

# **GENERAL TERMS AND CONDITIONS FOR THE PROVISION OF GoSMS SERVICES valid as of 01.04.2020**

## **1. Introductory Provisions (Contracting parties and contents of the Contract)**

### **1.1. (Contracting parties and contents of the Contract)**

The General Terms and Conditions for the Provision of GoSMS Services (hereinafter referred to as the "GTC" or the "Terms and Conditions" govern, in particular, the procedure for concluding the contract (hereinafter referred to as the "Contract") for the provision of services consisting in mass sending out of information SMS (hereinafter referred to as the "Services") between ZooControl s.r.o., Company ID No. 05766656, registered office at Planá 67, 370 01 Planá, a company incorporated in the Commercial Register kept by the Regional Court in České Budějovice, Section C, Insert 25800 (hereinafter also referred to as "ZooControl s.r.o." or the "Provider"), engaged in the provision of publicly available electronic communications services, and the Customer (hereinafter also referred to as the "Customer"), the procedure for handling complaints, the basic rights and obligations of the Parties, and the payment terms. These GTC form an integral part of the Contract concluded with the Customer. The Price List of GoSMS Services (hereinafter referred to as the "Price List") and the GoSMS Complaints Procedure (hereinafter referred to as the "Complaints Procedure") form an integral part of the Contract. When these GTC refer to the fulfilment of obligations under the Contract, it also includes the fulfilment of the obligations contained in these GTC, Price List, and Complaints Procedure. However, the provisions of the Contract shall take precedence over the contents of these GTC. By concluding the Contract, the Customer agrees with the GTC, Price List, and Complaints Procedure and confirms they have read these documents. ZooControl s.r.o. is permitted to provide publicly available electronic communications services based on the certificate issued by the Czech Telecommunication Office (hereinafter also referred to as the "CTO").

## **2. Establishment of the Contractual Relationship and Changes Thereof and Description of the Services**

### **2.1. (Conclusion of the Contract)**

The Services are provided on the basis of the Contract concluded between the Provider and the Customer. The Contract may be concluded based on the Customer signing up using the registration form (on the Provider's website [www.gosms.eu](http://www.gosms.eu)), by which the Customer creates a user account in the GoSMS Self-Service. If the agreed by the Provider in a specific case, the Contract may also be concluded in writing or by means of a different contract especially on the basis of an individual offer made by the Provider as a result of a written or other request of the Customer (when the Provider shall still be entitled to require concluding the Contract by means of signing up and filling in the registration form according to the previous sentence). The costs of using means of distance communication shall not differ from the basic rate (i.e., in the case of concluding the Contract online, the Customer shall pay only the cost of internet connection according to the contract concluded with their current internet connection provider).

When signing up, the Customer shall fill in the data required for the registration as mandatory. The Customer shall also state if they wish to conclude the Contract as an entrepreneur within the scope of their business activity or independent performance of their profession. Failure to do so may result in

the Provider indicating in the respective tax documents, provided to the Customer according to the Contract, that the Contract does not relate to the Customer's business activity.

An entrepreneur is a person who independently carries out a gainful activity on their own account and responsibility based on a trade or similar license with the intention of doing so systematically in order to make a profit. An entrepreneur is also a person registered in the Commercial Register on the basis of an entry in the Commercial Register. An entrepreneur is also a person who holds a trade license or other permission under law.

If the Customer fills in their Company ID No. when signing up, they shall be registered as an entrepreneur, and the Contract shall be concluded as part of their business activity or independent performance of their profession. If the Customer is a VAT payer, they must always state their relevant Tax ID No. (TIN).

In the event of a change in the registration data, the Customer shall notify the change not later than within seven days after the change. The Customer shall be liable to the Provider for damage incurred by the Provider as a result of the Customer providing false or incorrect data.

After signing up or placing an order, if via the Provider's website, the Provider shall send the Customer a confirmation of the registration or receipt of the order to the Customer's e-mail address specified by the Customer for the purposes of mutual communication with the Provider.

Confirmation of registration by the Provider shall not mean conclusion of the Contract. After confirming the registration, the Provider will contact the Customer to verify the data provided by the Customer. The Customer shall receive a confirmation of the conclusion of the Contract from the Provider by telephone or e-mail only on the basis of the verification and on the condition that the Provider agrees with the conclusion of the Contract. By concluding the Contract, the Provider and the Customer undertake to comply with these GTC and other documents specified in Article 1 herein.

The Customer expressly agrees that they will be allowed to use the Services prior to expiry of the period for withdrawal from the Contract according to section 8.5 of these GTC.

The Provider may refuse to conclude the Contract with the Customer, in particular, if: The Customer has unpaid debts from another contractual relationship with the Provider; The Customer has had in the past unpaid overdue debts to the Provider; insolvency proceedings has been initiated against the Customer, execution of an official decision or distraint order has been initiated against the Customer's assets; the Provider would not be able to fulfil their obligations under the Contract towards the Customer due to technical or other reasons; there is a reasonable assumption that the Customer would not properly fulfil their obligations under the Contract; the Customer has misused or attempted to misuse the Provider's Services; the Customer has provided incorrect personal or identification data, or where the Provider refuses to conclude the Contract with the Customer for other justified reasons. The Provider shall communicate the reasons for refusing to conclude the Contract to the Customer.

The Provider may require that the Customer proves their identity by means of the necessary documents when concluding the Contract (by a valid ID card or passport in case of natural persons, by a valid extract from a public register or a document on another type of registration, which must also imply the right to act on behalf of the legal person, and a valid ID card or passport of the person acting on behalf of the legal person in case of legal persons). For the purpose of any later proof of identification, the Customer acknowledges that the Provider may make a copy or photocopy of such data contained in the submitted documents which are necessary to identify the persons to whom the documents relate and the Provider may keep such copies. Photocopies of such data shall always be taken using a template. This means that only parts of the documents may be copied, i.e., only specific data, not full copies of the documents.

## **2.2. (Sample list of the contents of the Contract, the possibility of unilateral change of the Contract by the Provider, and change of the Contract by agreement)**

The Contract contains (possibly in connection with the GTC, Price List, Complaints Procedure, or other contractual documents), in particular, identification data of the Parties, specifications of the Services, price, information on dates and methods of billing and payment, duration of the Contract and the notice period, conditions for renewal and termination of the Services, method of claiming defects in the provided Services and complaints regarding billing of the provided Services, including information on places and deadlines for filing complaints, provisions on damages and refunds to be applied in case of discontinuation of the Services due to reasons on the part of the Provider, and method of notifying the Customer of changes in the contractual conditions. Absence of any of the preceding shall not invalidate the Contract provided the rights and obligations of the Parties would still be sufficiently determined and if the Contract contains the information required for the valid conclusion of the Contract by law.

