

# **sipgate & trunking - Terms & Conditions ("Agreement")**

Please read carefully the sipgate & trunking – Terms & Conditions below which describes how sipgate provides its services to you. If you have any questions about our Terms & Conditions please call our customer support team.

## **Introduction**

This Agreement sets out the terms of which sipgate agrees to provide VoIP Services („Service“) to you. This Agreement commences on the date that sipgate first accepts your order. The acceptance is declared by sipgate by making VoIP Services available to the customer. The customer is bound to his order for 30 calendar days.

This Agreement comprises these Terms and Conditions, our respective Service Description, our Privacy Policy which is available at <https://www.sipgate.co.uk/privacy> and our tariff list which is available at <https://www.sipgate.co.uk/all-call-rates>. Orders for the Service are accepted at our sole discretion.

The expressions, „sipgate“, „we“, „us“ and „our“ refer to sipgate GmbH (registered in the trade register under HRB 39841, Court of Duesseldorf), whose registered office is located at Gladbacher Straße 74, D-40219 Duesseldorf, Germany. The expressions „you“ and „your“ refer to the customer.

## **1. Use of the Service, Suspension and Termination**

1.1. By accepting these terms, you are agreeing NOT to allow through your actions, or those of others, the use of Services from sipgate for unlawful or illegal purposes; including but not limited to making offensive, indecent or prank/hoax calls, place bulk unsolicited commercial calls or use automatic dialers allowing others to do so, using the Services fraudulently or to commit or further a criminal offence.

1.2. You are agreeing NOT to cause damage to this or any other communication or data system, and you fully indemnify sipgate against any liabilities (including such things as legal expenses, losses, costs, claims and damages), brought about by your action or inaction in violation of this Agreement. You may NOT submit or publish through sipgate any materials that are libelous, defamatory, pornographic, an invasion of privacy, obscene, abusive, illegal, racist, offensive, an infringement on any intellectual property rights of a third party or would otherwise violate the rights of any third party. You will comply with all reasonable instructions provided by sipgate in relation to the Service.

1.3. You agree that the Service is for your own personal use only and that you will not without our prior written consent, re-sell or in any way re-supply the Service to others for money or monies worth.

1.4. Significant (even contractual) communication processes are carried out via e-mail. The customer accepts this procedure and hereby declares that he will regularly check his emails.

1.5. If there are changes with respect to relevant customer data, the customer commits to update this data without delay. Relevant customer data shall mean in particular but not exclusively

- Change of residence of the customer,
- Change of the e-mail address of the customer,
- Change of payment data e.g. bank account data for direct debit procedure or credit card data.

All information provided by you shall be true and accurate and will be relied upon by us for the provision of the Service.

1.6. Prerequisite for the utilisation of Services is internet access. The customer shall be responsible regarding his access to the internet. The mutual obligation resulting from the Agreement shall not be affected if the customer has no access

to the internet.

The Customer is obliged to keep all login data regarding his/her sipgate account (passwords and SIP passwords) confidential and secure. The customer accepts that passing login data on to third parties (e.g. staff or family) is carried out at his/her own risk. The customer must inform third parties regarding the obligation to keep login data confidential and secure.

The Customer is responsible for all necessary and usual safeguards against the accidental and abusive use of Services by third parties. If a customer notices an unintentional or abusive use of Services, he/she should inform sipgate immediately. In case customer fails to inform sipgate in due time, he will be liable for all damages resulting from this delay.

1.7. If, at any time, the Service is affected or unavailable other than due to our fault you will continue to be billed for the Service.

1.8. Without prejudice to our rights to terminate this Agreement, we may suspend the Service if we reasonably believe you are in breach of any terms of this Agreement or any other Agreement with us or you abuse, threaten us, or a member of our staff. We may also suspend the Service if we are obliged to comply with an order, instruction or request from a government department or other competent authority.

1.9. We can end this Agreement immediately upon email notification if:

- you breach this Agreement and fail to remedy the breach within a reasonable time, specified in a written notice to us to do so;
- you make, or offer to make, an arrangement with your creditors; you commit an act of bankruptcy; someone brings a petition against you, receiving order or administration order against you to make you bankrupt, you are a limited company and a resolution to liquidate the company is passed or a receiver or administrator is appointed over all or part of your assets. We can also end this Agreement if we think any of these actions or similar actions may happen;

- any regulatory change affecting our ability to offer the Service is introduced, including but not limited to any authorisation or licence under which we provide the Service expiring or being revoked.

