

Special Service Conditions magnews Platform

1. Introduction

1.1. These special service conditions (hereinafter “**SSC**”) together with the general terms of service (hereinafter “**GTS**”) available at the following link <https://www.diennea.com/en/general-terms-of-service-gts/>, along with further detailed provisions, within the service orders (hereinafter “**SO**”), govern the supply of services (hereinafter “**Service**”) that the company Diennea S.r.l., C.F. and P. IVA 02243600398, with registered office in Faenza (RA), viale G. Marconi 30/14, 48018, Italy, Certified Electronic Mail (“**PEC**”) address dienneasrl@pec.it (hereinafter the “**Supplier**”) in the person of its legal representative pro tempore undertakes to provide the service to the subjects, legal persons (hereinafter briefly referred to as “**Client/s**”) who request it according to the terms and conditions described below. Supplier and Client shall hereinafter be referred to synthetically as “**Parties**” (collectively) or “**Party**” (individually). GTS, SSC and SO shall hereinafter be jointly referred to as the “**Agreement**”.

2. Definitions

“**Case History**”: means the story of the projects that the Supplier develops for the Client, including the latter’s company history, the objectives set and the results achieved.

“**Routine Maintenance**”: means the scheduled maintenance of the Supplier’s Systems.

“**Extraordinary Maintenance**”: means unscheduled maintenance interventions of the Supplier’s Systems due to events beyond the Supplier’s reasonable control.

“**magnews Platform**”: means the system of software and hardware designed, developed and managed by the Supplier that enables the management of personalised information pushing services by e-mail, SMS or through other digital messaging services.

“**Supplier’s Terms and Conditions of Use**”: means the document that can be found at the following hyperlink: <https://www.magnews.com/acceptable-use-policy/>, which sets out the fundamental principles for the correct use of the magnews Platform by the Client.

“**Supplier’s Systems**”: indicates, generally, the set of hardware, software, networks and telecommunications systems (expressly including the magnews Platform) organised by the Supplier for the provision of the Services and, specifically and depending on the context, each of these elements.

“**Users**” or “**Contacts**”: means the recipients of messages and/or notifications (natural or legal persons) and, more generally, of the Client’s communications.

3. Ownership of the database

3.1. The Client declares that the ownership of the databases of the Users used to send communications by the same through the Supplier's Systems (with specific reference to the magnews Platform) vests in the Client itself.

3.2. The Client declares that User databases under controllership of third parties or unlawfully acquired will not constitute the subject of the use of the Service.

4. Privacy and security of personal data

4.1. The Supplier, as Data Processor (as referred to in Article 13.2 of the GTS), undertakes to process the personal data of the Client in order to properly provide the Service and in accordance with what is better agreed in the Data Processing Agreement which can be consulted [here](#), which, by signing the relevant SO, is understood to be fully accepted and binding between the Parties.

5. Supplier's Terms and Conditions of Use

5.1. The Client declares to have read and understood the Supplier's Terms and Conditions of Use <https://www.magnews.com/acceptable-use-policy/> and commits to use the magnews Platform according to the principles outlined therein; he also recognizes that different use of the magnews Platform from what is indicated in the Supplier's Terms and Conditions of Use constitutes a severe and relevant conduct pursuant to Article 5.3 of the GTS and, if it will be the case, illegal or otherwise in violation of the law and/or rights of the other relevant under Article 5.4 of the GTS; and where there is injury to the Supplier or to third parties, the Client undertakes to hold harmless and indemnify the Supplier against any claim for compensation under Section 5.2 of the GTS.

6. Obligation of vigilance and security

6.1. The Client undertakes to ensure the proper use of the Service and to put in place all appropriate measures to prevent any undue access by unauthorized persons, remaining, however, responsible for any theft, loss or loss of confidentiality of the credentials to access the magnews Platform.

7. Packages of messages and/or SMS credits not used within the reference period

7.1. If the consideration foresees the sale of the packages of messages (e-mail) and/or SMS credits in relation to a given reference period, any messages (email) not sent and/or SMS credits not used by the end of this period cannot be used subsequently and will not be reimbursed.

