

# CanaryVoIP

## Terms & Conditions

### 1. Introduction and definitions

1.1 These terms and conditions (“Conditions”) shall govern the agreement between CanaryVoIP (a division of Canary Island Communications S.L.) (“us” or “we”) and the individual or organisation applying for the provision of the Goods or Services (“you”).

1.2 Our registered office and correspondence address is at Calle Domitila Rancel 10, San Miguel, Tenerife, 36620

1.3 You can contact us by email on [support@canaryvoip.com](mailto:support@canaryvoip.com), telephone +34 610800689.

1.4 We explain in the headings what each clause covers. These headings are for guidance only and are not intended to be legally binding.

1.5 These Conditions take precedence if inconsistent with the material on our Website.

1.6 The following have particular meanings in these Conditions:

“Data” includes information, documents, text, software, music, sound, photography, messages, and other material of any kind in any form;

“Goods” means the goods described on the Website and which we agree to sell to you;

“Internet” means the global data network comprising interconnected networks to which we are connected and provide access to you via the Services;

“Personal Data” means Data about any identified or identifiable living person;

“Registry” means either Nominet UK Limited, CentralNIC Limited or Tucows Inc, or any other domain names registry that we choose to use from time to time;

“Regulations” means the Consumer Protection (Distance Selling) Regulations 2000;

“Services” means the services described on the Website and which we agree to provide to you; and

“Website” means our web presence at [www.canaryvoip.com](http://www.canaryvoip.com) and other locations we advertise from time to time.

### 2. Changes to these Conditions

2.1 We reserve the right on giving prior notice on the Website to alter these Conditions at any time (including altering our Acceptable Use Policy and other policies).

2.2 Any renewal of the Services will in any event be subject to our then current Conditions.

### 3 Your right to cancel

3.1 This clause 3 applies only if you are a “consumer”, which for the purposes of this clause 3 shall mean any natural person who is acting for purposes that are outside his or her business.

3.2 For the purposes of the Regulations:

3.2.1 The supplier shall be Canary Island Communications S.L.;

3.2.2 The address of the supplier shall be the correspondence address as set out in clause 1.2 above;

3.2.3 Prices on the Website are updated periodically and cannot be guaranteed for any period of time and every effort is made to ensure prices are correct at the point at which the consumer places an order.

3.2.4 Any complaints should be sent in writing to our correspondence address.

3.3 A consumer will, subject to any exceptions or exclusions set out in the Regulations, be entitled to cancel these Conditions by serving a written notice of cancellation on us at any time during the following periods:

3.3.1 In the case of Goods, within five working days after the day on which the consumer receives the Goods;

3.3.2 In the case of Services, within five working days after the date you enter into a contract with us.

3.4 In the event of cancellation by the consumer Goods should be returned to the supplier's correspondence address. The consumer will be liable for the costs of returning such Goods or the costs of the supplier in recovering such Goods unless the consumer has a right to reject the Goods under a term of these Conditions or under statutory right (including any right under the Unfair Terms in Consumer Contract Regulations).

3.5 The consumer will not be entitled to cancel any contract for the supply of Services once the performance of the Services has begun.

3.6 Please note that we begin to perform certain Services, such as registration or renewal of certain domain names and website hosting, within 24 hours after you place your order.

## **4 Security**

4.1 You must:

4.1.1 keep your username and password secure (and we may change these at any time for good reason);

4.1.2 if requested use your username and password when giving instructions (and we are authorized to comply with instructions containing your username and password);

4.1.3 take reasonable steps in respect of matters in your control to minimize any risk of security breaches in connection with the Services;

4.1.4 notify us of any unauthorised access to your account which you believe may affect the overall security of our systems; and

4.1.5 comply with our security checks.

## **5 Services**

5.1 We will supply the Services with reasonable skill and care.

5.2 However, we do not guarantee:

5.2.1 that the Services will be uninterrupted, secure or error-free; or

5.2.2 that any Data generated, stored, transmitted or used via or in connection with the Services will be complete, accurate, secure, up to date, received or delivered correctly or at all.

5.3 We do not provide a back-up of your Data or guarantee the integrity of your Data, however, we will use our reasonable endeavours to provide copies of Data for disaster recovery purposes.

5.4 We may have to suspend the Services for repair, maintenance or improvement. If so, we will restore them as quickly as is reasonably possible.

5.5 Specific Conditions on the Provision of Telephony Services

By purchasing our Telephony Services (VoIP) you confirm that you understand that our services:

5.5.1 may not offer all of the features you may expect from a conventional phone line;

5.5.2 may sometimes be unavailable as a result of things over which we have no control, for example, the weather, power disruptions and failures of your internet service provider (ISP) or broadband connection and you

understand that in such circumstances all services (including 999/112 public emergency call services) will also be unavailable;

5.5.3 may not connect you to the public emergency service and if we do, may not provide your phone number and location details to the operator if you make a public emergency services call. You will have to provide your location information and phone number verbally to the operator; and

5.5.4 may not offer you the ability to transfer (port) your existing number to an alternative service unless there is a Porting agreement in place with that service provider if your service ends.

