

General Terms and Conditions of Business



Phonesty Inc.

Date: July 17 2020

1) Scope

These Terms and Conditions constitute a legally binding agreement by and between Phonesty Inc. ("Phonesty" or "Provider") 786 S. Orange Avenue, Sarasota, Florida 34236, and you or your company (in either case, "You" or "Your" or "Customer") concerning the Customer's use of the Services offered by Phonesty ("the Services"). By using the Services, the Customer represents that it has read and understood, and agree to be bound by, this Agreement. IF THE CUSTOMER DOES NOT UNDERSTAND THIS AGREEMENT, OR DO NOT AGREE TO BE BOUND BY IT, THE CUSTOMER MUST IMMEDIATELY REFRAIN FROM USING THE SERVICES IN ANY WAY.

2) Compensation

2.1) Service Plans

Phonesty offers the following service plans:

Phonesty Free

- no monthly fee
- fees for dial-out calls charged by the second depending on the line being called
- Phonesty does not charge for dial-in calls to our system

Phonesty Premium

- monthly basic fee per account
- fees for dial-out calls charged by the second depending on the line being called
- Phonesty does not charge for dial-in calls to our system

Phonesty Premium

- monthly basic fee per account and conference room
- fees for dial-out calls charged by the second depending on the line being called
- Phonesty does not charge for dial-in calls to our system

2.2) The Customer compensates the Provider for its Services through

a) a basic fee for the *Phonesty Premium* and *Phonesty Professional* service plan.

The fee is due in advance for each invoicing period and is invoiced by the Provider to the Customer at the beginning of the invoicing period or, in the first month, immediately after conclusion of the agreement, through the website of Phonesty. Payment is made by credit card (VISA or Mastercard).

The invoicing period is monthly with invoices issued at the beginning of each month.
If the agreement begins during an invoicing period, the monthly fee is not charged for the first month.

And

b) payment of the per-minute rates indicated in the country table on the Phonesty website (<https://www.phonesty.us>), under the *Phonesty Free* and *Phonesty Premium* payment plans. These rates may vary depending on the payment plan selected, the country/region selected from the Phonesty system and the type of line.

The Customer should consult the country table to ascertain the current per-minute rates before any new call through the Phonesty system. Those rates may vary, since they depend on the prices of the providers employed by the Provider.

The Customer may deposit funds in his or her account with Phonesty at anytime and in various increments.

Charges for calls are assessed by the second.

The assessment of charges for dial-out calls begins with the lifting of the receiver, i.e. once the call is answered by the recipient of the call.

Existing calls are ended if the remaining balance in the Phonesty customer account is not sufficient for one more full minute with the code dialed.

Likewise, no more calls may be made if the balance is lower than the rate for a full minute with the code dialed. Accordingly, it is possible for a small residual balance to remain in a Phonesty customer account which cannot be used for outgoing calls.

2.3) Adaptation of Fees

The Provider reserves the right to change the fees for general list prices on a daily basis. The Customer has a right of termination if fee rates increase by more than 10%.

2.4) Process

Unless otherwise stipulated, the compensation is assessed through a per-minute fee for calls made, which may vary by destination country and the type of network of the recipient of the call, and possibly a basic monthly fee at the rates indicated in the latest version of the Provider's price list. Fees are generally indicated as a gross amount, not including any local, state or federal taxes and regulatory fee surcharges.

3) Customers/Registration

3.1) Users

Legal entities or natural persons 18 years of age or higher can register Phonesty accounts.

3.1.1 Eligibility

BY USING THE SERVICES, YOU REPRESENT AND WARRANT THAT YOU ARE AT LEAST 18 YEARS OLD AND ARE OTHERWISE LEGALLY QUALIFIED TO ENTER INTO AND FORM CONTRACTS UNDER APPLICABLE LAW. If You are using the Services on behalf of a company, You further represent and warrant that You are authorized to act and enter into contracts on behalf of that company. This Agreement is void where prohibited.

Phonesty customer accounts can only be opened by persons with residence or permanent establishment within the United States.

3.1.2) *Phonesty Free*

This service is available to natural persons with residence in the United States and 18 years of age or higher for private use. *Phonesty Free* is limited to one customer account per person.

