

# Special Terms and Conditions for Orange CineHome



## 1. Scope

These Special Terms and Conditions are part of the Agreement between the customer (hereinafter referred to as "the Customer") and Orange. They govern the supply of video on demand services via internet (to be viewed on a television set and/or computer) and/or optional additional services such as DVD rental (hereinafter together referred to as "Services") by Orange and their use by the Customer and apply to all existing and future Services which the Customer purchases from Orange.

## 2. Nature and extent of the Services

The Services that are currently available are described on the Internet site [www.orange.ch](http://www.orange.ch). The Services are only available within the territories of Switzerland and the Principality of Liechtenstein. The Service range may be altered, extended or reduced by Orange at any time and without prior notice. More particularly, additional Services may be added or existing Services removed without replacement and without statement of reasons. Such alternations of the Service range shall in no case establish a right to extraordinary termination on the part of the Customer.

Orange may transmit content in encrypted or unencrypted form. Furthermore, Orange shall take the measures necessary for digital rights management and may program these measures on use in a certain receiver ("Pairing"). Orange reserves the right to update the software for Orange terminal devices at any time and / or to replace the hardware at any time.

## 3. Designated use

The Services are provided for a strictly private use according to applicable Swiss legislation concerning audiovisual property rights. Reception and use of Services in publicly accessible premises and recording of contents for use outside private circles is strictly forbidden. The Customer is placed under a duty to indemnify Orange in the event of infringements.

## 4. Prerequisites

Orange can only provide Services if the contractual and technical conditions required have been fulfilled. More particularly, the subscription and connection to an internet broadband network with a minimum bandwidth of 2 mbps downlink in the home of the Customer is a prerequisite for the operation of Orange CineHome. This internet broadband access is NOT provided by Orange and Orange cannot be held liable for the availability, quality and speed of the internet broadband access.

The Customer is responsible for installation of the Orange terminal devices and Services, adequate electricity supply and the proper installation of cables as indicated in the user manuals. The Customer accepts that settings on his devices may possibly be altered as a result of installation and that Orange cannot accept any responsibility for this.

## 5. Video on demand (VOD) terms of use

The VOD service consists of making cinematic works available against payment and for a specified period of time via the Internet at the individual request of the Customer. To view the films offered by the VOD service on a computer, the Customer needs to install the proprietary player; to view them on a television, the Customer needs to install a receiver. The Customer is not authorised and may not claim the right to watch the films via non-proprietary software. The Customer undertakes not to contravene the interests of Orange, its partners and the beneficiaries by damaging or removing, in whole or in part, the use and read rights management.

The period for which the Customer is authorised to view the rented work is specified for each title at the time the Customer accepts the VOD service. For the entire duration of the rental, the Customer retains the right to download the work again or to restart a download that was interrupted or affected by technical issues.

## 6. DVD rental terms of use

The physical DVD rental service is provided by Orange in partnership with third parties. 'DVD' means any physical video medium, including DVD, Blu-ray, Blu-Ray 3D, etc.

DVDs are checked before being sent. They are therefore considered to be useable under normal conditions. DVDs provided to the Customer comply with current standards. They are classified as Region 2 in accordance with film distribution rights. If, however, the Customer receives a DVD with disc read errors, Orange should be informed. After verification, an identical DVD shall be provided to the Customer. Orange does not guarantee that DVDs will play normally on 'region code free' players.

DVDs are exchanged by post at no fees to the Customer, who should use the appropriate pre-paid envelope included with the delivery. Any other method is used at the sole expense and risk of the Customer. Computer tracking is

used for deliveries, and the envelopes and materials used have been tested for resistance to transportation hazards. Orange cannot be held liable for problems related to transportation (including delays), carriage or delivery under any circumstances. The Customer undertakes to inform Orange as quickly as possible of any damage, disappearance, theft (except during transportation) or loss of one or more DVDs provided to the Customer. The cost of replacement shall be borne by the Customer. If the Customer claims not to have received the DVDs or, conversely, if DVDs the Customer claims to have returned are not received, a post office search request shall be sent to the Customer. The Customer must complete, sign and return this request within ten(10) days. If the request is not received, the Customer shall be charged for the DVDs.