5.6 The Service provided by us is not a Publicly Available Telephone Services (PATS) and your attention is specifically drawn to the service descriptions at [www.canaryvoip.com](http://www.canaryvoip.com) that sets out the Service offering and service limitations for our customers. The Service is subject to different regulatory treatment than a Publicly Available Telephone Services (PATS) and this may limit or otherwise affect your rights of redress before regulatory agencies such as OFCOM in the UK.

## **6 Your obligations**

6.1 You must comply with our reasonable instructions and requests concerning the Services.

6.2 You must provide us with up to date contact details of one or two named representatives with whom we are authorised to deal (including email addresses) and promptly notify us of any changes. We rely on this information for various reasons including the transmission of renewal notices and other important information concerning the Services.

6.3 You must comply with our Acceptable Use Policy and bring it to the attention of your authorised users.

6.4 You are responsible for all persons who use your username and password to access the Services, whether authorised or not, unless acting on our behalf.

6.5 There is a risk that Data generated, stored, transmitted or used via or in connection with the Services may be irretrievably damaged or lost if there is a fault or on suspension or termination. You must frequently back-up all such Data that you wish to save.

## **7 Restrictions**

7.1 You must refrain from transferring any illegal material or engage in unlawful activities via your use of the Services.

7.2 You must refrain from sending menacing, offensive, defamatory, obscene, indecent or abusive messages or telephone calls whilst using the Services.

7.3 You must not use or permit the usage of the Services in a manner that is inconsistent with any and all applicable laws and regulations.

7.4 You must not make available or upload Data via your use of the Services that contain a virus, worm, Trojan or other malicious Data or download any disabling or harmful devices.

7.5 You must not use the Services to send bulk unsolicited commercial emails or telephone calls.

7.6 You warrant that your use of the Services will not infringe any third party intellectual property or other rights.

7.7 You must not embark on any course of action, whether by use of your website, telephone or any other means, which may cause a disproportionate level of activity (for example, causing mail bombs, denial of service attacks or encouraging large numbers of inbound phone calls) without providing us at least seven days prior notice in writing. If you give notice or we otherwise become aware of such disproportionate use we may:

7.7.1 move your service to a dedicated service and charge our then current rate as detailed on our Website; or

7.7.2 terminate some or all of the Services forthwith.

## **8 Data**

8.1 We may access, copy, preserve, disclose, remove, suspend or delete any Data:

8.1.1 if we are required to do so by applicable law or competent authority; or

8.1.2 for the purposes of registration of domain names with a Registry; or

8.1.3 if it is otherwise permitted under these Conditions; or

8.1.4 if such Data is prohibited under these Conditions.

## **9 Personal Data**

9.1 We will process your Personal Data only in compliance with our privacy policy.

9.2 You consent to such processing and confirm that you have shown our privacy policy to, and obtained similar consent from, any third party individuals whose Personal Data you have supplied to us and will continue to do so in the future.

## **10 Risk and Title to Goods**

10.1 Risk shall pass to you on delivery, but the Goods shall remain our property until such time as full payment has been received.

## **11 Limitation of liability**

11.1 Nothing in these Conditions in any way excludes or restricts our liability for negligence causing death or personal injury or for fraudulent misrepresentation or for anything which may not legally be restricted. Nor does it affect consumers' statutory rights.

11.2 Our liability in contract, tort (including negligence) or otherwise in connection with these Conditions for any one event or a series of events is limited to the price of the Goods, or 125% of the payment we received from you for the Services in the 12 months before the event(s) complained of.

11.3 In no event (including our own negligence), and even if we have been advised of the possibility of such losses, will we be liable for any:

11.3.1 economic loss (including, without limitation, loss of revenue, profit, contract, business or anticipated savings);

11.3.2 loss of goodwill or reputation;

11.3.3 special, indirect or consequential loss; or

11.3.4 damage to or loss of Data.

11.4 We have no liability for goods and services provided by third parties.

11.5 To the extent allowed by law, we exclude all conditions, terms, representations and warranties, whether imposed by statute or by law or otherwise, that are not expressly stated in these Conditions including, without limit, the implied warranties of satisfactory quality and fitness for a particular purpose. Consumers' statutory rights are unaffected.

## 12 Indemnity

12.1 You will indemnify us against all claims, damages, liabilities, costs (including reasonable legal fees) directly or indirectly related to your registration of or use of your domain names, the use of the Goods, your use of the Services or breach by you of these Conditions.

## 13 Payment

13.1 You must pay the fees (together with VAT and any applicable taxes) specified on our Website when you order Goods or order or renew any Services.

13.2 Payment for Goods may be made:

13.2.1 by Cash, Direct Debit, cheque, BACS, credit card or debit card; and

13.2.2 in advance or, if we agree to credit terms, within **5 days** of our invoice.

