



General Terms and Conditions

smstrade.de is operated by CM Telecom Germany GmbH.

§1 Areas of application

- (1) The following terms of use apply to all services offered on smstrade.de websites for registered and unregistered users.
- (2) By activating the checkbox on the registration page the user explicitly accepts these terms and conditions.

§2 Registration

- (1) Registration is stringently required for the use of smstrade.de services. The user is responsible for ensuring the accuracy of his personal information and maintaining this up-to-date during the entire duration of membership. Changes to personal information can be made at any point after login. The account will be deleted if the account is not charged within 14 days of registration.
- (2) smstrade.de is entitled to refuse registration to our service without giving reasons and to terminate an existing membership. Registration may only be made once per person.
- (3) The user undertakes to ensure the secrecy of the password sent to him or assigned by him and the special gateway key. Furthermore the user is solely responsible for the password assigned by him. It is therefore imperative that a password should be chosen which consists of different letters and numbers and which isn't guessable. The client is liable for all damages incurred in connection to the disclosure of the password.
- (4) All the services that are only available by access with the password should only be used by registered clients. It is not permitted to authorize use to other persons.

§3 Data protection

- (1) Personal data is collected by smstrade.de at registration. This data is required for contract management and customer support. The data can additionally be used for statistical research, including demography, user behavior and interests.
- (2) smstrade.de does not release personal data, unless the user has given express permission for it.
- (3) Third parties have no view of the content of SMS sent. Data saved by the user (for example mobile numbers) are not passed on by smstrade.de to third parties. For exceptions to this see §6 (5).

§4 Liability

- (1) smstrade.de, its legal representative or agent are liable subject to § 4 (3) only in the case of intent or gross negligence. This does not apply to damages based on injury to life, body or health; for these damages smstrade.de is liable without limitation within the scope of legal provisions.
- (2) In the case of slight negligence smstrade.de, its legal representative or agent are liable subject to § 4 (3) only by neglect of duty or culpable violation of an essential contractual obligation (cardinal duty) in one of the dangerous ways limited in the purpose of the contract to typical contractual and foreseeable damages, with which smstrade.de was able to envisage at the time of the conclusion of the contract. Otherwise the pre-contractual, contractual and non-contractual liability of smstrade.de is limited to intent or gross negligence in accordance with § 4 (1).
- (3) Punitive damages owing to absence of guaranteed features, such as liability according to product liability law and other obligatory legal standards, are unaffected by the terms of this clause.

(4) smstrade takes no responsibility for damages caused by unforeseeable and unavoidable events which lie outside the influence and discretion smstrade.de. Counted among these are particular acts of nature such as wars, malfunctioning of transmission paths, above all here network and server errors, longer lasting power failures, communication network failures and gateways, extreme weather conditions, strikes or other conflicts between employees and employers, disruptions in the transfer of internet data, failed transmission and sabotage.

(5) smstrade.de takes no responsibility for insignificant disruption to services, subject to § 4 (3). In particular, despite its high security regulations subject to § 4 (3), smstrade.de takes no responsibility or liability for the loss of data, insofar as the loss is not the fault of smstrade.de, its legal representative or agent within the limits of the terms of § 4 (1).

(6) smstrade.de assumes no liability concerning completeness, accuracy, correctness, suitability, legibility etc. of client data, client content or instructions transmitted by the client, or missing or delayed transmission to smstrade.de.

§5 Definition of message

(1) The definition of the term *message*: In these general terms and conditions the designation of message describes short messages, and also mobile services offered later in the future following sending or downloading to / from mobile terminals.

§6 Terms for sending SMS and units to mobile terminals

(1) Use of all services is only available after registration in the system.

(2) The user must ensure that the recipient is in agreement with receiving the message (including any possible advertising messages attached by the user). If agreement is not absolutely certain, no messages should be sent to the recipient.

(3) Sending messages with the following content is prohibited: criminally relevant data, SMS with illegal, chargeable, harassing, libelous, discriminating, threatening, vulgar, obscene, unauthorized or otherwise questionable content. Furthermore it is prohibited to send messages with pay-per-call numbers and to use the services of smstrade.de as a spam platform. In the event of infringement smstrade.de reserves the right to file charges and assumes no liability for the contents of messages sent.

(4) The user expressly releases smstrade.de from the demands of third parties, resulting from the receiving of messages sent.