The Provider shall have the right to unilaterally change the concluded Contract, i.e., including, in particular, the GTC, Price List, and Complaints Procedure, in the sense of the methods and reasons for changing the Contract, the possibility of unilateral change of the Contract by the Provider, negotiating amendments to the Contract, concluding new Contracts (possibly related to the original Contract), specification of the Services, prices of the Services, method and conditions of billing of the Services (especially including setting billing periods, due dates, and penalties for late payment), method, scope, parameters, and conditions of providing the Services, including changes to or termination of the Services, technical, security, and other measures related to the provision of the Services, procedures and claims in the event of misuse of the Services by the Customer or a third party, scope of rights and obligations of the Customer or Provider, price limits, use and functions of the GoSMS Self-Service, conditions for the use of the Customer's equipment and requirements for such use, damage liability, conditions for and amount of payments, conditions for interruption or restriction of availability of the Services, exercise and settlement of complaints, handling and removal of malfunctions and defects, security measures and safety, misuse of the Services, protection of assets and rights of the Provider and obligations of the Customer in protecting such assets and rights, duration of the Contract, conditions for and method of termination of the Contract, 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 agreements on applicable law and jurisdiction), processing of personal data, protection of personal data, notification of changes and new facts by the Customer, and further in the parts where the wording of the GTC or other documents that are part of the Contract follow from legal regulations or court or administrative decisions (or where specific matters related to the relationship between the Parties are at least governed by legal regulations or court or administrative decisions; however, deviating wording in the Contract is permitted). The Provider may also unilaterally cancel the conditions for the provision of the Services, which shall also terminate the Contract to the extent of these specific conditions cancelled.

The Provider may unilaterally change the preceding due to changes in input cost, introduction of new technologies, changes in the business strategy related to the Services, introduction of new services and changes in market conditions for electronic communications services, changes in legal regulations, or as a result of court or administrative decisions.

The Provider shall inform the Customer of such a change not later than within one month prior to its effect and in the manner selected by the Customer for sending billing, including information on the Customer's right to terminate the Contract as of the effect of such a change, which the Customer may exercise in the case of changes to the Contract referred to in Section 63(1)(c) to (p) and (r) of Act No. 127/2005 Coll., on Electronic Communications, as amended (hereinafter referred to as the "Electronic Communications Act"), without any penalty, provided the Customer does not accept the new conditions.

However, the Customer may not terminate the Contract in this respect if the change occurs on the basis of changes in legal regulations or a decision of the CTO which prescribes modification of the Contract. In the event that the Customer fails to terminate the Contract following notification of a change of the Contract in the sense of Section 63(1)(c) to (p) and (r) of the Electronic Communications Act, it shall be deemed that the Customer accepts the change as of the date of effect of the change; if the Customer terminates the Contract following notification of a change of the Contract, the Contract shall be terminated as of the date of effect of the change (for which case the Parties hereby agree to a special notice period).

The Customer may not be sanctioned or penalized in any way in this respect. In the event of such termination, the Customer shall also have the right to refund of unused credit.

As regards changes to the concluded Contract by agreement, such changes may be concluded (in addition to the methods specified for concluding the Contract) also via the GoSMS Self-Service, provided the GoSMS Self-Service currently contains such a function (if the GoSMS Self-Service currently enables this function).

### **2.3. (Description of the Services)**

The GoSMS services are used for mass sending out of information SMS messages. Using GoSMS, it is possible to send out mainly information SMS messages (informing customers, citizens, employees, and other persons of events or unexpected situation), notification SMS messages (informing customers and other persons of orders status, sending login details, informing of delivery status, etc), marketing SMS messages (promotion of products or services), competition SMS messages (engaging the Customer's clients in interaction with the Customer's brand), etc. The Provider shall not be liable for the contents and nature of SMS messages. It is the sole liability of the Customer to ensure and be able to prove their authorization to use telephone numbers of specific persons (contacts) as personal data.

### **2.4. Discontinuation and Restriction of Availability of the Services and Quality of the Services**

#### **2.4.1. (Reasons for temporary discontinuation of provision of the Services or restriction of their availability)**

The Provider may temporarily discontinue provision of the Services or restrict their availability for the following reasons:

- i (i) If the Customer, despite notice, violates the terms of the Contract in a material manner or materially violates other legal obligations, in particular, if the Customer fails to pay the price according to the Price List within due date (the consequences of non-payment are described in more detail in section 7.7. of the GTC);
- ii (ii) If the Customer reaches or exceeds the limit in the given billing period;
- iii (iii) If the Customer provides incorrect data (especially in the sense of section 2.1 of the GTC) or fails to notify a change thereof;
- iv (iv) If the Customer misuses the Services or if there is reasonable suspicion of misuse of the Services by the Customer or of the Customer's intention not to pay for the Services;
- v (v) If the Customer does not meet the conditions for using the Services or topping up credit or if the Customer is not authorized to perform the Contract;

- vi (vi) In the event of technical faults on public communication or telephone networks or in the event of risk of such faults, or for other serious technical or operational reasons;
- vii (vii) In the event of a crisis situation, in particular, natural disasters, terrorist attacks, epidemics, threats to state security, or adoption of other measures taken by an authorized public body that would result in restriction or suspension of availability of electronic communications services;
- i (viii) In the event of planned technical outages, maintenance, technical inspections, revisions, or repairs to technical equipment or premises through which the Services are provided or due to a power failure;
- ii (ix) If the Customer has not accepted or failed to be delivered letters, billings, or other documents at the address last notified to the Provider or if the Customer refuses to accept such documents;
- iii (x) In the event of unusually high traffic or an unusual type of traffic. The Provider shall notify the Customer of such measures, which in particular protect the Customer against misuse of the Services, for instance, by SMS messages;
- iv (xi) In the event of breach of the security of the Services or in the event of a threat to or vulnerability in the Services;
- v In the event of the death of the Customer (when the death of the Customer must be proven to the Provider by means of a death certificate or another credible document);
- vi (xii) In the event the Provider receives a complaint regarding unauthorized sending out of SMS messages from a recipient of SMS messages sent by the Customer via the Services using the Provider's identifier; or
- vii (xiii) In the event the Provider receives a complaint regarding unauthorized sending out of SMS messages from a recipient of SMS messages sent by the Customer via the Services using the Provider's identifier; or
- vii (xiv) in other cases arising from law, other legal regulations, or a decision of a public body.

If the Customer rectifies the defective condition according to the above provisions of section 2.4.1. of the GTC prior to expiry of the respective period (if set), the provision of the Services shall resume to the original extent.

#### **2.4.2. (Exclusion of claims in case of discontinuation of the provision of the Services or restriction of their availability, reduction of the quality of the Services, and defective provision of the Services)**

If the Services can be used only partially or not at all due to a technical or operational defect on the part of the Provider, the Provider shall ensure removal of the defect and reduce the price accordingly or, in agreement with the Customer, provide the Services in an alternative manner. The Provider shall not be obliged to compensate the Customer for damage or other harm incurred by the Customer due to discontinuation or defective provision of the Services.

#### **2.4.3. (Risk of outages and the Customer's measures to minimize damage, non-existence of guarantees or warranties beyond the statutory extent)**

The Customer acknowledges that the provision of services of this nature (i.e., electronic communication services) is associated with a certain risk of outages and interruptions and hereby consciously accepts such risk. The Customer therefore undertakes to take all steps to eliminate or limit the possibility of damage on their part in connection with the use of the Services to the maximum extent possible. The

Provider undertakes to take all available measures to restore the availability and quality of the Services as soon as possible.

The Provider does not provide any guarantees or warranties, except for those prescribed by law and those expressly provided beyond the statutory scope.

