

General terms and conditions of sale and use

March 16, 2022

smsmode® offers business customers mobile messaging communication services under the conditions specified below.

YOU ACKNOWLEDGE THAT THESE TERMS AND CONDITIONS ARE BINDING AND THAT YOU ACCEPT THESE TERMS AND CONDITIONS. FAILING THIS, YOU ARE NOT AUTHORIZED TO USE THE SMSMODE® SERVICES.

1. Définitions

- ✓ **Customer:** any natural or legal person ordering and using the Services for professional purposes who, commits to complying with these General Terms and Conditions, including individual users using the Services in the name and on behalf of the Customer.
- ✓ **Data:** data or information used or generated by the Customer when using the Services, including Personal Data.
- ✓ **General Terms and Conditions or Agreement:** these general terms and conditions of sale and use of the Services and any document appended hereto or referred to herein, particularly the Order and the applicable Special Terms and Conditions.
- ✓ **Messages:** messages or electronic communications that may be sent by the Customer via the Services provided by smsmode®, as described in the applicable Special Terms and Conditions.
- ✓ **Order:** any order of the right to use the Services by the Customer, accepted by smsmode®, formalized in a purchase order or displayed on the Customer's personal account on the Website. The Customer may order the Services online on the Website or by an exchange of e-mails or paper with smsmode®, as the case may be.
- ✓ **Personal data:** personal data allowing the direct or indirect identification of a natural person within the meaning of the regulations in force.
- ✓ **Recipients :** individuals to whom the Customer sends an SMS when using the Services.
- ✓ **Services:** Message sending services provided by smsmode® to the Customer as described in these General Terms and Conditions and in the applicable Special Terms and Conditions.
- ✓ **smsmode®:** Calade Technologies, a French limited company (société à responsabilité limitée) whose registered office is at 37 Rue Guibal, Pôle Média Belle de Mai, 13003 Marseille Cedex 13, registered with the Marseille Trade and Companies Registry under number 478 715 766, represented by Ludovic Pognon.
- ✓ **Special Terms and Conditions:** the special terms and conditions subscribed by the Customer, depending in particular on the Services ordered, and considered as appended to these General Terms and Conditions.
- ✓ **Website:** website accessible at www.smsmode.com on which the Services are provided.

2. Purpose and scope

Except for special terms and conditions expressly accepted in writing by smsmode®, the purpose of these General Terms and Conditions is to set out the terms and conditions for use of the Services by the Customer.

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Use of the Services is subject to acceptance and compliance with these General Terms and Conditions (including applicable Special Terms and Conditions).

Acceptance of these General Terms and Conditions (including applicable Special Terms and Conditions) by one of the Customer's agents or employees is deemed expressed in the name and on behalf of the Customer by a duly authorized person.

3. Description of Services

The Services subscribed by the Customer are described in detail in the applicable Special Terms and Conditions.

To use the Services, the Customer must:

- ✓ Have Internet access (high-speed Internet access is recommended);
- ✓ Have ordered the Services concerned;
- ✓ Meet any other prerequisites specified in the Special Terms and Conditions or expressed by smsmode®.

In general, all technical resources and telecommunication costs necessary to access and use the Website and Services are the sole responsibility and under the sole liability of the Customer. Unless otherwise agreed in writing, the Services do not include installation, configuration, adaptation, customization, or suitability of the Services to the specific needs of the Customer, nor training services.

The Customer can access its account with a unique login and password, which are strictly personal and which the Customer shall not disclose. The Customer is liable for the use of this login and password by third parties, and shall hold smsmode® harmless from and against any claim based on the use of this login and password. To avoid fraudulent use of the login and password, the Customer shall choose a password with a high level of security according to the standards and recommendations in force.

smsmode® reserves the right to modify the Services (e.g. to make available new features, to modify or remove current features, and to change the applicable price) after informing the Customer accordingly. smsmode® will provide the Customer with a summary description of the major changes to the Services within one month.

Any other services to be provided to the Customer must be agreed in writing in advance. smsmode® grants no other warranty than those expressly mentioned in these Terms and Conditions.

