

GENERAL TERMS AND CONDITIONS CONCERNING „ApiSendSMS“ SERVICES

1. Preamble (Subject entering into Contract; what is covered with this Contract)

1.1 (Subject entering into Contract; what is covered with this Contract)

These General terms and conditions concerning ApiSendSMS services (hereinafter „T&C“) regulate namely the process of entering into the Service contract (hereinafter the „Contract“) aimed at the bulk sending of information SMS (hereinafter the „Service“) and entered into between the Provider of publicly available electronic communication services and others, websites and the application <https://www.ApiSendSMS.com> and <https://app.ApiSendSMS.com> and the Provider of the services „ApiSendSMS.com“ and “ApiSendSMS.com Gateway Sender“ and related goods and services (hereinafter „ApiSendSMS“ or „ApiSendSMS.com“) is WTI LLC, reg. no.: 2015-000693891, 2232 Dell Range Blvd Ste 245, Cheyenne, WY 82009, Wyoming, USA (hereinafter „WTI LLC“) represented by WTI LLC o.z., odstepny zavod, reg. no.: 09828397, with the registered office at Svetova 523/1, PSČ 180 00, Praha 8 – Liben, Czech Republic, data box: u9d5r2x, registered in the Commercial register maintained by the Prague Municipal Court, section A, file 79642, represented by the manager of its branch Jana Medricka, hereinafter the „Provider“) and the Client (hereinafter the „Client“); the process of handling the complaints, general rights and obligations of the Parties of this Contract and the Payment terms. These T&C represent the integral part of the Contract concluded with the Client. The next integral part of this Contract forms the Pricelist of services and messages ApiSendSMS which is maintained and updated on webpages [ApiSendSMS.com](https://www.ApiSendSMS.com) and which also includes the prices of the Monthly tariff plans for the using of ApiSendSMS (hereinafter the „Pricelist“), and the Complaints procedure ApiSendSMS (hereinafter the „Complaints procedure“). The term „fulfilment of the contract obligations“ also includes the obligations stated in these T&C, Pricelist as well as in the Complaints procedure. However, any deviating arrangement included in the Contract prevails over the content of these T&C. By concluding of the Contract the Client agrees with the T&C, Pricelist and Complaint procedure and with any other terms and conditions stated on the website [ApiSendSMS.com](https://www.ApiSendSMS.com), and confirms he has become familiar with them.

2. The establishment of the contractual relationship and its changes, the description of Services

2.1 (Entering into the Contract)

The Service is provided on the basis of the Contract concluded between the Provider and the Client or the Client's registration in the ApiSendSMS web interface or in the application ApiSendSMS (Gateway Sender); and in any case after the agreement with this T&C. The Contract can be concluded on the basis that the Client registers himself/herself on the Provider's website (i.e. on the webpages www.ApiSendSMS.com or <https://app.ApiSendSMS.com> or <https://api.ApiSendSMS.com>) or via the application ApiSendSMS Gateway Sender by filling in the registration form, and thereby establishes his/her account within the ApiSendSMS. If the Provider agrees, in a specific case it is also possible to conclude the Contract with a written or any other statement, especially on the basis of an individual offer made by the Provider as a result of written or any other offer made by the Client (however, in this case the Provider is entitled to insist on concluding the Contract by registration and filling in the registration form according to the previous sentence). Costs for using the means of distance communication are the same as within the basic rate (i.e. the Client, in case of concluding the Contract via the Internet, shall pay only the costs of the Internet connection according to the contract concluded with its current Internet provider).

Within his/her registration, the Client fills in the required mandatory registration data. The Client will also state his reg. no. (IČO), if he/she is concluding this Contract within his/her business activities or self-employment. If the Client does not fill in any reg. no., the Provider will be entitled to explicitly state, in the tax document he issues from time to time in the context of this Contract, that the Client stated, that this Contract was not connected with his/her business activities.

Within these T&C, an Entrepreneur means the person who exercise his business activities on his/her own expenses and liability and as a tradesman or similar subject with the aim of doing this consistently in order to gain a profit. Further, an Entrepreneur means the person registered in the commercial register, based on this registration only. An entrepreneur is also considered to be a person who has a trade license or other authorization under the law. If the Client, within his/her registration, enters his/her reg. no., this means he/she registers himself/herself as an Entrepreneur and he/she concludes this Contract within his/her own business activities or self-employment. If the Client is the payer of VAT, he/she is obliged to enter his/her VAT number (DIČ).

In the event of a change in the registration data, the Client is obliged to notify this change no later than 7 days after the change has occurred. The Client is liable to the Provider for the damage incurred as a result of the false or incorrect information provided by the Client. After the registration or the order, if this is entered via the Provider's webpage, the Provider will send to the Client the receipt confirming the registration or accepting the order, while this receipt will be sent to the e-mail address or phone number of the Client, which the Client entered for the purpose of the mutual communication with the Provider.

After the registration is confirmed, the Provider will send to the Client, according to the contact data entered by him/her, the message confirming the aforementioned contact data and the identity of the Client. By the Client's registration or by the concluding of the Contract, the Provider and the Client bind themselves to comply with these T&C and any other document according to the Article 1 of this T&C. The Provider is entitled to refuse to enter into the Contract with the Client or his/her registration, especially in cases where: the Client has unpaid payables from another contractual relationship with the Provider; the Client has unpaid overdue liabilities to the Provider from the past; insolvency proceedings were initiated against the Client, or the enforcement was initiated concerning a decision or execution on the Client's assets; the Provider would not be able to fulfil his obligations under the Contract towards the Client for technical or other reasons; there is a reasonable presumption that the Client would not properly fulfil its obligations under the Contract; the Client has abused or tried to abuse the Provider's Service; the Client provided incorrect personal or identification data, or the Provider – for other justified reasons – refuses to conclude the Contract with the Client, or cancels/blocks the Client's Registration. The Provider is not obliged to inform the Client of the reasons for refusing or cancelling or blocking of the Contract.

The Provider is entitled to require the Client to prove his identity with the necessary documents while concluding the Contract (natural persons, especially a valid ID card or passport, legal entities especially a valid extract from the public register or proof of entry in other records, which will also indicate the right to act for a legal entity, and a valid ID card or passport of the person acting on behalf of the legal entity). In order to prove the later identification, the Client acknowledges that the Provider may copy or make photocopies of the data from the submitted documents that are necessary to identify the persons to whom the documents relate and have stored them. These photocopies of data concerned will be always made with the template. For the ID documents it is possible to make a record only of any part of the document, i.e. specific data, not to make a copy of the ID document, when it is not necessary, or the copy of the ID document is not sent by the Client himself/herself.

2.2 (Examples of the content of the Registration or the Contract, option to unilateral change of the Contract made by the Provider, and the change of the access to services or the Contract by the mutual agreement)

The Registration or the Contract include (in the conjunction with the T&C, Pricelist and Complaint procedure or any other contractual documents), namely the ID data of Parties, specification of the Service, price, information concerning the terms and the way of calculating the price and the payments, term of validity of this Contract and the notice period, the conditions regarding the renewal and termination of the Service, the way of claiming the faults of provided Service and claiming of billed prices for provided Services, including details, where and within which deadlines it is possible to raise

a claim, arrangements regarding damages and refund, that will be used in the case, when the Service will be stopped by default of the Provider, and the way of informing the client about the changes in the T&C. Absence of any of these items does not render this Contract as invalid, if the rights and obligations of Parties are – despite of this – sufficiently established and if this Contract includes the conditions necessary to valid concluding of this Contract according the law.

