



**General Terms and Conditions of 1NCE GmbH for M2M/IoT mobile communications services offered on the AWS Marketplace (<https://aws.amazon.com/marketplace>) (version as of 04/2023)**

**1. Scope of application**

- 1.1 The following General Terms and Conditions (hereinafter referred to as "GTC") shall govern any and all contracts relating to the provision of mobile communications services for machine-to-machine (M2M) and Internet of Things (IoT) applications and related services (hereinafter altogether referred to as the "Services") concluded between 1NCE GmbH, Sternengasse 14-16, 50676 Cologne, Germany, Local Court of Cologne, HRB 92529 (hereinafter referred to as "1NCE") and the Customer.
- 1.2 The provision of the Services by 1NCE shall be carried out exclusively under the application of these GTC. The application of any terms and conditions of the Customer which contradict or deviate from these GTC is excluded.
- 1.3 The offer of the Services through 1NCE is addressed exclusively to businesses within the meaning of Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch*, hereinafter referred to as "BGB"). 1NCE expressly points out that statutory provisions for the protection of consumers, such as for example statutory rights of withdrawal, do not apply to businesses.

**2. Conclusion of contract**

- 2.1 The offers made by 1NCE regarding the provision of the Services are non-binding. Such offers do not constitute a binding offer to conclude a contract, but merely a request for the submission of an order by the Customer in accordance with 1NCE's offer.
- 2.2 As a general rule, the Customer places its order via the 1NCE web shop. However, 1NCE reserves the right, in individual cases, to also allow the Customer, upon a request of the Customer declared in text form, to submit a completed and signed order form to 1NCE; however, the Customer is not entitled to claim such form of ordering. With its order, the Customer submits a binding offer to conclude a contract.
- 2.3 The Customer undertakes to only provide true and correct information in the context of its order. In particular, the Customer shall ensure that the Customer's billing address indicated by the Customer corresponds to the address for which

the Customer has been assigned the stated VAT identification number. Furthermore, the Customer undertakes to provide to 1NCE in connection with the order all documents required in accordance with Section 172 para. 2 sentences 1 and 2 of the German Telecommunications Act (hereinafter referred to as "TKG") or – if offered by 1NCE – to participate in any other identity verification procedure suitable in accordance with Section 172 para. 2 sentence 3 TKG; this obligation applies accordingly in the event that a change occurs with regard to the data provided by the Customer before or after the conclusion of the contract (Section 172 para. 4 TKG).

- 2.4 A contract is only concluded when 1NCE accepts the Customer's order by issuing an order confirmation or at the latest when 1NCE commences with the performance of the Services (i.e. activation of the IoT SIM).
- 2.5 Text form is sufficient for all declarations of the Parties referred to in this Section 2.

**3. 1NCE's performance obligations / Right to modify**

- 3.1 The Services include the following service elements:
  - a) the provision of access to mobile communication for M2M/IoT applications with which the Customer can use low-bandwidth mobile data connections and additional network services as well as other related services. This is done through derivative allocation of a mobile number and an additional identification number (e.g., International Mobile Subscriber Identity [IMSI], Mobile Subscriber Integrated Services Digital Network Number [MSISDN], Integrated Circuit Card Identifier [ICCID]) as well as the provision of an IoT SIM card or an IoT SIM chip encoded with the allocated number (in these GTC in each case referred to as the "IoT SIM") to the Customer;
  - b) the provision of access to low-bandwidth mobile data communications services in the Federal Republic of Germany and – where available on the basis of existing roaming agreements between the relevant mobile network operators – in certain other EU

- Member States or third countries specified in the Service Description;
- c) the provision of additional network services and other related services, in particular including the possibility of receiving and sending SMS (Short Message Service) messages and the provision of a software-based connectivity management platform; 1NCE shall provide the Customer with access to this platform either via a customer web portal or – provided that the Customer ensures full compatibility of its Customer systems within its sphere of responsibility – such access may be integrated by the Customer itself at its own expense into the Customer systems by using 1NCE's application programming interfaces (APIs); and
  - d) the provision of software services as further described in the Service Description.