3.1.3) *Phonesty Premium*

This service is available in addition to 3.1.2 for non commercial use to recognized charitable associations and non profit organizations located in the United States.

3.1.4) *Phonesty Professional*

This service is available in addition to 3.1.2 and 3.1.3 for commercial use to businesses with permanent establishment in the United States.

3.2) Requirements for Use

As a requirement for use, the Customer must first register on the website of Phonesty. For calls into the PSTN (Public Switched Telephone Network), i.e. the landline and mobile phone network, the Customer must first transfer funds to the Customer's personal account.

In order to use the Services of Phonesty, the Customer must have the necessary terminal devices, e.g. PC, headset, landline, cell phone or SIP phone.

4) Conclusion of Agreement, Term, Compensation, Payment, Reservations, Early Cessation, Termination, Deadlines

4.1) Conclusion of Agreement

The agreement is considered executed and entered into when the Customer confirms the order to open a customer account with Phonesty. An agreement relating to paid Services is considered executed and entered into when the Customer confirms the order to open a personal Phonesty account.

4.2) Assessment

The Provider may charge a basic fee each month. The fee for dial-out calls (outgoing calls through the Phonesty system) is assessed immediately after use. Both fees are deducted from the Customer's Phonesty account. If the fee for Services is charged by expense, the Provider will document the type and duration of the activities and convey this documentation to the Customer, upon request, together with the invoice, for a separate fee. All invoices, except insofar as payment was made by prior deposit to the customer's account, are generally due immediately after receipt including transaction fees, without deduction. Invoices will be sent after payments in pdf format by e-mail to the Customer's e-mail address indicated in the registration. The Customer may only set off claims or withhold payment against claims which are undisputed or established by final and binding judgment.

4.3) Withholding Payments due to Defects

The Customer may only withhold payments due to defects in an amount proportional to the defect, and only if the defect is not in doubt. The Customer has no right of retention based on defect claims which have expired. The Provider is entitled to prohibit further use of the Services for the duration of the Customer's default on payment. This does not constitute rescission of the agreement.

4.4) Return of Services

If the Customer or its customers return the Services, acceptance of the Services by the Provider does not constitute rescission except

insofar as the Provider expressly declares rescission. The same applies for the attachment of reserved goods or rights to reserved goods by the Provider.

4.5) Customer's Inability to Pay

If the Customer is in default on payments by more than one month, the Provider may terminate the agreement without notice.

4.6) Term

This agreement has an indefinite term. The invoicing period is the calendar month. The basic fee for the month in which the agreement is entered into will not be charged to the Customer by Phonesty. In other words, the first monthly fee will be due at the beginning of the first full month of membership.

4.7) Termination

The Customer may terminate the agreement at any time, in writing, by letter or fax, effective the end of the following month. Phonesty may terminate the agreement without citing grounds, observing a notice period of 4 weeks.

4.8) Right of Modification and Suspension by the Provider

Phonesty is entitled to modify or suspend the telecommunications services and terms of use. The Customer will be notified in suitable fashion, e.g. by be-mail, in such a case.

5) Cooperation, Cooperative Duties, Confidentiality

5.1) Duties of the Customer in case of Defects

The Customer is obligated to assist the Provider to the extent necessary and to create all necessary conditions within the Customer's sphere for proper execution of the Service. The Customer must report defects immediately in detailed and comprehensive form, indicating all information expedient for identification and analysis of the defects, in writing. In particular, the Customer must indicate the actions which led to discovery of the defect, as well as the form and impact of the defect. The Parties will impose these obligations upon their employees and any third parties which they employ. If the Customer fails to reports defects to the Provider without delay, any claims of the Customer against the Provider for compensation of damages or refunds will expire.

5.2) Security Risks in Communication

The Parties are aware that electronic and unencrypted communication (e.g. by e-mail) involves security risks. Accordingly, they will not assert claims based on the absence of encryption in this form of communication except insofar as encryption was stipulated beforehand.

5.3) Recording of Conferences

If a user records a conference, i.e. records in any audio format onto a sound or data storage medium, the consent of all other conference participants must be obtained first. This requirement applies regardless of whether the recording was performed through the Phonesty system itself or through another technical means.