The Provider is entitled to unilaterally change the concluded Contract or the conditions of Registration, including in particular the Conditions, Pricelist and Complaints procedure, regarding the methods and reasons for changes to the Contract, the possibility of unilateral change of the Contract by the Provider, negotiating amendments to the Contract, concluding new Contracts (extending the original Contract where applicable), specifications of the Service, prices of the Service, method and conditions of billing the Service (especially including setting billing periods, due dates and penalties for late payment), method, scope, parameters and conditions of providing the Service, including changes or termination of the Service, technical, security and other measures in the provision of the Service, procedures and claims in the event of misuse of the Service by the Client or a third party, the scope of rights and obligations of the Client or the Provider, price limits, use and functions of API, APP and ApiSendSMS server, conditions of use of the Client's equipment and requirements for such use, liability for damages, conditions and amount of payments, conditions of interruption or restriction of availability, claiming and handling of complaints, handling and elimination of malfunctions and faults, security measures and security, misuse of services, protection of the Provider's assets and rights and the Client's obligations in protecting the Provider's assets and rights, duration of the Agreement, conditions and the ways of termination of this Contract, restrictions concerning the provision of Services, customer support, contact points and data, method of delivery and communication, reservations in relation to legal regulations, exercise and enforcement of claims by the Provider (including the agreement concerning the applicable law and jurisdiction), processing of personal data, protection fo personal data, notification of changes and new conditions by the Client, and further in the sections, where the text of the T&C or any other documents, which form the integral part of this Contract, results from law provisions, decisions of the court ort he administrative body (or these are at least specific matters concerning the relationship between the Provider and the Client regulated by the legal provisions, decisions of the court or administrative body, despite the different arrangement within the Contract is possible). The Provider is also entitled to terminate the conditions for providing the Service immediately unilaterally, which will terminate the Contract to the extent of these specific terminated conditions.

The Provider is entitled to change the above mentioned conditions due to changes in input costs, introduction of new technologies, changes in business strategy related to the Service, introduction of new services and changes in market conditions for electronic communications services, changes in legislation, as a result of the decision issued by court or administrative body.

The Provider is obliged to inform the Client of such a change, using the way chosen by the Client for sending invoices or e-mails or messages to the user interface, including information on the Client's right to terminate the Agreement on the effective date of this change, to which he/she is entitled in cases, where it is a change of the requirements of the Contract specified in § 63 par. 1 c) to p) and r) of the Act no. 127/2005 Coll. concerning the electronic communications, as amended (hereinafter „Electronic communications act“), and this without any penalty, if the Client refuses to accept the new conditions. However, the Client is not eligible to terminate this Contract in this way, if the Contract is changed by the virtue of the change of the law of in the result of the decision ot the Czech Telecommunication Authority (ČTÚ), that would order to the Provider to make the abovementioned change of the Contract. Where the Client does not terminate this Contract based on the notification of the change of the Contract within the meaning § 63 par. 1 c) to p) and r) of the Electronic communications act, it is understood, that he accepts those changes as to the day of their validity; in the case, where the Client, after the notification of this change, terminates the Contract before the date of its validity, it is understood, that the Contract is terminated by the day of the validity of such change (when this is a procedure concluding the agreement on the special notice period). In this case, there is no way how to penalize the Client or to impose the sanctions on him/her. As regards the

changes of the Contract concluded by the way of mutual agreement, the Contract may be (beside the procedures for the conclusion of the Contract) concluded also via the Client's account ApiSendSMS, if this Client's account ApiSendSMS includes this function at the time concerned (if this Client's account ApiSendSMS provides this function at the time concerned).

2.3 (Description of the Service)

The ApiSendSMS service is used for bulk sending of information SMS using the Client's tariff. Through ApiSendSMS it is possible to send mainly SMS information (informing customers, citizens, employees and other entities about any event, incident or unexpected situation), notification SMS (informing customers and other entities about the status of orders, sending login details, information about delivery status and many others), SMS marketing (promotion of products or services), SMS relating to competitions (involvement of the Client's customers in the interaction with the Client's brand), planned SMS, SMS containing birthday wishes, advertising campaigns, abbreviated links to SMS. The Service Provider is not responsible for the content and nature of those SMS. It is the sole responsibility of the Client to ensure and be able to prove its authorization to use the telephone numbers of specific persons (contacts) as personal data. ApiSendSMS is also used to list all received and sent SMS from the phone, all received, outgoing and missed calls from the phone offline and online. ApiSendSMS serves as a web directory of contacts with groups and the blacklist. ApiSendSMS allows to import contacts from the phone and to synchronize in online and offline mode with the server for further use via Api or webhooks. ApiSendSMS allows to have multiple sending queues and priorities of sending concerning various events, actual summaries containing the status of sent SMS belonging to various queues. ApiSendSMS offers the option of sending via reserve/backup queue allowing to send SMS in case your cellphone is broken or your tariff is not functional, for the specific reserve/backup ApiGate queue.

2.4 Interruption or restriction of the availability of the Services, quality of Services

2.4.1 (Reasons for temporary suspension of the provision of the Service or restriction of its availability)

The Provider is entitled to temporarily suspend the provision of the Service, or limit its availability for the following reasons:

- (i) If the Client materially violates the terms of the Contract or other legal obligations, especially if he does not pay the price according to the Pricelist within its due date (the consequences of default with payment of bills are described in more detail in Article 7.7 of these T&C);
- (ii) In the case of a limit being exceeded or if the limit will be reached in a given billing period;
- (iii) If the Client provides incorrect data (especially in the sense of Article 2.1 of these T&C) or fails to report a change of his/her data;
- (iv) (iv) In the case of misuse of the Service or reasonable suspicion of misuse of the Service, or if there is a reasonable suspicion that the Client has entered into the Contract with particular intent not to pay the Service, or if the same Client abuses preferential offers and User Accounts or promotion prices in the way he creates multiple User accounts for this purpose;
- (v) If the Client does not meet the conditions for using the Services, or does not meet the conditions to enable topping up the credit, or is not entitled to perform the Contract;
- (vi) (vi) In the event of the occurrence of technical faults on the public communications or telephone network or in the event of the risk of such faults occurring, and for other serious technical or operational reasons;
- (vii) In case of state of emergency, in particular natural disasters, terrorist attacks, epidemics, threats to national security or the adoption of any other measure by an authorized public authority which will have the effect of restricting or excluding the availability of electronic communications services;

- (viii) In cases of planned technical outages, maintenance works, technical inspections, revisions, repair carried out on technical equipment or in the premises, which serve to provide this Service, or for the reason of electric grid outage;
- (ix) In the event where the Client has not taken over, or he failed to deliver letters, invoices or other documents to the last address provided by him/her, or the Client refused to receive the documents;
- (x) If unusually high traffic or an unusual type of traffic occurs. The Provider informs the Client about such a measure, which in particular protects the Client against misuse of the Service, preferably by sending SMS;
- (xi) In cases of a breach of the security of the Service, or in the event of a threat or vulnerability of the Service; due to the death of the Client (in which case the death of the Client must be documented by the Provider with a death certificate or other credible document);
- (xii) The Provider receives a message from the recipient of the SMS, which was sent by the Client via the Service using the Provider's identifier, stating a complaint about unauthorized sending of SMS; or
- (xiii) in other cases arising from a law, regulation or decision in the area of public law.

If the Client removes the defective condition according to the above provisions of Article 2.4.1. of these T&C before the expiration of the specified period (if the period has been set), the provision of the Service will be resumed by the Provider to the original extent.