1.10. Upon any suspension or termination according to 1.8 or 1.9, you are responsible for all charges, including, without limitation to unbilled charges and other charges all of which immediately become due and payable. We may immediately charge these amounts to your debit or credit card in the case of the credit balance not covering these amounts.

1.11. We may terminate this Agreement at any time without liability if any underlying arrangement with other operators or suppliers is terminated for whatever reason.

## **2. General Service Information**

2.1. The Emergency Service Description is part of the Terms and Conditions. The Customer declares that he/she has read the Emergency Service Description and accepts these regulations.

2.2. Number portability is generally available with the Service as far as applicable law obliges sipgate to provide such a service.

In all other cases sipgate will port numbers as far as possible/feasible from or to another provider.

2.3. sipgate is entitled to change the customer's telephone number(s) in the event of a:

- customer request
- change of telephone number is based on legal or regulatory measures or
- other reasonable economic or legal necessities that may force sipgate to

change the telephone number(s).

2.4. An inactive Account may be deleted after prior email request to the customer.

### **3. Billing**

3.1 When the customer tops up his/her credit balance, sipgate issues a respective invoice. Upcoming telephone charges are then generally charged against the credit balance.

3.2 sipgate issues invoices solely as a PDF file via e-mail or as a download. sipgate invoices comply with the VAT prerequisites.

The issuing of an invoice in paper form is generally not possible. The customer accepts that invoices are sent via e-mail although a confidential transfer of the data cannot be guaranteed. sipgate invoices do not include any itemised billing.

The customer can access their call charges at any time via his itemised bill in his sipgate account.

3.3. sipgate will issue VAT-free invoices for business customers where a valid VAT-ID has been provided in the sipgate account in the case of businesses located in the European Union, or where the customer is located outside the European Union.

3.4. Invoice details required for VAT purposes are taken from the customer's sipgate account. The customer is obligated to currently update this information in his account. sipgate is not obliged to provide invoices with other data.

### **4. Charges and Payment Terms**

4.1. Provision of the Service is conditional upon the customer paying all fees and charges applicable to the Service in accordance with this Agreement and the tariff list. We publish all fees and charges at <https://www.sipgate.co.uk/all-call-rates>. The methods of payment accepted by sipgate are set out in the customer's sipgate account.

Where VAT must be paid we have included it at the current rate. All invoices are available by accessing the customer's online account.

4.2. If payment is made by credit card, sipgate reserves the right at any time to stop accepting credit cards from one or more providers.

4.3. The customer's initial order for the Service authorises sipgate to charge customer's debit or credit card unless another payment procedure is regulated in the Service description. The authorisation will remain valid until sipgate receives the customer's written notice terminating sipgate's authority.

4.4. If the customer's credit or debit card data or other data related to the payment procedure change, the customer must update this information immediately in the customer's online account. Failure to do so may lead to suspension or termination of Service.

If the customer fails to update his/her credit or debit card details or other data relevant for payments, or if the customer cancels a direct debit authorisation or the customer causes a return debit note, a negative balance (sipgate claims against the customer) may result. In this case, sipgate is entitled to request the customer by mail to balance their negative account. sipgate is entitled to charge processing costs with a flat rate of 3.90GBP.

4.5. The Customer has to reimburse the costs caused by a return debit note or similar costs caused due to a failure according to No. 4.4. In this case sipgate charges a flat amount of 9.00GBP, unless the customer proves that no damages were caused at all. However, sipgate is entitled to charge more than the flat fee in the case of sipgate being able to quantify a higher cost of damage.

4.6. We may suspend or terminate our Service at any time acting reasonably, if you fail to make any payment that is due. You must pay all sums due in full and you cannot set off, deduct or withhold any part of any sum of money that you owe us. We reserve the right to charge for administration costs incurred in recovering any sum you owe us and we reserve the right to employ debt collection agencies, to assign the right to collect your debt or to factor your debt to a third party for collection.

4.7. We can change the payment terms for any good reason, for instance, if you do not pay your bills on time.

4.8. You must notify sipgate in writing within 7 days after the date of your debit or credit card statement if you dispute any sipgate charges. Billing disputes must be sent to [team@support.sipgate.co.uk](mailto:team@support.sipgate.co.uk).

4.9. By using the Service you agree to be bound by our fair usage policy. If you do not comply with our fair usage policy or you use the Service for anything other than for normal and reasonable purposes and contrary to usage patterns reasonably expected of a residential or business user, as the case may be, we may freely suspend the Service immediately and offer you an alternative tariff list or terminate the Service immediately.