All media, as well as other online services provided to the Customer, remain the exclusive property of Orange or its partners. They may not be loaned, sublet, assigned, more generally, provided to third parties in any form whatsoever.

## 7. Limitations on Services

Orange reserves the right at any time to carry out maintenance work, which may involve interruptions in the operation of the Service. Interruptions in Services may also occur on account of breakdowns in networks of third parties required for the supply of the Services. Orange disclaims responsibility for such breakdowns.

## 8. Customer devices

The Customer is personally responsible for the setting-up, operability, suitability, compatibility, maintenance and legal compliance of devices connected by the Customer himself. Orange cannot guarantee that all devices of the Customer (such as television set, computer) enable the use of the Services. On Orange request the Customer is obliged to take all measures to eliminate faults if use of equipment which has been connected by the Customer leads to malfunctioning in the network or interruptions in Services.

## 9. Orange terminal devices

For the use of the Services on a television set, Orange can only guarantee the proper provision of the Services by way of the terminal devices (e.g. receiver) supplied by Orange. Orange offers technical support and repair or replacement service for Orange terminal devices in accordance with the corresponding service description. The terminal devices owned by Orange or its associates and made available on a rental basis are to be treated with due care. Software which Orange supplies with these terminal devices is made available purely on a licensing basis. This software is solely intended for installation and use on the Orange terminal devices, and the Customer may neither remove, convert nor reverse engineer it.

The Customers agrees to return these terminal devices together with the accessories within 2 weeks following expiry of the Agreement, in proper working order at his own expense and risk. Otherwise the Customer is liable to refund Orange for their value at the rate of CHF 150.- per device.

## 10. Validity

These Special Terms and Conditions shall come into force on acceptance by Orange of the application made by the Customer. Orange may suspend the Services without prior warning or cancel the contract without notice if the Customer infringes these Special Terms and Conditions or other parts of the Agreement.

*Renens, August 2010*

# General Terms and Conditions (GTC)



## 1. Scope

The General Terms and Conditions, (hereinafter referred to as "GTC"), govern all legal relationships (hereinafter referred to as "Subscription Contract") between Orange Communications SA (hereinafter referred to as "Orange") and the Customer.

The entire Subscription Contract consists as a rule of (i) the Membership form, (ii) Special Terms and Conditions (referred to as "STC"), (iii) General Terms and Conditions (referred to as "GTC"), (iv) Price lists and (v) Product Information. In the event of contradictions between the documents, the provisions of the Subscription Contract apply in the order of priority from (i) to (v). In the event of any conflict between the different language versions of the Subscription Contract, the German text shall always prevail.

These GTC replace all previous versions thereof.

## 2. Services provided by Orange

Orange provides national and international telecommunication and internet services according to the Product Information (hereinafter referred to as the "Services").

Orange gives the Customer, for the term of the Subscription Agreement, a non-transferable and non-exclusive right to use the Services as end customer, according to the applicable Product Information and according to the existing network coverage. However it is not possible to guarantee services that are completely free of interruption or interference, particularly not in cases of force majeure (avalanches, floods, war, unforeseeable orders by the authorities, electricity cuts, viruses, etc.).

Details and conditions regarding the Services provided by Orange are contained in the specific Product Information. Information on the national and international availability is obtainable at any time free of charge from Orange website, Customer Care or any Orange point of sale. Information regarding the availability of services is always provided on a non-binding basis. The Customer is responsible for requesting all documents that are lacking, before using the Services.

The Customer acknowledges that Orange Services can only be supplied if all the contractual and technical conditions have been fulfilled.

Orange is entitled to modify or cease its services at any time without giving prior notice thereof. By using a service offered or arranged by Orange, the Customer accepts the relevant prevailing conditions respectively the applicable Subscription Contract.

The Customer is in particular not permitted to install own call-through solutions that are not offered as part of the Orange product range. Should the Customer install a call-through solution which has not been accepted by Orange, Orange is entitled to migrate the Customer, without prior notification, to another price plan.