5.4) The Customer can set two PINs for use of the Phonesty service (an Admin PIN and User PIN), as well as a password. The password and the Admin PIN for the restricted-access section of the website, as well as for the Phonesty Services available directly by telephone (see 3.2 above) must be kept strictly confidential by the Customer. Phonesty is not liable for unauthorized access of customer information if the customer fails to keep the PINs and password confidential.

5.5) The user will provide a valid e-mail address during registration and will inform Phonesty immediately when the e-mail address changes.

5.6) The Customer is required to report any change in Customer information to Phonesty immediately. This includes but is not limited to:

- Change in Customer address; and
- Change in customer e-mail address.
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5.7) The user may only use the Services in accordance with all applicable federal, state and local laws and regulations. The user will not abuse the offered Services in any means which could contradict these terms. The user will not violate or attempt to violate any security feature of the service, or interfere or attempt to interfere with the use of the Service by any other user. Any violation of this section may subject the User to civil and/or criminal liability. Phonesty reserves the right to cooperate with law enforcement in any investigation of any violation of this or any other section of the Agreement.

6) Taxes, Fees and Surcharges

In addition to the monthly service charges billed by Phoesty for the service, service provider surcharges, taxes, fees and other charges may be applied to your monthly invoice based on the type of service you have and your geographical location, among other factors. Examples include, but are not limited to:

6.1) Federal Universal Service Fund:

The Telecommunications Act of 1996 requires that Phonesty contribute to the Federal Universal Service Fund ("FUSF"). The FUSF helps to make phone service affordable and available to all Americans, including consumers with low incomes; those living in areas where the cost of providing telephone service is high; public schools and libraries; and rural health care providers. The Federal Communications Commission ("FCC") delegates the administration of the FUSF to the Universal Service Administrative Company ("USAC"). Each quarter, USAC announces, and the FCC approves, a "contribution factor." The contribution factor is a percentage of the total interstate/international revenue for which each interstate carrier is responsible for contributing to the FUSF in order to sustain the FUSF System. As permitted by FCC regulations, Phonesty has opted to bill FUSF as a separate line item. Consistent with such regulations, Phonesty only bills FUSF line item charges in an amount equal to the quarterly contribution factor currently in effect. This is a permissible pass-through fee but is not a tax or charge mandated by the government. Please visit [USAC's Website](#) for more information on the FCC's Universal Service Fund.

6.2) Federal Cost Recovery Fee:

A charge equal to 2.75 percent of charges, excluding taxes, may appear on your invoice and will apply to services subject to direct regulation by the FCC. This Cost Recovery Fee ("CRF") is being imposed to recover amounts incurred by Phonesty for fees, contributions and/or charges associated with telecommunications services for the sight and hearing impaired, local number portability and North American Numbering Plan administration, and administrative costs, fees and expenditures related to compliance with Federal regulatory programs and annual FCC regulatory fees. This is a permissible pass-through fee but is not a tax or charge mandated by the government. For more information on the various programs supported by the CRF, please see below.

6.3) Federal Telecommunications Relay Services Fund:

The Telecommunications Relay Services ("TRS") Fund was established by the FCC in 1993 to reimburse TRS providers for the cost of providing interstate TRS services. TRS services are telephone transmission services that provide hearing or speech challenged individuals with the ability to use a traditional telephone. Under the FCC's rules, Phonesty must contribute a percentage of its interstate and international end-user telecommunications revenues to the TRS Fund and is permitted to recover these fees from its customers. The contribution percentage varies annually.

6.4) Local Number Portability Administration (LNPA):

Local Number Portability (LNP) is a customer's ability to keep existing phone numbers when switching to another service provider. Phonesty must provide LNP, as well as contribute to the FCC's LNPA program, designed to diffuse the costs of administering LNP. Phonesty pays a proportionate share of the LNP costs in each region in which it operates and has customers. Phonesty collects a fee from its customers to offset its LNP costs. This fee varies frequently by region.

6.5) North American Numbering Program Administration:

The North American Numbering Plan is an integrated telephone numbering plan for the Public Switched Telephone Network serving multiple countries including the United States and its territories. It is administered by the North American Numbering Plan Administration. Under the FCC's rules, Phonesty must contribute to the costs of numbering administration. Contributions are based on a percentage of Phonesty's revenues from customers using international, intrastate and interstate services. The percentage varies annually.

