

# General and Special Terms and Conditions of retarus (UK) Ltd.



The following General Terms and Conditions ("GTC") and Special Terms and Conditions ("STC") and the service descriptions referred to therein shall apply exclusively to services ("Services") provided by retarus (UK) Ltd. ("Retarus"), unless Retarus and the Customer (each a "Party" and together the "Parties") agree otherwise in text form for the individual case on the basis of an offer and its acceptance ("Individual Order").

## A. General Terms and Conditions of Retarus

### I. Validity and Amendment of the GTC and STC, Order of Precedence

1. The Customer's general or purchase terms and conditions ("Customer GTC") shall apply only if Retarus has expressly accepted them in text form (which shall always also be fulfilled by stricter forms such as the written form), even if Retarus performs Services without reservation in full knowledge of conflicting Customer GTC.
2. With regard to Individual Orders with terms exceeding 12 months, Retarus may modify these GTC/STC at any time during the term. Customer shall be notified in text form at least 6 weeks before the effective date of any amendment, stating the reasons for the amendment (e.g. legal or technical changes, etc.). Amendments become effective if Customer does not object in text form within 6 weeks after receipt. In case of such objection, Retarus may terminate the affected Individual Order within 2 weeks of receipt, taking into account an appropriate expiry period (max. 6 months).
3. The following order in descending priority shall apply to contractual documents: (i) Individual Order, (ii) further contract documents such as SLA, NDA, etc., (iii) STC, (iv) GTC, (v) service description. The STC apply in addition to and, in the event of contradictions, take precedence over the GTC.

### II. Scope and subject of the Services

1. Service descriptions and other technical documentation (e.g. in the Enterprise Administration Services Portal, "EAS"), are descriptions and not feature warranties or guarantees of any kind. Warranties or guarantees apply only if made in writing by Retarus management and expressly marked as "warranty" or "guarantee".
2. Retarus reserves the right to modify Services during the term of an Individual Order, provided that the Service requirements described in the Individual Order are substantially met, and the change is reasonable for the Customer ("Insignificant Changes"). This applies in particular to (i) outdated or unusual technical systems, (ii) design of user interfaces / message content (form, color, dimensions), and/or (iii) Customer system requirements. Insignificant Changes will be announced by providing an updated service description in the EAS, indicating the implementation date of the Insignificant Change. Customer will keep itself informed of the implementation of changes by regularly consulting the EAS.
3. Retarus may perform Services partially or ahead of schedule if reasonable for Customer.
4. The term specified in the Individual Order shall commence with the initial Service provision by Retarus. The initial Service provision will be notified to Customer in text form ("Provision Notification"), following which all Services available for use shall be remunerated in accordance with the terms of the Individual Order. For multiple services, the Provision Notification relating to the last Service provided shall be decisive for the commencement of the term for all Services provided under the corresponding Individual Order.
5. Unless expressly agreed otherwise, Retarus reserves the rights to all work results created in connection with the provision of Services. If and to the extent the granting of any rights is required for the use of the agreed Services, Retarus shall grant to Customer a non-exclusive, non-sublicensable right of use, limited to the term of the respective Individual Order.

### III. Performance Deadlines and Delay

1. Deadlines and dates ("Service Dates") are non-binding target and indicative Service Dates, unless expressly agreed as binding in the Individual Order. For such binding Service Dates, Retarus shall be in default only if the Service is due and Retarus is responsible for the delay in accordance with these GTC.
2. Retarus' compliance with binding Service Dates requires the timely fulfillment of Customer's obligations (in particular the cooperation duties pursuant to Secs. A.IV, B.III and payment obligations); otherwise, binding Service Dates shall be postponed accordingly, notwithstanding Retarus' right to assert further objections and pleas.

### IV. Customer cooperation

1. To the extent required for the performance of the Services, the Customer shall provide the necessary cooperation, in particular:
  - (i) Providing or collecting of information and data (such as content, control and address data) in the agreed or appropriate format,
  - (ii) Enabling access to Customer systems if necessary; and
  - (iii) Supporting Retarus if any permits required for the Services need to be obtained and/or notifications need to be submitted (e.g. to the regulatory authority).