4. Financial conditions

The Customer may use the Services with a subscription, or not, under the conditions specified in the Special Terms and Conditions applicable to the subscribed Services.

Any issue regarding an invoice must be notified in writing, giving the reasons therefor, within 15 days of receipt of the invoice, failing which the invoice will be deemed to have been accepted by the Customer.

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Any delay in payment with respect to the agreed due date shall give rise, without notice, to the application of interest at a rate equal to an annual rate of 10% per day, as well as compensation for collection costs, which may not be less than €40, without prejudice to any other rights and remedies. smsmode® shall also have the right to suspend or terminate the agreement.

The Customer shall bear any costs incurred by smsmode® due to such delay in payment.

5. Term and termination

The term of the Agreement and termination conditions are set out in the Special Terms and Conditions applicable to the Services subscribed.

In general, the Agreement may be terminated (for any reason whatsoever) in its entirety or only for one type of Service at the discretion of the party terminating the Agreement.

At the end of the Agreement for whatever reason, whether early or upon expiry of its term, the Customer shall cease using the Services concerned by the termination and, in the case of the termination of all Services, its account will be deleted. The Customer shall be personally responsible for recovering the Data, which will be automatically deleted 3 months after termination of the Agreement, unless otherwise required by law.

✓ **Early Termination:**

should one party breach these General Terms and Conditions and/or the Special Terms and Conditions, the other party may terminate the Agreement by operation of law, 30 days after sending written notice thereof by registered letter with acknowledgment of receipt remaining without effect or, where applicable, with immediate effect if the breach is irremediable.

✓ **Suspension:**

In addition, smsmode® reserves the right to suspend the Customer's account without notice or indemnity in the following cases:

- ✓ The Customer's breach of Clause 6 or the applicable Special Terms and Conditions;
- ✓ Any act of hacking or illegal attempt to use information on the network caused by or originating in the Customer's account;
- ✓ Information provided by the Customer to create its account is incorrect;
- ✓ Any delay in payment by the Customer of any amounts owed to smsmode® after expiry of their due date;
- ✓ In application of an injunction or legal or regulatory provision applicable to smsmode® or one of its suppliers;
- ✓ If necessary for maintenance or security purposes (of which smsmode® will endeavour, where possible, to notify the Customer);
- ✓ In the event of suspension of the provision of the Services by the supplier(s) of smsmode®.

This suspension will be applicable without prejudice to the other rights of smsmode® and without indemnity.

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6. Obligations of Customer

The Services are intended for professional use. The Customer must be of age and be able to provide proof of the existence of its company if requested to do so by smsmode®.

The Client undertakes to comply with the recommendations of the professional advertising regulatory authority (Autorité de Régulation Professionnelle de la Publicité - ARPP) regarding the rules governing advertising campaigns. In particular, the Client must notably provide clear and unequivocal, legible and/or audible information allowing:

- ✓ Identification of the advertisement;
- ✓ The identification of the advertiser.

The Customer is informed that telecommunication operators may block SMS/TTS that do not comply with the rules defined by the ARPP and/or when fraudulent SMS (identity theft, phishing, smishing and others) are detected. smsmode shall not be held responsible for such blockings that telecommunication operators may implement without prior consultation with smsmode or the Customer.

Furthermore, the Customer agrees to use the Services in accordance with national and international regulations, and, without this list being exhaustive, not to use them to display or send any content:

- ✓ Of a violent nature or likely to undermine human respect and dignity, equality between men and women, the protection of children and adolescents, including through the production, transport and dissemination of messages of a violent or pornographic nature or likely to infringe human dignity;
- ✓ That encourages the commission of crimes and misdemeanours;
- ✓ That encourages the consumption of prohibited substances;
- ✓ That causes or is likely to cause discrimination, hatred, violence because of race, ethnicity or nationality;
- ✓ That is illegal, harmful, threatening, abusive, harassing, defamatory, abusive, vulgar, obscene, that threatens the privacy of others or is likely to offend the sensitivity of certain persons;
- ✓ That is misleading, including by usurping the name or corporate name of other persons;
- ✓ That infringes the rights of third parties, such as but not limited to, any manufacturing secret, professional secrecy, confidential information, trademark, patent and in general any industrial or intellectual property right or any other right concerning information or protected content;
- ✓ Including, without this list being exhaustive, computer viruses or any other code or program designed to interrupt, destroy or limit the operation of any software, computer or telecommunication systems, or that constitutes spam.