6.6) Annual Regulatory Fee:

Phonesty must pay an annual regulatory fee to the FCC. This fee varies annually. Phonesty may collect this fee from its customers.

6.7) State and Local Taxes:

States, counties, cities, and special taxing districts may assess various taxes on Phonesty's services and/or phone purchases. These may include specific taxes on communications services, sales, use and excise taxes, gross receipts taxes, property taxes and others. Phonesty collects applicable taxes and remits them to the taxing authorities.

6.8) State and Local E911 Fees:

Some states and localities require Phonesty to collect a fee to help support state and local Enhanced 911 (E-911) Funds. These fees vary by state and locality.

6.9) State Universal Service Funds:

Phonesty may also be required to contribute to State Universal Service Funds. The funds may be used to assist in providing universal service and to a variety of other programs at the state level. Phonesty collects applicable charges from customers. This charge is not a tax or government-imposed fee.

6.10) State Telecommunications Relay Services Funds:

Some States also require contributions to State Telecommunications Relay Services Funds to offset the cost of providing local transmission services that provide hearing or speech challenged individuals with the ability to use a traditional telephone. Many states require Phonesty to collect this fee and remit it to the taxing authority.

7) Disruptions in Performance of the Service

7.1) Service Disruptions for which the Provider is not Responsible

If observance of service deadlines is impeded by a cause for which the Provider is not responsible, including strike or lock-out ("disruption"), deadlines will be extended by the duration of the disruption, including a reasonable restart phase if necessary.

7.2) Rescission by the Customer based on Defects

If the Customer rescinds the agreement based on improper performance by the Provider or alleges such a right, the Customer will so declare in writing, at the Provider's request, and within a reasonable period, whether the Customer intends to assert this right or prefers to continue performance of the service. In case of rescission, the Customer must reimburse the Provider for the value of pre-existing use rights.

7.3) Default, Availability and Compensation of Damages

If the Provider defaults on performance of the service or if performance of the service as a whole is impossible, any compensation for damages or reimbursement of expenses to the Customer is hereby excluded.

7.4) Phonesty reserves the right to discontinue national and international telephone numbers at a month's notice and replace them with new numbers.

7.5) Phonesty is not responsible for service errors and interruptions in service availability and usability. In case of a delay in performance, the Customer has a right of rescission, within the bounds prescribed by law, only if the Provider is responsible for the delay. The Customer has no claim for compensation of damages or reimbursement of expenses in lieu of performance based on such delays.

7.6) Reimbursement of Expenses

The Provider may request reimbursement of its expenses insofar as:

- a) it acts based on a report and a defect does not exist, except insofar as the Customer could not recognize at reasonable expense that no defect existed;
- b) a reported disruption is not reproducible or otherwise demonstrable by the Customer as a defect; or
- c) additional expenses accrue due to improper performance of the Customer's duties.

This applies in case of cancellation by credit companies due to insufficient funds in the Customer's bank account or unjustified cancellations of credit card payments by the Customer ("chargeback"). In such cases, Phonesty GmbH will charge the Customer a processing fee of \$50.00 in each case.

If the Customer requests the transfer of funds paid in to the Customer's account by banking transfer or debit entry to another account (refund), Phonesty will execute the transfer only after the debit entry amount has been credited to the Customer's account for at least six weeks.

If a payment initiated by debit entry is not executed for reasons for which the Customer is responsible, such as erroneous information, revocation or insufficient funds in the originating account, Phonesty will charge the Customer a process fee of up to \$25.00 in each case.

If the Customer selects the "bank transfer" payment method on the payment website of Phonesty GmbH and a specific payment amount and then transfers a sum which deviates from the selected amount to Phonesty GmbH, Phonesty will charge a processing fee of \$2.00 in each case.

These fees may be deducted from the Customer's account balance.

Otherwise, Phonesty reserves the right to hire a collection company to enforce any claims.

