technologies may not enable the use of certain network services or other related services. The details of the actually available scope of Services is set out in the Service Description.

### 3.3 1NCE's obligation to perform is limited

- a) to the activation period of the Chip Card in accordance with Section 3.5 of these GTC (hereinafter referred to as the "Activation Period");
- b) to a consumable data volume of 500 MB per Chip Card; and
- c) a volume of 250 SMS per Chip Card, in which case a pro rata consumption of this volume takes place both by each SMS received (Mobile terminated - MT) and each SMS sent (Mobile Originated - MO) and 1NCE further expressly points out that the technical solution used by 1NCE only supports SMS transmissions between terminal device and server (both traffic directions), but not SMS transmissions between two terminal devices (the data volume referred to in lit. b) and the SMS volume referred to in lit. c), unless otherwise indicated, are hereinafter referred to individually and together as the "Quota" or the "Quotas".

The Customer is entitled at any time to purchase additional Quotas for the relevant Chip Card once or several times (see Sections 5.1 and 5.3 of these GTC); this can already take place before the complete use of an original Quota. The Activation Period of the relevant Chip Card as such remains unaffected by the subsequent purchase of additional Quotas.

- 3.4 If one of the original Quotas (data volume or SMS volume) or another Quota subsequently purchased by the Customer is used up before the end of the Activation Period, the Chip Card will be temporarily deactivated and can no longer be used until further notice. Upon receipt of payment of the charge for a Quota subsequently purchased by the Customer, any temporarily deactivated Chip Card will be immediately reactivated by 1NCE. Additional Quotas can only be purchased in such a way that both a full data volume and a full SMS volume are purchased at the same time in accordance with Sections 3.3 sentence 1 lit. b) and c) of these GTC.
- 3.5 The Activation Period for the respective Chip Card is ten years from the beginning of the fourth calendar month following the calendar month in which 1NCE dispatches the Chip Card to the Customer, unless the Activation Period ends earlier in accordance with Section 3.6 of these GTC or is extended by mutual agreement between the

Parties in text form based on the then current terms. The initial activation of the Chip Card takes place before the Chip Card is sent to the Customer; the Chip Card can therefore be used from the moment of receipt through the Customer.

### 3.6 The Activation Period automatically ends early if

- a) within 18 months after 1NCE has notified the Customer in text form that the data volume or the SMS volume of the relevant Chip Card has been used up before the end of the Activation Period, the Customer has not subsequently purchased an additional Quota;
- b) no data has been sent or no SMS has been received or sent by the relevant Chip Card for a continuous period of at least 18 months; or
- c) the Customer has finally deactivated the relevant Chip Card within the connectivity management platform provided by 1NCE.

### 3.7 The Chip Card is provided to the Customer as a sale; the Chip Card therefore becomes the Customer's property when it is handed over to the Customer. The right of 1NCE (a) to deactivate or block the Chip Card or (b) to make designated configuration changes to the Chip Card or to download and install software updates on the Chip Card by OTA (Over the Air) remote control for the purpose of continued service provision, as part of the Services and in accordance with the provisions of these GTC, shall remain unaffected and shall continue for the entire term of the contract. From the time of transfer of risk, the Customer bears the risk of accidental loss or accidental deterioration of the Chip Card. In particular, 1NCE is therefore not obliged to replace a Chip Card that has been lost or damaged or rendered unusable due to circumstances not attributable to 1NCE. All Quotas are also linked to the use of the specific Chip Card provided. Therefore, in the case of sentence 4, 1NCE is not obliged to transfer any remaining Quota that cannot be used anymore to another Chip Card or to make any other reimbursement to that effect.

### 3.8 The transfer of risk with regard to the Chip Card shall take place in accordance with Section 447 para. 1 BGB. Unless otherwise agreed between the Parties in text form, CIP Incoterms® 2010 shall apply when sending Chip Cards to delivery addresses of the Customer outside the Federal Republic of Germany.