8. Exceeding User threshold

8.1. When the User threshold applicable to the Client at the time of signing this SO, or that which has been applied over time due to effective use of the Service, is exceeded, the Supplier will invoice the User threshold effectively used, applying the price of the corresponding range indicated in Annex – EXTRA CONTACT RANGES.

8.2. The additional cost due will be invoiced the month following the exceeding of the threshold and shall be paid within 60 days of the end of the month from the invoice date.

9. Extra traffic billing – Email e sms

9.1. When extra traffic with respect to what reported in the active SO is used, the Supplier can invoice extra traffic by applying the CPM of € 0,2 for emails, or the purchase price for SMS messages upon the expiration of the SO or upon each subsequent renewal

10. Italian ISTAT adjustment

10.1. At each renewal of this SO, the Supplier reserves the right to update the annual licence fee for the magnews Platform (in the amount applied at the time of renewal) on the basis of the change in consumer prices relating to the Italian Istat FOI index

11. SLA/ Up Time

11.1. The service levels offered by the Supplier are indicated at the following link:
<https://www.magnews.com/magnews-service-level-agreement-sla/>.

12. Usage standard limits of the magnews Platform

12.1. The usage standard limits of the Platform are specified at the following link: <https://www.magnews.com/standard-limits-of-use-of-the-platform/>.

13. Remote access to magnews Platform

13.1. The Client acknowledges that the Supplier may access the magnews Platform to carry out consulting activities for the optimization of the Service usage by the Client, to manage and/or support in the corresponding administrative and commercial operations, and to perform Maintenance and security activities.

14. Maintenance

14.1. The Supplier reserves the right to suspend, in whole or in part, access to the magnews Platform for Ordinary and/or Extraordinary Maintenance needs.

14.2. The Supplier will give prompt notice of the intervention of Ordinary Maintenance within 5 (five) working days prior of such maintenance.

14.3. The Supplier shall make every effort, but without giving any undertaking in this regard, to forewarn the Client of the work of Extraordinary Maintenance and to minimize inconveniences resulting from these interventions.

15. Cookie/tracking technology clause

15.1. Diennea provides the Client with a cookie/tracking technology, which is directly inserted in the magnews Platform under this Agreement and which can be entirely activated and managed by the Client.

15.2. The tool “**Web Conversion Tracking**” enables the Client to analyze and process the information related to the recipients of their communications, in order to aggregate such recipients in “profiles”, i.e. in homogeneous groups based on behavior or specific characteristics.

15.3. The “**Web Experience**” tool allows the Client to track the actions of visitors on one or more of the Client’s websites.

15.4. In particular, it allows tracking behavioral data of both anonymous and known visitors (i.e. associated to contacts in the magnews DB). Should an anonymous visitor be identified as a contact, all browsing data gathered before their identification will also be associated with that same contact.

15.5. The Client, acting as Controller of the data thus obtained, undertakes to process the data in accordance with the applicable law, and to provide Diennea, acting as Data Processor, with detailed instructions about the processing carried out under this Agreement. The appointed Data Processor undertakes to inform the Client of any necessary technical changes to this technological tool, thus complying with the duty of information arising out of their appointment and in order to enable the Client to achieve the same privacy obligation compliance with respect to the recipients of their communications.

16. Penalty clause

16.1. If the activity of the Client using the Service leads to the inclusion of IP addresses or domains of the Supplier (and/or its suppliers), whether they are shared or personal, in the “Main Monitored Blacklists” (available at the following link: <https://www.magnews.com/black-list-monitor-service/>), the Supplier shall have the right to promptly block the outgoing communications and to definitively close the Client’s account, without prejudice to the right of the Supplier to compensation for additional damages

16.2. If the activity of the Client using the Service leads to a reporting of abuse/spam to the Supplier by a Client’s contact, starting from the third abuse/spam report from the date of signature of the GTS, the Client shall pay to the Supplier, as a penalty, the amount of Euro 200.00 for each violation, as minimum compensation for the activities that the Supplier shall put in place in order to handle the request of the contact, with respect to both the same contact and the Client in accordance with the role of data processor (as mentioned in article 13.2 of the GTS), without prejudice to the right of the Supplier to compensation for additional damages. Please note that the number of abuse/spam reports is related to a period of 12 months from the date of receipt of the abuse/spam report. Therefore, starting from the third abuse/spam report recorded during the last 12 months from the date of its receipt, the Client shall pay to the Supplier, as a penalty, the amount of Euro 200.00 for each violation, as described above, without prejudice to the right of the Supplier to compensation for additional damages.