## 3. Customer's special obligations

### Services and equipment

The Customer is under an obligation to use the Services provided under the Subscription Contract in compliance with the law and with the Subscription Contract. The Customer is also responsible for any use of the Services provided by Orange if such use is made by third parties.

Furthermore, the Customer is responsible for the end devices, including accessories, particularly in relation to installation, adjustment, operability, compliance with the law as well as compatibility with the networks and services used. The Customer will refrain from distributing digital content without valid permission or rights.

### SIM cards and telephone numbers

SIM cards are easily damaged and should be handled with care. Orange will replace free of charge any returned SIM card found to be defective through faulty design or workmanship. In any other circumstances, however, Orange may charge the Customer for its replacement. Orange is entitled to exchange the SIM card at any time.

The Customer is in particular liable for all charges incurred as a result of using the Services. This liability also extends to all goods or services requested from or provided by Orange. Orange reserves the right to limit the number of SIM cards, as well as other services, per private or business Customer and to deactivate, without indemnity, any or all SIM cards or services, should they exceed the set limits. Orange is entitled to deactivate immediately all SIM cards designated exclusively for Office Flex by Orange (even if the connection was set up once only) without any compensation, should such cards be used in mobile phones, or other mobile, or fixed devices.

The Customer undertakes, within 10 days after receiving a written request by Orange, to disclose all users of the SIM cards and mobile phone services, as well as the associated actual type of use (e.g. type of end device). Should the Customer fail to do so, Orange is entitled to cancel the Contract in accordance with article 10.

## 4. Prices and payment terms

The prices and payment conditions of the Services are defined in the relevant price list. Orange may amend the prices at any time without prior notice and will inform the Customer in an appropriate manner.

Orange may make the Contract and the provision of services dependent upon credit limits, prepayments, or security deposit. If there is justified doubt that the Customer will not meet his payment obligations under the terms of the Contract, Orange may, without indemnity, restrict the Services without notice, or cancel any Subscription Contract with immediate effect.

Information on international roaming prices and options to reduce these prices are available on the website [www.orange.ch](http://www.orange.ch), via the number 0800 700 700 or in retail stores of Orange.

When registering on a foreign network, the Customer receives a message informing about the maximum cost for the following roaming services: calls to Switzerland, incoming calls, local calls, sending of text messages and data transfer (including sending of MMS). The Customer can deactivate and reactivate for free the sending of this Travel Info message via the website [www.orange.ch/myaccount](http://www.orange.ch/myaccount).

Flat rate products are provided to the Customer for normal private usage. If Customer's usage exceeds normal private use, Orange reserves to take appropriate measures to ensure optimal service quality for all Customers. Such measures comprise migration to a different price plan, reduction of the transfer rate, suspension of the concerned service and charging of applicable standard rates.

PrePay credits will not be reimbursed, nor transferred to another operator.

Invoices are payable at latest by the due date indicated on the invoice. If neither a due date nor a period for payment is indicated, the invoice is due 30 days after the invoice date. If the customer does not object in writing before the due date, the invoices are deemed to have been accepted. Charges made by Orange to the account of PrePay Customers must be contested in writing within 30 days of the relevant telephone call. Otherwise, the charge is deemed to be accepted by the PrePay Customer. The Customer may not offset payments to Orange against any counterclaims.

In the event of a default in payment by the Customer, Orange shall be entitled to appoint a collection agency to recover any defaulted payments and sell such debt to third parties located in Switzerland or abroad. Orange may charge the Customer a minimum amount of CHF 30.- for each payment reminder notice. Furthermore the Customer shall reimburse all costs incurred by Orange or third parties which are entrusted with the collection of debt, as a result of the default in payment.

## 5. Customer data / directory

Within the context of the conclusion and of the handling of the Subscription Contract, the Customer authorises Orange to obtain, or pass on, information concerning the Customer's credit rating. The Customer is aware that his Customer data will be transferred to third parties nationally and abroad as part of the handling of the Contract. **Orange and its business partners may process the Customer data with a view to improving their services, or use such data for marketing purposes, and transfer such data to third parties nationally and abroad, unless the Customer excludes such usage. Should the Customer not preclude such use explicitly, Orange and/or business partners of Orange have the right to contact the Customer in writing, by phone or by SMS/MMS as part of Orange marketing activities.**

The Customer is obliged to inform Orange immediately of any change of data relevant to the Contract (in particular changes of address).