#### **2.4.4. (Network repairs, maintenance, and adjustments; signal coverage and availability of the Services)**

Service activities may in some cases result in temporary restriction of the availability of the Services, of which the Provider shall notify its Customers in a suitable manner and without undue delay. The Provider undertakes to notify the Customer of any planned technical outages at least 48 hours in advance in the form of a notification sent to the Customer's e-mail address, provided the Provider has been timely informed about planned technical outages from third parties (suppliers) and no other facts prevent such notification.

The availability of the Services depends on the parameters of the network operators in the respective country of the SMS message recipient. The availability of the Services (in the form of delivery of SMS messages to recipients) depends on the propagation of radio waves, which can be affected by numerous factors (especially physical effects, type and nature of technologies used, design of buildings and materials used in buildings, and many other external aspects and circumstances that are objectively beyond the Provider's control). Signal coverage may also change over time for the above reasons. The availability of mobile signal cannot be guaranteed in all places under all circumstances, not even in areas commonly covered by a mobile operator's signal. In the event that some places are not covered by mobile signal, this may not be considered a defect in the provided Services, and this fact does not establish any rights or claims to the benefit of the Customer.

The Customer also acknowledges the fact that other services than the GoSMS Services may also be provided via the electronic communications network. In order to prevent reaching or exceeding the capacity, it is a standard procedure to assign higher priority to voice services than to data services. If the connection capacity of data services is full, the connection speed will be limited for all network users.

The available quality of the Services is also influenced by a number of factors, and it may not always be possible for the Provider or other persons to affect them so as to guarantee the necessary quality of the Services. Factors influencing the quality of the Services include, in particular, the weather, nature of the surrounding environment, disturbances in the environment, level of mobile signal coverage, or design of buildings and materials used in buildings.

#### **2.4.5. (GoSMS Self-Service)**

Information on the status and use of the Services, important notifications of the Provider, and some other information related to the provided Services can be found by the Customer in their customer account in the GoSMS Self-Service (hereinafter referred to as the "GoSMS Self-Service") on [app.gosms.eu](http://app.gosms.eu). The Customer will receive their login data to the customer account in the GoSMS Self-Service to their e-mail address indicated by the Customer when concluding the Contract. In the event that the Customer does not provide the Provider with their e-mail address when concluding the Contract (e.g., if concluded in writing), the Provider shall send the Customer's login data to the e-mail address that the Customer communicates subsequently. The Provider may verify whether it is the Customer who communicated the e-mail address (e.g., using a verification code sent to the Customer via SMS messaging, etc.).

#### **2.4.6. (Changes to functional or technical specifications of the Services)**

The Provider may unilaterally change functional or technical specifications of the Services or improve the customer interface for access to the Services.

#### **2.4.7. (Additional network and service protection methods)**

The Provider may also deploy additional methods of protection of the Services, if such deployment would be to the benefit of the Customer.

### **3. Price and Payment Terms**

#### **3.1. (Price amount, publication of the Price List)**

The Customer undertakes to pay the agreed price for the provided Services. In the case of concluding the Contract by means of signing up using the registration form on the website [www.gosms.eu](http://www.gosms.eu), the price shall always be determined by the Price List of GoSMS Services. The current Price List is published by the Provider on their website [www.gosms.eu](http://www.gosms.eu). The Customer confirms that they have read the Price List applicable as of the date of concluding the Contract and agrees therewith. By paying the price for the ordered Services, the Customer re-confirms that they have read these GTC, Price List, and Complaints Procedure.

In the case of concluding the Contract on the basis of an individual offer made by the Provider as a result of the Customer's written or other request, the price shall be governed by the individual conditions of the respective Contract (or the Price List, unless agreed otherwise in the Contract).

Unless stated otherwise in the Price List or in the Contract, all prices are stated without VAT. The VAT rate is governed by applicable legal regulations.

#### **3.2. (Start of charging of the price for the Services)**

Unless agreed otherwise, prices for the provided Services start to be charged from the date of activation of the Services. Activation of the Services is the moment when the Customer is enabled the use of the Services, not when the Customer actually starts using the Services.

#### **3.3. (Changes to the Price List by the Provider)**

The Provider shall have the right to change the Contract, i.e., in particular including the GTC, Price List, or Complaints Procedure, in the sense of section 2.2. of these GTC.

#### **3.4. Payment by means of topping up credit, i.e., prepaid**

##### **3.4.1 (Payment of the price by drawing paid credit)**

In the case of concluding the Contract by signing up using the registration form on the website [www.gosms.eu](http://www.gosms.eu), unless the Parties agree otherwise, the Customer must, after possibly drawing the number of test SMS messages as determined by the Provider before starting the use of the Services, top up credit from their customer account in the GoSMS Self-Service in the amount corresponding at least to the value of the Services required by the Customer. The Services will be provided for the agreed price (according to the Price List) and always only to the extent corresponding to the amount of the remaining credit. The Customer may top up their credit at any time, using the GOPAY payment gateway or by wire transfer to the Provider's bank account on the basis of an advance invoice sent to the

Customer to their e-mail address. All tax documents issued by the Provider (or advance invoices and regular invoices) are accessible to the Customer via the GoSMS Self-Service. The Customer can verify their current amount of credit using the GoSMS Self-Service.

### **3.4.2 (Validity of prepaid credit)**

The validity of prepaid credit is limited to 12 months from the date of originally topping up the credit. The validity of prepaid credit is extended by each subsequent top-up of the credit by the Customer for another 12 months from the time of such top-up. The Price List or another document may set longer validity period of credit. After the expiration of the validity of prepaid credit, the Provider will deny the Customer's active access to the Services. If the Customer tops up their prepaid credit within 30 days of expiry of the prepaid credit, then the unused portion of the credit (the credit that remained unspent at the end of the last credit validity period) will be renewed upon topping up the prepaid credit. If the Customer tops up their prepaid credit in the period from the 31<sup>st</sup> day from expiry of the prepaid credit to the 120<sup>th</sup> day from expiry of the prepaid credit, then the Customer will be enabled the use of the Services upon topping up the prepaid credit, however, the unused credit will not be restored. If the Customer does not top up the prepaid credit even within 120 days from expiry of the prepaid credit, then the Contract shall expire after the 120-day period and it may not be renewed and only a new Contract may be concluded. If the Customer does not use up the credit during its validity period and fails to restore the credit as described above, the credit shall be deemed to have been used up and the Customer shall have no right to any compensation from the Provider.

### **3.4.3 (Termination of the Contract prior to expiry of prepaid credit)**

The Customer may terminate the Contract without giving a reason prior to expiry of the prepaid credit validity period by a 30-day notice commencing on the date of delivery of the notice to the Provider, unless a shorter notice period is agreed between the Parties. In such a case, the unused credit shall be considered used up and the Customer shall not have the right to any compensation for the unused credit from the Provider. Refund of credit in the event of termination of the Contract due to a change of the Contract by the Provider is regulated above in section 2.2 of these GTC.

### **3.4.4 (Billing of prepaid credit payments)**

The Provider does not issue any regular or one-off billings to the Customer in the case of payment for the Services through prepaid credit. At the Customer's request (or in the event that the sending of tax documents is required by law), the Provider shall provide the Customer with a tax document on the payment of the prepaid credit. Such a tax document shall be sent to the Customer in electronic form free of charge. If the Customer requires sending of such a tax document in paper (physical) form, the Customer shall pay the Provider an administrative fee of CZK 20.66 without VAT for sending each individual tax document in paper (physical) form.