The exact scope of the Services in accordance with this Section 3.1 shall be determined in each case by the [Service Description](#), excluding "Auto Top-Up" of Section 2.4.3 and Section 4.1 thereof, attached to these GTC as an **Annex** (in these GTC in each case referred to as the "Service Description").

- 3.2 1NCE performs the Services within the boundaries of its technical and operational capabilities. The mobile communications services referred to in Section 3.1 lit. a) and b) of these GTC are enabled by 1NCE on the basis of wholesale services provided by licensed mobile network operators. 1NCE also uses subcontractors as technical service providers for the provision of individual parts of the additional network services and other related services referred to in Section 3.1 lit. c) of these GTC. 1NCE expressly points out that the type and scope of such services of the respective mobile network operators, in particular also the respective available transmission technologies (e.g. no permanent use of 2G/3G in individual countries), may vary and, in addition, individual available transmission technologies may not enable the use of certain network services or other related services. The details of the actually available scope of Services are set out in the Service Description.
- 3.3 1NCE's obligation to perform is limited
  - a) to the lifetime of the IoT SIM in accordance with Section 3.5 of these GTC (hereinafter referred to as the "Lifetime");
  - b) to a consumable data volume of 500 MB per

IoT SIM; and

- c) a volume of 250 SMS per IoT SIM, in which case a pro rata consumption of this volume takes place both by each SMS received (Mobile terminated - MT) and each SMS sent (Mobile Originated - MO) and 1NCE further expressly points out that the technical solution used by 1NCE only supports SMS transmissions between terminal device and server (both traffic directions), but not SMS transmissions between two terminal devices (the data volume referred to in lit. b) and the SMS volume referred to in lit. c), unless otherwise indicated, are hereinafter referred to individually and together as the "Quota" or the "Quotas").

The Customer is entitled at any time to purchase additional Quotas for the relevant IoT SIM once or several times (see Sections 5.1 and 5.3 of these GTC); this can already take place before the complete use of an original Quota. The Lifetime of the relevant IoT SIM as such remains unaffected by the subsequent purchase of additional Quotas.

- 3.4 If one of the original Quotas (data volume or SMS volume) or another Quota subsequently purchased by the Customer is used up before the end of the Lifetime, the IoT SIM will be temporarily deactivated and can no longer be used until further notice. Upon receipt of payment of the charge for a Quota subsequently purchased by the Customer, any temporarily deactivated IoT SIM will be immediately reactivated by 1NCE. Additional Quotas can only be purchased in such a way that both a full data volume and a full SMS volume are purchased at the same time in accordance with Sections 3.3 sentence 1 lit. b) and c) of these GTC.
- 3.5 The Lifetime for the respective IoT SIM is 10 years and begins 3 months after the day on which 1NCE dispatches the IoT SIM, unless the Lifetime ends earlier in accordance with Section 3.6 of these GTC or is extended by mutual agreement between the Parties in text form based on the then current terms. The period until the beginning of the Lifetime is also referred to as the "Grace Period". The activation of the IoT SIM takes place before the IoT SIM is sent to the Customer; the IoT SIM can therefore already be fully used during the Grace Period.
- 3.6 The Lifetime automatically ends early if
  - a) within 18 months after 1NCE has notified the Customer in text form that the data volume or