8) DISCLAIMERS; LIMITATION OF LIABILITY**8.1) NO WARRANTIES**

PROVIDER,, ON BEHALF OF ITSELF AND ITS LICENSORS AND SUPPLIERS, HEREBY DISCLAIMS ALL WARRANTIES RELATING TO THE WEBSITE AND SERVICES. THE WEBSITE AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." TO THE MAXIMUM EXTENT PERMITTED BY LAW, PROVIDER, ON BEHALF OF ITSELF AND ITS LICENSORS AND SUPPLIERS, EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE WEBSITE AND SERVICES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. NEITHER Phonesty NOR ITS LICENSORS OR SUPPLIERS WARRANTS THAT THE WEBSITE OR SERVICES WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE WEBSITE OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. NEITHER PROVIDER NOR ITS LICENSORS OR SUPPLIERS HAS ANY LIABILITY WHATSOEVER IN CONNECTION WITH YOUR USE OF THE WEBSITE OR SERVICES. ADDITIONALLY, Phonesty HAS NOT AUTHORIZED ANYONE TO MAKE ANY WARRANTY OF ANY KIND ON ITS BEHALF, AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT BY ANY THIRD PARTY.

8.2) USER RESPONSIBILITY FOR DAMAGE

THE CUSTOMER AGREES THAT ITS USE OF THE SERVICES IS AT ITS SOLE RISK. THE CUSTOMER WILL NOT HOLD PROVIDER OR ITS LICENSORS OR SUPPLIERS, AS APPLICABLE, RESPONSIBLE FOR ANY DAMAGE THAT RESULTS FROM YOUR ACCESS TO OR USE OF THE SERVICE, INCLUDING WITHOUT LIMITATION ANY DAMAGE TO ANY OF YOUR COMPUTERS OR DATA. THE SERVICE MAY CONTAIN BUGS, ERRORS, PROBLEMS OR OTHER LIMITATIONS.

8.3) LIMITATION OF LIABILITY

THE LIABILITY OF PROVIDER AND ITS LICENSORS AND SUPPLIERS IS LIMITED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL PROVIDER OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST DATA OR CONFIDENTIAL OR OTHER INFORMATION, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY INCLUDING WITHOUT LIMITATION OF GOOD FAITH OR OF REASONABLE CARE, NEGLIGENCE, OR OTHERWISE, REGARDLESS OF THE FORESEEABILITY OF THOSE DAMAGES OR OF ANY ADVICE OR NOTICE GIVEN TO PROVIDER OR ITS LICENSORS AND SUPPLIERS) ARISING OUT OF OR RELATING TO YOUR USE OF THE WEBSITE OR SERVICES. THIS LIMITATION SHALL APPLY REGARDLESS OF WHETHER THE DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT, OR ANY OTHER LEGAL THEORY OR FORM OF ACTION. ADDITIONALLY, THE MAXIMUM LIABILITY OF PROVIDER AND ITS LICENSORS AND SUPPLIERS TO YOU UNDER ALL CIRCUMSTANCES WILL BE \$250. YOU AGREE THAT THIS LIMITATION OF LIABILITY REPRESENTS A REASONABLE ALLOCATION OF RISK AND IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN PROVIDER AND THE CUSTOMER. THE SERVICES WOULD NOT BE PROVIDED WITHOUT SUCH LIMITATION.

8.4) Application

THE ABOVE DISCLAIMERS, WAIVERS AND LIMITATIONS DO NOT IN ANY WAY LIMIT ANY OTHER DISCLAIMER OF WARRANTIES OR ANY OTHER LIMITATIONS OF LIABILITY IN ANY OTHER AGREEMENT OR AGREEMENTS BETWEEN THE CUSTOMER AND PROVIDER OR BETWEEN YOU AND ANY OF PROVIDER'S LICENSORS AND SUPPLIERS. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES OR THE LIMITATION OF CERTAIN DAMAGES, SO SOME OF THE ABOVE DISCLAIMERS, WAIVERS AND LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU. UNLESS LIMITED OR MODIFIED BY APPLICABLE LAW, THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE. PROVIDER'S LICENSORS AND SUPPLIERS ARE INTENDED THIRD-PARTY BENEFICIARIES OF THESE DISCLAIMERS, WAIVERS AND LIMITATIONS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU THROUGH THE WEBSITE OR OTHERWISE SHALL ALTER ANY OF THE DISCLAIMERS OR LIMITATIONS STATED IN THIS SECTION.