Retarus may request information on the aforementioned measures at any time.

2. The Customer shall be responsible for the procurement and operation of software, technical equipment and facilities required for the use of the contractual Services at its own expense.

3. The Customer shall appoint a contact person authorized to make decisions to the extent required. If necessary, Retarus shall arrange all necessary details and schedules with this contact person.
4. Retarus shall not be liable for delays resulting from delayed performance of the aforementioned cooperation duties. Thus delayed Service Dates shall be postponed accordingly for the duration of the delay. Retarus shall be entitled to charge any additional costs and expenses incurred in accordance with Sec. XI.4 of the GTC.

### V. Prices and Terms of Payment

1. Prices are subject to statutory VAT. Invoices are issued either following Service provision, or monthly in arrears for continuous Services. If the initial Service provision is delayed for reasons outside Retarus' responsibility, the first invoice shall be issued no later than 2 months following conclusion of the respective Individual Order.
2. With regard to Individual Orders with terms exceeding 12 months, Retarus reserves the right to adjust prices every 12 months in accordance with the development of the Labour Cost Index of the Office for National Statistics. Increases shall be limited to a maximum of 7.5% annually in any event. In addition, Retarus may, for just cause, adjust prices irrespective of said indices with Customer's consent, e.g. in the event of a sharp increase in cost prices. Retarus will notify Customer of price adjustments in text form at least 30 days before the effective date, stating the index or cost price development. If Customer objects in text form within 4 weeks from receipt, Retarus reserves the right to terminate the relevant Individual Order within 4 weeks from receipt of the objection, subject to a reasonable phase-out period (max. 6 months).
3. Under certain circumstances, e.g. if the Customer is in default with an undisputed (partial) payment or if Retarus is unable to obtain credit insurance for payment claims against Customer, Retarus reserves the right, upon reasonable prior notice, (i) to provide further Services only against advance payment or appropriate collateral, (ii) to refuse other Services even unrelated to the default, (iii) to declare all outstanding invoices due and payable immediately, (iv) charge interest on the overdue amount payable by Customer immediately from issuing a demand, as from the due date up to the date of actual payment, after as well as before judgment, at the maximum rate permitted by applicable law, and/or (v) terminate the relevant Individual Order. The assertion of further claims remains reserved.
4. Objections to usage-dependent invoices shall be made in text form promptly upon receipt. In the absence of a written objection, Retarus invoices shall be deemed accepted 8 weeks following the invoice date.
5. Payments shall be made without deduction to the bank account specified by Retarus. Any bank charges, taxes or similar expense shall be borne by Customer. Time shall be of the essence with regard to Customer's payment obligations.
6. Customer (i) may only offset against undisputed / legally established claims and (ii) may assert any statutory rights of retention solely on the basis of such claims and only on account of counterclaims based on the same Individual Order.

### VI. Subcontracting

1. Unless agreed otherwise, Retarus may subcontract Retarus' Affiliates (a company controlled by or controlling Retarus, whereby "control" means a majority of an ownership or voting interest) and/or other subcontractors with the provision of Services. Corresponding subcontracts shall substantially meet the confidentiality, data protection and data security requirements of the Individual Order.
2. Third parties outside the direct control of Retarus, such as internet/housing service providers, SMS aggregators and carriers used for the provision of Services are not considered subcontractors.

### VII. Protection of Personal Data and IT- Security

1. If and to the extent Retarus processes personal data of Customer ("Personal Data"), Retarus will comply with applicable data protection laws. Retarus will (i) only process or use Personal Data as required for the performance of the Services and (ii) implement appropriate technical and organizational measures to protect Personal Data against unauthorized or unlawful processing, access and accidental loss or damage.
2. If Customer requires (i) Retarus to comply with specific data or IT-regulatory standards in addition to the standards implemented at Retarus, or (ii) if Customer requests specific information or reports, Retarus shall, at Customer's cost, endeavor to evaluate such requests for feasibility, and respond, as soon as reasonably possible.