If indicated by the Customer on the membership form, the Customer's phone number will be forwarded to phone directory suppliers for publication. Other directory data to be published is determined by the Customer separately. The processing of the directory data may be transferred to third parties nationally or internationally.

## 6. Displaying / hiding phone numbers / call barring

The Orange mobile network allows the display of the Customer's phone number on the calling and receiving telephone device. If technically possible with reasonable effort, the Customer is entitled to request that Orange does not display his number (for each call individually, or on a permanent basis). The above-mentioned service is not available for calls to emergency services numbers and Orange Customer Services.

The Customer can request the complete barring of all outgoing calls to premium rate numbers (090x numbers, SMS and MMS premium services, Wap and internet-based premium services billed on the Customer's invoice) or limited only to those services with erotic or pornographic content. With regard to SMS and MMS premium service content, blocking also includes receiving such services.

Orange is entitled to bar the above mentioned connections to premium rate services with erotic or pornographic content automatically for Customers younger than 18 years.

The set-up or cancellation of call barring is free of charge.

## 7. Responsibility for unauthorised use and tapping

The Customer is liable to Orange for the use of the subscribed Services and the associated rights, in particular in the event of misuse of his end devices, fixed-line network or internet connections and/or the SIM cards. To minimise as much as possible the risks of misuse, account passwords, personal identification codes or similar precautionary measures must be kept confidential. The Customer is also obliged to safeguard SIM cards and to observe all other recommended security measures at all times.

The Customer must immediately notify Orange Customer Care of any impending misuse (e.g. in the event of loss or theft of the end devices and/or the SIM cards) by phone and also confirm the information given in writing. If the Customer does not comply with this duty of notification, he shall be liable for all damages and expenditure incurred. For technical reasons it is not possible to guarantee complete protection from unauthorised access or call interception by third parties. Orange is not liable for any such occurrence.

## 8. Limitation of liability

The liability of Orange for personal injury is unlimited. Orange is liable for damages to property and financial losses, to the extent that such losses are incurred by the actual fault of Orange with wilful intention or gross negligence. For other negligently caused damages to property and financial losses the liability of Orange is limited to the current value of the Services paid for by the Customer during the last 12 months, but in any event to the maximum amount of CHF 20'000.-. Any other liability, in particular for indirect and consequential damages (loss of profit, savings not achieved, suspension of usage etc.), is - to the extent permitted by law - expressly excluded.

Orange draws the Customer's attention to the restrictions of the internet and telephony network, as well as the risks associated with the use thereof. Orange in particular accepts no responsibility for spamming, hacking, transfer of viruses and other attempts to enter the computer and other end devices used and any damage caused as a result thereof. Orange accepts no liability for damages caused by a temporary or permanent interruption or delay of services or the network, such as losses of business or private data, non-availability of data, etc.

The liability of Orange is exclusively applicable to the proper use of its own network and its own services in accordance with the relevant Product Information. Orange is not liable and does not provide a guarantee for any services and goods supplied by third parties, even if Orange is entrusted with the collection of third-party debts.

Emissions generated by antennas and other radio equipment and by telephone devices can affect certain technical devices such as hearing aids, heart pacemakers or other electronic devices. The safety measures and general restrictions of use stated by the respective manufacturers (e.g. for use in road or air traffic) must be most carefully observed.

## 9. Intellectual property

Orange gives the Customer, for the term of the Subscription Contract, a non-transferable and non-exclusive right to use the Services. All associated intellectual property rights stay in the sole ownership of Orange or the relevant licensor.

## 10. Term of contract and termination

The Subscription Contract becomes effective upon the date of the Customer signature, subject to a positive outcome of the final credit-rating check, unless a particular date was stated on the Contract form. Where a condition is lacking or no longer available, Orange may reject the conclusion of a Subscription Contract. The Subscription Contract is generally concluded for an unlimited period, unless a minimum period was specified in the membership form.