In general, the Customer agrees to comply with these General and Special Terms and Conditions, not to infringe in any way whatsoever any rights belonging to third parties, not to use or distribute content prohibited by law and not to interfere with or disrupt the operation of the Website or the Services.

The Customer acknowledges and agrees that it is responsible for Data and content created, stored or sent in connection with its use of the Services, excluding any liability of smsmode® or its suppliers.

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The Customer undertakes, in particular, only to use the Services with regard to Personal Data concerning Recipients that it is authorized to process, in compliance with the regulations in force, in particular concerning Personal Data, the collection of the telephone numbers, marketing and the sending of Messages and, where appropriate, with the consent of the Recipient. It also undertakes to use, on a compulsory basis, systems enabling the Recipient to object to the receipt of marketing Messages or, where applicable, the processing of their Personal Data. An SMS confirming the unsubscribing is mandatory on the marketing channel. It is sent automatically from the account that sent the marketing message, at the Customer's expense.

If the Customer becomes aware of a likely or proven violation of this clause or of the applicable Special Terms and Conditions, the Customer undertakes to inform smsmode® in writing. Likewise, the Customer undertakes to inform smsmode® in writing of any request or communication from the competent authorities directly or indirectly concerning the supply or use of the Services, by sending a copy of said request or communication and/or all information concerning it.

The Customer agrees to use the Services only for its own needs and in particular not to resell all or part of the Services, alone or with other Services, for the benefit of third parties, unless expressly agreed by smsmode®. The Customer warrants that the data it provides is accurate and consistent to reality. Customer undertakes to modify its information on its account in the event of a change.

The Customer undertakes to hold smsmode® and its suppliers harmless from and against any direct or indirect damage resulting from the Customer's breach of the General Terms and Conditions or applicable Special Terms and Conditions, in particular any legal action that may be taken against it, or any complaint that may be filed against it by a third party due to the use by the Customer, or under the control of its identifier, of the Services under conditions not in conformity with the General Terms and Conditions, the applicable Special Terms and Conditions or the law. This undertaking covers any sum that smsmode® (or its suppliers) may be required to pay in any capacity whatsoever, including lawyers' fees and legal costs.

7. Obligations of smsmode®

smsmode® undertakes to provide the Services in accordance with the French and European legal and regulatory provisions in force, and with standard practices within the profession.

In particular, smsmode® undertakes to:

- ✓ Comply with the legal obligations specific to the secrecy of correspondence sent by means of telecommunications, the violation of which is sanctioned by the provisions of Articles L.226-15 and 432-9 of the French Criminal Code, subject in particular to the provisions of the French Act No. 91-646 of 10 July 1991;
- ✓ Ensure the security, confidentiality and integrity of Messages and Personal Data concerning the Recipients communicated by the Customer under the conditions detailed in the "Personal Data" Appendix and, where applicable, the applicable Special Conditions;
- ✓ Provide the Services and make them accessible 24/7, excepted for interruptions, scheduled or otherwise, for security, maintenance or resulting from force majeure.

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The Customer represents it has familiarized itself with the specific characteristics and delivery times of the various Services offered by smsmode®.

The obligations incumbent on smsmode® are "best efforts" obligations. smsmode® undertakes to use all available means to meet these deadlines, and to report any malfunction to the Customer as soon as possible.

8. Personal Data

The provisions concerning the processing of Recipients' Personal Data by the Customer (as data controller) and by smsmode® (as data processor) are set out in the "Personal Data" Appendix attached at the end of these General Terms and Conditions.

The provisions concerning the processing by smsmode® (as data controller) of Personal Data provided by the Customer for the performance of these General Terms and Conditions are set out in the privacy policy of smsmode® available on the Website.

9. Confidentiality and intellectual property

In addition to the applicable provisions in terms of Personal Data, the parties agree to keep confidential and not to use on their own account any information of a confidential nature, including, but not limited to, any trade secret, exclusive information, commercial and financial details and any other information having commercial value (hereinafter "**Confidential Information**").