### 3.9 To the extent 1NCE is liable for defects with regard to individual elements of the Services under statutory warranty provisions (*Mängelhaftung*), this liability shall be governed by the applicable provisions of statutory law. In particular, the prescription period relating to claims for defects in respect of Chip Cards shall begin from the time of receipt of the relevant Chip Cards by the Customer. Liability for damages due to defects is limited in accordance with the provisions of Section 8 of these GTC.

- 3.10 The provision of the Services by 1NCE is otherwise subject to the provisions of these GTC and applicable laws and regulations, in particular those of the TKG.
- 3.11 For operational reasons and/or reasons of technological development, 1NCE shall be entitled to change the specifications and functionalities of the Services and to adapt the Service Description accordingly, provided that the respective change does not reduce or impair the essential performance characteristics of the Services. This may also result in changed system requirements to be observed by the Customer (see Section 4.5 of these GTC). Sentences 1 and 2 shall apply mutatis mutandis if third parties from whom 1NCE obtains underlying services necessary for the provision of the Services change their services.
- 4. Terms of use / Cooperation obligations of the Customer**
- 4.1 The Customer may only use the Services in accordance with these GTC and the Service Description for its own purposes.
- 4.2 The Customer is not permitted to make the Services available to third parties for their sole use or commercial use or to otherwise pass them on to third parties without the prior permission of 1NCE. In particular, the Customer is also not entitled to act as a provider of telecommunications services using the Chip Cards made available to it for use and to offer mobile communications services, switching or interconnection services to third parties.
- 4.3 The Services may not be used abusively or in any other illegal manner in violation of legal prohibitions in the Federal Republic of Germany or at the respective place of use. In particular, no legally prohibited, unsolicited information, goods and other services shall be sent by the Customer. Furthermore, (a) no information with unlawful or immoral content may be transmitted and no reference may be made to such information; (b) connections may not be established which serve the purpose that the Customer or a third party is to receive payments or other consideration on account of the connection or the duration of the connection (e.g. in return for SMS to chat lines or advertising hotlines), or which do not serve the purpose of direct communication with another subscriber, but only for the purpose of establishing the connection and/or the duration of the connection; (c) national and international copyrights, trademarks, patents, names and other intellectual property rights and personal rights of third parties must be observed.
- 4.4 1NCE shall be entitled, in the event of serious breaches by the Customer of the obligations incumbent upon it in accordance with Section 4.3 of these GTC, to block the Services at the Customer's expense, without the Customer being exempted from the obligation to pay the agreed charges in this respect. The regulation of Section 45o TKG regarding the blocking of call numbers remains unaffected.
- 4.5 The Customer undertakes to comply with the system requirements for the use of the Services specified in the Service Description and to comply with the cooperation obligations specified in these GTC and the Service Description. To the extent non-observance of the system requirements in accordance with sentence 1 by the Customer can have a detrimental effect on network operation, in particular on network security or network integrity (e.g. in the case of operation of non-network-compliant terminal devices by the Customer), 1NCE shall in particular be entitled to block the relevant Chip Card; any further rights and claims of 1NCE shall remain unaffected.
- 4.6 The Customer is further obliged to
- notify 1NCE's customer service without undue delay of the loss of the Chip Card provided to the Customer;
  - notify 1NCE without undue delay in text form of any change in its name or company name, legal form, address or invoice recipient, or to have a third party authorized to do so notify 1NCE accordingly (see also Section 2.3 sentence 3 [second half] of these GTC);
  - to keep personal access data (such as passwords) confidential and to change them without undue delay if it is suspected that unauthorized persons may have gained knowledge of them;
  - to make backup copies of all Customer data used in connection with the Services at reasonable intervals in order to enable lost or destroyed Customer data to be restored with reasonable effort; and
  - in the event of a request for information addressed to 1NCE by authorities or courts in connection with the Services, to provide 1NCE without delay with the information requested by 1NCE in relation to the Customer and, in particular, to transmit to 1NCE documents and information necessary to enable 1NCE to comply with the relevant request for information.
- 5. Charges / Objections of the Customer**
- 5.1 The Customer shall pay the charges agreed between the Parties in accordance with Section 2 of these GTC for the Services. Within the framework of the conclusion of the contract, the Customer may choose between different payment methods offered by 1NCE. Unless otherwise agreed between the Parties, the charges to be paid by the Customer for the purchase of additional Quotas in accordance with Section 3.3 sentence 2 of these GTC shall be determined by the price list of 1NCE valid at the time of this purchase.
- 5.2 All charges are to be paid by the Customer in advance (prepaid). Payments by the Customer must be made within 14 days of receipt of the invoice at the latest.
- 5.3 The Chip Card shall not be activated for the first time and dispatched until 1NCE has been able to record the complete receipt of payment both for the charge attributable to the Chip Card (this includes the purchase price for the Chip Card and the fees for the respective original Quota)