2.4.2 (Waiver of claims in the case of interruption, restriction of availability, reduction of quality or defective provisioning of the Services)

If the using of Service is partly or whole restricted due to the technical or operational faults on the part of the Provider, the Provider shall remove fault concerned and shall lower the price accordingly, or based on an agreement with the Client, ensure the alternative providing of the Service. The Provider is not obliged to compensate the Client for any damage or any other loss arising from the interruption or faulty providing of the Service

2.4.3 (The risk of outages and the measures of the Client aiming at the minimalization of losses; non-existence of guarantees or warranty beyond the guarantees according to the law)

The client acknowledges, that the providing of the services with this nature (i.e. electronic communication services) is associated with the certain risk of outages and interruptions of Service, and he/she accepts this risk. The Client therefore undertakes to take all necessary steps to eliminate or limit the possibility of losses on his/her part in connection with the use of the Service as much as possible. The Provider undertakes to take all available measures to restore the availability and quality of the Service as soon as possible.

The Provider does not provide any guarantees and warranty.

2.4.4 (Repair works, maintenance and modification of the network; signal coverage and availability of the Services)

The conducting of service activities may in some cases result in a temporary restriction of the availability of the Service, of which, however, the Provider will notify its Clients in a suitable manner and without undue delay. The Provider undertakes to notify the Client, at least 48 hours in advance, of any planned technical outages, in the form of a notification sent to the Client's e-mail, if the Provider is informed of planned technical outages from third parties (suppliers) or other facts, or other technical problems do not prevent such notification. The availability of the Service or backup ApiGate results from the parameters of the network operators in the state of the concerned SMS receiver. The

availability of the Service (in the form of delivering SMS to the receivers) relies on the radio waves transmissions, which can be influenced by many factors (namely as a result of physical phenomena, types and nature of technologies used, construction design of buildings and materials used within them and many other external aspects and events, which the Provider cannot reasonably affect).

The coverage also varies based on the abovementioned reasons. The availability of the mobile signal cannot be guaranteed in all locations, including the areas of normal coverage provided by the mobile provider. In case of lacking coverage with the mobile signal, it is not the fault of the provided Service, and therefore it does not establish any rights or claims in favour of the Client.

The Client also takes note of the fact that services other than the ApiSendSMS Service may also be provided via the electronic communications network. In order to prevent the capacity from being filled or exceeded, voice services are provided in preference to data services. If the connection capacity of the data services is used to the full capacity, the connection speed of all network users will be limited. The available quality of the Service is also affected by many factors, and it may not always be possible for the Provider or other persons to influence these factors and to guarantee the required quality of the Service.

Factors influencing the quality of the Service include, in particular, the weather and the nature of the environment and disturbing influences in the environment, the level of mobile signal coverage or the construction design of buildings and materials used within buildings.

The Client is obliged to check the settings of Battery Management and Battery Optimization and other Android settings and permissions for the correct operation of the application on his/her Android device, which tries to disable / stop / restrict / block the application in the background, and thus the connection between the ApiSendSMS server may be interrupted, and the ApiSendSMS sending application on the Client's device or blocking sending messages by Android or on the part of operators. Detailed information on the settings for individual brands and models can be found in the Help section on the ApiSendSMS website.

Some brands of phones or specific phone models may have a modified Android system and settings and it will not be possible to make such settings allowing the 100% correct settings of Battery Management and Optimization and Authorization, in which case the Provider is not obliged to compensate the Client for damages or other losses arising from the interruption of the Service or faulty provisioning of the Service.

2.4.5 (User account ApiSendSMS)

The Client will find information about the status and the use of the Service, important messages of the Provider and some other information related to the provided Service in his ApiSendSMS user account (hereinafter „User account ApiSendSMS“) on website app.ApiSendSMS.com. The Client will receive access data to his/her User account ApiSendSMS to his/her e-mail address, which the Client provided while concluding this Contract. If the Client does not provide the Provider with his/her telephone number and email address while concluding the Contract (e.g. in the event that he/she concluded the Contract in paper form) the Provider will send to the Client with access data to his/her ApiSendSMS user account, using the Client's email address or telephone number which the Client communicate to the Provider later, if these data are not mandatory for the User account registration. The Provider is entitled to verify whether these are correct e-mail address and a telephone number communicated by the Client (e.g., using a verification code sent to the Client via SMS, etc.).

2.4.6 (Changes to the functional and technical specifications of the Service)

The Provider is also entitled to unilaterally modify or change the functional or technical specifications of the Service or change the customer interface for access to the Service.

2.4.7 (Additional means of protection of the network and the Service)

The Provider is also entitled to establish the additional means of protection concerning the Services.

3. Price and payment conditions

3.1 (Amount of the price, announcing of the Pricelist)

The Client is obliged to pay the agreed price for the Service provided. If the Contract were concluded using the registration form on the www.ApiSendSMS.com website, the price will be always determined according to the Pricelist of ApiSendSMS services. The actual Pricelist is announced by the Provider on its www.ApiSendSMS.com webpages. The Client confirms, that he/she has become familiar with the actual Pricelist and Tariffs and that he/she agrees with them. By paying the price for the ordered Service, the Client reaffirms that he has read the wording of these T&C, the Pricelist and the Complaints procedure. In the case of concluding the Agreement on the basis of an individual offer made by the Provider as a result of the Client's written or otherwise made request, the price will be determined by the individual conditions agreed in this Contract (or the Pricelist, unless otherwise agreed in the Contract). Unless otherwise stated in the Pricelist or in the Contract, all prices are stated without VAT in CZK, unless another currency is stated. VAT rate is regulated by the actual law provisions.

3.2 (The start of invoicing the price for the Services)

Prices for the provided Services start to be charged from the date of activation of the Tariff/Service, unless otherwise agreed. Activation of the Service begins at the moment when the Client is allowed to use the Service and not at the moment when the Client actually starts using the Service.

3.3 (Changes to the Pricelist made by the Provider)

The Provider is entitled to change the Contract, i.e. namely including the T&C, Pricelists, Tariffs, Complaint procedure in the meaning of the Article 2.2. these T&C.

3.4 Payment in the form of topping-up the credit, so-called prepaid kredit

3.4.1 (Paying the price by its deduction from the prepaid credit)

In the case of concluding the Contract by registering via the registration form on the website www.ApiSendSMS.com, unless otherwise agreed with the Client, the Client is obliged, after consuming the number of test SMS or Test Tariff specified by the Provider before, to deposit through his customer account in ApiSendSMS credit in the amount corresponding at least to the value of the Service required by the Client. The Service will be provided for the agreed price (according to the Pricelist), and this always within the amount corresponding the remaining credit. The Client may top up the credit at any time via the payment gateway (if implemented) or may make a payment by transfer to the Provider's account based on a deposit slip or a request for payment or a direct bank connection with a variable number equal to the user ID in the ApiSendSMS system, which will be sent to the Client to the e-mail address he/she has provided. All tax receipts issued by the Provider (or advance certificates and settlement invoices) are accessible to the Client via the User account ApiSendSMS. The Client can verify the remaining amount of his/her credit in the User account ApiSendSMS. The credit topped-up by the Provider may be reduced by the costs relating the fees for the payment received via the relating payment channel, e.g. by the payment with the card this reducing concerns the costs for the card payments, and fees invoiced by the provider of the payment channel concerned, e.g. Transferwise, Western union, etc.

3.4.2 (The validity of the prepaid credit)

The validity of the prepaid **credit** is restricted for the 12 months from the day of the first topping-up the credit. The validity of the prepaid credit is extended with the every additional topping-up of the credit made by the Client, and this for another 12 months counting from this additional topping-up. The validity of the credit may be set, in the Pricelist or another document, as longer or shorter. After

the expiration of the credit the Provider will block the Client's active access to the Service – for the payments effected by SMS. If the Client tops up the prepaid credit within 30 days of the expiration of the prepaid credit, then the unused credit (the credit that remained unspent at the end of the last credit validity period) will be renewed at the moment of topping up the prepaid credit. If the Client does not use up the credit during their validity and the validity of the credit is not renewed in accordance with the abovementioned provisions, then the credit is considered as spent and the Client is not entitled to any compensation from the Provider.