### **3.4.5 (Current amount of prepaid credit)**

The Customer can check the current amount of their prepaid credit in the GoSMS Self-Service.

## **3.5 Postpaid invoicing**

### **3.5.1 (Invoicing for billing period)**

In the case of conclusion of the written Contract on the basis of an individual offer made by the Provider as a result of a written or other request of the Customer, unless otherwise agreed with the Customer, payments for the provided Services, including regular (e.g., monthly) fees, are charged retrospectively for the previous calendar month (regular, e.g., monthly, fees are charged in the proportional part in the case of incomplete months, i.e., for each day) – all this unless agreed otherwise in the Contract. If the Services cannot be billed or if the Provider is unable to bill the Customer in the respective billing period, the Services shall be billed, if possible, in the nearest possible billing period. If the billing according to the previous sentence does not occur for technical or other reasons, the Provider does not waive their right to the payment of the amount due by the Customer.

### **3.5.2 (One-off payments and fees)**

One-off (especially activation) fees for the Services are charged by the Provider to the Customer, at the discretion of the Provider, either in the billing period (i.e., in the invoice for the billing period) immediately following the billing period in which the relevant Services associated with the one-off fee was provided or the Provider may charge such one-off fee at any time after the provision of the relevant Services associated with the one-time fee so that the amount is due no earlier than 10 days from delivery of the billing (this arrangement differs from the provisions of sections 3.5.3 and 3.5.4 of the GTC) – all this unless agreed otherwise in the Contract.

### **3.5.3 (Issuance of tax documents and due date)**

Tax documents or advance invoices issued by the Provider for the provided Services shall always be due on the due date stated in that tax document or advance invoice. The Customer agrees that the minimum due date stated in the tax document or advance invoice is 10 days from the date of issuance, whereas tax documents and advance invoices are sent to the Customer on the day of their issuance. If no due date is specified in the billing, the billing shall be due within 30 calendar days from the date of the end of the billing period.

### **3.5.4 (Issuance of billings, delivery of billings, and charging of billings sent in paper form)**

The Customer may choose in the Contract between sending invoices in electronic or paper form. In the case of choosing electronic invoicing, tax documents (invoices) will be sent to the Customer free of charge to their e-mail address in PDF format. Otherwise, tax documents (invoices) will be sent by post in paper form, for which case the Provider and the Customer agree that the Customer pays to the Provider an administrative fee of 20.66 CZK without VAT for sending each individual invoice in paper (paper) form. The fee according to the previous sentence shall always be contained in the invoice for the sending of which in paper form the fee is charged, and the fee shall be due according to the due date of the payment for the Services in the respective invoice. The Customer may change the required method of delivery of invoices by a written request delivered to the Provider not later than within 10 days before the beginning of the period for which the billing is made. In the event that the Customer does not indicate any of the invoicing methods in the Contract, the invoicing shall be made electronically.

In the case where a tax document is sent by post, it shall be deemed that the invoice sent by a postal service provider is delivered on the third working day following the dispatch; however, if sent to an address in another country, then on the 15<sup>th</sup> working day following the dispatch (this is without prejudice to possibility to prove that the invoice was delivered earlier). The billing for the Services according to section 3.5.3 of these GTC shall be delivered to the Customer within 15 calendar days from the date of the end of the billing period. In the event that the Customer is not delivered the billing in accordance with section 3.5.3 of these GTC within 15 calendar days from the date of the end of the billing period, the Customer has the right to request a copy of the billing from the Provider. If the Customer does not

request a copy of the billing according to section 3.5.3 of these GTC within 20 calendar days from the end of the billing period, it shall be considered that the billing has been delivered to the Customer (using the method of delivery selected by the Customer) on the 15<sup>th</sup> calendar day from end of the billing period. Non-delivery of a billing is without prejudice the Customer's obligation to pay the price for the provided Services properly and in due time. The provisions of section 3.7 of these GTC regarding delivery of billing to the GoSMS Self-Service remain unaffected.

As the basic form of billing, the Provider issues billings of the Services indicating a summary of the drawn units. The Customer may request that the Provider issues a detailed billing containing a breakdown of the drawn Services.

### **3.6. (Methods of payment of the invoiced amounts; contractual penalty and default interest)**

Invoiced amounts shall be deemed to have been paid upon crediting the amount to the Provider's bank account in the case of a wire transfer. The moment at which the amount is considered to have been paid may be specified differently for other payment methods below in section 3.6 of these GTC.

The Provider accepts payments by wire transfer, direct debit from a payment card through the GoPay gateway, or by payment via the GoPay gateway. However, amounts due shall always be considered to have been paid at the Provider, not at the Customer's registered office or residence. Payment must be made not later than by the due date, otherwise the Customer shall be in default in the payment and the Provider shall have the right to charge a contractual penalty in the amount specified directly in the written Contract and, in addition to the contractual penalty, also default interest at the statutory rate. Payment of the contractual penalty does not affect the Provider's right to demand full compensation for any damage.

In the case of payment via the GoPay gateway, the payment shall be deemed to have been made (the amount paid) at the moment when the Customer receives a confirmation of the payment from the GoPay payment gateway system.

In the case of payment by direct debit from the Customer's payment card via the GoPay gateway, the Customer agrees that the Provider may collect the invoiced amount from the Customer's payment card after issuing the billing. In the event of a repeated situation where the payment has not been collected due to a reason on the part of the Customer or provider of their payment card, the Provider shall have the right to cancel this payment method, of which the Provider shall inform the Customer, and the Customer then must choose another payment method. Payments shall be considered to have been paid when the Customer receives a confirmation of the payment sent by the GoPay gateway system.

The Customer may set these parameters for their standing payment order: (i) maximum amount of the standing order payments, (ii) whether the amount is fixed or variable, (iii) date or frequency of the standing order payments, and (iv) whether the date or frequency are fixed or variable.

### **3.7. (Possibility to search for billing in the GoSMS Self-Service)**

In the event of postpaid invoicing, the Provider provides access to the Customer to their invoices issued by the Provider for the last six calendar months on the Provider's website [app.gosms.eu](http://app.gosms.eu), where the Customer may view and print out such invoices. The Provider and the Customer have therefore agreed that each invoice issued is considered delivered to the Customer, unless sent by e-mail, in paper form, or otherwise, on the 15<sup>th</sup> day after making the invoice accessible in the user account in the GoSMS Self-Service (or earlier upon the Customer signing in to the user account in the GoSMS Self-Service provided the invoice has already been made available in the respective user account at the time of signing in). The Provider thus recommends that the Customer visits the GoSMS Self-Service regularly.

### **3.8. (Unidentified payments)**

The variable symbol for making a payment is always indicated on the respective billing. The payment is always primarily applied against the billing corresponding to the variable symbol of the payment indicated by the Customer (if the payment amount is greater than the invoiced amount, the remainder shall be applied against the next due billing). In the event that the payment is not properly marked by the Customer so that the Provider can identify the payment without unreasonable efforts, such payment shall not be considered a proper and timely payment by the Customer. If the Provider is at least able to identify the paying Customer from the payment, the payment shall be credited against that Customer's debt from their oldest (with earliest due date) billing issued by the Provider.