and any additional charge owed by the Customer (e.g. for the dispatch of the Chip Card). Also, the reactivation of a temporarily deactivated Chip Card (see Section 3.3 sentence 2 of these GTC) will only take place as soon as 1NCE has been able to record the complete receipt of payment with regard to an additional Quota purchased by the Customer at a later date.

- 5.4 If the Customer orders several Chip Cards within the scope of one order, the activation and dispatch of all ordered Chip Cards in accordance with Section 5.3 of these GTC will only take place as a whole when 1NCE has been able to record the complete receipt of payment for all charges relating to the ordered Chip Cards. 1NCE is not obliged to provide partial deliveries; therefore, no activation or dispatch of partial quantities of ordered Chip Cards will take place.
- 5.5 All charges shall be in Euro plus any applicable statutory value added tax (which shall also be borne by the Customer). Any taxes, levies, duties and similar charges incurred outside the Federal Republic of Germany in connection with the Services shall be borne by the Customer. This also applies in particular to the value added tax to be borne by the service recipient in accordance with the provisions of the EU VAT system directive in its EU member state (reverse charge procedure).
- 5.6 The Customer may only set off payment claims asserted by 1NCE against counterclaims which are undisputed or have become *res judicata*. The same applies to any rights of retention asserted by the Customer.
- 5.7 Complaints raised by the Customer against the amount of the connection charges or other usage-dependent charges vis-à-vis 1NCE are subject to the legal provisions of Sections 45i, 45j TKG. Therefore, in particular the following applies: Complaints of the Customer must be made within eight weeks of the connection being established. Failure to make such complaints in good time shall be deemed approval. The Customer's statutory claims in the event of complaints after the lapse of the said time period shall remain unaffected.

## 6. Contract Term / Termination

- 6.1 The contractual relationship is concluded for an indefinite period of time.
- 6.2 The contractual relationship in respect of each individual Chip Card may be terminated by
- a) the Customer at any time without period of notice; and
  - b) 1NCE with a period of two weeks, but not before the end of the Activation Period.
- 6.3 The right of both Parties to terminate the contractual relationship exceptionally for good cause (*außerordentliche Kündigung aus wichtigem Grund*) remains unaffected.
- 6.4 No compensation for any unused Quota that may still exist at the time of termination of the contract with regard to the relevant Chip Card shall be payable to the

Customer unless 1NCE is responsible for an exceptional termination through the Customer for good cause (see Section 6.3 of these GTC).

- 6.5 Any termination must be made in text form in order to be valid.

## 7. Rights of use / IP rights of third parties

- 7.1 To the extent 1NCE provides the Customer with software for use within the scope of the Services, 1NCE grants to the Customer a simple right to use the software for the duration of the respective contract term, which is limited to the countries specified in the Service Description. This right of use is (a) neither sublicensable nor transferable and (b) subject to the restrictions resulting from these GTC and the Service Description. Further rights to use the software are not granted to the Customer. Similarly, the Customer shall not be granted any rights to edit the software unless such rights are required by mandatory law.
- 7.2 If, in respect of the rights of use referred to in Section 7.1 above, a violation of third party intellectual property rights is asserted or threatened to be asserted, 1NCE shall be entitled, at its own discretion and expense, to secure the Customer's right of continued use or to modify the software in order to prevent infringements of intellectual property rights or to temporarily cease the provision of the software. Any claims of the Customer are excluded if and to the extent that the infringement relates to an unauthorized modification of the software by the Customer or its other use by the Customer in violation of the provisions of these GTC or the Service Description.