This article does not apply to Confidential Information which the recipient party can demonstrate is in the public domain or of which it was already aware at the time of its disclosure, that falls into the public domain subsequently other than by a breach of this clause or that came into the possession of the recipient party legally via a third party.

If an authority or a court requests Confidential Information, the parties will contact each other and cooperate to minimize the possible negative effects of such disclosure.

The Customer acknowledges that if an authority or a court requests smsmode® or one of its suppliers to disclose information relating to the Customer or the use of the Service, smsmode® or the supplier will be required to comply with it and to provide this information.

The recipient party will return to the disclosing party all Confidential Information in the recipient party's possession in any form upon termination or expiry of the Agreement.

The terms of this clause will survive the expiry or early termination of the Agreement, as long as the Confidential Information does not fall into the public domain.

In addition, it is specified that the intellectual property rights to any software, information, technology or data whatsoever provided by one or other of the parties within the framework of the Agreement, shall remain the property of that party.

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10. Liability

- ✓ **Customer:** the Customer uses the Service under its sole liability. In particular, the Customer is solely liable for its use of the Services and of the Data it use or provides through the Services.
- ✓ **smsmode®:** the parties acknowledge that due to the complex nature of telecommunications networks and of the Services, Services may have undetected or unidentified malfunctions. The parties have entered into this Agreement with full knowledge of the possible existence of such malfunctions. smsmode® is therefore only bound by a "best efforts" obligation and may only be held liable if it is proven that smsmode® did not employ its best efforts to provide the Services in accordance with these General Terms and Conditions and the applicable Special Terms and Conditions. smsmode® therefore may not be held liable for damages, whatever their nature, resulting from the unavailability of the Services if such unavailability is not due to a proven breach by smsmode®.

Under no circumstances may smsmode® be held liable towards the Customer for any indirect damages, such as, but not limited to, any loss of earnings, operating losses, profits, data, records or content, any interruption of business or impossibility to access the Services except in the cases provided for in the General Terms and Conditions and applicable Special Terms and Conditions.

The amount of damages for which smsmode® may be held liable, under the conditions provided for above, will be limited to the amount actually paid by the Customer for the provision of the Services during the twelve (12) months preceding the event that caused the damage.

Any claim relating to the performance (or non-performance) of a Service must be notified in writing to smsmode® within 3 months from the date of the performance of the service or the date of the event that caused the damage.

- ✓ **Force majeure:** no party will be liable for any breach of its obligations hereunder if such breach results from an act or event beyond its control, especially as a result of force majeure, including in particular events recognized as such by the courts and, without limitation: strikes, wars, import or export embargoes, lock-outs, accidents, fires, blockades, natural disasters, pandemics, disturbances, cuts and anomalies affecting transmissions through telecommunications networks, delays, suspensions or interruptions of service of mobile telephone operators, any order by the Telecommunications Regulatory Authority imposing the total or partial suspension of GSM public radiotelephony, power outages or any other technical difficulty or malfunction of the Internet.
- ✓ **Compensation:** in general, each party will indemnify the other party against all claims made by a third party in connection with the provision or use of the Services under this Agreement, provided that the party requesting compensation (i) immediately notifies the other party of this third-party claim, (ii) allows the other party to conduct the defence against the said claim, (iii) does not enter into negotiations or any settlement without the agreement of the other Party and (iv) cooperates in all respects with the other party in the defence against the claim.

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11. Governing law, disputes and jurisdiction

These General Terms and Conditions shall be governed by French law. In its relationship with the Customer, only the French version of these General Terms and Conditions shall be authentic.

In the event of a dispute relating to the validity, interpretation, performance or termination of these General Terms or Conditions or of the Agreement between the parties, the parties will try to resolve their dispute amicably. Failing this, within one month of the notification of the dispute by one party to the other party, the dispute will be submitted to the Commercial Court of Marseille, to which jurisdiction is expressly granted, even in the case of multiple defendants, emergency or summary proceedings. The dispute must be submitted within one year from the day the Party bringing the claim became aware or should have become aware of the facts on which its claim is based. The condition of amicable settlement will not apply in the case of summary or emergency proceedings.