Payments shall be credited (if it is not sufficient to pay the entire billing) (i) first against the principal amount of the billing (ii), then against the default interest, if any, and (iii) eventually against contractual penalties, if any. Default interest is not further interest-bearing (even if the payment is primarily credited against the principal amount and only then against the default interest). Any overpayment remaining after the payment of the above-mentioned amounts shall be returned by the Provider to the Customer on the basis of a request made by the Customer. If such a request is not made by the Customer, then the Provider shall use such balance to pay further billings (and the balance shall not bear any interest).

### **3.9. (Debt recovery through third parties)**

The Provider shall have the right to authorize a third party to recover its receivables from the Customer who is in default in the payment of the price of the Services provided or other obligations. The Customer undertakes to treat such a third person as if dealing directly with the Provider.

## **4. Conditions for the Provision of the Services**

### **4.1 (Activation of the Services)**

Activation of the Services is the moment when the Customer is enabled the use of the Services, not when the Customer actually starts using the Services. The Customer may start using the Services immediately after the verification of the Customer by the Provider.

### **4.2. (Necessity of compliance with legal regulations and instructions of the Provider)**

When using the Services, the Customer must comply with the relevant generally binding legal regulations and instructions of the Provider. In particular, the Customer is obliged to proceed in accordance with the applicable legal regulations on spam protection and personal data protection. The

Customer shall be solely responsible for any violation of these or other legal regulations when using the Services.

#### **4.3. (Procedure in case of discontinuation or restriction of the provision of the Services)**

In accordance with the provisions of these GTC, the Provider may discontinue the provision of the Services at any time and without a written notice or restrict the scope of their provision for reasons stated herein. If the Services can be used only partially or not at all due to a technical or operational defect on the part of the Provider, the Provider shall ensure removal of the defect and reduce the price accordingly or, in agreement with the Customer, provide the Services in an alternative manner. The Provider shall not be obliged to compensate the Customer for damage or other harm incurred by the Customer due to discontinuation or defective provision of the Services.

#### **4.4. (Inspection, change, and maintenance of technical equipment)**

In the event of an inspection, change, or maintenance of technical equipment or in the event of a change in the method of providing the Services, the Provider may discontinue the provision of the Services or restrict their scope, of which it will inform the Customer without undue delay in the form of a notice published in the GoSMS Self-Service. Even in these cases it shall apply that if the Services could be used only partially or not at all, the Provider shall ensure removal of the obstacle preventing the use of the Services and reduce the price accordingly, or provide the Services in an alternative manner after agreement with the Customer. Not even in these cases shall the Provider be liable for damage incurred by the Customer due to such discontinuation or defective provision of the Services.

### **5. Rights and Obligations of the Provider**

#### **5.1. (Malfunctions and defects due to actions of the Customer or other persons)**

The Provider is not responsible for the occurrence of failures, defects, or malfunctions of the Services or part thereof when these were occurred as a result of unprofessional or unauthorized actions of the Customer or other persons.

#### **5.2 (Process of filling complaints and the Complaints Procedure)**

The process of filling complaints regarding the quality of the Services or their availability, as well as the performed billing of the Services, is regulated by the Complaints Procedure. The Customer declares that they have read the Complaints Procedure.

#### **5.3. (Notification of troubleshooting at the Customer's request)**

The Customer shall be informed of the nature, extent, and expected date of rectification of a failure upon their request. In the case of severe or extensive failures, the time to rectify the fault can be difficult to determine since it depends on the specific situation and the possibilities for rectifying the fault.

## **6. Rights and Obligations of the Customer**

### **6.1. (Start of use of the Services by the Customer)**

The Customer is entitled to start using the agreed Services after their activation. Within the sense of section 3.2 of these GTC, the prices for the provided Services shall be charged as from the date of activation of the Services. In the event that the Customer does not start using the agreed Services, this shall be without prejudice to the Provider's right to charge the price of the Services (especially in the scope of the regular monthly fee, etc.).

### **6.2. (Prohibition on abuse of the Services)**

The Customer may not use the Services in such a way as to violate the Provider's rights, rights of other Customers, or rights of third parties in general or cause other Customers to be disadvantaged in using the Services. Customer may not use the Services in a manner that would give them an unjustified advantage over other Customers or in a manner that could lead to a breach or damage to the functionality of the mobile network or that could endanger the operation of the mobile network. Any attempt to breach the security and continuity of the operation of the Services shall be deemed a material violation of the obligations of the Customer.

## **7. Duration and Termination of the Contract, Including the Consumer's Right to Withdraw from the Contract Concluded at a Distance or Outside the Provider's Usual Business Premises**

### **7.1. (Period for which the Contract is concluded)**

The Contract is concluded for an indefinite period, unless it is stated in the Contract that it is concluded for a definite period.

If the Contract is concluded with a consumer or a natural entrepreneurial person for a definite period, that period may not exceed 24 months when concluding the Contract for the given Services for the first time. The Provider is obliged to allow the Customer, who is a consumer or a natural entrepreneurial person, to conclude the Contract for a maximum period of 12 months; this does not exclude the possibility of concluding the Contract for a longer period if requested by the Customer.

If the Contract is concluded for a definite period, the Provider is obliged to inform the Customer, who is a consumer or a natural entrepreneurial person, about the impending expiry of the Contract and about possibilities for its renewal using the method selected by the Customer for delivery of billings not earlier than three months and not later than one month before the expiry of the Contract. If the Customer, who is a consumer or a natural entrepreneurial person, does not demonstrably grant their consent to the renewal of the Contract for a definite period, the Contract shall become a contract for an indefinite period. However, the provisions on the duration and termination of the Contract concluded with the payment in the form of prepaid credit according to section 3.4.2 of these GTC shall remain unaffected by the preceding provisions.

### **7.2. (Method of termination of the Contract)**

The contractual relationship may be terminated by agreement of the Parties, by notice (either in writing or by e-mail), by withdrawal from the Contract, by expiry of the legal person without a legal successor, or in another manner prescribed by law.

### **7.3. (Termination of the Contract by the Customer)**

The Customer may terminate the Contract without giving a reason with the 30-day notice period commencing on the day following the delivery of the notice to the Provider, unless otherwise agreed.

### **7.4. (Termination of the Contract by the Provider)**

The Provider may terminate the Contract for the following reasons:

(I) If insolvency proceedings are initiated against the Customer, in the event of a decision of the insolvency court on the bankruptcy or imminent bankruptcy of the Customer, in the event of rejection of an insolvency petition for lack of the Customer's assets, in the event that the Customer enters into liquidation, or in the event of a distraint order issued against the Customer;

(II) Violation of the Customer's obligations set out in the Contract or in legal regulations if the Customer has not remedied the situation within 14 days after delivery of the invitation to fulfil their obligations (the possibility to terminate the Services in case of violation of the Customer's obligation to pay the charged price for the provided Services is regulated in section 7.7 of these GTC);

(III) If the Customer provides incorrect or false information or statements or has not reported a change in their data;

(IV) If it is not feasible to activate the Services for the Customer due to technical conditions; or

(V) If the Provider ceases to be contractually or technically competent to provide the Services (especially as a result of termination of the contract with the Provider's contractual partners which is required for providing the Services; this is without prejudice to the Provider's right to withdrawal from the Contract in such a case according to other provisions of these GTC.)