4.10. If you accept an equipment upgrade, special offer, promotion or benefit, such as a free month of Service, free installation, a rebate or other incentives, there may be a term of commitment associated with the benefit you accepted („Commitment“). The Commitment will be disclosed as part of the promotion. The Commitment begins on the date you activate the new equipment or accept the special offer, promotion or benefit. If your Service is disconnected prior to the end of the Commitment period, you agree to pay sipgate a recovery fee in an amount equal to the difference between the price you paid and the recommended retail price (RRP) of the goods, Service or other benefits you received at the time the Commitment period began. Recovery fees are cumulative and are independent of any other charges or fees you may owe sipgate, including any disconnection fees, for example.

4.11. You accept that when you order the Service from us we may carry out credit reference enquiries about you and that we may also carry out identity and fraud prevention enquiries. All information disclosed to us following such enquiries will be protected and kept secure in accordance with our privacy policy at <https://www.sipgate.co.uk/privacy>.

## **5. Cancellation**

5.1. Except when stated otherwise cancellation of the Service / an agreement

between the parties is possible but generally requires one month's prior notice.

5.2. If you want to cancel this Agreement in full, or if you want to cancel some but not all of your phone lines and other features of the Service, for any reason you must inform us in writing or via email at [team@support.sipgate.co.uk](mailto:team@support.sipgate.co.uk). Your written notice of cancellation must be received no later than 1 working day before the end of the current calendar month, otherwise cancellation will not become effective until the end of the following calendar month. sipgate will send you confirmation of your cancellation by email. A working day does not include Saturdays, Sundays or any public or bank holidays in the United Kingdom.

5.3. If the customer still has credit in his / her account at the point of cancellation, sipgate will reimburse the customer on request, to the value of the credit balance, minus sipgate's processing fees of 6.00GBP. A refund is not issued in the case of the balance not exceeding 6.00GBP.

A prerequisite of a reimbursement, is a written customer request, stating the customer number / SIP-ID, a bank or credit card account and a copy of proof of ID (passport/driving license). The refund of a positive balance becomes time-barred from three years after the date of termination.

5.4 You are solely responsible for your actions and the content of your transmissions through or in connection with the Service, it being understood that each employee acts on behalf of the Company with which such employee is associated in all actions and submissions on or in connection with the Service. You agree:

- to abide by all applicable local, state, national, and international laws and regulations in your use of the Service;
- not to use the Service for illegal purposes;
- not to use or attempt to use another person's or entity's account, telephone number, service or system without authorisation from the owner;
- to comply with all laws regarding the transmission of voice or technical



data (including all export laws, regulations, and restrictions of the United Kingdom);

- not to „stalk“, threaten, or harass anyone through, in connection with, or utilising any data collected through the Service;
- that we neither endorse the content of any of your communications nor assume any responsibility for any threatening, libelous, obscene, harassing or offensive material contained in such materials, or any crime facilitated by use of the Services;
- not to interfere or disrupt networks connected to the Service or otherwise attempt to interfere with the proper function of the Service; and
- not to attempt to obtain unauthorised access to the Service.

sipgate may, in its sole discretion, immediately terminate your access to the Service respectively the Service should your conduct fail to conform with any provision of this Section.

## **6. Changing the Agreement**

6.1. We may at any time change the terms and conditions of this Agreement, any policy or document referred to in this Agreement, our charges and tariff list by posting changes to the „Dashboard“ section of your web account which you access at sipgate’s website ([www.sipgate.co.uk](http://www.sipgate.co.uk)). We shall endeavour to notify you of changes to tariff lists and charges at least 5 days before they are due to take effect, however, we may have to make changes without giving the full 5 days notice. You agree that if you use the Service, you will be bound by the changes, once the changes to the charges are made. You may contact us for details of changes to charges and to the tariff list or visit our website at <https://www.sipgate.co.uk/all-call-rates>.

6.2. Provided you have not used the Service following any change as described in clause 7.1, you may end this Agreement without incurring any applicable

disconnection fee if the changes are not to your liking, provided that you will remain liable for all charges due up until the date of termination. To exercise your right of termination you will need first to give us notice via email.

## **7. Warranty**

We warrant that we shall provide the Service with reasonable skill and care, within a reasonable time and substantially as described in this Agreement and in the Service Description. We do not warrant that the provision of the Service will be fault free or uninterrupted but will use all reasonable skill and care to provide and maintain the Service. We do not make any other promises or warranties about the Service. You acknowledge and agree that in entering into this Agreement you do not do so on the basis of that the Service will always be optimal, and do not rely on any representation, warranty or other provision except as expressly provided in this Agreement and all conditions, warranties or other terms implied by statute or common law are excluded to the full extent permitted by law. The Equipment and the Service is made available for your own use only.

