

Terms and conditions of Olivia Wireless

last amended on February 02, 2020

Definitions

In these terms and conditions the following words have the meaning stated below, unless from the context the contrary appears:

General terms and conditions means these general terms and conditions.

Day means calendar day.

Olivia means the company Olivia Wireless B.V., located at Singel 250 in Amsterdam, Netherlands and registered in the Commercial Register of the Chamber of Commerce under number 75865378.

Customer means any legal person or natural person, acting in the exercise of his company, which enters into or wants to enter into an agreement with Olivia.

Website means the website of Olivia, being www.oliviawireless.com.

Applicability

1. These general conditions apply to all offers made by Olivia, quotations, agreements and all resulting commitments with the customer. As far as the customer (also) orders other products or services that are subject to special terms and conditions application, these also apply to the agreement between the customer and Olivia explained.
2. If the customer applies his own general terms and conditions to an agreement with Olivia states or refers to these terms and conditions, Olivia will not accept these general terms and conditions Olivia's general terms and conditions prevail, unless expressly otherwise at an earlier stage agreed.
3. The general conditions are communicated to the customer in advance and can always be consulted via the website and can also be downloaded there as a PDF file. The general terms and conditions will be sent free of charge on request.
4. All that in these general terms and conditions and in any further agreements for the benefit of Olivia is stipulated, is also stipulated for third parties engaged by Olivia.
5. These general conditions do not apply to offers to and agreements with natural persons who do not act in the exercise of a business.

Olivia

Offers / offers

1. All offers / offers from Olivia are without obligation and can always be revoked by it, even if they contain a deadline for acceptance. Offers / quotations can also be made by Olivia be revoked in writing within seven days of receipt of acceptance, in which case no agreement has been reached between the parties.
2. Offers / quotations can only be accepted in writing (including a acceptance by email). Olivia is nevertheless entitled to an oral accept acceptance as if it were done in writing. If the customer is on the website of Olivia places an order, then this order is the moment the customer presses the order button or receive an order confirmation by email, permanently. At the moment the customer of Olivia a confirmation by email, a binding agreement is reached between the parties.
3. In advertising material in the broadest sense of the word, such as catalogs, price lists, leaflets, websites third-party data etc. are never binding on Olivia.
4. Unless otherwise express and written agreements are statements of sizes, weights and other data as reliable estimates as possible.

Billing

1. The customer will not be committed to purchase cellular connectivity for a pre-defined term, but will pay for the service on a monthly basis. Olivia will bill Customer:
 - a. monthly in arrears for its use of the Services;
 - b. Any monthly (i.e. non-prepay) bundle is one calendar month. All bundles will renew on 00:00:00 hour at the first day of the calendar month and on 23:59:59 hour at the last day of the month;
 - c. Fees based on Customer's usage of the Services during the preceding month;
 - d. All data sessions are rounded up to 1kb (1000 bytes). Every 6 hours a Call Detail Record will be generated, that is rounded up to 1kb;
 - d. SIM cards in Paused state are billable and eligible for discounts of Monthly active SIM fees.
2. Olivia will provide Customer services for the Services when Customer orders the Services, and will use the Fees, on a prorated basis, for Customer's usage during that month. Any partial day of Services will be rounded up to a full day of Services for the purposes of calculating Fees.

Price

1. All prices charged by Olivia are based on the pricing list available for downloading on the Website as PDF. Unless custom quotes or offers are expressly agreed otherwise in writing.
2. Unless expressly agreed otherwise in writing, the prices indicated by Olivia are always exclusive of VAT and excluding shipping costs.
3. Olivia is entitled to the prices or parts thereof for not yet delivered and / or not paid to adapt business or services to any changes in price-determining factors such as

data charges, roaming agreements, wages, taxes, production costs, currency exchange rates and the like.

4. Olivia is always authorized to adjust the prices without delay if a statutory price-determining factor.

Payment

1. Olivia is at all times entitled to demand security from the customer for the correct and timely compliance with his payment obligations.