(5) smstrade.de considers messages sent to be private correspondence between sender and receiver. The content of private correspondence is not displayed, edited or sent on to third parties; however smstrade.de is authorized in the following cases:

-when it is required to satisfy legal regulations

-in order to conform to legal proceedings

-if applicable, to make valid the general terms and conditions of smstrade.de

-to verify claims that the message content infringes the rights of the third parties

-in order to protect the rights or the assets of smstrade.de or third parties

(6) For reasons of prosecution smstrade.de logs specific data emerging from the sending of a message (IP addresses), which may be passed on under certain requirements (for example on request of prosecuting authorities)

(7) In the event of violation of the general terms and conditions, the user is obliged to make available all demands resulting from it to third parties, as well as compensating for all losses, costs or damages incurred through it.

(8) The unit sending price is determined by the current tariff class of the client which can be consulted after login. Tariff class assignment takes place after payments into the client's account within the last 30 days. Receipt of money into the smstrade.de account is essential for this. Updating of tariff classes takes place daily before 12:00 CET. The user is made aware via e-mail of a change in tariff class.

§7 Account/ Account charging

- (1) Charges are incurred for the use of some services, which are debited from user SMS account.
- (2) The user SMS account can be charged by bank transfer.
- (3) Services subject to charges can only be used if a minimum payment amount of 20 Euros is paid into the user SMS account.
- (4) Access to against payment services is enabled after charging a minimum balance of 20 Euros. The duration of availability of against payment services (activity time window) amounts to 24 months from the charging of credit. The activity time window is extended each time by further charging, in which the availability of 24 month duration begins again.
- (5) If no messages have been sent over a time period of 90 days the account will be deleted. In due course before the expiry of 90 days the user will receive notification regarding the imminent deletion and the option to prevent deletion. In the case of existing credit the user will be promptly refunded after statement of the necessary recipient data for the refund.
- (6) Receipt of money in the smstrade.de account is essential for charging SMS accounts and the updating of tariff classes.

§8 Informative e-mails, newsletter

- (1) All registered users receive automatic news and information at irregular intervals from smstrade.de via e-mail to address specified at registration.

§9 Availability of offer, SMS sending

- (1) smstrade.de will do everything in its power to keep offers available at all times, however, difficulties can arise over which smstrade.de has no influence over. These are above all transmission failures, accessibility problems of the web server or gateways or other failures of network operators. Internal disruption is corrected by smstrade.de as quickly as possible and external service providers are promptly notified of problems.
- (2) smstrade.de is also not responsible for sent messages being correctly received by the recipient, insofar as an error appears outside the smstrade.de server on message transmission.
- (3) Unforeseeable events such as acts of nature, strikes, regulatory action, failures of transmission mediums or similarly named issues already under § 4 (4), which are not covered by smstrade.de, absolve smstrade.de from liability and warranty.
- (4) smstrade.de will make all reasonable efforts to resolve such disturbances as soon as possible.
- (5) smstrade.de assumes no responsibility for the sending and receipt of data services in the network of a foreign operator, particularly in the foreign network of mobile radio devices, since these reside in the sole area of responsibility of the network provider. In particular smstrade.de is not liable for damages resulting from delayed or incomplete delivery of data services in the networks of foreign operators. This doesn't apply, if the delayed or incomplete transmission are based on the fault of smstrade.de, its legal representative or agent, within the confines of clause § 4.

§10 Severability clause

- (1) If a clause of this contract, of the terms and conditions or a new future recorded clause, is or becomes void in whole or in part, the rest of the terms will remain hereof unaffected. The contract partners will agree to replace the invalid clause with the valid clause, which corresponds best to the financial aims of the contract partners. This applies equally in cases of loopholes in the contract.

§11 External links

(1) No liability is assumed on our part for the contents of external links. Content of linked pages is under the sole responsibility of its operator. Such links also do not signify that the external contents echo the view and/or opinion of smstrade.de.

§12 Changes to the General Terms and Conditions

(1) smstrade.de is authorized to modify the terms and conditions at any time in the future. smstrade.de will make the user expressly aware of the particular modification and in good time. If a user doesn't reply in writing by e-mail or by post within a month from the receipt of the modification message, the modifications to the terms and conditions are understood to be accepted by the user, provided that smstrade.de has made the user expressly aware of the consequence of its behavior in the modification message. If the user does not agree with the modification of the terms and conditions and disagrees, the previous terms and conditions apply which were already accepted by the user. However, smstrade.de alternatively has the right to cancel the previous contract with the user, at the earliest point after the use of remaining credit already charged and within a reasonable period of time.

§13 Place of execution / Legal domicile

(1) The place of execution for all claims in relation with business connections are the smstrade.de headquarters in Frankfurt.

(2) As far as the client involves an agent, official legal funds assets or a legal entity, Frankfurt is agreed as a sole legal domicile.

(3) All legal transactions carried out by smstrade.de are subject to German Federal Republic law with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).

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