(VI) the Customer has not used the Services in the last 12 months;

(VII) Further provision of the Services cannot be fairly requested from the Provider due to technical, operational, or economic reasons.

The notice period in these cases shall be 30 days and commences from the day following delivery of the notice to the Customer, unless otherwise agreed.

### **7.5. (Possibility of the Consumer to withdraw from the Contract concluded by means of distance communication or outside the Provider's usual business premises)**

The Customer, if they are a consumer or a natural entrepreneurial person and if the Contract was concluded by means of distance communication or outside the Provider's usual business premises, has the right to withdraw from the Contract without giving a reason within 14 days from the day following the conclusion of the Contract.

However, the period of a consumer or natural entrepreneurial person for withdrawal from the Contract (regardless of the expiry of the period according to the previous sentence) may not end before the expiry of 14 days, commencing on the day following the day when the Provider provided to the Customer information pursuant to Section 63(1) of the Electronic Communications Act either in electronic or paper form. In order to comply with the period for withdrawal from the Contract according to the preceding sentences, it shall be sufficient to send the withdrawal notice before the expiry of the relevant period mentioned above.

A consumer is any person who, outside the scope of their entrepreneurial activity or outside the scope of their independent performance of profession, enters into the Contract with the Provider or otherwise deals with the Provider.

For the purposes of exercising the right to withdraw from the Contract according to section 7.5 of these GTC, the Customer must inform the Provider of their withdrawal from the Contract either in writing to the Provider's current registered office (registered in the public register), or in writing to the support department of the Provider, the current address of which is available on the Provider's website [www.gosms.eu](http://www.gosms.eu), or by e-mail to the e-mail address [support@gosms.eu](mailto:support@gosms.eu), or by a unilateral legal action (e.g., by a letter sent through a postal service provider or by e-mail). The Customer may use the sample form for withdrawal from the Contract provided by the Provider, however, its use is not mandatory.

If the Customer withdraws from the Contract in accordance with section 7.5 of the GTC, the Provider shall return to them, without undue delay and not later than within 14 days from the date on which the Provider withdrew from the Contract, all payments (credit top-ups) received from the Customer (if the Customer has not drawn the credit for the Services). To return payments, the Provider shall use the same method of payment as used by the Customer to perform the original transaction, unless the Customer has expressly stated otherwise. In no case shall the Customer incur additional costs in this respect.

However, the Provider hereby informs the Customer in the sense of Section 1834 of Act No. 89/2012 Coll., the Civil Code, that if the Customer withdraws from the Contract the subject of which is the provision of the Services and the Provider had started providing the Services on the basis of the Customer's explicit request prior to expiry of the withdrawal period, then the Customer shall pay to the Provider a proportionate part of the agreed price for the provision of the Services provided until the moment of the withdrawal from the Contract (this also applied to a situation where the Customer has activated or used the Services to any extent, for instance, through their customer account in the GoSMS Self-Service, which action is considered an explicit consent of the Customer to the provision of the Services). If the agreed price is unreasonably high, the Customer shall pay to the Provider a proportionate part of that price corresponding to the market value of the provided Services.

#### **7.6. (Withdrawal from the Contract due to default on the part of the Provider)**

The Customer may withdraw from the Contract without stating a reason if the Provider is in default in the commencement of the provision of the Services for at least one month from the date on which the provision of the Services was to be commenced.

#### **7.7. (Restriction of the provision of the Services and termination of the Services due to non-payment or late payment by the Customer)**

If the Customer has not paid the price for the rendered Services within the due date stated on the billing, the Provider shall notify them thereof and set an additional period to meet that obligation of not less than one week from delivery of the notification. After expiry of the additional period, the Provider may restrict the provision of the respective separately billed Services to the Customer by preventing their active access to the Services, or it may restrict (exclusively at the discretion of the Provider) the provision of such respective separately billed Services only to a lesser extent. The price of the notice, which was demonstrably made, shall be cost-oriented. The Provider may terminate the contractual relationship with the Customer in the event that the Customer has consistently paid late or in the event of the Customer's consistent non-payment of the price for the Services indicated in the billing, after notifying the Customer thereof. Consistent late payments mean at least two consecutive billings paid after the due date. Consistent non-payment means the existence of at least three unpaid billings.

## **7.8. (Possibility of the Provider to withdraw from the Contract, especially in the event of loss of the Provider's ability to provide the Services)**

The Parties have agreed that the Provider may withdraw from the Contract if:

- (i) The Provider ceases to be contractually or technically competent to provide the Services (especially as a result of termination of a contract with the Provider's contractual partners, which is a condition for the provisions of the Services);
- (ii) There is a final decision on the bankruptcy issued on the Customer's assets or an insolvency petition is rejected for lack of the Customer's assets; or
- (iii) The Customer materially violated the Contract (for non-payment of billings, however, it is possible to terminate the Contract only in the manner specified above in section 7.7. of the GTC).

Withdrawal from the Contract shall be effective upon delivery of the withdrawal notice to the Customer with effect only as of the date of delivery, thus not voiding the Contract from the beginning. This is without prejudice to the Provider's possibility to terminate the Contract in such a case in accordance with another provision of the GTC.

## **7.9. (Death of the Customer)**

The Contract shall also be terminated upon the death of the Customer. The Customer's death must be notified to the Provider and credibly documented, in particular, by submitting the death certificate of the deceased Customer or another credible proof of their death. In such a case, the Contract shall be terminated as of the date of the Customer's death. The rightful heir of the deceased Customer and the Provider may agree to negotiate a new Contract.

## **7.10. (Possibility of the Customer to terminate the Contract due to changes to the Contract made by the Provider)**

The Customer's possibility to terminate the Contract due to changes to the Contract made by the Provider is regulated above in section 2.2 of the GTC.

## **7.11. (Possibility of the Customer to terminate the Contract due to changes to the Contract made by the Provider)**

In cases where the Customer has the right to refund of prepaid credit, the credit shall be refunded to the Customer on the basis of their request (and not without it), in which case the Provider has the right to request proof of the Customer's identity prior to the refund.

## **7.12. (Obligation of the Customer to pay the price of the rendered Services even after termination of the Contract)**

By terminating the contractual relationship, the Customer is not relieved of the obligation to pay to the Provider the price for the provided Services and other performance provided until the termination of the contractual relationship, nor of the liability for any damage caused to the Provider. Also, this shall not terminate the Provider's claim for the payment of unsettled receivables arising during the contractual relationship.

## **8. Confidentiality, Processing of Personal Data, and Protection of Personal Data**

### **8.1. (Obligation of confidentiality)**

The Customer, who is an entrepreneur (but not a natural entrepreneurial person) undertakes to maintain confidentiality of all facts of which they learn in connection with the Contract and the provision of the telecommunications services on the basis thereof, unless such facts are publicly known. Such a Customer shall also ensure compliance with this obligation of confidentiality on the part of their employees and other persons used in the performance of the Contract. Such obligation of confidentiality shall survive the termination of this Contract.

### **8.2 (Information on the processing of the Customer's personal data)**

The Customer acknowledges that information on the processing of personal data and its protection is accessible to the Customer through the document Privacy Policy for the Provision of GoSMS Services.