2. If the delivery takes place in parts, each part can be taken out separately by Olivia invoiced, unless otherwise agreed in writing with the customer.

3. SIM cards and hardware purchased on the Website are paid in full directly with secured online payment processes.

4. The monthly costs are payable at the end of each month. Unless Olivia and the customer have agreed otherwise in writing, Olivia collects all payments by direct debit the moment the costs are payable. The customer authorises Olivia to collect all due amounts from the customer's bank account which has to be made known to Olivia at all times.

5. If the collection per direct debit fails and/or the bank details are incorrect:

- a. The customer will be in default under this Agreement without this requiring a prior notice;
- b. All outstanding claims from Olivia on the customer are immediately payable;
- c. Olivia will be entitled to suspend services until payment is settled;
- d. All costs that occurred during suspension will be for the customer to bear.

6. In case of payment default Olivia is entitled to the execution of the agreement and all suspend or terminate related agreements.

7. Payments made by the customer always serve to settle all interest and costs due and then of due invoices that have been open the longest, even if the customer states that the payment relates to a later invoice.

8. The customer waives any right to settlement of reciprocal amounts. Settlement by the customer is not permitted.

9. Making payments from the customer to Olivia electronically, including via the internet and credit cards take place at the risk of the customer. Olivia is not liable for damage of the customer related or the result of payments by electronic means, via the internet or through credit cards. The provision of credit card data by the customer to Olivia via the internet or otherwise is at the customer's own risk.

Accounts and registration

1. The customer receives account details for the SIM management platform after placing a binding order with Olivia. Olivia reserves the right to revoke access to the application again, for example after the detection of irregularities.

2. The login details are strictly personal and may not be made available to third parties. The customer guarantees the use of his login data, even if this is done without being know.
3. The customer will immediately notify Olivia if he suspects that his log-in details are at third known or otherwise irregularities occur.
4. The customer is allowed to add users from within the same organisation into the application. The customer is not allowed to (re) enter users for an account after Olivia lifted the account of that user.
5. The customer is responsible for all user accounts added to the organisation. The customer guarantees the use of the application is for personal authorised users. Any changes, charges or malfunctions from added users are at the risk of the customer.

Delivery

1. As the place of delivery in all cases - unless otherwise written - the factual or the location of the customer's location or the location of the customer's order which was contracted.
2. The specification of delivery terms in offers / quotations, confirmations and / or contracts to the best of our knowledge and these will be taken into account as much as possible, but they are never to be regarded as a deadline.
3. The customer undertakes to enable Olivia to perform the delivery.
4. The customer guarantees at his own expense and risk that:
 - a. Olivia is provided with the necessary cooperation to perform the performance;
 - b. the ordered items or services are taken; and
 - c. the delivery under normal working conditions, during normal working hours of 08.00 18:00 can take place.
5. If the ordered items or services have been offered to the customer for delivery, but is delivery not possible on the grounds that the customer is one of the above mentioned in paragraphs 3 and 4 obligations have been fulfilled, purchase is deemed to have been refused. From this moment on the customer is legally in default without further notice of default being required by Olivia. The day on which refusal of acceptance takes place shall be deemed to be the date of delivery of the ordered items or services. The goods are also from this moment at the risk of the customer, conform to the article 'Risk transfer' in these general terms and conditions.
6. Without prejudice to the obligation to pay, the customer shall be held in the case referred to in paragraph 5 compensation of damage suffered by Olivia as a result of the refusal, including the making of costs for storage and transport, the latter costs being related to the on-site usual rates.

Risk transition

Regardless of what is between Olivia and the customer regarding transport and insurance costs

agreed, the items remain at risk of Olivia, until the time they are in the actual the power of disposal of the customer or of the third party (s) engaged by the customer have been transferred by signing of waybills, checklists and / or packing lists or by actual delivery.