3.4.3 (Termination of the Contract before the expiration of the prepaid credit)

The Client may terminate the Contract before the expiration of the prepaid credit period, while the notice period is 30 days from the date of delivery of the notice to the Provider, unless a shorter notice period is agreed, and the notice may be given without giving a reason. In such a case, the unspent credit is considered as consumed and the Client is not entitled to any compensation for the unspent credit from the Provider.

3.4.4 (Invoicing the payments of the prepaid credit)

In case of payments for the Service through a prepaid credit, the Provider does not issue any regular or one-off bills to the Client. At the Client's request (or in the event that the sending of a tax document is required by law), the Client will be provided with a tax document stating the payment of the prepaid credit. This tax document will be sent to the Client in electronic form and free of charge. If the Client asked for a tax document in a physical form (as a paper document), the Client is obliged to pay to the Provider the manipulation fee in the amount of 100,- CZK without VAT for each shipment.

3.4.5 (The actual amount of the prepaid credit)

The Client can read the actual amount of prepaid credit in his/her User account ApiSendSMS.

3.4.6 (Maintaining the credit in various currencies)

The credit in the User account ApiSendSMS can be maintained in various currencies, namely CZK, EUR, USD and there are planned others in the future. (In 2022 temporarily in CZK only, while in the case of payment in another currency, the amount is immediately after receiving transferred to the credit maintained in CZK). The monthly tariff plans can be paid, according to the relevant prices, from the EUR, USD or CZK account. The payments for each SMS message are, for the technical reasons, always paid from the CZK credit, thus in the case of credit maintained in another currency than the CZK, the internal conversion will be performed, from the actual currency to CZK using the standard exchange rate.

3.5 Calls for payments and invoicing and tax receipts

3.5.1 (Call for the payment)

Unless otherwise agreed with the client, the Provider, based on the tariff or the request for the topping-up the credit of the Client and always before the expiration of the Service/tariff, will issue the invoice to the call for payment stating the due date and other data concerning the chosen tariff.

3.5.2 (Invoicing / tax receipts for the invoicing period)

Unless otherwise agreed with the Client, for example tariff invoiced retroactively for the previous calendar month – unless the Contract states otherwise – the Provider, based on the payment received

from the Client, will issue a tax receipt / invoice, or in the cases some services with retroactive invoicing, for example the payment via SMS and other services with allowed limit set by the Provider, the Provider will issue the retroactive invoice with a due date od 10 days, as in the case of the tariff plan, ant this to the first day of the respective month. If the Service cannot be invoiced, or some items for the relevant invoicing period, in which the Service was provided, cannot be invoiced to the Client, this Service will be invoiced – if possible – in the invoice for the next possible invoicing period. If the invoicing according to the previous sentence fails, the Provider does not waive its claim for paying the amount concerned by the Client.

3.5.3 (One-off payments and fees)

The Provider charges one-off (namely activation) fees for the Service to its Client at its discretion within the invoicing period (i.e. via the invoice for the period invoiced in advance), or immediately after the invoicing period in which the relevant Service with the one-off payment was provided, or the Provider is entitled to invoice the one-off payments whenever after the period in which the relevant Service with the one-off payment was provided, while the amount concerned will be due at least at 10 days after delivering of the invoice (in this case, this provision has a special nature relating the Articles 3.5.4 and 3.5.5 of these T&C), while all the abovementioned provisions are valid, unless otherwise agreed in the Contract.

3.5.4 (Issuing of the tax receipt and the due date)

Tax receipt issued by the Provider for the provided Service, or advance sheet, are always due on the due date stated on the tax document, or advance sheet. The Client agrees that the minimum due date stated on the tax receipt, or advance sheet, may be 10 days from the date of its issuance, when tax receipts and advance sheets are sent to the Client on the day of their issuance. If no due date is specified in the invoice, the invoice is due within 30 calendar days from the end of the invoicing period.

3.5.5 (Issuing of the invoices, delivering of the invoices and charging the invoices sent in the form of letters)

The Client may choose, in the Contract, between sending invoices in electronic form or on request for a fee in paper (letter) form. If electronic invoicing is chosen, tax receipts (invoices) will be sent to the Client free of charge to his e-mail in PDF format. Otherwise, the tax receipt (invoice) will be sent by mail in paper form, while in this case the Provider and the Client agree that the Client will pay the Provider an administrative fee in the amount of 100 CZK without VAT for sending each individual paper invoice. The fee according to the previous sentence will always be charged in the invoice for which it will be charged in accordance with the previous sentence, when the due date of this fee is determined by the due date of the Service, which will be charged by the given invoice. The Client is entitled to change the required method of delivery of the invoice by a written request delivered to the Provider no later than 10 days before the beginning of the period for which the invoicing will be performed by the relevant invoice. If the Client does not indicate any of the invoicing methods in the Contract, the invoicing will be performed electronically.

If the tax receipt is sent by mail, the received letter sent using the postal service provider is considered to be received on the third working day after dispatch, but if it was sent to an address in another state, then on the fifteenth working day after dispatch (however, the possibility of confirming that the consignment has arrived earlier shall not be affected). The invoice for the Services pursuant to Article 3.5.4 of these T&C will be delivered to the Client within 15 calendar days from the end of the invoicing period. In the event that the Client does not receive a statement in accordance with Article 3.5.4 of these T&C within 15 calendar days from the end of the invoicing period, the Client is entitled to request a copy of the statement from the Provider. If the Client does not request a copy of the statement

according to Article 3.5.4 of these T&C within 20 calendar days from the end of the billing period, it is considered that the statement was delivered to the Client (in the manner he/she chose for sending the receipt) on the 15th calendar day from end of the invoicing period. Failure to deliver the invoice does not affect the Client's obligation to pay the price for the provided Services properly and on time. The provisions of Article 3.7 of these T&C for the delivery of invoices to the ApiSendSMS Client Account are not affected.

As a basic form of invoicing, the Provider provides invoicing to the Service, where a summary of drawn units is given. The Client is entitled to request the Provider for a detailed statement, which contains a breakdown of the consumed Service.

3.6 (Individual ways of payments for the billed amounts; contractual penalty and the interest of arrears)

The charged amount is considered as paid, in case of payment by bank transfer, at the moment of crediting the relevant amount to the account with the Provider's financial institution. The moment at which the amount is considered paid may be specified separately for other methods of payment below in Article 3.6 of these T&C, as a special provision. The Provider accepts payment to the account by direct debit from the payment card through the payment gateway (if implemented), payment by the payment gateway. However, it is always a debt paid by the Provider (not at the Client's office or the place of residence). The payment must be made no later than at the due date of the charged amount, otherwise the Client is in arrears and the Provider has the right to demand payment of a contractual penalty in the amount specified directly in the written Contract and in addition to the contractual penalty payment of default interest in the amount specified by law. Payment of the contractual penalty does not affect the Provider's right to demand full compensation for any damage.

In the case of payment by the payment gateway, the payment is effected (amount paid) at the moment when the Client receives a confirmation of payment sent by the payment gateway system. In the case of payment by direct debit from the Client's payment card through the payment gateway, the Client agrees that the Provider is entitled to collect the invoiced amount after issuing the receipt from the Client's payment card. In the case of recurring situation of a failure to collect the payment from the payment card of the Client for the reason on the part of the Client or his/her payment card issuer, the Provider will be entitled to cancel this payment mode and to inform the Client accordingly, after which the Client will be obliged to effect his/her payment using another means. The payment is considered paid when the Client receives a confirmation of payment sent by the payment gateway system. By the establishment of the recurring payment, the Client is therefore entitled to enter: (i) the maximum amount of the recurring payment, (ii) fixed or variable nature of the payment, (iii) the date or frequency concerning the charging of the recurring payment; and (iv) fixed or variable nature of the date or the frequency concerning the charging.