16.3. The conducts described in points 16.1. and 16.2. above also integrate severe and relevant conduct under Article 5.3 of the GTS and, if it is the case, illegal activity or otherwise activity in violation of the law and/or significant rights of others relevant under Article 5.4 of the GTS, and where there is injury to the Supplier or to third parties, the Client undertakes to hold harmless and indemnify the Supplier against any claim for compensation under Article 5.2 of the GTS.

17. “Alias” clause

17.1. The Client, if so permitted by the supplier of the messenger service integrated in the magnews Platform, pursuant to AGCom Resolution no. 42/13/CIR, may send SMS by setting an alphanumeric code (Alias).

17.2. The Client shall only use Alias which he actually uses as legitimate holder or over which he has a legitimate right of use on the basis of current applicable law (with particular reference to trademark laws and AGCom Resolution 42/13/CIR, insofar as it is applicable, and Resolution 12/23/CIR) and undertakes to hold harmless the Supplier and indemnify it against any claims, including damages or sanctions, for its own facts or omissions, brought by any third party and/or the competent Authorities.

17.3. The Client agrees not to use generic Alias (i.e. “hotel”, “restaurant”, etc.), which may deprive the message of its distinctive features or make the sender not easily recognizable.

17.4. Prior to the start of the activities, the Client shall notify the Supplier of any Alias that he intends to use and update promptly the Supplier on the elimination or the non-use of any Alias previously communicated, in order to allow the Supplier to communicate the Alias for its registration in the database managed by AGCom (“**AGCom Data Base**”) or for its update, acknowledging that in case of non-communication, it may not be possible to send messages using the Alias.

17.5. In case of failure of registration of an Alias in the AGCom Data Base, the message may be send anyway, but Alias will be replaced by a numeric sender id assigned by the supplier of the messaging service integrated in the magnews Platform. The Client who intends to delete from AGCom Data Base the Alias previously communicated to the Supplier and registered according to the present clause, shall communicate in writing to the Supplier this intention within 20 (twenty) days before the date of expiration of the Agreement.

17.6. By signing this Agreement, the Client authorizes the supplier of the messenger service integrated in the magnews Platform to publish its personal information and contact data in the AGCom Data Base.

18. Additional terms for the WhatsApp Business service

18.1 . Without prejudice to the provisions of Section 8.2 of the GTS and the provisions of the SO relating to the termination of the Parties, with specific reference to the WhatsApp Business service, the Supplier reserves the right to prematurely terminate WhatsApp Business service in the event that: (a) the

provision of WhatsApp Business service becomes impossible; (b) there are legal, regulatory, or governmental prohibitions or limitations affecting WhatsApp Business service; (c) any license necessary to provide WhatsApp Business service is terminated or expires. In such case, the Supplier will provide thirty (30) days notice of early termination of such specific service, and will endeavour to verify the need to renegotiate in good faith the economic terms of the applicable SO in relation to such service, where appropriate.

18.2. In addition to the provisions of Articles 5.5 and 6.2 of the GTS, in the event of a breach of the provisions contained in the aforementioned articles in the context of the use of the WhatsApp Business service purchased by the Client, the Client agrees to indemnify and hold the Provider harmless from any liability for claims of infringement of third party copyright and authors' rights. Client is also aware that the WhatsApp Business service is provided through subcontractors and under licence from third parties.

18.3 . In the event that a claim is made against the Client for violations referred to in the preceding paragraph, the Supplier reserves the right to suspend the WhatsApp Business service and interrupt the execution of the affected SO or terminate the relevant Agreement in accordance with Article 1456 of the Civil Code, as provided in Article 5.3 of the GTS.