### VIII. Liability of Retarus under or in connection with Individual Orders

1. In the event of Retarus being delayed in, or prevented from, performing Services due to circumstances beyond Retarus' reasonable control including without limitation acts of God, governmental actions, war or national emergency, riot, terrorism, civil commotion, fire, explosion flood, epidemic, lock-outs, strikes or other labor disputes, power outages, failures in telecommunication links or equipment ("Force Majeure Event"), Retarus shall not be liable for any loss, damage or expenses incurred by Customer and, if a Force Majeure Event continues for a continuous period of more than three (3) weeks, either Party may cancel or suspend the Individual Order without incurring any liability arising therefrom, provided that Customer shall at all times pay for Services already performed under the Individual Order.

2. Retarus shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent) or otherwise for: (i) loss of profits, (ii) loss of business, (iii) depletion of goodwill or similar losses, (iv) loss of revenue or anticipated savings, (v) loss of goods, (vi) loss of contract, (vii) loss of production or use, (viii) loss or corruption of data or information, and/or (ix) any type of special, indirect, consequential or pure economic loss, costs, damages, charges or expenses. (including loss or damage suffered by Customer as a result of an action brought by a third party) even if such loss were reasonably foreseeable or Retarus had been advised of the possibility of Customer incurring the same).
3. Retarus' total, maximum and cumulative liability (including any liability for act and omissions of its employees, agents and subcontractors) in respect of any and all claims in contract, tort (including negligence or breach of statutory duty), defective performance, indemnity, misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance or non-performance of the Individual Order shall be limited to the value of the related Individual Order, for continuous payments to the greater of (i) the average amount paid or payable by Customer per contractual year of the related Individual Order, or (ii) 50,000 GBP. If a number of events give substantially rise to the same loss, they shall be regarded as giving rise to only one claim.
4. Any legal action shall be barred unless suit is commenced within two (2) years after the date the cause of action occurs.
5. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded. No condition is made or to be implied nor is any warranty given or to be implied as to the life or wear of Services or that they will be suitable for any particular purpose or use under any specific conditions, notwithstanding that such purpose or conditions may be known or made known to Retarus.
6. Nothing herein shall exclude or limit the liability of Retarus for death or personal injury caused by Retarus' gross negligence or fraudulent misrepresentation.
7. Upon conclusion of an Individual Order, Customer may request the negotiation of liability stipulations exceeding Sec. 3 against appropriate remuneration adjustments.

## IX. Termination of an Individual Order

1. During the minimum term, an Individual Order can only be terminated for cause, unless the Parties have expressly agreed to a trial period, in which case either Party may terminate the Individual Order with effect from the end of the trial period. Otherwise, the Individual Order shall continue and the agreed minimum term shall commence at the end of the trial period, notwithstanding Sec. II.4 GTC. Separable and independently usable Services may be terminated individually.
2. Without prejudice to any other right or remedy available to Retarus, Retarus may immediately terminate the Individual Order, or suspend any further Services without liability to Customer if: (i) an order is made or a resolution is passed for the winding up of Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to Customer, (ii) an order is made for the appointment of an administrator to manage the affairs, business and property of Customer, (iii) a receiver is appointed of any of Customer's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of Customer, or if any other person, including but not limited to an encumbrancer takes possession of or sells Customer's assets, (iv) Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt, (v) Customer ceases, or threatens to cease, to trade (vi) Customer takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt, and / or (vii) Customer has committed a material breach of the Individual Order and, where such breach is capable of remedy, has failed to remedy that material breach within fourteen (14) days of the issue of a notice requesting such remedy. Upon the occurrence of any of the events set out hereinabove, if the Services have been performed but not paid for, payment shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary.
3. The termination of an Individual Order shall not affect or prejudice the accrued rights of the Parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

## X. Confidentiality and Intellectual Property

1. "Confidential Information" means all tangible, electronic or oral information and data provided or made available by one Party to the other Party in the course of or in connection with their business relationship, provided that such information and data is either marked as confidential or considered as such due to its nature or the circumstances of disclosure. Each Party will treat the details of an Individual Order and the Confidential Information provided or made available by the disclosing Party (i) as confidential, and safeguard and protect it from disclosure, using measures that will equal or exceed the level of care the receiving Party would exercise to safeguard its own Confidential Information; (ii) not use it for any purposes other than necessary in connection with the relevant Individual Order; and (iii) make it available only to its affiliates, directors, officers, employees, contractors, agents, accountants, attorneys and other professional advisors (collectively "Representatives") on a need to know basis in connection with the respective Individual Order, provided that these Representatives are bound by confidentiality obligations no

less stringent than those set forth in this Sec. 1. Obtaining Confidential Information by imitation, *reverse engineering* or similar means is prohibited.