- the SMS volume of the relevant IoT SIM has been used up before the end of the Lifetime, and the Customer has not subsequently purchased an additional Quota;
- b) no data has been sent or no SMS has been received or sent by the relevant IoT SIM for a continuous period of at least 18 months. 1NCE will notify Customer at least 30 days in advance prior to any termination of Lifetime;
  - c) the Customer has finally deactivated the relevant IoT SIM within the connectivity management platform provided by 1NCE; or
  - d) the Customer violates these GTC, including by engaging in a prohibited use of the Services.
- 3.7 The IoT SIM is provided to the Customer as a sale; the IoT SIM therefore becomes the Customer's property when it is handed over to the Customer. The right of 1NCE (a) to deactivate or block the IoT SIM or (b) to make designated configuration changes to the IoT SIM or to download and install software updates on the IoT SIM by OTA (Over the Air) remote control for the purpose of continued service provision, as part of the Services and in accordance with the provisions of these GTC, shall remain unaffected and shall continue for the entire term of the contract. From the time of transfer of risk, the Customer bears the risk of accidental loss or accidental deterioration of the IoT SIM. In particular, 1NCE is therefore not obliged to replace a IoT SIM that has been lost or damaged or rendered unusable due to circumstances not attributable to 1NCE. All Quotas are also linked to the use of the specific IoT SIM provided. Therefore, in the case of sentence 4, 1NCE is not obliged to transfer any remaining Quota that cannot be used anymore to another IoT SIM or to make any other reimbursement to that effect.
- 3.8 The transfer of risk with regard to the Chip Card shall take place in accordance with Section 447 para. 1 BGB. Unless otherwise agreed between the Parties in text form, CIP Incoterms® 2020 shall apply when sending IoT SIMs to delivery addresses of the Customer outside the Federal Republic of Germany.
- 3.9 In general, 1NCE is liable for defects under the applicable provisions of statutory law. In particular, the prescription period relating to claims for defects in respect of Chip Cards shall begin with delivery of the relevant Chip Cards to the Customer. Liability for damages due to defects is limited in accordance with the provisions of Section 8 of these GTC.
- 3.10 For operational reasons and/or reasons of technological development, 1NCE shall be entitled to change the specifications and functionalities of the Services and to adapt the Service Description accordingly, provided that the respective change does not reduce or impair the essential performance characteristics of the Services. This may also result in changed system requirements to be observed by the Customer (see Section 4.5 of these GTC). Sentences 1 and 2 shall apply mutatis mutandis if third parties from whom 1NCE obtains underlying services necessary for the provision of the Services change their services.
- 3.11 The provision of the Services by 1NCE is otherwise subject to the provisions of these GTC and applicable laws and regulations, in particular those of the TKG.
- 4. Terms of use / Cooperation obligations of the Customer**
- 4.1 The Customer may only use the Services in accordance with these GTC, the Service Description, and, where applicable, further agreements with 1NCE or its affiliated companies, for its own purposes or for the provision of IoT solutions to third parties.
- 4.2 The Customer is not permitted to make the Services available to third parties for their sole use or to otherwise pass them on directly to third parties without the prior permission of 1NCE. In particular, the Customer is not entitled to act as a provider of telecommunications services using the IoT SIMs made available to it for use and to offer mobile communications services, switching or interconnection services to third parties.
- 4.3 The Customer is in compliance and shall continue to comply, with all applicable laws, including all data protection laws which are applicable to the Customer's use of the Services. The Services may not be used abusively or in any other illegal manner in violation of legal prohibitions in the Federal Republic of Germany or at the respective place of use. In particular, the Customer shall not and shall procure that its customers, agents, sub-contractors and employees shall not to transmit information with illegal or immoral content or to refer to such content.
- 4.4 1NCE shall be entitled, in the event of a serious breach by the Customer of the obligations incumbent upon it in accordance with Section 4.3 of these GTC, to suspend or terminate the Services at the Customer's expense, without the Customer being exempted from the obligation to

pay the agreed charges in this respect.

- 4.5 The Customer undertakes to comply with the system requirements for the use of the Services specified in the Service Description and to comply with the cooperation obligations specified in these GTC and the Service Description. To the extent non-observance of the system requirements in accordance with sentence 1 by the Customer can have a detrimental effect on network operation, in particular on network security or network integrity (e.g. in the case of operation of non-network-compliant terminal devices by the Customer), 1NCE shall in particular be entitled to block the relevant IoT SIM; any further rights and claims of 1NCE shall remain unaffected. The Customer is further obliged to

- a) notify 1NCE's customer service without undue delay of the loss of the IoT SIM provided to the Customer;
- b) notify 1NCE without undue delay in text form of any change in its name or company name, legal form, address or invoice recipient, or to have a third party authorized to do so notify 1NCE accordingly (see also Section 2.3 sentence 3 [second half] of these GTC);
- c) keep personal access data (such as passwords) confidential and to change them without undue delay if it is suspected that unauthorized persons may have gained knowledge of them, and to ensure that only authorized users are permitted access to the platform according to Section 3.1 lit. c);
- d) make backup copies of all Customer data used in connection with the Services at reasonable intervals in order to enable lost or destroyed Customer data to be restored with reasonable effort; and
- e) in the event of a request for information addressed to 1NCE by authorities or courts in connection with the Services, to provide 1NCE without delay with the information requested by 1NCE in relation to the Customer and, in particular, to transmit to 1NCE documents and information necessary so that 1NCE can comply with the relevant request for information.

