

**1. Introduction**
General

Naka AG, (hereafter: Naka) is a high-quality national and international service provider in the mobile telecommunications sector.

Naka enables its customers (hereinafter "the Customer") to make calls and exchange data via the mobile networks and its roaming partners. When the appropriate communication devices are used, the Customer may also access Naka's VoIP service as well as the Internet and related services.

Naka's website provides information on the scope and the specific terms of use of the individual services offered by Naka. Naka may engage at any time a third party to fulfil any of its obligations in performing its services.

Scope

These General Terms and Conditions (hereafter: Conditions) govern the entire relationship between Naka and the customer. They apply to all services provided by Naka. By activating the Service, you acknowledge you have read and understood, and you agree, to these Conditions.

**2. Customer's obligations**
General

In particular, the Customer is responsible for using his/her mobile line in compliance with all legal requirements and these provisions, as well as for paying for the services received within the specified time.

Customer device

The Customer is responsible for purchasing its device and for ensuring its functionality and compliance with legal provisions. The Customer is responsible for taking measures to prevent unauthorised access to third-party systems and the spread of computer viruses. Should the Customer's terminal or mobile line cause malfunctions or damage to the equipment owned by or a third party, the latter may discontinue its services without advance notice or compensation and claim for damages.

Responsibility for use of the mobile line

The Customer is responsible for all uses of his/her mobile line, including the use by third parties. In particular, he/she is responsible for the payment of all charges arising in connection with use of the mobile line including goods and services ordered or obtained via his/her mobile line, and in particular, for dialling premium numbers with increased charges and rates. PIN and PUK codes and any other security codes that may be assigned should be stored carefully and separately from the terminals and the SIM card and should not be disclosed to a third party. To minimise as much as possible the risks of misuse, account passwords, personal identification codes or similar precautionary measures must be kept confidential. The Customer is also obliged to safeguard SIM cards and to observe all other recommended security measures at all times. The Customer must immediately notify Naka Customer Care of any impending misuse (e.g. in the event of loss or theft of the end devices and/or the SIM cards) by phone and also confirm the information given in writing. If the Customer does not comply with this duty of notification, he shall be liable for all damages and expenditure incurred.

**3. Prices**

The current and binding prices are published on the internet at [www.nakamobile.com](http://www.nakamobile.com) and may be obtained at any time direct from Naka by emailing at [info@nakamobile.com](mailto:info@nakamobile.com). Such prices remain subject to the consequences of fluctuating exchange rates at all times. Prices are subject to modification at any time without prior notice. It is the customer's responsibility to obtain any information before using the service. Naka does not make any guarantee for the typographic correctness of the prices published on the homepage. In case of an error in the pricing or product information, Naka reserves the right to cancel the order of the customer by giving the respective information.

**4. Information content; utilisation in compliance with legal and contractual provisions; misuse**
Information content

The Customer is responsible for the content of information (voice or data, in any form) which he/she has transmitted or processed by Naka or which he/she makes accessible to a third party. Naka is not responsible for the above, nor for the information received by the Customer via the mobile network nor any information disseminated or made accessible by a third party via telecommunications networks.

Utilisation in compliance with legal and contractual provisions

The Customer is responsible for using his/her mobile line in compliance with all legal provisions and the terms stipulated hereunder. Using a mobile line for the purpose of disturbing or harassing a third party or for impeding the proper use of another line or for any other unlawful purpose is prohibited. Telemarketing calls and messages are illegal if the caller or sender knows or ought to know that the recipient does not wish to receive such calls or messages.

Measures against misuse

In the event of justified indications of unlawful use of a mobile line, or if such use is reported by the responsible authorities or if it has been determined by a legally enforceable judgement, Naka may give instructions to the Customer in how to use the mobile line adequately, discontinue its services without advance notice or compensation, terminate its services without notice or compensation and, if applicable, claim compensation for damages. Naka may also take said measures if there are reasons to assume that the Customer is violating or will violate legal requirements or that he/she provided inaccurate or incomplete information at the time he/she started to use Naka's services. Should Naka terminate the contract for any of the above reasons, the Customer is responsible for payment pursuant to the provisions on premature termination of the contract.

**5. SIM card service and account balance**

The account balance may be increased at any time. In respect of the account balance, Naka's accounting system is deemed to be correct. The Customer may submit substantiated objections to the charge incurred within 14 days after the relevant telephone call. If he/she fails to do so the charge is deemed to be accepted. When the account balance is insufficient, the service may no longer be used. No refund is made as against any credit on the account.