2. The foregoing obligations shall not apply to the extent that Confidential Information (i) was in the receiving Party's possession prior to obtaining it from the disclosing Party without a confidentiality obligation (ii) is or becomes generally known to the public without a Party's breach of the obligations pursuant to Sec. 1 above (iii) was or becomes available to the receiving Party on a non-confidential basis through no fault of the receiving Party and/or from a third party without a confidentiality obligation (iv) was provably independently developed by the receiving Party (v) must be made available to authorities pursuant to applicable law or court orders, or (vi) approved for release or disclosure in writing by the disclosing Party.
3. Confidential Information (in whole or in part) shall, at the option of the disclosing Party, be returned in full or destroyed (if in tangible form) or irrecoverably deleted within max. fourteen (14) days. This shall not apply to routine back-up copies of electronic communication and to the extent Confidential Information is required to be retained under applicable law, provided that, however, such Confidential Information shall in any event remain subject to the confidentiality provisions of this Sec. X until the expiration of the retention period.
4. Any and all intellectual property rights (which, without prejudice, shall include copyrights, design rights, patents, trademarks and know-how, whether registered or not in drawings, designs, specifications) in samples, tools, and the Services shall remain vested in Retarus or its licensors only. Customer has a limited, non-exclusive, non-transferable license to use such intellectual property rights strictly for the purpose of the Individual Order. Save as aforesaid, Customer has no right, interest or title in such intellectual property rights.

## XI. Miscellaneous

1. Retarus shall be permitted to use the Customer's name and logo as well as the description of the Services provided for the purpose of appropriate reference Customer advertising.
2. Individual Orders including their conclusion and termination (including non-contractual disputes or claims) shall be governed and construed in accordance with English law excluding the UN CISG. The Parties irrevocably agree that the courts in London shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with an Individual Order or its subject matter or formation (including non-contractual disputes or claims).
3. The assignment of Individual Orders, in whole or in part, to third parties are subject to the written consent of the other Party. This shall not apply in the case of an assignment (i) to a Retarus Affiliate or (ii) to a third party to whom Retarus transfers all or most of the assets of that part of the business for which the Individual Order was concluded.
4. Remuneration, reimbursement of costs or expenses of Retarus under these GTC, STC or the Individual Order shall be determined in accordance with the agreed hourly rates.
5. Should any provision of these GTC, STC or the Individual Order be or become invalid or contain a gap, the validity of the remaining provisions shall not be affected, unless adherence thereto would constitute an unreasonable hardship for one of the Parties. The invalid or missing provision shall be replaced by an effective provision approximating the purpose intended by the Parties upon conclusion of the relevant agreement as closely as possible.
6. Customer is responsible for compliance with applicable import and export regulations. Customs duties, fees and other charges incurred for cross-border Services will be borne by the Customer. Legal or official proceedings in connection with cross-border Services are the responsibility of Customer.
7. The Individual Order is made for the benefit of the Parties, (and, where applicable) their successors, and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.
8. Each Individual Order constitutes the entire agreement between the Parties relating to its subject matter. Each Party acknowledges that, in entering into the Individual Order, it does not rely on any statement, representation, assurance or warranty ("Representation") of any person (whether a Party to this agreement or not) other than as expressly set out in the Individual Order. Changes to an Individual Order must be made in text form.

## B. Retarus Special Terms and Conditions (STC)

These STC shall apply to Services provided by Retarus that involve transmission/receipt of messages and/or other data processing Services (hereinafter: Communication Services).