## 5. Charges / Objections of the Customer

- 5.1 The Customer shall pay the charges agreed between the Parties in accordance with Section 2 of these GTC for the Services. Within the framework of the conclusion of the contract, the Customer may choose between different payment

methods offered by 1NCE. Unless otherwise agreed between the Parties, the charges to be paid by the Customer for the purchase of additional Quotas in accordance with Section 3.3 sentence 2 of these GTC shall be determined by the price list of 1NCE valid at the time of this purchase.

- 5.2 All charges are to be paid by the Customer in advance (prepaid). Payments by the Customer must be made within 14 days of receipt of the invoice at the latest.
- 5.3 The IoT SIM shall not be activated for the first time and dispatched until 1NCE has been able to record the complete receipt of payment both for the charge attributable to the IoT SIM (this includes the purchase price for the IoT SIM and the fees for the respective original Quota) and any additional charge owed by the Customer (e.g., for the dispatch of the IoT SIM). Also, the reactivation of a temporarily deactivated IoT SIM (see Section 3.3 sentence 2 of these GTC) will only take place as soon as 1NCE has been able to record the complete receipt of payment with regard to an additional Quota purchased by the Customer at a later date.
- 5.4 If the Customer orders several IoT SIMs within one order, the activation and dispatch of all ordered IoT SIMs in accordance with Section 5.3 of these GTC will only take place as a whole when 1NCE has been able to record the complete receipt of payment for all charges relating to the ordered IoT SIMs. 1NCE is not obliged to provide partial deliveries; therefore, no activation or dispatch of partial quantities of ordered IoT SIMs will take place.
- 5.5 All charges shall be in USD plus any applicable statutory value added tax (which shall also be borne by the Customer). Any taxes, levies, duties and similar charges incurred outside the Federal Republic of Germany in connection with the Services shall be borne by the Customer. This also applies in particular to the value added tax to be borne by the service recipient in accordance with the provisions of the EU VAT system directive in its EU member state (reverse charge procedure).
- 5.6 The Customer may only set off payment claims asserted by 1NCE against counterclaims which are undisputed or have become res judicata. The same applies to any rights of retention asserted by the Customer.
- 5.7 Complaints raised by the Customer against the amount of the connection charges or other

usage-dependent charges vis-à-vis 1NCE are subject to Section 67 paras 2 to 6 TKG. Therefore, in particular the following applies: Complaints of the Customer must be made within eight weeks of the connection being established. Failure to make such complaints in good time shall be deemed approval. The Customer's statutory claims in the event of complaints after the lapse of the said time period shall remain unaffected.

## 6. Contract Term / Termination

- 6.1 The contractual relationship is concluded for an indefinite period of time until terminated by either party.
- 6.2 The contractual relationship in respect of each individual IoT SIM may be terminated without cause by
  - a) the Customer at any time without period of notice; and
  - b) 1NCE with a period of two weeks' notice, but not before the end of the Lifetime.
- 6.3 The right of both Parties to terminate the contractual relationship exceptionally for good cause (*außerordentliche Kündigung aus wichtigem Grund*) remains unaffected.
- 6.4 No compensation for any unused Quota that may still exist at the time of termination of the contract with regard to the relevant IoT SIM shall be payable to the Customer unless 1NCE is responsible for an exceptional termination through the Customer for good cause (see Section 6.3 of these GTC).
- 6.5 Any termination must be made in text form in order to be valid.