8.5) Indemnity by User

The Customer agrees to defend, indemnify and hold harmless the Provider and its officers, directors, employees, agents, affiliates, representatives, sublicensees, successors, assigns and contractors (collectively, the " Provider Parties") from and against any and all claims, actions, demands, causes of action and other proceedings (collectively, "Claims"), including but not limited to attorneys' fees and costs, arising out of or relating to: (i) the Customer's breach of this Agreement, including without limitation any representation or warranty contained in this Agreement; or (ii) the Customer's access to or use of the Services.

9) Governing Law; Jurisdiction and Venue; Interpretation

This Agreement, including without limitation its construction and enforcement, shall be treated as though it were executed and performed in Bradenton, Florida, and shall be governed by and construed in accordance with the laws of the State of Florida without regard to its conflict of law principles. ANY CAUSE OF ACTION BY YOU ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE INSTITUTED WITHIN ONE (1) YEAR AFTER IT AROSE OR BE FOREVER WAIVED AND BARRED. THE PROPER VENUE FOR ANY JUDICIAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE WEBSITE WILL BE THE STATE AND FEDERAL COURTS IN BRADENTON, FLORIDA. THE PARTIES HEREBY STIPULATE TO, AND AGREE TO WAIVE ANY OBJECTION TO, THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS, AND FURTHER EXPRESSLY SUBMIT TO EXTRATERRITORIAL SERVICE OF PROCESS

10) Dispute Resolution

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by binding arbitration in the state of Florida before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. The arbitrator's decision shall be final and binding and judgment may be entered thereon. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an Award or its enforcement, or unless otherwise required by law or judicial decision.

11) Miscellaneous

The Customer is responsible for complying with import or export laws applicable for the Services or deliveries, particularly those of the United States of America. In case of cross-border service or delivery, the Customer will pay any tolls, fees and other duties. The Customer is responsible for handling statutory or official procedures in connection with cross-border Services or deliveries unless expressly stipulated otherwise.

12) Rights of Use and Protection from Unauthorized Use

Use of the Services is limited to legal entities, or private individuals aged 18 years or higher.

Otherwise, all rights remain with the Provider. The Provider is entitled to take reasonable technical measures to protect against use in violation of the agreement. The use of software in an alternate or trailing configuration may not be materially impaired thereby.

The Provider may revoke the Customer's right to use the Service if the Customer commits a material breach of use limitations or other provisions for the protection against unauthorized use. The Customer must confirm cessation of use to the Provider in writing after revocation.

13) Delivery and Passage of Risk

Unless otherwise stipulated, the Provider will deliver the service objects on its website to the Customer through electronic transmission or by making them available for download. If the service objects are made available for download, the Provider will notify the Customer of their availability. Insofar as the service objects are transmitted electronically, the risk of accidental loss will pass to the Customer upon receipt by the tele-Services provider employed by the Provider for the transmission. Insofar as the service objects are made available for download, the risk of accidental loss passes to the Customer upon availability and notification of the Customer thereof. The Provider is not liable for the non-availability of its Services e.g. due to technical disruptions affecting the Customer, its internet and/or telephone providers or the internet and/or telephone provider of Phonesty, due to failures in the computing/data centers employed by Phonesty or their internet and/or telephone providers or other service providers, and due to maintenance and optimization work to the Services of Phonesty .

14) Hotline

The Provider will set up a customer service hotline available Monday through Friday, 9 AM to 5 PM, Eastern Standard Time. The hotline will process the Customer's inquiries regarding the technical requirements and conditions for use of the telecommunications Services offered, as well as specific functional aspects. The hotline will not provide Services in connection with the use of non-approved environments (particularly uncommon PCs, operating systems and internet browsers).

Acceptance and Processing of Inquiries

In making inquiries to the hotline, the Customer will make use of forms made available by the Provider, if any. The hotline accepts such inquiries by e-mail during the Provider's normal business hours. Those are Monday through Friday, 9 AM to 5 PM, Eastern Standard Time. The Customer has no claim to process of his or her inquiry by the Provider within a certain period of time.

The hotline will assess proper inquiries in the course of ordinary business and answer them to the extent possible. The hotline may answer inquiries by referring to the documentation available to the Customer and other educational material, particularly the online help and "FAQ" (list of frequently asked questions on the website of Phonesty).