3.7 (The option to find the invoice with the User account ApiSendSMS)

In the case of subsequent (so-called post-paid) invoicing, the Provider allows the Client to request for payment, issued Invoices / tax receipts for at least the last 6 calendar months that are available on its website app.ApiSendSMS.com, with the possibility for the Client to view and print such invoices. The Provider and the Client have therefore agreed that each invoice issued is considered delivered to the Client, if it has not previously been delivered to him by e-mail, in paper form, or otherwise, on the 15th day after making the invoice available in the User account ApiSendSMS (or earlier when the Client logged in to his customer account in ApiSendSMS, if the invoice was already made available in the given User account at the time of login). The Provider thus suggests the Client to regularly check his/her ApiSendSMS user account regularly.

3.8 (Unidentified payments)

On each invoices, there is always present the variable symbol needed for the correct transfer of the payment. Unless stated otherwise, the variable symbol always consists of the User account ID,

predominantly for the reason of the settings concerning the option of automatic transfer payments made by the Client. As a specific symbol it is suggested to enter the number of the Call for payment, the Invoice or the Tax receipt, which enabled the specific identification of the payment; if it is not entered, cf. the after mentioned text, the payment will be accounted for the oldest (earliest due) type of the payment. The payment always pays the primary invoice according to the variable symbol specified during the payment by the Client (and if the amount of the payment exceeds the debt from the given invoice, then to the next earliest due invoice). In the event that the payment is not properly marked by the Client so that the Provider can identify the payment without unreasonable difficulties, such payment will not be considered a proper and timely payment made by the Client. If the Provider is able to identify at least for which Client the payment is made, the payment will be offset against the Client's debt from his/her oldest (earliest due) invoice with the Provider. In the context of a specific bill / invoicing / call for payment, the payment is offset (if it is not sufficient to pay the entire invoice) (i) first on the principal of the amounts charged, (ii) then on default interest and (iii) subsequently on the contractual penalties charged. Interest on arrears is no longer interest-bearing (even if the payment is primarily credited to the principal and then to interest on arrears). The overpayment remaining after the payment of the above-mentioned receivables will be credited to the Client's credit account.

3.9 (Debt collection through a third party)

The Provider is entitled to authorize a third party to recover its receivables from the Client who is in arrears with the payment of prices for the provided Service or other obligations. The Client undertakes to deal with such a person as directly with the Provider.

4. Conditions for providing the Service

4.1. (Activation of the Service)

The activation of the Service means the moment, when the Client is allowed to use the Service, not the moment, when he/she begin with the real use of the Service. The Client is allowed to use the Service immediately after the Client verification carried out on the part of the Provider, or after the Client chooses the tariff, or after the payment for the tariff respectively, if it is charged.

4.2 (Necessity of the procedure in accordance with legal regulations and instructions of the Provider)

When using the Service, the Client is obliged to comply the general binding laws and the instructions issued by the Provider. Namely, the Client is obliged to comply with the laws concerning the protection against the spam and the protection of personal data. The Client bears the sole responsibility for any breach of these or other laws.

4.3 (Procedure in the event of interruption or restriction of the provision of Services)

In accordance with the provisions of these T&C, the Provider is entitled to suspend the provision of the Service at any time and without written notice or to limit its scope for reasons stated in these T&C or in the law. If the Service is not for the part or whole available due to the reasons of technical or operational nature on the part of the Provider, the Provider is obliged to ensure the repair of the fault and to proportional lower the price or, based on the mutual agreement with the Client, to ensure the alternative providing of the Service. The Provider is not obliged to compensate any damage or other losses to the Client, that arise from the interruption of the Service or its faulty providing, not even the paid proportional part for the Tariff.

4.4 (Inspection, changes and maintenance regarding the technical equipment)

In the case of inspection, changes or maintenance of technical equipment or changes in the method of provision, the Provider is entitled to interrupt the provision of the Service or limit its scope, of which it will inform the Client without undue delay in the form of a notice published in the User account ApiSendSMS. Also in these cases, if the Service is partly or whole unavailable, the Provider will ensure the removal of the obstacle preventing the use of the Service and will reduce the price or, in agreement with the Client, ensure the provision of the Service in an alternative manner. Again, the Provider is not obliged to compensate the Clients for any damages that may arise as a result of the interruption of the Service or faulty provision of the Service.

5. Rights and obligations of the Provider

5.1 (Unavailability or faults as result of the actions of the Client or other persons)

The Provider is not responsible for the occurrence of failures, defects or malfunctions of the Service or its part in cases where these failures, defects or malfunctions occurred as a result of unprofessional or unauthorized actions by the Client or other persons.

The Client is obliged to check the settings of Battery Management and Battery Optimization and other Android settings and permissions for the correct operation of the application on his/her Android device, which tries to disable / stop / restrict / block the application in the background, and thus the connection between the ApiSendSMS server may be interrupted, and the ApiSendSMS sending application on the Client's device or blocking sending messages by Android or on the part of operators. Detailed information on the settings for individual brands and models can be found in the Help section on the ApiSendSMS website.

Some brands of phones or specific phone models may have a modified Android system and settings and it will not be possible to make such settings allowing the 100% correct settings of Battery Management and Optimization and Authorization, in which case the Provider is not obliged to compensate the Client for damages or other losses arising from the interruption of the Service or faulty provisioning of the Service.

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5.2 (Process of complaint handling and the Complaint procedure)

The process of complaint handling concerning the quality or availability of the Services, as well as the invoicing of the Services, is regulated by the Complaint procedure. The Client declares he/she has become familiar with it.

5.3 (Information concerning the removal of fault demanded by the Client)

The Client, based on his/her own request, will be informed of the nature, extent and expected date of rectification of the fault. In the case of severe or extensive faults, the rectification time can be difficult to determine, because it depends on the specific situation and the possibilities for rectifying the fault.

6. Rights and obligations of the Client

6.1. (The start of the using the Service by the Client)

The Client is entitled to start using the agreed Service after its activation. Pursuant to Article 3.2 of these T&C, the prices for the provided Services start to be charged from the date of activation of the Service or the Tariff. In the case that the Client does not start using the agreed Service, this does not affect the Provider's right to charge the Price of the Service (especially in the amount of the regular monthly fee, etc.).

6.2 (Prohibition of abusing the Service)

The Client may not use the Services in such a way as to violate the Provider's rights, the rights of other clients or any third parties in general, or could cause other clients to be disadvantaged concerning the use of the Services. The Client may not use the Service in the way giving him/her the advantage against the other clients, or in the way that might lead to the interruption or the impairing of the functionality of the mobile network, as well as to threaten its operation. An attempt to disrupt the security and continuity of the Service's operation and the obligation to comply with the contractual conditions between the Client and its mobile operator or its service provider through which it sends messages and their limits is considered to be the serious breach of the Client's obligations.

7. Duration of the Contract, including the right of the Client to terminate the Contract concluded at a distance or outside the premises normally used by the Provider for its business

7.1 (Duration of the Contract)

Unless stated in the Contract, that it is concluded for a definite period, this Contract is concluded for an indefinite period. If the Contract is concluded with the Client or self-employment person for the definite period, this duration may not exceed 24 months for the given Service and if it is concluded for the first time. The Provider is obliged to enable the Client, who is a consumer or a self-employment person, to conclude the Contract for the maximum period of 12 months; this does not exclude the possibility of concluding the Contract for a longer period on the request of the given Client.