18.4. Limited to the WhatsApp Business service, Client acknowledges that the Supplier's maximum aggregate liability for direct damages may in no case exceed €10,000.00 for all events – direct and/or related – that may give rise to such liability, occurring within a period of twelve (12) months from the Effective Date of the SO or its subsequent renewals applicable in relation to this service.

18.5. Client understands and agrees that, with specific reference to the WhatsApp Business service, the *WhatsApp Client Terms* set out in the document attached to the SO in force between the parties, which constitutes an integral part of the Agreement, will apply.

19. Retention of Data and Information – Reference

19.1. The Client declares that the retention times available at the following link <https://www.magnews.com/data-retention-policy-on-the-magnews-saas-platform/> indicate the instructions that the Supplier, as Data Processor, undertakes to comply with, without prejudice to the Supplier's right to retain data in order to comply with specific legal obligations, regulations and/or requests from authorities, as well as to assert or defend its rights and interests against any claims, actions and disputes regarding the provision of the Services covered by the Agreement and the Data Processing Agreement . In the event of changes to the above instructions, the Client shall, in written form, inform the Supplier, who reserves the right to quote any additional costs associated with the provision of the service.

20. Case History, logos and marks

20.1. With regard to the activities covered by the Agreement and the relationship between the Parties, the Client:

- grants the Supplier the non-exclusive right to use the Case History and the related materials (including videos, images, texts, etc.) free of charge and without time or territory limits, including the right to process, publish, re-adapt, reproduce;
- grants the Supplier the non-exclusive right to use the Client's logos and marks until such authorisation is expressly revoked.

20.2. The Supplier specifies that it will use the Client's Case History and logos for the following purposes:

- publication on current and future websites owned by the Supplier (such as, but not limited to: www.diennea.com, www.magnews.com, www.tbd.it, www.magnews.it);
- publication in information brochures (Company Profile, Best Practices, PPT) in both digital and printed format;
- presentation at events in which Diennea participates;
- promotional activities through media, press releases and advertising;
- by way of reference (with particular reference to the Client's logo and marks).

20.3. At the Client's request, the Supplier undertakes to have the Client review the drafts of the promotional material, as well as to cease using them, and to remove the relevant information from the paper and digital media where it has been published and where technically possible.

21. Changes and updates to the Services

21.1. The Client accepts and recognises that Diennea has the right to modify, at any time, the Service covered by the SO, including the magnews Platform and Helpdesk Service, and the conditions under which the same are offered, even removing some of their functions. It is understood between the Parties that for the purposes of this provision, as well as pursuant to Article 11 of the GTS, changes to the SO or the Service are not to be considered changes to the Services due to software updates of the magnews Platform necessary to guarantee an improvement in software performance and to ensure an adequate level of information security.

21.2. Notwithstanding the provisions of Article 11 of the GTS, changes to the Services shall be communicated to the Client 60 (sixty) days in advance of the date on which the changes are to take effect by PEC or registered letter with return receipt. In the event that the Client, by virtue of the changes to the Service and to the conditions under which the same are offered to the Clients, decides to withdraw from this SO, it must notify Diennea in writing by Certified E-Mail or registered letter with return receipt, within 30 (thirty) calendar days from receipt of the Supplier's notice of change.

21.3. Limited to the WhatsApp Business service, the Client agrees that, as a partial derogation to the provisions of Articles 11.1 and 11.2 of the GTS, the Supplier may modify the economic conditions indicated in the SO applicable to this specific service, by notifying the Client in writing at least 15 days beforehand by email. In these circumstances, the Client will have the right to partially withdraw from the SO affected by these changes, limited to the specific WhatsApp Business service, by sending the relevant notice to the Supplier within 10 days of receipt of the aforementioned notice, after which the changes will be deemed accepted by the Client.

21.4. It is understood that in the event that the Client does not communicate anything to Diennea or does so late or in a manner different from that set forth above, such conduct shall be considered as acceptance by the Client of the changes to the Service and the SO.

These SSC were updated on 09/04/2024