Retention of Title

1. The ownership of the goods delivered by Olivia to the customer only passes to the customer as this everything has been fulfilled by Olivia under all agreements with the customer and in that context to claim or receive services or activities that have been performed.
2. The customer is entitled, notwithstanding the provisions of paragraph 1, the goods that he has from Olivia received in the normal course of business.
3. The customer shall never be authorized to pledge, transfer and / or hand over and / or hand over the goods delivered in any way. Nor is the customer entitled to make any change to the case.
4. If the customer is in default with the fulfillment of his obligations, Olivia is entitled to the hair to retrieve belongings at the customer's expense from the place where they are located.

Liability

1. If one of the parties fails to comply with one or more of its obligation (s) from the agreement, the other party shall give notice of default to the latter, unless performance of the regarding obligation (s) is already permanently impossible, in which case the negligent party immediately is defective. The notice of default will be made in writing, with a reasonable notice to the negligent party period will be granted to fulfill its obligations. This term has it character of a fatal term. The liability of Olivia towards the customer for direct damage in the event of non-performance, late or improper performance is limited to the net invoice value of the relevant items or services.
2. The restriction referred to in paragraph 1 also applies if Olivia has been taken out by the customer for any other reason than the agreement concluded between them.
3. Direct damage is exclusively understood to mean:
 - a. Reasonable costs that a party would have to incur to perform a performance of the other party to the agreement. However, this damage will not be reimbursed if the other party has terminated the agreement;
 - b. reasonable costs incurred to determine the cause and extent of the damage for so the determination relates to direct damage within the meaning of the general terms and conditions; and / or
 - c. reasonable costs incurred to prevent or limit damage as far as the damage the suffering party demonstrates that these costs have led to limitation of direct damage in the sense of these conditions.
4. Olivia is never liable for indirect damage, including consequential damage, forfeited profit, missed savings, damage due to business stagnation and all damage not covered by the direct damage within the meaning of these terms and conditions.

5. The limitation of liability does not apply if there is intent or gross negligence of directors and executives of Olivia.
6. Olivia is never liable in respect of the by the customer to Olivia in connection with the agreement on materials made available. The customer commits himself to this materials to take out adequate insurance.
7. Without prejudice to the above, Olivia is not liable if the damage is due to intent and / or gross negligence and / or culpable actions or injudicious or improper use of the delivered goods by the customer.

Software

1. When purchasing or using a software product, the customer receives access (Login if hosted in the cloud), the associated documentation (if any), as well as a user license in accordance with the licensing conditions of the manufacturer.
2. The customer automatically agrees with the first use of the software and the relevant license conditions. The intellectual property of the product remains with the licensor. All rights to the product designations, brands, as mentioned and used by Olivia, logos etc. belong to the respective holders of these rights. When using the products the customer must respect all rights of third parties.
3. Keep installation of new software as well as changing already installed software the risk of data loss. The customer must take measures to prevent data loss. Olivia is not liable for damage resulting from the installation of new software.

Indemnification

1. The customer indemnifies Olivia insofar as permitted by law, in respect of liability towards one or more third parties, which arose from and / or connected with the execution of the agreement, irrespective of whether the damage was caused by Olivia or by its aid (s), auxiliary or delivered goods and / or services is caused or inflicted. In addition, the customer indemnifies Olivia, insofar as the law does permitting, for all claims of third parties in connection with any infringement of intellectual property rights of these third parties.
2. The customer shall ensure adequate insurance with regard to the above-mentioned risks.
3. The customer is always obliged to do everything in his power to limit the damage.