### **8.3 (Protection of Personal Data)**

**8.3.1.** When providing the Services, the Provider is in the position of a personal data processor, while the Customer is the data controller, i.e., the person who determines the purposes and means of the processing of personal data. The Provider shall process personal data of other persons for the Customer exclusively for the purpose of providing the Services to the extent and under the conditions according to the Contract. The Provider may process personal data for the Customer on the basis of documented instructions of the Customer corresponding to the contents of the Contract or on the basis of other documented instructions of the Customer.

**8.3.2.** The Provider shall process personal data of the recipients of mass sent information SMS messages for the Customer in the scope of: name, surname, telephone number, e-mail address, recipient's group. The data subjects are therefore recipients of the GoSMS Services used by the Customer, i.e., recipients of mass sent information SMS messages.

**8.3.3.** The processing of personal data shall take place during the period of validity and effectiveness of the Contract.

**8.3.4.** Personal data shall be processed and stored by the Provider on servers located within the EU.

**8.3.5.** The Provider undertakes to adopt appropriate technical and organizational measures in accordance with 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 referred to as the "Regulation"), which applies to the Provider as to a processor of personal data, and to prove the fulfilment of these obligations to the Customer upon their request.

**8.3.6.** The Provider shall inform the Customer if, in the Provider's opinion, certain instructions of the Customer are in conflict with applicable legal regulations.

**8.3.7.** The Provider may transfer personal data to third countries or international organizations within the meaning of the Regulation only on the basis of a special instruction issued by the Customer. If such transfer is based on an obligation under EU or Member State laws applicable to the Customer, the

Provider shall inform the Customer of this legal requirement prior to the transfer, unless such laws prohibit such disclosure for important reasons of public interest.

**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 in relation to security measures, the disclosure of which would jeopardize the security of the personal data.

**8.3.9.** The Provider may adopt all the measures pursuant to Article 32 of the Regulation in order to ensure adequate security of the personal data.

**8.3.10.** The Provider may involve another processor in the processing, however, they shall inform the Customer of any intended changes concerning the use of other processors or their replacement, and thus provide the Customer with the opportunity to object thereto. The Provider undertakes to enter into an agreement with such other processors that ensure compliance with the rights and obligations set out in the Contract, in particular, with the obligation of confidentiality and security of personal data and provision of sufficient guarantees for the adoption of the same technical and organizational measures by such other processors.

**8.3.11.** The Provider shall also take account of the nature of the processing, provide assistance to the Customer through appropriate technical and organizational measures in order for the Customer to meet their obligation to respond to a request for the exercise of the rights of a data subject according to the Regulation.

**8.3.12.** The Provider shall assist the Customer in ensuring compliance with the obligations under Articles 32 to 36 of the Regulation, taking into account the nature of the processing of information available to the Provider. In cases where the nature of the processing requires the provision of information to the Customer by the Provider, the Provider shall inform the Customer without undue delay.

**8.3.13.** The Provider shall enable the Customer or their authorized person to verify compliance with the obligations concerning the processing of personal data arising from the Contract at the Provider's registered office during normal working hours of the Provider after prior agreement and within the period communicated to the Provider at least 14 days in advance.

**8.3.14.** After the end of the processing of personal data under the Contract, the Provider shall erase all the processed personal data from all their systems or databases, including all backup copies, except for which storage is required by legal regulations.

**8.3.15.** In the event that the Provider processes personal data beyond the scope defined by the Contract or other documented instructions of the Customer, the Provider shall be considered the controller in relation to such processing.

## **9. Liability for Damage**

### **9.1. (Contractual limitation of the aggregate amount of expectable property damage and other contractual limitations)**

The Customer and the Provider have agreed that the Provider shall be liable to the Customer only for the damage caused by the Provider. The Customer and the Provider have agreed that the Provider shall be liable to the Customer for damage under one Contract only up to the amount of CZK 50,000. However, the provisions on limitation of the Provider's liability for damage under section 9.1 of the GTC shall not apply if it concerns an obligation to compensate for damage caused to a person's natural rights

or if caused intentionally or by gross negligence. The Customer also declares that the aggregate expectable damage that the Customer may incur in connection with the Contract and/or the use of the Services may not exceed CZK 50,000. The Parties have also agreed that the Provider shall not be liable for damage to the Customer that could not be reasonably foreseen at the time of concluding the Contract. The provisions of the preceding sentences of section 9.1 of these GTC shall not affect any legal or other contractual provisions that would establish the Provider's liability for damage to a lesser extent when the provisions of the previous sentences of section 9.1 of these GTC limit the Provider's liability for damage but do not lead to its extension beyond the statutory limits or limits set by other contractual arrangements. Any damage caused in connection with the Contract shall be compensated in money.

## **9.2. (Exclusion of claims in case of discontinuation of the provision of the Services or restriction of their availability, reduction of the quality of the Services, and defective provision of the Services)**

If the Services can be used only partially or not at all due to a technical or operational defect on the part of the Provider, the Provider shall ensure removal of the defect and reduce the price accordingly or, in agreement with the Customer, provide the Services in an alternative manner. The Provider shall not be obliged to compensate the Customer for damage or other harm incurred by the Customer due to discontinuation or defective provision of the Services.

## **9.3. (Exclusion of claims in case of disclosure or misuse of the Customer's login data, due to computer viruses, and in case of violation of the Customer's obligations)**

The Provider shall not be liable for any damage caused as a result of disclosure or misuse of the Customer's login data to the user account in the GoSMS Self-Service. Furthermore, the Provider shall not be liable for damage caused by (i) defects or unsuitability of the Customer's technical equipment, (ii) incorrect method of using the Services by the Customer, (iii) damage to or interference in the provision of the Services by the Customer, or (iv) violation of contractual obligations or obligations arising for Customer from generally binding legal regulations.

## **9.4. (The Customer's obligation to pay damages)**

The Customer shall be liable for any intentional and unintentional damage caused during the use of the provided Services. The Provider shall have the right to claim damages from the Customer for damage caused by the Customer, including lost profit. Damages also include, in particular, the time and cost incurred by the Provider to eliminate the defective condition caused by unauthorized or unprofessional use of the Services by the Customer, damage to third parties and especially other customers, damage caused by restricting the availability of Services or damage to the Provider's technical equipment, etc. The Provider shall have the right to compensation for damage caused by non-fulfilment of a monetary debt even if the damage is covered by default interest. All damage shall be compensated in money.

# **10. Dispute resolution, out-of-court settlement of consumer disputes, and applicable law**

## **10.1. (Dispute resolution)**

The Parties shall make every effort to ensure that any dispute which may arise between them in connection with the performance of the Contract is resolved amicably. Disputes between the Customer

and the Provider shall be decided by a court, and in cases stipulated by law disputes shall be resolved by the Czech Telecommunication Office. Disputes resulting from business activities falling within the jurisdiction of the courts in situations where the Customer is an entrepreneur shall be resolved by the court competent for the registered office of the Provider at the time commencement of the court proceedings. Disputes falling within the jurisdiction of the courts in situations where the Customer is a foreign person shall be resolved by the court competent for the registered office of the Provider. Other disputes falling within the jurisdiction of the courts for which the Parties were unable to reach an amicable resolution shall be resolved by the locally and factually competent court.