We reserve the right to modify or discontinue the Service respectively part of the Service, temporarily or permanently, with or without notice to you, and we are not obligated to support or update the Service. We will not be liable to you or any third party in the event that we exercise our right to modify or discontinue the Service.

Nothing in this Agreement affects your statutory rights.

## **8. Liability and Indemnity**

8.1. Nothing in this Agreement excludes or limits our liability for any liability that cannot be excluded or limited by law.

8.2. You accept and agree that you will have no claim against sipgate or any underlying network access provider if you are unable to access the Service and the exclusions and limitations of liability in this clause shall apply to all claims arising from your use of the Service including claims against our business associates.

8.3. We shall not be liable for you or any third party in contract, tort, including any

liability for negligence or breach of statutory duty, or otherwise, for any loss of revenue, business, anticipated savings, profits, (whether or not in each case they are considered to be direct or indirect losses) corruption or destruction of data, or for any indirect or consequential loss howsoever arising, or in connection with any computer virus or system failure even if we are expressly advised of the possibility of such damage or loss.

8.4. Except in the case of clause 8.1, our liability to you (if any) for direct loss or damages in contract, tort, including negligence or breach of statutory duty, or otherwise, arising out of or in connection with this Agreement shall be limited to 12,500EUR per incident per customer. As regards all customers the liability per incidence is limited to 10,000,000EUR. As far as this amount does not suffice for all customers claims resulting from one incidence all customer claims are reduced accordingly.

8.5. In the event of any failure in the Service, we shall not be liable for any charges incurred by you, should you divert your traffic to another provider.

8.6. You will indemnify sipgate from and against any and all costs, expenses, (including reasonable legal fees), claims, demands and actions arising from or related to any breach of this Agreement or any misuse of the Service or Equipment (whether or not supplied by sipgate).

8.7. We shall not be liable to you for any loss or damage due to any cause beyond our reasonable control such as failure or shortage of power supplies, acts or omissions of other communications providers, compliance with any law or court order, acts or omissions of local or central government or other competent authorities.

We shall not be in breach of this Agreement for any delay or failure in performance if such delay or failure is due to a cause beyond our reasonable control.

## **9. Privacy**

We comply with all applicable data protection laws in the UK and our current Privacy Policy is published at <https://www.sipgate.co.uk/privacy>. By entering into

this Agreement you confirm that you have read and understood our Privacy Policy and you agree to us using your data as outlined in our Privacy Policy.

## **10. Intellectual Property**

All websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively „marks“) of sipgate are and shall remain the exclusive property of sipgate throughout the world. Nothing in this Agreement shall grant you the right or licence to use such marks.

## **11. General**

11.1. If we fail to enforce a right under this Agreement, that failure will not prevent us from enforcing other rights, or the same type of right on a later occasion.

11.2. If a clause or condition of this Agreement is not legally effective, the remainder of this Agreement shall be effective. We can replace any clause or condition that is not legally effective with a clause or condition of similar meaning.

11.3. Except as provided in clause 9, nothing in this Agreement confers on any third party any right to enforce any of its provisions pursuant to the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

11.4. You may not assign or transfer any of your rights or obligations under this Agreement without our prior written consent.

11.5. The survival of the clauses is necessary for the interpretation or enforcement of this Agreement shall continue in full force and effect in accordance with their terms notwithstanding termination or expiry of this Agreement.

11.6. This Agreement represents the entire Agreement and understanding between us in relation to the subject matter hereof and supersedes all prior understandings and representations, whether written or oral. This clause shall not affect the parties' rights and remedies in respect of any fraudulent misrepresentation.

11.7. This Agreement is governed by the laws of the Federal Republic of Germany except for regulations regarding consumer protection. Consumer protection shall be regulated according to the laws of the United Kingdom. The parties submit to the exclusive jurisdiction of the German Courts to the extent this is permissible.

11.8. Our Service may not be used from the USA or through US citizens.

## **12. More About Us**

www.sipgate.co.uk is provided by sipgate GmbH Gladbacher Str 74,40219 Düsseldorf Germany. Please contact us under [team@support.sipgate.co.uk](mailto:team@support.sipgate.co.uk).

Our VAT ID number: DE 219349391.