12. General provisions

Should any provision of this Agreement be null and void or unenforceable by virtue of a law, regulation or enforceable decision by a Court or competent authority, the parties expressly agree that the agreement shall not be affected by the invalidity of the aforementioned clause.

Failure by either party to require at any time the strict performance by the other party of any provision of these General Terms and Conditions may not be deemed to constitute a permanent waiver of such provision.

Accordingly, each party may at any time request the strict and complete performance by the other party of this Agreement.

The Customer grants to smsmode® the right to use and reproduce the name and logo of the Customer, for reference only, for any display or use on the Website or on any commercial media of smsmode® .

Special terms and conditions of sale and use SMS/TTS sending service

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These Special Terms and Conditions supplement the smsmode® general terms and conditions of sale and use ("General Terms and Conditions") and apply to use of the SMS/TTS sending service.

YOU ACKNOWLEDGE THAT THESE SPECIAL TERMS AND CONDITIONS ARE BINDING AND THAT YOU ACCEPT THEM. FAILING WHICH YOU ARE NOT AUTHORIZED TO USE THE SMS/TTS DE SMSMODE® SENDING SERVICE.

1. Purpose and scope

The purpose of these Special Terms and Conditions is to set out the terms and conditions for use of the Short Message Service (SMS) and Text To Speech (TTS) sending Services provided by smsmode® to the Customer, in addition to the General Terms and Conditions.

The Order and use of the Services is subject to acceptance and compliance with these General Terms and Conditions and Special Terms and Conditions.

2. Description of Services - Details with regard to clause 3 of the General Terms and Conditions

The Services enable the Customer to send SMS/TTS to the mobile phone of the correspondent of its choice, the Recipient(s), either immediately or after a delay, and either one by one or en masse.

Depending on the type of SMS/TTS used and as desired by the Customer, an SMS/TTS receipt report may be obtained and, for SMS only, the sender may be customized.

The smsmode® Website also provides an address book system for managing contact lists that can be used when scheduling the sending of SMS/TTS, a red list for storing the numbers of Recipients who do not wish to receive SMS/TTS from the Customer and a system for managing sub-accounts within the Customer's main account.

Duplicate numbers can be processed based on the address book.

In addition, any duplicates are systematically identified when sending an SMS/TTS in order to send a single SMS/TTS per Recipient.

For non-subscribing Customers, the Services include access to support by smsmode® email, subject to reasonable requests and up to a maximum of 5 tickets per month.

For subscribing Customers, the Services include access to support by e-mail and by phone during smsmode® opening hours (Monday to Friday from 9 a.m. to 12 p.m. and from 2 p.m. to 5 p.m. excluding public holidays), subject to reasonable requests and within the limits 30 tickets per month.

In order to be able to use the Services, the Customer must have credited its account by a prior purchase of credits for non-subscribing Customers, or have taken out a subscription, for subscribing Customers (see details in Clause 3 of these Special Terms and Conditions).

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3. Financial conditions - details with regard to clause 4 of General Terms and Conditions

The Customer may take out a subscription, or not, under the following conditions:

✓ **Subscription:**

the Customer takes out the subscription under the conditions set out in the Order (which defines in particular the price of the subscription and the rate applicable to the sending of SMS/TTS). The flat-rate amount applicable to the subscription is payable, whether or not the Customer has used the Services during the month in question. In the case of a subscription, the Customer undertakes to pay the sum due to smsmode® for the subscription and SMS/TTS used during the corresponding period, as indicated in the invoice issued by smsmode®.

✓ **Non-subscribing Customers:**

the Customer must obtain "credits" from smsmode® before using the Services, which entitle the Customer to access the Services and send a specific number of SMS/TTS messages.

The Customer undertakes to pay the sum due to smsmode® for the purchase of credits by bank card, bank transfer, cheque or direct debit. Details of the rates in force are available on the Website.

Credits are valid and can be used only after actual receipt of the price by smsmode®.