If the Subscription Contract is not cancelled to the end of the applicable minimum Contract period by adhering to the notice period, the Contract is automatically renewed successively for a further year. The minimum contract period, as stated in the membership form, will be calculated from the activation / conducted porting of the Customer. Another minimum contract period may be assigned to the Customer depending on promotions or other offers chosen by the Customer. Subscription contracts with a minimum contract period, or extended contract period may be cancelled at any time to the end of the contract term giving 30 days notice. Subscription contracts with an unlimited term can be cancelled at any time with a notice period of 30 days. All cancellations must be made during the notice period in writing or by phone to Orange Customer Services.

Subject to an explicitly different provision in the relevant Product Information, when cancelling the Contract the Customer is not entitled to reimbursement of charges paid.

Orange is entitled to cancel all Services without notice and without indemnity and to cancel the Subscription Contract if there is doubt about the use of its Services in compliance with the law, or with the Contract (e.g. in the event of a default in payment, improper or unlawful use of services, unauthorised distribution of services to third parties, ceasing of conditions for the supply of the Services, usage of SIM cards for Office Flex in other equipment, etc),

or if the quality of Orange mobile network, or networks provided by third parties, is affected by the type of use. If the Customer changes Preselection Carrier, or ADSL provider, during the running duration of the Subscription Contract, without notice of the cancellation period, such a change is deemed a premature termination of Contract.

For any premature termination of the Subscription Contract Orange may without notice, demand the charge agreed (see membership form) regardless of whether the Contract was terminated by the Customer or Orange.

Orange reserves the right to deactivate, without indemnity, all SIM cards (except Orange PrePay), on which no communication has been made within 90 days after activation and to cancel the Subscription Contract prematurely. In this case, the Customer must pay the charge agreed for premature cancellation of the Contract.

## 11. Contract amendments

Orange may modify the Production Information and any other parts of the Subscription Contract, including these GTCs, at any time, and the Customer will be informed in an appropriate manner thereof. If the Customer does not accept modifications that are to his disadvantage, he is entitled to reject the changed services in writing within a period of 30 days from receipt of the notification or, in the case of major changes to the Contract to the Customer's disadvantage, to terminate the Contract in writing within the same term. Changes of prices, bandwidth/speed or network coverage (regardless of whether the network is operated by Orange or third parties) must be accepted and are not deemed to be a major change in Product Information or other key provisions of the Contract, and shall not entitle the Customer to terminate the Contract as stated above.

Any applications to change the Contract made by the Customer are subject to approval by Orange and may be dependent on certain conditions. Orange will put any applications consented to into effect at the beginning of the next invoice period.

The Customer acknowledges that Orange may activate the associated number, price plan and/or apply the fee for prematurely terminated Subscription Contracts, if the transfer of the number fails for reasons that are not the fault of Orange.

## 12. Transfer of rights and obligations

Any assignment of rights and obligations arising from the Subscription Contract, or the distribution of services to third parties requires the prior written consent of Orange. Such consent may be refused by Orange without a reason being given. Without consent of the Customer, Orange is entitled to transfer rights and obligations pursuant to this Contract, as well as the entire Contract to third parties and/or to assign such third parties the responsibility of providing the Services.

## 13. Conciliation, applicable law and jurisdiction

The conciliation office of the telecom industry (Ombudscom) settles conflicts between consumers and providers registered at the Federal Office of Telecommunications (BAKOM), in cases where the two cannot agree. Ombudscom is committed to absolute neutrality. Ombudscom represents neither the consumer nor the provider. Ombudscom does not accept any instructions from the parties involved, external persons, authorities or institutions. Ombudscom has no authority to issue directives. Ombudscom issues recommendations with the objective that these will be accepted by both parties.

The Subscription Contract is governed by Swiss law. The place of jurisdiction is either Lausanne or Zurich, at the prosecuting party's choice. Mandatory places of jurisdiction are reserved.

*Renens, July 2010*