Naka has the right to cancel or change any phone number without compensation, when same is required for operational or technical reasons or as a result of regulations.

Further details are included in the user guide provided at the time of purchase of the SIM card service. The payment of the purchase amount as well as the increase of the prepaid-account of the customer using debit / credit card is subject to the agreement of the bank, which has issued the debit / credit card. Naka is not liable in such cases, where the bank refuses to accept the debit / credit card. Naka protects the details of the order and payment of the customer with all expected care. In case where a third party manages to get unauthorized access to the data, Naka is not liable.

**6. Deactivation**

If the SIM card service is not used (i.e. no incoming or outgoing calls) during six (6) months (180 days) period after last chargeable usage of the service, Naka reserves the right to deduct a charge of EUR 1.00 per month from the remaining credit balance of the account or

phone number. With expiration of the credit, the SIM card and all related services will be deactivated without prior notice. The phone number shall be lost without any compensation. NB: the applicable period of time prior to deactivation may vary from country to country and/or from product to product. Please obtain the relevant information at the point of sale or from [www.nakamobile.com](http://www.nakamobile.com)

**7. Obligation to register**

In accordance with prevailing regulations, the customer is obliged, at the time of purchase of the SIM card and its service, to identify himself by means of a valid and official identification document. Purchase and use of a SIM card service without due identification shall be considered as abuse of the service. Article 11 hereunder shall then be applicable.

**8. Data protection**
General

Naka complies with the prevailing laws with regard to handling data, particularly the laws on telecoms and data protection. Naka only collects, stores and processes the data required for providing the services, for handling and maintaining customer relations, particularly to ensure high-quality services, operational reliability and infrastructure and for invoicing purposes. The Customer accepts that Naka may, in connection with the performance of its services, request information concerning his/her person, pass on information regarding his/her payment history, use his/her personal data for the needs-specific design and development of services and customised offerings. If a service is provided jointly by Naka

and a third party, or if the Customer receives third party services via the Naka service, Naka may disclose the Customer's data to a third party, insofar as this is necessary for the provision of such services. Naka takes precautionary measures to protect the network against third-party access. However, full protection against unauthorised access or unlawful wire-tapping cannot be guaranteed. Naka is not responsible for such access.

#### Display and suppression of the caller's number

In principle, the caller's number will be displayed to the called party. Naka's service allows may to suppress the caller number permanently at no charge or he/she may suppress the number for each individual call. In some cases, the display or suppression of the caller's number cannot be ensured for technical reasons, particularly

for calls from or to a third-party network or for SMS. The caller's number cannot be suppressed for calls to an emergency number.

#### **9. Fair use policy**

Naka's service rates and tariffs is subject to a fair usage of the services by the customer. In the event of fair usage not being sustained, Naka reserves the right to review the rates and tariffs applied to customer's account or to terminate the services. Naka may rely on the Fair Use Policy where customer's (i) ratio of outbound chargeable calls to inbound calls and/or (ii) usage of Naka Data services is excessive or unreasonable, as defined below. In the case of Naka data services, downloading and/or uploading of more than 1 GB of data each month on or from customer's mobile device is excessive use. It is unreasonable use of Naka services where customer's use of Naka services is reasonably considered by Naka to be fraudulent or to adversely affect the Naka network or other Naka customers' use of or access to a Naka Service or the Naka network. Where customer is in breach of this Fair Use Policy, Naka may advise customer and draw his/her attention to the necessary changes of usage so that it conforms to this Fair Use Policy. Should customer's excessive or unreasonable use continues, Naka may, without further notice to customer suspend or limit the service (or any feature of it) for any period Naka thinks is reasonably necessary and/or terminate its services with two weeks written notice.

#### **10. Restricted use**

##### General

Naka shall make every effort to provide a high level of availability for the mobile network. However, Naka is unable to guarantee continuous, trouble-free operation of its mobile network or certain transmission times or capacities (for SMS, for example).

Naka reserves the right to service its mobile network at any time, which may result in temporary disruptions. No representations or guarantees are made with regard to availability, quality, operation or support for voice or data communication on the networks or with third-party lines and for Internet access via a mobile line.