13.3 Payment for the Services may be made:

13.3.1 monthly or annually, by Direct Debit, credit card or debit card; and

13.3.2 annually by Direct Debit, cheque, BACS, credit card or debit card; and

13.3.3 in advance or, if we agree to credit terms, within **5 days** of our invoice.

13.4 Payment must be made without deduction or set-off.

13.5 All fees are non refundable unless otherwise stated.

13.6 All fees remain payable where we suspend the Services in accordance with these Conditions.

13.7 We may impose a credit limit on your account and/or require a deposit as security for paying bills

13.7.1 In the case of credit terms on the 6<sup>th</sup> day from the invoice date if payment is not received in full then all services will be suspended.

13.7.2 After a further 6 days if payment is still not received then all services will be terminated and a reconnection charge of £4.99 will be applied per number in the case of VoIP services.

13.7.3 All goods and services purchased from Canary Island Communications S.L. remain the property of Canary Island Communications S.L. until paid for in full.

## 14 Duration and termination

14.1 All Services paid for either annually or monthly will be subject to initial contract periods of 12 months or 30 days respectively, and shall continue thereafter on a rolling monthly basis unless and until terminated in accordance with clause 17.2 and 17.3.

14.2 Subject to clause 17.1, either party may terminate this agreement (as regards some or all of the Services) at any time for any reason by giving to the other 30 days written notice.

14.3 We may terminate this agreement (as regards some or all of the Services) or suspend some or all of the Services immediately on written notice:

14.3.1 if you breach any the terms and obligations under these Conditions and, if remediable, having received from us a written notice stating the intention to terminate these conditions if not remedied, fail to remedy the breach within 5 days;

14.3.2 if you are subject to a resolution for winding up or a petition for bankruptcy or liquidation or there is a proposal or you enter into any arrangement or composition with your or for your creditors or a receiver or liquidator or trustee in bankruptcy is appointed over you or any of your assets or any similar circumstances; or

14.3.3 if we are required to do so by a competent or regulatory authority.

14.4 On termination of this agreement or suspension of Services for any reason:

14.4.1 we will immediately stop supplying, and will terminate access to, the relevant Services. This may involve irretrievable damage to or loss of Data generated, stored, transmitted or used via or in connection with the Services and / or we may destroy any such Data;

14.4.2 all licenses granted by us to you will terminate;

14.4.3 any fees due remain payable and, if already paid, will be non-refundable unless you have cancelled this agreement in accordance with clause 3.1;

14.4.4 your accrued rights and liabilities will be unaffected.

## **15 Confidentiality**

15.1 We both agree not to use for any purpose apart from this agreement or disclose any Confidential Data received from the other party. "Confidential Data" means Data identified as, or which clearly is, confidential.

15.2 This clause does not apply to Data which:

15.2.1 enters the public domain other than through breach of this clause;

15.2.2 is or becomes independently known to the receiving party free from any confidentiality restriction;

15.2.3 is required to be disclosed by applicable law or competent authority;

15.2.4 is reasonably disclosed to employees, suppliers or others for the proper performance of these Conditions;

15.2.5 is reasonably disclosed to professional advisers; or

15.2.6 we are otherwise permitted to disclose in accordance with these Conditions.

## **16 Notices**

16.1 You should send any notices under these Conditions to the correspondence address, fax or email address given at the top of these Conditions.

16.2 We shall send any notices in accordance with the most recent contact information which you have provided to us.

16.3 Notices may be sent by hand, recorded delivery, fax or email and shall be deemed to be received:

16.3.1 by hand – when delivered provided handed to a senior employee;

16.3.2 recorded delivery – five days after posting;

16.3.3 fax – when the sender receives an error-free transmission report; or

16.3.4 email – on the day sent unless the contrary is proved.

## **17 General**

17.1 These Conditions represent the entire agreement of the parties relating to its subject matter. It supersedes all prior agreements and representations (unless fraudulent). We are not bound by, nor should you rely on, any

oral representations or representations by any agent or employee of any third party you may use to apply for our Services.

17.2 If any part of these Conditions is deemed void for any reason, the offending words shall be deemed deleted and the remainder shall continue in full force.

17.3 You may not assign these Conditions or subcontract or resell any of the Services without our prior written consent. We may assign these Conditions or subcontract any of the Services.

17.4 We shall not be liable for failure to perform or delay in performing any obligation under these Conditions if the failure or delay is caused by any circumstances beyond our reasonable control, including but not limited to failure of any communications, telecommunications or computer system.

17.5 No firm, person or company which is not a party to these Conditions shall have any right under the Contract (Rights of Third Parties) Act 1999 to enforce any provision of these Conditions.

17.6 The failure to exercise or delay in exercising a right or remedy under these Conditions shall not constitute a waiver of the right or remedy.

17.7 Nothing in these Conditions shall be construed as creating a partnership or joint venture of any kind between us.