## 8. Liability

Any liability of 1NCE for damages and/or reimbursement of expenses arising from or in connection with the contractual relationship between 1NCE and the Customer shall be subject to the following limitations:

### 8.1 Liability according to Section 44a TKG

- a) To the extent the Services consist of the provision of publicly available telecommunications services, 1NCE as a provider of such telecommunications services shall be liable for financial losses exclusively in accordance with the provisions of Section 44a TKG.
- b) The wording of Section 44a TKG is as follows (non-binding convenience translation):  
Insofar as the provider of publicly available telecommunications services is obliged to compensate an end user for financial loss and such liability is not based on intent, the liability is limited to a maximum of EUR 12,500.00 per end user. If the obligation to pay damages results from a uniform act or an event causing uniform damage to several end users and this is not based on intent, the liability to pay damages is limited to a maximum of EUR 10 million, without prejudice to the limitation of liability in sentence 1. If the compensation payable to several damaged

parties due to the same event exceeds such maximum limit, the compensation shall be reduced in proportion to the sum of all claims for compensation. The limitation of liability in accordance with sentences 1 to 3 shall not apply to damage claims caused by the delay in payment of damages. In deviation to sentences 1 to 3, the amount of liability towards end users who are not consumers may be regulated by individual contractual agreement.

## 8.2 Liability outside the scope of Section 44a TKG

Outside the scope of application of Section 44a TKG (see Section 8.1 of these GTC) 1NCE is liable as follows:

- a) In the event of intent or gross negligence, assumption of a quality and/or durability guarantee or fraudulent concealment of a defect, 1NCE shall be liable in accordance with the statutory provisions.
- b) In the event of slight negligence, 1NCE shall be liable without limitation in the event of injury to life, limb or health. In all other respects, 1NCE shall only be liable in the event of slight negligence if a cardinal obligation is breached and only for the foreseeable damage typical for this kind of contract. A cardinal obligation means an essential contractual obligation, the fulfilment of which is a precondition for the proper performance of the contract and upon which the Customer may regularly rely.
- c) The liability for the foreseeable damage typical for this kind of contract to be compensated in the event of a breach of a cardinal obligation pursuant to lit. b) is limited to EUR 25,000.00 per damaging event and to EUR 100,000.00 for all damaging events occurring within one contract year.
- d) Any strict liability without fault of 1NCE in accordance with Section 536a BGB for defects existing at the time of conclusion of the contract is excluded; the provisions of lit. a) and b) above shall remain unaffected.

8.3 Any liability pursuant to the provisions of the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.

## 9. Limitations to performance obligations: Force Majeure / Reservation as to availability of supplies

9.1 Neither Party shall be liable for the fulfilment of its obligations if such fulfilment is prevented by force majeure. This includes events which are unforeseeable, irresistible and beyond the Parties' control, particularly including severe weather, flood, landslide, earthquake, storm, lightning, fire, epidemics, acts of terrorism, outbreak of military hostilities (whether or not war is declared), riot, explosions, strikes or other labour unrest, sabotage, interruptions of energy supply, expropriation by governmental authorities.

9.2 1NCE's obligation to perform is also subject to the proper and timely availability of supplies with products or

advance performances provided by the suppliers of 1NCE. However, this shall be subject to 1NCE having concluded with due care a congruent covering transaction with the respective supplier and the improper or untimely supply being not attributable to a fault of 1NCE. Products or advance performances in the sense of sentence 1 shall include, but are not limited to, services or transmission lines procured by 1NCE from other suppliers of telecommunications services, supplies of hardware or software or other technical services from third parties (e.g. electricity supplies).

## 10. Data Protection / Confidentiality

10.1 The Parties undertake to process any personal data transferred to them by the respective other Party in the context of establishing and implementing the contractual relationship in accordance with the applicable legal provisions, in particular the provisions of the EU General Data Protection Regulation (GDPR) and the Federal Data Protection Act (*Bundesdatenschutzgesetz*).