Any purchase of loans is final and the Customer may under no circumstances request partial or total repayment. Credits are valid for 12 months from purchase. If they are not used within this period, they will be lost and the Customer will not be able to claim any repayment of the unused credits.

smsmode® reserves the right to change the prices of credits or SMS/TTS at any time and will not offer any price reduction or refund in the event of any price reduction or promotional offer subsequent to the date of purchase of credits.

4. Term and termination - details with regard to clause 5 of General Terms and Conditions

✓ **Subscription:**

The subscription is valid for a period of one year from the date of subscription. Upon expiry of the term, the subscription shall be tacitly renewed for a period equal to that of the initial agreement, unless terminated.

Either party may unilaterally terminate the subscription without having to give any justification. Termination will only take effect after the end date of the subscription. Termination must be notified by letter with acknowledgement of receipt at least one working month before the end of the subscription in progress.

The Customer may change the type of subscription at any time during the subscription period, in particular to access other services made available by smsmode®. The change of subscription must be notified by registered letter with acknowledgement of receipt sent to smsmode® at least one working month before the effective date of the change and subject to agreement by smsmode®.

✓ **Non-subscribing Customers:**

the agreement is concluded upon acceptance of the Order for an indefinite period. Either party may unilaterally terminate the agreement without having to give justification, by letter with acknowledgement of receipt giving one month's notice.

If the account remains inactive for a period of 18 consecutive months, smsmode® may terminate the account after informing the Customer giving 15 days' notice.

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5. Obligations of Customer - details with regard to clause 6 of General Terms and Conditions

In addition to the obligations set out in Clause 6 of the General Terms and Conditions, the Customer is informed that STOP SMS is a tool that allows recipients of SMS/TTS sent by the Customer to unsubscribe from the distribution list. It must be used for any marketing, sales campaign or promotional campaign in accordance with Article L.121-20-5 of the French Consumer Code. The Customer must remove the Recipients from the mailing list in the event of opposition to the receipt of SMS/TTS or to the processing of their data.

6. Obligation of smsmode[®] - details with regard to clause 7 of General Terms and Conditions

In addition to the obligations stipulated in Clause 7 of the General Terms and Conditions, the Customer is informed that messages will be deemed sent to the Recipient's mobile phone when sent to the mobile operator directly or via an interface provided by the operator. smsmode[®] does not guarantee delivery by the mobile operator.

Moreover, each SMS/TTS is valid for 24 hours from the date it is sent. After such time, the SMS/TTS will be considered as non-deliverable and no new delivery attempt will be made.

APPENDIX

Processing of personal data by smsmode[®] as data processor

The purpose of this appendix is to set out the conditions under which smsmode[®] undertakes to process the Personal Data of Recipients on behalf of the Customer when performing the Services.

In the context of their contractual relationship, both Parties undertake to comply with regulations applicable to the processing of personal data, including in particular Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 applicable as of 25 May 2018 (hereinafter the "GDPR").

smsmode[®] shall employ its best efforts to implement data protection principles by design and by default when developing the Services.

This appendix shall apply in addition and without prejudice to the General Terms and Conditions and applicable Special Terms and Conditions. Words commencing with a capital letter are defined in the General Terms and Conditions and applicable Special Terms and Conditions.

1. Processing operations

In accordance with Article 28.3 of the GDPR, the processing of Personal Data in the context of the Customer's use of the Services is described below.

Use of the Services requires the collection and processing of Personal Data concerning Recipients by the Customer as data controller and smsmode[®] as data processor.

Types of personal data: the Personal Data concerning Recipients processed by smsmode[®] on behalf of the Customer are the following :

- ✓ At the very least and in a mandatory fashion: the Recipient's mobile phone number and Message to be sent,
- ✓ Optionally, at the Customer's discretion: the Recipient's first name, company, telephone number, e-mail address, postal address, town/city and country.

Categories of data subjects: Recipients of Messages.

Nature and purpose of the processing: collection and management of Recipients' contact details and Messages as determined by the Customer, in order to send Messages to Recipients.

Duration of the processing: term of the Agreement between smsmode[®] and the Customer.

2. Obligations of the Customer (data controller)

The Customer undertakes to comply with the applicable regulations (including, but not limited to, concerning protection of Personal Data, collection of telephone numbers, marketing and the sending of Messages) with regard to Recipients.