##### Interference with medical equipment and other

The electromagnetic fields generated by the Naka transmission and receiver stations or by terminals may interfere with the functioning of other equipment, such as hearing aids, pacemakers and household appliances. To prevent such interference, the manufacturers' safety measures should be observed and adequate distance should be maintained. The Customer is responsible for obtaining information on prohibited and restricted use (for example, when driving or during air travel) and for obeying such rules.

##### VoIP service

Naka offers an enhanced service of VoIP and same is provided on a best efforts basis by Naka. Events beyond Naka's control may affect such service, such as power outages, fluctuations in the internet, your underlying IP or broadband service, or maintenance. Naka will act in good faith to minimize disruptions to your use of and access to the service.

VoIP services allow Customer to make or receive calls over the internet to or from the public switched telephone network. However, the nature of VoIP telephone calls, while appearing

similar to traditional telephone calling services, creates unique limitation and circumstances, and Customer must acknowledge that differences exists between traditional telephone services and VoIP services, including the lack of traditional emergency services.

#### **11. Naka's liability**

The liability of Naka for personal injury is unlimited. Naka is liable for damages to property and financial losses, to the extent that such

losses are incurred by the actual fault of Naka with wilful intention or gross negligence. For grossly negligently caused damages to property and financial losses the liability of Naka is limited to the current value of the Services paid for by the Customer during the last 12 months, but in any event to the maximum amount of CHF 10'000.- . Any other liability, in particular for indirect and consequential damages (loss of profit, savings not achieved, suspension of usage etc.), is - to the extent permitted by law - expressly excluded.

Naka draws the Customer's attention to the restrictions of the internet and telephony network, as well as the risks associated with the use thereof. Naka in particular accepts no responsibility for spamming, hacking, transfer of viruses and other attempts to enter the computer and other end devices used and any damage caused as a result thereof.

Naka accepts no liability for damages caused by a temporary or permanent interruption or delay of services or the network, such as losses of business or private data, non availability of data, etc.

The liability of Naka is exclusively applicable to the proper use of its own network and its own services in accordance with the relevant Product Information. Naka is not liable and does not provide a guarantee for any services and goods supplied by third parties, even if Naka is entrusted with the collection of third-party claims against the customer..

#### **12. Term and proper termination of the contract**

The contract shall run for an unlimited term. Subject to specific provisions included herein, the services may be terminated in writing by either party with 30-days' notice.

#### **13. Overview of services; amendments**

##### Overview of services

Naka may forward in suitable form an overview of certain or all mobile services drawn by the Customer from Naka. Unless the Customer requests a correction of erroneous information in writing, via fax or e-mail within the time specified on the overview, the overview of services shall be binding upon both Customer and Naka. Should Naka determine that the overview of services contains erroneous information, a corrected version may be forwarded to the Customer.

##### Amendments

Naka may modify the Product descriptions and any other parts of the applicable conditions, including these Conditions, at any time, and the Customer will be informed in an appropriate manner thereof. If the Customer does not accept modifications which are major changes to the Conditions, that are to his disadvantage, the Customer may prematurely terminate his/her usage of the service before the effective date of the increase without suffering any financial consequences by rejecting same in writing within a period of 30 days from receipt of the notification. Changes of prices or network coverage (regardless of whether the network is operated by Naka or third parties) must be accepted and are not deemed to be a major change in Product description or other key provisions of these Conditions, and shall not entitle the Customer to terminate as stated above.

#### **14. Other stipulations**

The customer may transfer rights and obligations arising from this contract to third parties only with the prior written approval of Naka. Naka is entitled to transfer this contract to third parties without the consent of the customer, provided it is permitted according to the law.

#### **15. Intellectual property rights**

For the duration of the contractual relationship, Naka grants the customer a non-transferable and non-exclusive right to use the services and products provided by Naka in accordance with these Conditions. All intellectual property rights to Naka's products and services, both existing rights and rights arising in connection with the performance of Naka's services, shall remain the property of Naka or entitled third parties.

#### **16. Choice of law and jurisdiction**

The relationship between Customer and Naka shall be subject to the application of the Substantive Swiss Law, excluding the United Nations Convention on Contracts for the International Sale of Goods, dated in Vienna on April 11, 1980. The exclusive place of jurisdiction for all disputes arising out of or in connection with this agreement shall be Zurich, Switzerland subject to mandatory places of jurisdiction under federal law.