10.2 The Parties also undertake to treat all other confidential information of the other Party that the receiving Party becomes aware of in connection with the contractual relationship as strictly confidential and not to disclose such information to any third party for an unlimited period.

10.3 1NCE uses the payment service provider Stripe Payments Europe Ltd, The One Building, 1 Grand Canal Street Lower, Dublin 2, Ireland (hereinafter referred to as "Stripe") for payment processing (see Sections 5.1 and 5.2 of these GTC). All (personal) data provided by the Customer during the payment process will be processed by Stripe and in some cases also be collected directly by Stripe. For further information on Stripe's data protection, the Customer may refer to Stripe's privacy policy, which is currently available at: <https://stripe.com/de/privacy>.

10.4 1NCE points out that it uses the usage data arising within the framework of the implementation of the contractual relationships with all customers in anonymous and aggregated form for its own statistical purposes. This is done for the purposes of network capacity planning as well as for continuous quality assurance and improvement of the services provided by 1NCE.

## 11. Amendment of these General Terms and Conditions

11.1 1NCE shall be entitled to unilaterally amend these GTC – to the extent they are included in the contractual relationship with the Customer – insofar as this is to be considered appropriate or necessary for adapting to a change of law or court rulings or other market conditions, in particular technical conditions.

11.2 To the extent 1NCE intends to make such an amendment to these GTC which does not exclusively relate to an adaptation to statutory law or administrative orders, 1NCE shall notify the Customer of this in text form at least six weeks before the amendment becomes effective. The

Customer is entitled to terminate the contractual relationship with effect from the effective date of the relevant amendment. If the Customer does not terminate within six weeks after receipt of the amendment notification from 1NCE in text form, the relevant amendment shall become an integral part of the contract at the time it becomes effective. 1NCE shall inform the Customer of this legal consequence in the amendment notification.

## **12. Mandatory information under telecommunications law**

- 12.1 Information on the procedures established by 1NCE to measure and control traffic to avoid full capacity utilization or congestion of a network connection and information on the possible effects thereof can be found on the internet at [www.1nce.com/impressum](http://www.1nce.com/impressum) (see the entry "Mandatory information under telecommunications law").
- 12.2 A list of measures 1NCE can take to respond to security or integrity violations or threats or vulnerabilities can be found on the internet at [www.1nce.com/impressum](http://www.1nce.com/impressum) (see the entry "Mandatory information under telecommunications law").
- 12.3 In the event of a dispute between the Parties about one of the cases mentioned in Section 47a TKG, the Customer may, following a prior attempt to reach an agreement with 1NCE, initiate arbitration proceedings at the Consumer Arbitration Office for Telecommunications (*Verbraucherschlichtungsstelle Telekommunikation*) of the Federal Network Agency (*Bundesnetzagentur*) in Bonn by means of an application.
- 12.4 The Customer may request that
  - a) the use of its network access for certain number ranges is blocked free of charge on the network side,

to the extent this is technically possible for 1NCE; and

- b) the identification of its mobile phone connection for the use and billing of a service provided in addition to the connection is blocked free of charge on the network side.

## **13. Final provisions**

- 13.1 The Customer may only assign or transfer claims, rights or obligations arising out of the contractual relationship to a third party after prior consent of 1NCE in text form. Section 354a of the German Commercial Code (*Handelsgesetzbuch*) remains unaffected.
- 13.2 1NCE shall be entitled at any time to have the Services rendered in whole or in part by subcontractors. In this case, however, 1NCE fully remains responsible for the provision of the Services in relation to the Customer.
- 13.3 If any provision of these GTC is invalid, the remaining provisions shall remain unaffected. The invalid provision shall be replaced by the applicable statutory provisions.
- 13.4 The law of the Federal Republic of Germany shall apply to these GTC and all legal relations between 1NCE and the Customer, excluding the provisions of international private law which refer to another jurisdiction and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 13.5 In business transactions with merchants, legal entities under public law or special funds under public law, Cologne, Germany, is the place of jurisdiction for all legal disputes arising out of or in connection with the contractual relationship between the Parties. A potential exclusive place of jurisdiction shall remain unaffected.