

General Terms and Conditions for the Provision of Services of Dimension Data Germany AG & Co. KG, Horexstr. 7, 61352 Bad Homburg v. d. Höhe, Germany (“Dimension Data”)

1. Subject matter of the General Terms & Conditions

1.1. The present General Terms and Conditions shall apply in the context of business dealings with entrepreneurs, legal entities under public law, and special assets (*Sondervermögen*) under public law when it comes to any and all services not entailing technical work under high-voltage conditions that pertain to the construction and extension of telecommunications systems as well as other communications and data systems (“System”) or the establishment of grid networks (“Installation”). They shall also apply to contracts for the repair, maintenance, testing, placement into service, and refurbishment of the corresponding Systems, insofar as these do not fall within the expressly agreed applicable scope of a separately concluded sales agreement, lease agreement or service agreement (“Customer Service”).

1.2. Customer Service shall be performed on the basis of the defect descriptions provided by the customer, or otherwise on the basis of the defects identified by Dimension Data. Dimension Data reserves the right to replace any and all parts to the extent required for repairs, respectively to exchange such parts for good-as-new parts (replacement assemblies).

1.3. The customer shall provide free and unhindered access to the place of performance and shall ensure that any parts which the customer is to provide are delivered to the place of performance in a timely manner. Moreover, the place of performance must be in compliance with the applicable workplace safety regulations.

2. Claims for defects

2.1. Dimension Data undertakes to remedy any defects, at no charge by way of subsequent contractual performance, of which the cause can be shown to have arisen before the devolution of the risk. The customer is to grant Dimension Data the time and opportunity to perform that the latter may deem necessary, at its free discretion, for purposes of such subsequent contractual performance. Any parts replaced shall become the property of Dimension Data. Once a defect has been identified, this must be promptly reported in writing to Dimension Data. Liability for material defects shall be precluded for normal wear and tear as well as for damage resulting from any of the following: improper or negligent handling; modification by the customer or third parties of the programs delivered along with the Systems; use of unsuitable operating equipment or premises; any other circumstances that are not the fault of Dimension Data; a deviation from the agreed characteristics that is merely negligible in scope and non-detrimental; or a merely negligible restriction of serviceability. The customer shall bear any expenditures arising because subsequent performance is to be delivered at a location other than the agreed place of performance.

2.2. Claims for defects shall become time-barred twelve months after the date of the corresponding service having been performed. If longer, compulsory limitation periods are mandated by law – e.g. under Section 438 (1) no. 2, Section 479 (1) and Section 634a (1) no. 2 German Civil Code (*BGB - Bürgerliches Gesetzbuch*), respectively – then these shall apply. The length of the respective operating/service life shall have no influence on the limitation period.

2.3. If the subsequent contractual performance provided fails to remedy the defect in question, customer shall be entitled to revoke the contract or reduce the price, whereby this shall in no way prejudice any other indemnification claims the customer may enjoy. There shall be no right to assert claims for compensation of damages unless the preconditions set forth in Clause 3 have been fulfilled.

2.4. Dimension Data may also meet its obligation to satisfy claims for defects by means of remote access, provided it notifies the customer in advance and the required technical preconditions are given. The exchange of data between Dimension Data’s remote centre and the System of the customer shall occur in a manner compliant with the applicable statutory provisions regarding data protection.

3. Liability

Dimension Data’s liability shall be strictly limited as follows:

3.1. Dimension Data shall be fully liable for cases involving wilful conduct, gross negligence or injury to life, limb or health, as well as for a failure to provide a characteristic for which Dimension Data has assumed a guarantee, and for fraudulent misrepresentation.

3.2. Dimension Data’s liability for a slight negligent breach of a duty, the fulfilment of which is indispensable to the proper performance of the agreement and something upon which the customer should normally be able to rely, shall be limited to the damage that was foreseeable and customary upon conclusion of the agreement.

3.3. Unless the parties have demonstrably agreed that Dimension Data is to be responsible for performing data backups, Dimension Data

shall assume no liability for any loss of data by the customer, except in those cases where Dimension Data has wilfully or grossly negligently caused the data loss and the customer has ensured that the data files can be reconstructed at reasonable effort and expense using machine-readable data material kept available on a standby basis.

3.4. Liability for pecuniary losses caused by slight negligence, furthermore, shall be limited to the contract value. No liability shall be assumed for indirect damages, particularly for lost profits, production disruptions, investment-related interest costs, or financing costs.