## 7. Rights of use / IP rights of third parties

- 7.1 To the extent 1NCE provides the Customer with software for use within the scope of the Services, 1NCE grants to the Customer a non-exclusive right to use the software for the duration of the respective contract term. This right of use is not transferable and subject to the restrictions resulting from these GTC, the Service Description and the [Terms of Use](#). Further rights to use the software are not granted to the Customer. Similarly, the Customer shall not be granted any rights to edit the software unless such rights are required by mandatory law.
- 7.2 If, in respect of the rights of use referred to in Section 7.1 above, a violation of third-party intellectual property rights is asserted or threatened to be asserted, 1NCE shall be entitled,

at its own discretion and expense, to secure the Customer's right of continued use or to modify the software in order to prevent infringements of intellectual property rights or to temporarily cease the provision of the software. Any claims of the Customer are excluded to the extent that the infringement relates to an unauthorized modification of the software by the Customer or its other use by the Customer in violation of the provisions of these GTC or the Service Description.

## 8. Liability

Any liability of 1NCE for damages and/or reimbursement of expenses arising from or in connection with the contractual relationship between 1NCE and the Customer shall be subject to the following limitations:

### 8.1 Liability according to Section 70 TKG

- a) To the extent the Services consist of the provision of publicly available telecommunications services, 1NCE as a provider of such telecommunications services shall be liable for financial losses exclusively in accordance with the provisions of Section 70 TKG.
- b) The wording of Section 70 TKG is as follows (non-binding convenience translation):

Insofar as the provider of publicly available telecommunications services is obliged to pay damages to an end user for financial loss or to pay compensation, the liability is limited to a maximum of 12,500.00 Euro per end user. If the provider's obligation to pay damages or compensation results from the same event, the liability to pay damages or compensation is limited to a maximum of 30 million Euro. If the obligation to pay damages or compensation to several entitled parties due to the same event exceeds the maximum limit under sentence 2, the damages or compensation shall be reduced in proportion to the sum of all claims for damages or compensation. The limitation of liability in accordance with sentences 1 to 3 shall not apply if the obligation to pay damages or compensation is caused by the provider's intent or gross negligence and to claims for damages resulting from the delay in payment of damages or compensation. In deviation to sentences 1 to 3, the amount of liability towards end users who are not consumers may be regulated by individual contractual agreement.

## 8.2 Liability outside the scope of Section 70 TKG

Outside the scope of application of Section 70 TKG (see Section 8.1 of these GTC) 1NCE is liable as follows:

- a) In the event of intent or gross negligence, assumption of a quality and/or durability guarantee or fraudulent concealment of a defect, 1NCE shall be liable in accordance with the statutory provisions.
  - b) In the event of slight negligence, 1NCE shall be liable without limitation in the event of injury to life, limb or health. In all other respects, 1NCE shall only be liable in the event of slight negligence if a cardinal obligation is breached and only for the foreseeable damage typical for this kind of contract. A cardinal obligation means an essential contractual obligation, the fulfilment of which is a precondition for the proper performance of the contract and upon which the Customer may regularly rely.
  - c) The liability for the foreseeable damage typical for this kind of contract to be compensated in the event of a breach of a cardinal obligation pursuant to lit. b) is limited to 25,000.00 Euro per damaging event and to 100,000.00 Euro for all damaging events occurring within one contract year.
  - d) Any strict liability without fault of 1NCE in accordance with Section 536a BGB for defects existing at the time of conclusion of the contract is excluded; the provisions of lit. a) and b) above shall remain unaffected.
- 8.3 Any liability pursuant to the provisions of the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.

## 9. Limitations to performance obligations: Force Majeure / Reservation as to availability of supplies

- 9.1 Neither party shall be liable for the fulfilment of its obligations if such fulfilment is prevented by force majeure. This includes events which are unforeseeable, irresistible and beyond the parties' control, particularly including severe weather, flood, landslide, earthquake, storm, lightning, fire, epidemics, pandemics, acts of terrorism, outbreak of military hostilities (whether or not war is declared), riot, explosions, strikes or other labor unrest, sabotage, interruptions of energy supply, expropriation by governmental authorities.
- 9.2 1NCE's obligation to perform is also subject to the proper and timely availability of supplies with products or advance performances provided by

the suppliers of 1NCE. However, this shall be subject to 1NCE having concluded with due care a congruent covering transaction with the respective supplier and the improper or untimely supply being not attributable to a fault of 1NCE. Products or advance performances in the sense of sentence 1 shall include, but are not limited to, services or transmission lines procured by 1NCE from other suppliers of telecommunications services, supplies of hardware or software or other technical services from third parties (e.g. electricity supplies).