## **10.2. (Out-of-court settlement of consumer disputes)**

The Customer who has concluded the Contract as a consumer may, pursuant to Act No. 634/1992 Coll., on Consumer Protection, resolve disputes arising from the Contract also out-of-court before the Czech Telecommunication Office (website address [www.ctu.cz](http://www.ctu.cz)). Disputes arising from the Contract where the Parties were unable to reach an amicable resolution cannot be resolved by out-of-court or administrative proceedings, except for the above case.

## **10.3. (Applicability of Czech law)**

All legal relations of the Parties related to the Contract or provision of the Services shall be governed by Czech law with the exclusion of conflict of law rules.

## **11. Reporting and Removal of Failures**

### **11.1. (Reporting of failures)**

The Customer shall immediately report failures of the Services by telephone on the HELPLINE line +420 380 422 242 using the contact telephone number specified in the Contract or in another way.

### **11.2. (Customer support)**

The Provider undertakes to provide Customers with customer support. The Customer may contact the Provider via the e-mail address [support@gosms.eu](mailto:support@gosms.eu) or on the telephone number +420 380 422 242.

## **12. Delivery and Communication**

### **12.1. (Delivery addresses and methods of delivery, the Customer's obligation to regularly check the contents of their customer account in the GoSMS Self-Service)**

The delivery addresses for correspondence between the Parties (hereinafter also referred to as the "Delivery Addresses") are as follows:

The Provider: the Provider's address registered in the public register as their registered office as of the date of sending a communication, e-mail address: [support@gosms.eu](mailto:support@gosms.eu) (the Provider may unilaterally change these contact details). Other provisions of these GTC, Contract, or Complaints Procedure regarding notifications and actions made in specially regulated cases (e.g., complaints, special contacts for reporting defects, or contacting the customer support pursuant to Article 11 of these GTC) shall remain unaffected by the provisions of section 12.1.

The Customer: address (building No. and municipality) communicated by the Customer when concluding the Contract, e-mail address communicated by the Customer when concluding the Contract (the Customer may notify the Provider of a change in these contact details).

The Provider may contact or deliver to the Customer in person, by telephone, through a postal service provider (hereinafter referred to as "Post")(e.g., Czech Post), a courier (e.g., PPL, etc.), e-mail, SMS or MMS messaging, the customer account of the Customer in the GoSMS Self-Service, by fax, or otherwise.

The Customer hereby acknowledges that any communication from the Provider shall be transmitted to them via messages sent to the Customer's customer account in the GoSMS Self-Service or electronic mail (e-mail). The Customer thus acknowledges that the **delivery of a message to the Customer's customer account in the GoSMS Self-Service, within the meaning of section 12.2. db) of these GTC, shall take effect not later than on the 15<sup>th</sup> day after delivery of the message to the Customer's customer account in the GoSMS Self-Service. The Provider thus recommends that the Customer visits the GoSMS Self-Service regularly. When delivering by e-mail, the provisions on delivery, within the meaning of section 12.2 ca) and cb) of these GTC, shall apply.**

**12.2. (Delivery time)** Any correspondence made under the Contract shall be deemed to have been duly delivered to the other Party at the latest also:

- a) upon personal delivery or delivery by a courier when
  - (aa) when the addressee actually received the item; or
  - (ab) when the addressee refused to accept the item
- (b) upon delivery by post or a courier on the date:
  - (ba) indicated on the delivery note returned by post as the date of receipt, or
  - (bb) of vain expiry of the time for collecting a deposited item, even if the other Party did not learn of the item.
  - (bc) indicated as the date on which the addressee refused to accept the item.
- (c) upon delivery by fax, e-mail, SMS or MMS messaging when the sender received a confirmation of the successful transmission of the communication issued by the sending device, where:
  - (ca) the message was transmitted after 16:00, it shall be deemed to have been delivered at 09.00 on the following working day,
  - (cb) the message was transmitted on a day which is not a working day, it shall be deemed to have been delivered on the next following working day.
- d) upon delivery to the Customer's customer account in the GoSMS Self-Service:
  - da) on the date when the Customer first signed in to their customer account in the GoSMS Self-Service after the message has been delivered to the Customer's customer account in the GoSMS Self-Service,
  - db) on the 15<sup>th</sup> day after delivery of the message to the Customer's customer account in the GoSMS Self-Service.

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

The provisions of section 12.2 of these GTC shall not affect the possibility to use other means that allow demonstration of a written or other expression of the will of the other Party nor other legal regulations according to which the item is considered to have been delivered earlier, e.g., in the event of legal presumption or legal fiction of delivery of the item (pursuant to Section 573 of Act No. 89/2012 Coll., the Civil Code, it shall be considered that an item send by a postal service provider was delivered on the third working day after dispatch, or on the 15<sup>th</sup> working day if sent to an address in a foreign country).

#### **12.4. (Change of delivery addresses)**

The delivery addresses specified in section 12.1 of these GTC may be changed by a unilateral written notice send by the respective Party provided that such change becomes effective for the other Party on the 10<sup>th</sup> working day after delivery of such notice to the respective Party. If either Party fails to notify a change of their delivery address, it may not object that it no longer accepts consignments at the previously notified delivery address since the effects of delivery within the meaning of section 12.2 have remained unaffected. The Provider may change their delivery addresses in the form of a modification of the Contract (including, for instance, by changing these GTC).

### **13. Final Provisions**

#### **13.1. (Necessity of approval of all changes to the offer by the Provider)**

In view of the number of customers and the need for uniform administration of contracts, the Provider generally excludes acceptance of an offer containing an addition or deviation, for which purpose the Provider hereby reserves the right to explicitly approve any such change, addition, or deviation in the draft Contract (including the GTC, Price List, Complaints Procedure, or any other document or arrangement which are part of the Contract). The Parties further exclude the possibility of the Customer to refer to their business terms and conditions that are in conflict with the provisions of the Contract. The only exception is filling out of the Customer's details, the completion of which the Contract envisages (e.g., personal data of the Customer).

#### **13.2. (Exclusion of the Customer's possibility to issue confirmations regarding the contents of the Contract that would affect the contents of the Contract)**

The Provider also generally excludes, within the meaning of Section 1757 of Act No. 89/2012 Coll., the Civil Code, that any confirmation of the Customer sent by the Customer after the conclusion of the Contract had any effect on the agreed contents of the already concluded Contract.

#### **13.3. (Supervision by the Czech Telecommunication Office)**

The Provider's activities in the provision of electronic communications services are subject to the supervision by the Czech Telecommunications Office.

#### **13.4. (Applicability of Czech law, including the Electronic Communications Act)**

All legal relations of the Parties related to the Contract or provision of the Services shall be governed by Czech law with the exclusion of conflict of law rules. The contractual relationship established hereunder shall also be governed by Act No. 89/2012 Coll., the Civil Code, and Act No. 127/2005 Coll., on Electronic Communications and on Amending Certain Related Acts (the Electronic Communications Act).

#### **13.5. (Code of conduct)**

The Provider is not a member of organizations issuing special codes of conduct for their members, and the Provider is thus not bound by any such code of conduct.

#### **13.6. (Effective date of the GTC)**

These GTC become effective as of 1 March 2020.

ZooControl s.r.o.