If the Contract is concluded for a definite period, the Provider is obliged to inform the Client, who is a consumer or a self-employed person, in the manner chosen by the Client for sending the invoice, no earlier than 3 months and no later than 1 month before the expiry of the Contract, on the impending termination of the Contract and on the possibilities of its extension. If the Client, who is a consumer or a self-employment person, does not give his verifiable consent to the extension of the Contract for a definite period, the Contract passes into a contract for an indefinite period. However, the provisions on the duration of the Contract and its termination in the case of an Contract concluded with payment in the form of topping-up the credit (so-called prepaid) according to point 3.4.2 of these T&C are not affected by the previous provisions.

7.2 (Options for termination of the Contract)

The contractual relationship may be terminated by the agreement of the parties, termination (which may be made in writing or by e-mail), withdrawal from the Contract, expiration of the period, termination of the legal entity without a legal successor, or in another manner prescribed by the law.

7.3 (Termination of the Contract on the part of the Client)

The Client is entitled to terminate the Contract without giving a reason when the notice period is 30 days and is counted from the day following the delivery of the notice to the Provider, unless otherwise agreed.

7.4 (Termination on the part of the Provider)

The Provider may terminate this contract for the following reasons:

- (I) The insolvency proceedings is conducted against the Client, or the Insolvency Court issues the decision concerning the bankruptcy or imminent bankruptcy of the Client, the refusal

- concerning the drafted insolvency due to the insufficient assets of the Client, or the Client is entering into liquidation, and in the case when there is a seizure conducted against the Client;
- (II) Breach of the Client's obligation stipulated in the Contract or in the law, if the Client did not arrange a remedy within 14 days after delivery of the call to fulfil this obligation (possibility to terminate the Service according to the Article 7.7 of these T&C);
 - (III) If the Client provides incorrect or false information or statements, or has not reported a change in its information;
 - (IV) A condition in which it will not be possible to activate the Service with the Client due to technical reasons; or
 - (V) A condition when the Provider ceases to be contractually or technically fit to provide the Service (especially due to cancellation of the contract with the Provider's contractual partners, which is a condition for providing the Service, when the Provider's ability to concerned);
 - (VI) The Client has not used the service in the past 12 months;
 - (VII) Further provision of the given Service cannot be fairly requested from the Provider for technical, operational or economic reasons. The notice period in these cases amounts to 30 days and it is calculated from the day following the delivery of the notice to the Client, unless otherwise agreed, or immediately as applicable.

7.5 (The Client's option to terminate the Contract concluded at a distance or outside the premises normally used by the Provider for its business)

The Client, if he/she is a consumer or a self-employment person and if the Contract was concluded at a distance or outside the premises normally used by the Provider for its business, has the right to terminate this Contract without stating the reasons within the deadline of 14 days counted from the day after the day when the Contract was concluded. However, the period of the consumer or self-employed person for withdrawal from the Contract at the same time (regardless of the expiration of the period according to the previous sentence) does not end before the expiration of the 14 days period in the form of information pursuant to Section 63 (1) of the Electronic Communications Act. In order to comply with the deadline for withdrawal from the Contract according to the previous sentences, it is sufficient to send the letter of withdrawal from the Contract before the expiration of the relevant period mentioned above.

A consumer is any person who, outside the scope of his business activity or outside the scope of independent performance of his/her profession, enters into a Contract with the Provider, or otherwise deals with the Provider.

For the purposes of exercising the right to withdraw from this Contract pursuant to Article 7.5 of these General Terms and Conditions, the Client must inform the Provider of its withdrawal from this Contract either in writing to the Provider's data box or by email at Support@ApiSendSMS.com, in the form of the unilateral act (for example, by letter sent through the postal service provider or by e-mail). The Client may use the sample withdrawal form provided by the Provider, however this is not his/her obligation. If the Client makes a withdrawal from this Contract according to the Article 7.5 of these T&C, the Provider will refund to him/her without undue delay and no later than 14 days from the date on which the Provider received the notice of withdrawal concerned, all payments (toppings-up of credit) received from the Client (if no Service was consumed) and after deducting all administrative costs and meeting all tax and legal requirements. Unless the Client has expressly stated otherwise, the Provider shall return Client's payments using the same means of payment used by the Client to perform the initial transaction.

However, the Provider informs the Client – in accordance with § 1834 of the Civil Code No. 89/2012 Coll. – that if he/she withdraws from the Contract, the subject of which is the provision of services and the Provider begun to provide services before the expiration of the withdrawal deadline, the Client shall pay to the Provider the proportionate part of the agreed price for performance provided up to the moment of withdrawal from the Contract (such a situation is also considered the situation when the Client has activated or used the Service/Tariff to any extent, e.g. through his/her user account,

while this act will be considered as the express consent of the Client with the performance of the Service). If the agreed price is unreasonably high, the Client shall pay to the Provider a proportional part of the price corresponding to the market value of the provided performance. The Provider is entitled to receive the contractual penalty and the administrative costs, which he calculates, while he will refund any overpayment.

7.6 (Termination of the Contract due to the default on the part of the Provider)

The Client is entitled to withdraw from the Contract without further reason if the Provider is in arrears with the commencement of the provision of the Service for at least 1 month from the date on which the provision of the Service was to be commenced.

7.7 (Restrictions on the provision of the Service and termination of the Service due to non-payment or late payment on the part of the Client)

If the Client has not paid within the due date stated on the invoice for the Services provided or for the Tariff Plan, the Provider will notify him and may block the Service and the User account immediately. In the event of a replacement due date after its useless expiration, the Provider may limit the provision of the affected Service to the Client by preventing active access to the Service, or it may restrict (exclusively on its discretion) the provision of the separately invoiced Service. The price for the verifiable notification will be cost oriented. The Provider may terminate the contractual relationship, when the Client has consistently paid late, or has not consistently paid the price for the Services, or the Tariff specified in the price statement, after the Provider notifies the Client. Constantly late payment means the payment of at least 2 consecutive invoices after their due date. Constant non-payment means the existence of at least 3 unpaid invoices.

7.8 (Arranging the possibility of the Provider to withdraw from the Contract, especially in the event of loss of the Provider's ability to provide the Service)

The Parties agreed that the Provider is entitled to withdraw from this Contract from the following reasons:

- (i) If the Provider loses his contractual or technical ability to provide the Service (especially in the case of the termination of the contract made by its contractual partners, that is conditional to providing the Service);
- (ii) In case of final decision of bankruptcy concerning the assets of the Client or to the refusal relating the bankruptcy draft due to the insufficient asset of the Client; or
- (iii) if the Client materially breaches the Contract (however, for the reason of non-payment of invoices, it is possible to terminate the Contract only in the manner specified above in Article 7.7 of these T&C). Withdrawal from the Contract is effective upon delivery of the notice of withdrawal to the Client, with effect until the date of delivery, when the Contract is not cancelled from the beginning. The Provider's ability to terminate the Contract in such a case in accordance with another provision of these T&C is not affected.

7.9 (Death of the Client)

Death of the Client represents another condition terminating this Contract. The death of the Client must be noticed and credibly proved to the Provider, namely by submitting the death certificate of the dead Client, or by any other credible proof testifying his/her death. In such a case, the Contract will be terminated on the day the Client died. The rightful heir of the deceased and the Provider may agree to negotiate a new Contract.

7.10 (The Client's option to terminate the Contract due to changes made to the Contract by the Provider)

The Client's option to terminate the Contract due to changes made to the Contract by the Provider is described in the Article 2.2 of these T&C.