### I. Subject of Communication Services

1. For Communication Services, Retarus shall provide via the Retarus System (as defined in Sec. 2 below),
  - (i) by using the services of other telecommunications providers as third-party suppliers,
  - (ii) in accordance with the Service Levels for Communication Services as defined in Sec. II STC, and

- (iii) in accordance with the communication formats agreed in the Individual Order

in particular the following services, in accordance with the respective Individual Order:

- (i) receipt of messages and data and/or
- (ii) storage of messages and data, to the extent required for the Communication Service and as described in the Individual Order or the EAS, and/or;
- (iii) short-term provision of messages and data for collection by Customer, and/or
- (iii) processing and conversion of messages and data for the purpose of the respective Communication Service, and/or
- (iv) screening of messages and data for security risks, and/or
- (v) performing the number of attempts as specified in the Individual Order - or, in the absence of such agreement, a reasonable number of attempts - to deliver messages and data to Customer or the addressee designated by Customer.

As part of the Communication Services, Retarus shall maintain its readiness to receive and transmit messages and data. However, Retarus does not provide any representation or warranty that any message or data will be successfully received or delivered. Retarus shall not be responsible for technical infrastructure or devices which is/are outside the Retarus System or which is/are operated by Customer or third-party provider.

- 2. **Retarus System** means the message- and data-communication system which is directly accessed and controlled by Retarus without involving any third party provider. The Retarus System does not include software and/or technical equipment installed by Retarus pursuant to Sec. 4 provided to Customer for self-installation, nor the Internet or other third-party systems.
- 3. Retarus does not vet, review or classify any message content or other Customer data in the course of Communication Services, neither under legal, functional, logical aspects nor for completeness.
- 4. Retarus shall only be responsible for set-up services if and to the extent expressly agreed.
- 5. Retarus may suspend or terminate Communication Services in whole or in part, and may, in particular, filter or discard messages and data, if or to the extent
  - (i) the addressee is on a blacklist, or
  - (ii) the addressee objects to further communication,
  - (iii) necessary for reasons of public security, security of network operations, preservation of network integrity, interoperability of Services, data protection, prevention of blacklisting, spam or computer viruses, or
  - (iv) there are definite indications that Customer is in breach of his obligations pursuant to Sec. A.IV and B.III

This does not constitute an obligation on Retarus to sync Customer's addresses with blacklists or to clean up Customer's address data, however such Services can be purchased.

- 6. A transmission of messages or data, originating from Customer's communication system and received by the Retarus System, is deemed to have been ordered by Customer.
- 7. Any use by third parties (incl. affiliated companies) and any resale of Communication Services by Customer requires Retarus' prior written consent. If Customer fails to obtain Retarus' consent, Retarus may terminate the respective Individual Order for cause with immediate effect. Retarus may withhold its consent for material reasons only. If use by third parties is permitted, Customer shall contractually oblige such third party to adhere to all contractual terms applicable to the use of the Communication Services. Customer shall be liable for the conduct of such third party to the same extent as for its own acts and omissions.

## II. Service Levels

- 1. Retarus shall provide the respective Communication Services promptly in accordance with the technical capabilities of the Retarus System. Communication Services are dependent on the provision and availability of third-party networks and transmission channels outside the Retarus System.
- 2. Unless otherwise agreed in a separate SLA, the Retarus System shall have an availability of 99 % per calendar quarter following Provision Notification, i.e. the performance of the agreed Communication Services with the agreed system capacity shall be possible for 99 % of the specified period (including day and night time, Sundays and public holidays at Retarus' location). Notwithstanding the foregoing, temporary, maintenance-related system downtimes, downtimes due to Force Majeure or any other reasons outside the Retarus System shall not be considered when calculating any unavailability.
- 3. Information on planned maintenance and disruptions is available via a status platform provided by Retarus.

## III. Compliance and Cooperation Obligations

- 1. Customer shall observe data protection and telecommunications secrecy obligations when using the Services, in particular if and to the extent the communication of Customer's employees is impacted, e.g. by setting up filters, archiving, temporarily withholding or changing messages or by

other interventions. The legally compliant operation of its corporate communications is the sole responsibility of Customer, who shall ensure legitimate and authorized message processing. If applicable, Customer shall implement appropriate internal measures.