3.5. In the event the customer receives consultancy services exceeding the commissioned scope, Dimension Data shall be liable only for damages it has caused wilfully or grossly negligent. In particular, the customer shall not be released from its obligation to verify upon its own initiative that a given delivery is fit for its intended purpose. This shall apply also in those cases in which Dimension Data are aware of the purpose intended by the customer.

3.6. Liability under the German Product Liability Act (*ProdHaftG – Produkthaftungsgesetz*) shall remain unaffected.

4. Data protection and data backups

4.1. Dimension Data and its subcontractors will comply with the applicable statutory provisions when processing any personal data pertinent to the conclusion and performance of the agreement; the address of the corresponding data recipients shall be disclosed upon request.

4.2. The customer is hereby advised that the Customer Service provided may give rise to “data processing on behalf of others” within the meaning of Section 11 of the German Federal Data Protection Act (*BDSG – Bundesdatenschutzgesetz*), a situation for which the customer may have to conclude a separate written agreement with Dimension Data, as the case may be. This obligation is incumbent on the customer. Unless the customer issues instructions to the contrary, Dimension Data shall perform the Customer Service under express reference to Section 28 (1), first sentence, no. 1 and 2 BDSG.

4.3. The customer is to periodically perform, in accordance with the generally recognised codes of practice, a proper backup of the System data relevant to the Agreement and to check such data after any total breakdown of the System. This shall not apply if and insofar as the parties have agreed in writing to make Dimension Data responsible for such data backup.

5. Prices

5.1. Materials shall be charged on the basis of the Dimension Data price list in effect at the time of service performance. Services performed on site, including travel costs and the costs resulting from any delays for which the customer is responsible, shall be charged on the basis of timesheets documenting the number of hours worked. Any time increments of less than 30 minutes shall be rounded up to the next half hour.

5.2. Should Dimension Data be contractually obligated under the agreement made to provide services exclusively via a Dimension Data Repairs Depot (e.g. under a repair depot agreement or repair agreement), Dimension Data shall charge two hours at the respectively hourly rate as a blanket charge to cover mileage and travel expense for any services performed on site at the customer’s request. Services performed at a Dimension Data Repairs Depot shall be charged on the basis of the time, effort and costs expended.

5.3. For the provisions of Customer Service Dimension Data will bill a one-time-fee of EUR 190.00, unless customer is an existing customer which has concluded a recurrent service contract with Dimension Data. Additionally, the following hourly billing rates shall be applied.

Hourly rates ¹ for Installation and Customer Service	During normal working hours ²	At all other times
NK Installation (e.g. work on the transmission grid, switching/routing work)	EUR 140.00	EUR 170.00
K1 Small-scale systems (e.g. ALE International OXO/4200)	EUR 166.00	EUR 205.00
K2 Mid-sized and large-scale Systems (e.g. ALE International OXE)	EUR 190.00	EUR 240.00
K3 Networked Systems, special technology, data technology, Cisco Call Manager	EUR 230.00	EUR 285.00

6. List prices for data-set changes

Data-set changes that are defined in the respectively current Standard Change Catalogue of Dimension Data shall be performed in keeping with the time units defined therein. The remuneration owed shall be governed by Clause 5.3.

7. Deployment of subcontractors

Dimension Data reserves the right to also have the agreed services performed by suitable contractors. Also in the event of subcontractors being deployed, Dimension Data shall remain liable for the proper performance of the contractual services. The customer may refuse to allow deployment of specific subcontractors if it has serious cause for doing so.

8. Invoicing, payment terms

8.1. The commissioned services shall be billed to the customer on the basis of the above-referenced rates after they have been performed by Dimension Data.

8.2. The remuneration for services (plus VAT at the respectively applicable rate) shall be due and payable within 30 days of the corresponding invoice date.

8.3. The customer shall be entitled to perform retention or offset only on the basis of counterclaims that are undisputed or that have been finally and conclusively determined by a court's declaratory judgment. The customer may not assign to third parties any of its claims against Dimension Data. Section 354a of the German Commercial Code (*HGB – Handelsgesetzbuch*) shall remain unaffected.

9. Miscellaneous provisions

9.1. If any provision of these General Terms and Conditions should be or become invalid, this shall not affect the remaining provisions.

9.2. German law shall apply, to the exception of the UN Convention on Contracts for the International Sale of Goods (CISG) as well as international private law. The place of jurisdiction shall be Bad Homburg v. d. Höhe, Germany. Dimension Data reserves the right to also bring suit at the customer's registered seat.

¹ Service performed at end devices shall be attributable to the corresponding main System.

² 8:00 AM to 4:00 PM Mondays to Fridays, except on the legal holidays applicable at the System location.