7.11 (The Client's right to a refund of the credit arising from the Contract due to changes to the Contract made by the Provider)

In cases where the Client is entitled to a refund of the prepaid credit, this credit will be returned to the Client upon his/her request (not without it), while the Provider has the right to request, before returning the prepaid credit, proof of the Client's identity.

7.12 (The Client's obligation to pay the price for the provided Service even after the termination of the Contract)

Upon termination of the contractual relationship, the Client is not relieved from his/her obligation to pay the Provider the prices for the provided Services and other services provided until the termination of the contractual relationship, nor the liability for any damages caused to the Provider. This also does not terminate the Provider's claims for payment of unsatisfied receivables arising during the contractual relationship.

8. Confidentiality, processing of the personal data, personal data protection

8.1. (Confidentiality)

The Client, who is an entrepreneur (but not the self-employed person) undertakes to maintain the confidentiality of all facts he/she has known in the connection with this Contract and the provision of the telecommunication Service based on it, unless these fact are the part of the public domain. The Client shall ensure following this commitment also on the part of his/her employees and persons he/she uses to fulfil his contractual obligations. This confidentiality applies even after the termination of the Contract.

8.2 (Information concerning the processing the personal data of the Client)

The Client acknowledges that information on the processing of personal data and their protection is accessible to him through the document Privacy Policy concerning the provision of the ApiSendSMS services.

8.3 (Personal data protection)

8.3.1 The Provider is in the position of a personal data processor when providing the Service, while the Client is the controller of personal data, i.e. the person who determines the purposes and means of personal data processing. The Provider will process the personal data of other persons for the Client exclusively for the purpose of providing the Services to the extent and under the conditions set out in the Contract. The Provider is entitled to process personal data for the Client on the basis of the Client's documented instructions, as they result from this Contract or from other Client's documented instructions.

8.3.2 The Provider will process for the Client the personal data of the addressees of bulk sent information SMS, which data include: name, surname, telephone number, e-mail, group to which the addressee belongs, or other data filled in by the customer. The data subjects are therefore the recipients of the ApiSendSMS Service used by the Client, i.e. the recipients of the information SMS sent in bulk or individually.

8.3.3 Personal data will be processed for the entire duration of the Contract.

8.3.4 The Provider will process and store the personal data on servers in the EU.

8.3.5 The Provider undertakes to adopt reasonable technical and organizational measures complying the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data

Protection Regulation) (hereinafter „GDPR“), to that he is obliged in its function of data processor, and to prove them to the Client upon his/her request.

- 8.3.6** The Provider will inform the Client if certain instructions are, upon its opinion, in conflict with effective legal regulations.
- 8.3.7** The Provider is entitled to transfer personal data to a third country or international organization within the meaning of the GDPR only on the basis of a special instruction from the Client. If such transfer is based on obligations under EU or Member State law applicable to the Client, the Provider shall inform the Client of this legal requirement prior to the transfer, unless such law prohibits such disclosure for important public interest reasons.
- 8.3.8** The Provider is obliged to ensure that the persons authorized to process personal data undertake to maintain confidentiality in relation to all personal data that the Provider processes under the Contract, as well as on security measures, the disclosure of which would jeopardize the security of personal data.
- 8.3.9** The Provider is obliged to take all measures of the EP and the Council of the EU according to Article 32 of the GDPR, so as to ensure adequate security of personal data.
- 8.3.10** The Provider is entitled to involve another processor in the processing, but is obliged to inform the Client of any intended changes concerning the acceptance of other processors or their replacement, and thus provide the Client with the opportunity to object to these changes. The Provider undertakes to enter into an agreement with these other processors ensuring compliance with the rights and obligations set out in this Contract, in particular confidentiality and security of personal data and the provision of sufficient guarantees for the implementation of the technical and organizational measures by this other processor complying the same level of confidentiality and security as with the Provider.
- 8.3.11** The Provider is also obliged to take into account the nature of the processing, to assist the Client through appropriate technical and organizational measures to meet the Client's obligation to respond to a request for the exercise of the data subject's rights under the GDPR.
- 8.3.12** The Provider shall assist the Client in ensuring compliance with the obligations under Articles 32 to 36 of the GDPR, taking into account the nature of the processing of information available to the Provider. In cases where the nature of the matter requires the Provider to inform the Client, the Provider informs the Client without undue delay.
- 8.3.13** The Provider is obliged to enable the Client, or a person authorized by him, to check compliance with the obligations concerning the processing of personal data arising from this Contract at the Provider's registered office during normal working hours of the Provider, upon the prior agreement and within the period communicated to the Provider for at least 14 days in advance.
- 8.3.14** Upon termination of the processing of personal data under this Contract, the Provider shall delete all processed personal data from all its systems or databases, including the deletion of all backup copies, except when storage is required by law or accounting regulations.
- 8.3.15** If the Provider processes personal data beyond the scope defined by the Contract or other documented instructions of the Client, it is considered to be the data controller in relation to such processing.

9. Liability for losses

9.1 (Contractual limitations for the aggregate amount of foreseeable material losses and the other contractual limitations)

The Client and the Provider have agreed that the Provider is liable to the Client only for the intentionally caused losses. The Client and the Provider have agreed that the Provider is liable to the Client for damage from one Contract only up to the amount of CZK 1,000. However, the agreements described in the abovementioned Article 9.1 of these T&C concerning the limitations of the liability of the Provider relating the losses does not apply, if it is the obligation to compensate the losses

concerning the natural rights of any person, or in the result of the intention or the gross negligence. The Client also states that the total foreseeable damage that the Client may incur in connection with the Contract and/or the use of the Service amounts to a maximum of CZK 1,000. Hereby it is excluded the obligation of the Provider to compensate the Client for losses that could not be reasonably expected by the signing of this Contract. The agreements according to the abovementioned sentences in the Article 9.1 of these T&C do not affect any possible legal or other contractual provisions stating the liability of the Provider concerning the smaller losses, while the agreements according to the abovementioned sentences in the Article 9.1 of these T&C limits the liability of the Provider, however they are not intended to its extensions beyond the legal framework, nor beyond the limitations established by other contractual agreements. All losses caused in connection with the Contract shall be compensated in cash for the credit.

9.2 (The exclusion of claims in the case of interrupting of the Services or limiting their availability or quality and in the case of faulty providing of the Services)

If the Service could be used only partially, or it could not be used at all due to a fault of a technical or operational nature on the part of the Provider, the Provider is obliged to ensure the elimination of the fault and to reduce the price or, in agreement with the Client, to provide the Service in an alternative manner. The Provider is not obliged to compensate the Client for damage or other losses that arise as a result of interruption of the Service or faulty provision of the Service.

9.3 (The exclusion of claims in the event of disclosure or misuse of the Client's access data, as a result of computer viruses and in the event of a breach of the Client's obligations)

The Provider is not liable for any loss resulting from the disclosure or misuse of the Client's access data to the User account ApiSendSMS or Queue ID numbers and passwords or extracts from online and offline communications, messages, calls and other data from the Client's equipment or the ApiSendSMS system. Furthermore, the Provider is not liable for losses caused by (i) faults or unsuitability of the Client's technical equipment, (ii) incorrect Client's procedure in using its own Service, (iii) damage or intervention of the Client in providing the Service, (iv) breach of contractual obligations or obligations arising for Client from generally binding legal regulations.