- 2. Customer shall promptly notify Retarus in text form of any disruptions, problems or errors in the use of the Communication Service ("**Disruptions**") and any related damages. Customer may not demand compensation for damages which could have been avoided by timely notification. Customer shall also duly investigate the cause of such Disruptions, in particular whether such Disruptions were caused by Customer, third parties or the Retarus System, and shall notify Retarus accordingly in text form. Support in the event of Disruptions which (i) are triggered by faulty operations by Customer or (ii) are caused by technical changes outside the Retarus System, or (iii) which could have been avoided by the use of the EAS by Customer personnel, as well as (iv) Customer-initiated inspection, investigation and error elimination efforts for Disruptions outside Retarus' area of responsibility shall be invoiced in accordance with the agreed hourly rates.
- 3. In the event of Disruptions and Service restrictions, Customer shall, in particular for business-critical messages or data (i) immediately resort to alternative communication options and (ii) take all reasonable steps to enable Retarus to resume Communication Services or an alternative transmission of messages as quickly as possible. The Parties shall mutually agree on the further course of action.
- 4. Customer is responsible for protecting from unauthorized access, and maintaining the confidentiality of, user and access authorizations (passwords) and data transmission- and communication addresses, as well as their storage and administration. Customer is responsible for the backup and protection of its messages and data with customary frequency and in accordance with best industry practices.
- 5. Customer refrains from (i) any use of the Communication Services not expressly provided for in the Individual Order and/or which is illegal, immoral or anti-competitive, in particular the dissemination of deceptive mass or marketing messages, and (ii) initiating security tests (such as stress or penetration tests) of the Retarus System without Retarus' consent; (collectively "**Prohibited Use**"). Customer shall indemnify Retarus against all expenses and costs incurred in connection with any Prohibited Use.
- 6. If a Communication Service results in (i) a complaint from an addressee, (ii) a blacklisting from a service provider, an anti-spam or other relevant organization, (iii) a similar measure detrimental to Retarus' business, or (iv) if Retarus receives an inquiry from an authority or a relevant organization, Customer shall promptly (within one business day), provide evidence of the lawful use of the Communication Service and its compliance with the contractual terms. Until positive clarification, Retarus shall have the rights pursuant to Sec. B.I.5.
- 7. Upon expiry of an Individual Order, Customer shall ensure there are no further communication or access attempts with/to the Retarus System, in the event of which Retarus is entitled to the contractually agreed remuneration for the used Services.
- 8. For Fax Services, the following applies: If an Individual Order provides for the allocation or porting of local network numbers, such allocation or porting is subject to the Customer maintaining local network reference (mandatory); accordingly, the Customer must provide Retarus with evidence of a registered office for the relevant local network area. Customer agrees to notify Retarus promptly about any discontinuation of local network references. If Customer service numbers are redirected to numbers provided by Retarus or if these numbers are destination numbers for redirections from Customer's phone system, any further use or publication or transfer of these numbers by Customer shall be excluded. Customer is not entitled to port or continue to use such numbers after expiry of the Individual Order. Changes initiated by the responsible local authorities regarding numbers provided by Retarus need to be accepted by Customer. Customer is obliged to provide a so-called CLI "Caller Line Identification" (incl. corresponding local network reference), otherwise Retarus may, without prejudice to any other available rights, assign a CLI that makes the Customer identifiable for message addressees.
- 9. For Email Services, the following applies: Customer has the following obligations when sending transactional and/or promotional emails, in particular:
  - (i) Consent: Customer warrants that emails will only be sent to addressees who have expressly consented in accordance with the statutory provisions (opt-in) or for whom another legally recognized permission is given.
  - (ii) The obligations for the design of emails and the technical configuration are detailed in the respective service description and other technical documentation.
- 10. The obligations under Sec. 9 shall apply mutatis mutandis to other Communication Services (e.g. fax and SMS), where applicable. In particular, Customer shall immediately delete fax addresses, voice addresses or SMS addresses from corresponding address lists if reported by Retarus as non-existent (in the case of fax as telephone number instead of fax number).