## 10. Data Protection / Confidentiality

- 10.1 The parties undertake to process any personal data transferred to them by the respective other party in the context of establishing and implementing the contractual relationship in accordance with the applicable legal provisions, in particular the provisions of the EU General Data Protection Regulation (GDPR) and the Federal Data Protection Act (*Bundesdatenschutzgesetz*).
- 10.2 The parties also undertake to treat all other confidential information of the other party that the receiving party becomes aware of in connection with the contractual relationship as strictly confidential and not to disclose such information to any third party for an unlimited period.
- 10.3 1NCE uses the payment service provider Amazon Web Services, Inc., 410 Terry Avenue North, Seattle, WA 98109-5210, United States (hereinafter referred to as "AWS") for payment processing (see Sections 5.1 and 5.2 of these GTC). All (personal) data provided by the Customer during the payment process will be processed by AWS and in some cases also be collected directly by AWS. For further information on AWS' data protection, the Customer may refer to AWS' privacy policy, which is currently available at: <https://aws.amazon.com/privacy/>.
- 10.4 1NCE points out that it uses the usage data arising within the framework of the implementation of the contractual relationships with all customers in anonymous and aggregated form for its own statistical purposes. This is done for the purposes of network capacity planning as well as for continuous quality assurance and improvement of the services provided by 1NCE.
- 10.5 The Customer acknowledges that it is solely responsible for applying appropriate security measures to any data transmitted through the use of the Services. 1NCE will use commercially



reasonable efforts to maintain safeguards reasonably designed to protect the confidentiality and integrity of, and to prevent unauthorized access to or use of the Services.

## 11. Amendment of these General Terms and Conditions

11.1 1NCE shall be entitled to unilaterally amend these GTC – to the extent they are included in the contractual relationship with the Customer as appropriate or necessary in response to a change of law or court rulings or other market conditions.

11.2 To the extent 1NCE intends to make an amendment to these GTC exceeding the above, 1NCE shall notify the Customer of this in text form at least one month before the amendment becomes effective. The Customer is entitled to terminate the contractual relationship with effect from the effective date of the relevant amendment. If the Customer does not terminate within one month after receipt of the amendment notification from 1NCE in text form, the relevant amendment shall become an integral part of the contract at the time it becomes effective. 1NCE shall inform the Customer of this legal consequence in the amendment notification.

11.3 Section 57 paras 1 and 2 TKG remain unaffected.

## 12. Final provisions

12.1 The Customer may only assign or transfer claims, rights or obligations arising out of the contractual relationship to a third party after prior consent of 1NCE in text form. Section 354a of the German Commercial Code (*Handelsgesetzbuch*) remains unaffected.

12.2 1NCE shall be entitled at any time to have the Services rendered in whole or in part by affiliates or by subcontractors. In this case, however, 1NCE fully remains responsible for the provision of the Services in relation to the Customer.

12.3 If any provision of these GTC is invalid, the remaining provisions shall remain unaffected. The invalid provision shall be replaced by the applicable statutory provisions.

12.4 The law of the Federal Republic of Germany shall apply to these GTC and all legal relations between 1NCE and the Customer, excluding the provisions of international private law which refer to another jurisdiction and the UN Convention on Contracts for the International Sale of Goods (CISG). German law shall also apply to extracontractual claims in relation to the contractual relationship. Mandatory conflict of laws provisions remain

unaffected.

12.5 In business transactions with merchants, legal entities under public law or special funds under public law or customers seated outside of the Federal Republic of Germany, Cologne, Germany, is the place of jurisdiction for all legal disputes arising out of or in connection with the contractual relationship between the Parties. A potential exclusive place of jurisdiction shall remain unaffected.

12.6 In the event of a dispute between the Parties concerning one of the cases mentioned in Section 68 TKG, the Customer may also initiate conciliation proceedings by submitting an application to the conciliation body for telecommunications of the Federal Network Agency (*Bundesnetzagentur*) in Bonn.