Force majeure

1. If performance on the part of Olivia or purchase by the customer due to force majeure for more than one month is delayed, each of the parties - with the exclusion of further rights - is authorized to dissolve the agreement in accordance with the law. That which has already been fulfilled under the agreement or has been performed, the parties will then be settled pro rata.
2. Under supremacy of Olivia is in any case understood:

- a. the circumstance that Olivia represents a performance (including a performance by the customer) interest in connection with the performance to be delivered, not, not timely or improperly delivered;
 - b. strikes;
 - c. disruptions in traffic;
 - d. government measures that prevent Olivia from fulfilling its obligations on time or in a proper manner come;
 - e. riots, rebellion, war;
 - f. extreme weather conditions;
 - g. fire; and / or
 - h. import, export and / or transit bans.
3. If there are unforeseen circumstances that are of such a nature that the customer goes to reasonableness and fairness performance of Olivia can not be expected, the judge can demand one of the parties dissolves the agreement in whole or in part.

Dissolution

1. Each of the parties has, in the cases described below and in so far as it has been granted, the contract without further notice of default and judicial intervention, wholly or in full partially, with immediate effect to terminate:
 - a. if the other party has applied for or obtained a suspension of payment or the other party has been declared bankrupt;
 - b. when the other party's company is wound up voluntarily or involuntarily;
 - c. when the enterprise of the other party merges or is taken over;
 - d. when a substantial part of the assets of the other party are seized;and / or
 - e. when there are other circumstances in which the continuation of the agreement can not be required.
2. The authority to dissolve the agreement shall only vest in each of the parties if the other party - after a proper and as detailed as possible written notice of default with proposal for a reasonable period for the purification of the shortcoming, attributable inadequate in the fulfillment of material obligations pursuant to the agreement and provided that this shortcoming
3. If the agreement is dissolved, Olivia's claims against the customer are immediate claimable. If Olivia suspends the fulfillment of the obligations, it will retain its claims to the law and agreement.
4. Olivia always retains the right to claim compensation.

Intellectual property

1. Olivia guarantees that the goods it delivers do not, as such, infringe Dutch patent rights, design rights or other rights of industrial or intellectual property of third parties.

2. If nonetheless must be recognized by Olivia or by a Dutch judge in a lawsuit a decision that can no longer be challenged is determined, that any delivery made by Olivia case infringes the rights of third parties as referred to here, Olivia will, at its discretion, consult to replace the relevant item with the customer by a case that does not infringe on the relevant item, acquire a right or license fee in this matter, or take the matter in question against repayment of the price paid for it, less the depreciation normally to be considered, without being held to further compensation.
3. However, the customer loses the right to the benefits specified in paragraph 2 if he does not notify Olivia in a timely and complete manner about claims from third parties as referred to above in this article informed, as a result of which Olivia has not been able to properly fulfill its rights in this respect to defend.

Transmission

The customer is not allowed to have obtained without written permission from Olivia rights and obligations arising from the agreement to third parties.

Privacy and security

1. Olivia respects the privacy of the customer. Olivia handles and processes all personal data it is provided in accordance with the applicable legislation, in particular the Protection Act Personal data. The customer agrees with this processing. To protect the personal data of the customer Olivia applies appropriate security measures.
2. For more information about privacy, please refer to the Olivia website.

Remaining

1. Any deviations from these general terms and conditions can only be made in writing agreed. No rights can be derived from such deviations until later entered into legal relationships.
2. The administration of Olivia applies, subject to proof to the contrary, as proof of the client's performance requests and / or orders. The customer acknowledges that electronic communication can serve as proof.
3. If and in so far as any provision of the general terms and conditions is declared void or is destroyed, the other provisions of these general conditions will remain unaffected by stay power. Olivia will then determine a new provision to replace the void / nullified provision, where possible the purport of the void / voided provision will be taken into account.
4. The place of performance of the contract shall be deemed to be the place where Olivia is located.

Applicable law

1. All disputes between Olivia and the customer, which may arise as a result of a by Olivia agreement entered into with the customer or agreements resulting therefrom, shall, unless Olivia and the customer have agreed otherwise in writing in this respect first instance to be settled by the competent court in the place of business or the arrondissement of Olivia.

2. On agreements, and all ensuing non-contractual obligations, between Olivia and the customer to which these general conditions relate is exclusively Dutch application. The Vienna Sales Convention 1980 is expressly excluded.