15) Right of Use

15.1) Versions

The Customer's rights to use new versions and other modifications of the Phonesty service conform to the rights to use the previous version of the Phonesty service. With respect to rights of use, rights to new versions and other modifications take the place of rights to previous versions and other modifications after a reasonable transitional period, usually no more than one month.

15.2) Delivery

The enabling of use of new versions and modifications is made in the same way as provision of the first version used by the Customer.

16) Right of Rescission

The Customer is entitled to rescind the Agreement within 14 days from the execution and entry of the Agreement. This requires a written notice by letter, fax or e-mail to the Provider.

Services received by both parties will be returned upon the Customer's rescission of the agreement. Customer will be liable to Phonesty for calls which have already been made prior to rescission of the agreement.

17) Scope of Use

16.1) Consent of the Recipient

The service may not be used for abusive purposes such as telephone marketing or "spamming".

16.2) Paid Service Numbers

The Phonesty system can also be used to reach paid service numbers in various countries. In rare cases, operators temporarily change the fees for such numbers so that the prices and fees deposited in the Phonesty system for those numbers are not up-to-date. In such cases, Phonesty reserves the right to charge additional fees as soon as it receives knowledge of the change in the service provider's fees.

In rare cases, such service numbers are set up for the purpose of abusing the Services of providers like Phonesty. In such cases, Phonesty will charge the user for the damages it sustains. Phonesty also reserves the right to take legal action in that regard.

18) Resale

The Services of Phonesty may not be resold by the Customer without the express written agreement of Phonesty. All requests for permission to resale Phonesty service must be presented to Phonesty in writing.

19) Data Protection

The personal data of customers of Phonesty is treated as confidential and used only within the bounds allowed by state and federal law.

The Customer's personal data is electronically processed.

Phonesty ensures by using adequate technical or organizational measures the appropriate security of the personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage.

Phonesty never transfers personal data to third parties except when it's legally dictated following all legal requirements.

Phonesty does not process personal data for automated decision-making or profiling.

Only data is stored and processed which is necessary for the fulfillment of the contract or for compliance with legal obligations.

Personal data is only stored and processed within the scope of the following laws and regulations: §89 of the Telecommunications Act, §5(1) and §6(1) of the Telecommunications Data Protection Regulation and §5 and §6 of the Tele-Services Data Protection Act.

The following data is collected at registration and stored as long as the Phonesty membership exists. The data is necessary for billing and for communication with the Customer.

Organization (optional)

Gender

Firstname

Lastname

Postal address

Date of birth

E-Mail address

After timely cancellation all personal data is deleted unless other laws or regulation dictate further storage of the data.

Call data is stored within the storage period stipulated by law unless the customer expressly requests deletion of the Customer's data in writing.

The following data is stored.

Date and Time

Direction (in/out)

CallerID

Hangup Cause

Duration

Rate

Call data is automatically deleted after 3 months.

Cookies: Phonesty does not store cookies when visiting the public Phonesty webpages. For the member area cookies are stored for authentication. When logging out the cookies are deleted.

The following cookies are used.

__ac_user
__ac_session

You have the right to request information about, access to and rectification or erasure of your personal data or restriction of processing concerning the data subject or to object to processing as well as the right to data portability. If you want to execute any of these rights please send an e-mail to support@phonesty.com.

Data protection official is Florian Trinkwalder (Contact: support@phonesty.com).

Note regarding Commissioned Data Processing:

All data collected by Phonesty is used to provide services as a telecommunications provider and is protected by the "Telekommunikationsgesetz" (telecommunications act) and the "Fernmeldegeheimnis" (telecommunications secrecy). A separate agreement for Commissioned Data Processing is not necessary.

20) Severability

Any invalidity of a provision hereof shall not affect the validity of the remaining provisions.

The invalid provision shall be replaced in that case by the provision which most closely approximates the intended meaning.

21) Force Majeure

The provider is not liable for failure to perform the Provider's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. No party is entitled to terminate this Agreement under Clause 4.7 (Termination) in such circumstances.

If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described in Clause 20 (Force Majeure).

22) Notes

22.1) "pdf" is a trademark of the Adobe company.

22.2) "Phonesty" is a trademark of Phonesty GmbH