9.4 (The obligation of the Client to compensate losses)

The Client is liable for all intentional and unintentional losses caused during the use of the provided Service. The Provider is entitled to claim from the Client the compensation for losses caused by the Client, including loss of profit. The compensation for losses also means time and costs incurred by the Provider to eliminate the defective condition caused by unauthorized or unprofessional use of the Services by the Client, further damage to third parties and especially other Clients, losses caused by restricting the availability of Services or damages caused to the Provider's technical means, etc. The Provider is entitled to compensation for losses caused by non-repayment of a monetary debt, even if these losses are covered by default interest. All losses caused shall be compensated in cash.

10. Dispute resolution, out-of-court settlements of consumer disputes, the applicable law

10.1 (Dispute resolution)

The Parties shall make every effort to ensure that any disputes which may arise between them in connection with the performance of the Contract are settled amicably. Disputes between the Client and the Provider are decided by a court. Disputes in matters where the Client is an entrepreneur, arising from business activities falling within the jurisdiction of the courts, will be decided by the competent court in the place of the Provider's registered office on the day of the commencement of court proceedings. Disputes in matters where the Client is a foreign person belonging to the jurisdiction of the courts will be decided by the competent court in the place of the Provider's registered office.

Other disputes falling within the jurisdiction of the courts, in which no amicable settlement will be found, will be decided by the court with substantive and territorial jurisdiction.

10.2 (Out-of-court settlements of consumer disputes)

The Client who has concluded the Contract as a consumer may, in accordance with Act No. 634/1992 Coll., on consumer protection, also resolve disputes arising from the Contract out of court. Disputes arising from the Contract, unless an amicable settlement of the dispute is reached between the Parties, may not be settled out of court or in administrative proceedings, except as provided above.

10.3 (The applicability of the Czech law)

All legal relations of the Parties, which arise on the basis of the Contract or in connection with the provision of the Service on its basis, are governed by Czech law with the exclusion of conflict of law rules.

11. Reporting of faults and their removing

11.1 (Reporting of faults)

The Client is obliged to report the fault of the Service using HELPLINE +420 777 166 238 and using the his/her contact telephone number specified in the Contract or otherwise.

11.2 (Customer support)

The Provider undertakes to provide the customer support to the Clients. The Client can contact the Provider on the email address Support@ApiSendSMS.com or the phone number +420 777 166 238, or (the best way) via the Contact form from his/her own user interface.

12. Notice and communications

12.1 (Delivery addresses and methods of delivery, the obligation of the Client to get acquainted regularly with the content of the User account ApiSendSMS)

Delivery addresses used for the correspondence (hereinafter „delivery addresses“) are following:
Provider: the Provider's address registered on the day of sending the correspondence in the public register as its data box, email: Support@ApiSendSMS.com (the Provider is entitled to change these contact data on its own discretion). Other provisions of these T&C, the Contract or the Complaints procedure concerning notifications and actions made in special modified cases (e.g., complaints or special contacts for reporting faults and contacting customer support according to Article 11 of these T&C) are not affected by the provisions of Article 12.1.; Client: ID, name, surname, address (house with number or number and municipality) communicated by the Client when concluding the Contract, email and telephone number communicated by the Client when concluding the Contract (when the Client is entitled to inform the Provider of the change of these data).

The Provider is entitled to contact or deliver to the Client in person, by telephone, through the postal service provider – hereinafter referred to as „mail“ (e.g., Czech Post), courier service (e.g., PPL, etc.), email, SMS or MMS, to the Client's User account in ApiSendSMS, or otherwise. The Client hereby acknowledges that **the delivery of the message to his/her User account in ApiSendSMS has in the sense of Article 12.2. db) of these T&C shall take effect no later than the fifteenth day after delivery of the message to the Client's User account in ApiSendSMS. The Provider thus asks the Client to regularly inspect his/her User account in ApiSendSMS. When delivering by email, the provisions on delivery in the sense of Article 12.2 ca) and cb) of these T&C shall apply.**

12.2 (Delivery time)

Any correspondence made under this Contract shall be also deemed to have been duly delivered to the relevant Party at the latest:

- a) in case of personal delivery, or delivery by courier, at the delivery date
- aa) when the consignee actually received the consignment; or
- ab) when the consignee has refused to accept the consignment;
- b) on delivery by post or courier service on the day of delivery
- ba) indicated on the delivery note returned by post as the date of receipt; or
- bb) the expiration of the deadline for acceptance of the deposited consignment in vain, even if the other Party did not become aware of such consignment;
- bc) the date indicated as the date on which the consignee refused to accept the consignment;
- c) in the case of delivery by email, SMS or MMS, the moment when the sender has received a confirmation of the complete transmission of the message issued by the sending device, while:
 - ca) if the message was transmitted after 4 pm, it shall be deemed to have been received at 9 am on the following working day;
 - cb) if the message was transmitted on a day which is not a working day, it shall be deemed to have been received on the next following working day;
- d) to the Client's User account in ApiSendSMS:
- da) the day on which the Client first logged in to his/her User account in ApiSendSMS after the message was delivered to his/her User account in ApiSendSMS;
- db) on the fifteenth day after delivery of the message to the Client's User account in ApiSendSMS.

12.3 (Other means of proving delivery and legal presumptions and fiction of delivery)

The provisions of Article 12.2 of these T&C do not affect other means by which can prove the delivery of a written or otherwise made statement to the other Party, nor the provisions of the law on the basis of which the consignment would be considered previously delivered, for example based on the fiction of delivery (e.g., according to the § 573 of the Civil Code No. 89/2012 Coll., it is applied that the delivered consignment, sent by post service, shall be deemed as delivered at the third day after it was sent, however, if it was sent to the address in another state, it is deemed as delivered on the fifteenth day after it was sent).

12.4 (Changes of delivery addresses)

The delivery addresses listed above in the Article 12.1 of these T&C may be changed by unilateral written notice of the relevant Party, provided that such change becomes effective against the other contracting parties on the tenth working day after delivery of such notice to the relevant Party. If the Party does not notify the change of delivery address, it is not entitled to object that it no longer accepts consignments at the previously stated delivery address, while the effects of delivery within the meaning of Article 12.2 concerning the previously stated delivery address are maintained. The Provider is entitled to change its delivery addresses in the form of a change in the Contract (including, for example, a change in these T&C).

13. Final provisions

13.1 (The need for approval of all changes to the offer by the Provider)

With regard to the number of clients and the need for uniform administration of the Contracts, the Provider excludes in advance the acceptance of the offer with amendment or deviation, when the Provider reserves that all changes, additions or deviations in the draft Contract (including T&C, Pricelist, Complaints procedure or any other documents or arrangements, which are part of the Contract) must be expressly approved by the Provider. The Parties further exclude the possibility of the clients to refer to their business conditions, which in their content contradict the conditions of this Contract. The only exception is the completion of data by the Client, the completion of which is envisaged in the Contract (e.g., the Clients's personal data).

13.2 (Exclusion of the Client's ability to confirm the content of the Contract, which would affect the content of the Contract)

The Provider also in advance, within the meaning of § 1757 of the Civil Code No. 89/2012 Coll., excludes that any written confirmation of the Client sent by the Client after the conclusion of the Contract has any effect on the agreed content of the already concluded Contract.

13.3 (The applicability of the Czech law, including the Electronic Communications Act)

All legal relations of the Parties, which arise on the basis of the Contract or in connection with the provision of Services on its basis, are governed by Czech law with the exclusion of conflict of law rules. The contractual relationship established under this contract is also governed by the Civil Code No. 89/2012 Coll. and Act No. 127/2005 Coll., on electronic communications and on the amendment of certain related acts (the Electronic Communications Act).

13.4 (Ethic codex)

The Provider is not a member of any organization issuing any special ethic codex binding their members, nor it is bound by any other ethic codex and in any other way.

13.5 (The effective date of these Terms and Conditions)

These T&C are effective from 01.01.2022.