The Customer shall ensure confidentiality of the login and password used to access the Services and to implement appropriate technical and organizational measures to use the Services on devices, software and equipment under its responsibility.

The general obligations of the Customer when using the Services are set out in the applicable General Terms and Conditions.

APPENDIX

Processing of personal data by smsmode[®] as data processor

3. Obligations of smsmode[®]

smsmode[®] acts in its capacity as a data processor within the meaning of the applicable regulations.

As such, in accordance with Article 28.3 a) of the GDPR, smsmode[®] only processes the Personal Data on the Customer's documented instructions and for the purposes set in this Appendix. These Appendix and the Customer's actions when using the Services constitute the Customer's instructions.

Should smsmode[®] be required to transfer Personal Data to a third country or an international organization by virtue of the law of the European Union or French law, smsmode[®] shall inform the Customer accordingly, unless prohibited from doing so on important grounds of public interest.

In accordance with Article 28.3 b) of the GDPR, smsmode[®] ensures that persons authorized to process the Personal Data of Recipients have undertaken to respect the confidentiality of such Personal Data and are aware of Personal Data protection issues.

In accordance with Article 28.3 c) of the GDPR, smsmode[®] employs its best efforts to take appropriate technical and organizational measures to ensure a level of security appropriate to the processing of the Personal Data of Recipients.

In accordance with Article 28.3 e) of the GDPR, smsmode[®] undertakes to work with the Customer, insofar as is possible, to respond to any request by a Recipient whose Personal Data are used in the context of the Services, formulated in accordance with applicable regulations. In this respect, the Customer is informed that it may directly rectify or erasure the Personal Data of Recipients via its account on the Website. smsmode[®] will forward to the Customer any requests from Recipient that smsmode[®] may receive directly.

In accordance with Articles 28.3 f) and h) of the GDPR, the Customer may ask smsmode[®] for reasonable information or available inspection reports to assist the Customer in ensuring compliance with its obligations. Available technical documentation is accessible via the Website. smsmode[®] will employ its best efforts to inform the Customer, insofar as it possible, if smsmode[®] is aware that any instruction that, in the opinion of smsmode[®], infringes the applicable regulations. smsmode[®] will employ its best efforts to notify the Customer without undue delay after becoming aware of any Personal Data breach by a Recipient.

Subject to complying with the confidentiality obligations stipulated in the General Terms and Conditions above, the Customer may request an on-site audit of the security measures undertaken by smsmode[®] with regard to the protection of Customer Personal Data. The audit can be carried out by the Customer itself or by an independent third party auditor mandated by the Customer (smsmode[®] reserves the right to reject the appointment of the third party auditor by providing reasonable reasons). The Customer must inform smsmode[®] about the date the audit will be conducted with at least a fifteen-(15) days prior written notification. In case of a third-party auditor, its name must be provided in the written notification. Then the Customer will have to contact smsmode[®] in order to agree on the terms of the audit, i.e. its scope, its schedule and its duration. The Customer will bear all the costs associated with the audit. The Parties agree that such audit can be conducted only for a maximum of five (5) working days, and only once per year.

In accordance with Article 28.3 g) of the GDPR, smsmode[®] may return and will delete the Personal Data of Recipients hosted in the context of use of the Services upon termination of the contractual relationship.

Regarding the duration of the storage of messaging logs, the data will remain in the active database for 6 months. Once this period has elapsed, the data will be archived for 12 months and then permanently deleted.

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Processing of personal data by smsmode[®] as data processor

In accordance with Articles 28.2, 28.3 d) and 28.4 of the GDPR, the Customer authorizes smsmode[®] to appoint subprocessors to perform the Services. smsmode[®] undertakes to require that sub-processors comply with applicable Personal Data obligations. smsmode[®] shall remain fully liable towards the Customer for the performance of this Agreement. The list of subprocessors is available at the Customer's request.

smsmode[®] shall inform the Customer of any intended changes concerning the addition or replacement of subprocessors, thereby giving the Customer the opportunity to object to such changes within 15 days indicating the reasons for such objections. In this case, the Customer may terminate the agreement.