

Misterfone – Terms & Conditions

The present Terms and Conditions represent the entire agreement between you (the “Client”) and Misterfone S.à r.l. (“Misterfone” hereinafter).

Accepting the Terms & Conditions

By making use of Misterfone’s services (the “Service”) or by accessing Misterfone’s web site at www.misterfone.com or any other web site operated by Misterfone (the “Web Site”) the Client automatically agrees to the service conditions, including the privacy and cookie policy (the “Privacy and Cookie Policy”) as well any other terms and conditions provided on the Web Site (together the “Terms & Conditions”). If the Client does not accept the Terms & Conditions, he or she is not allowed to use the Service. Misterfone may without prior notice make modifications to the Terms & Conditions and if the Client continues to use the Service he or she automatically accepts these new versions of the Terms & Conditions.

This document contains the following sections

1. Service terms and conditions
2. Privacy and Cookie Policy
3. Ownership of the Web Site and the Service

PLEASE NOTE: The present Terms & Conditions are available in different languages on Misterfone’s web site. The original version of the Terms & Conditions is the version in English and any version in another language is a translation thereof. In case of inconsistencies or discrepancies between the English version and a version in another language, the English version shall always prevail.

SECTION 1 SERVICE TERMS AND CONDITIONS

1.1 The Service

1.1.1 Registering for the service

As part of the registration for the Service and prior to the Service activation, Misterfone requires the Client to provide certain personal information. The Client warrants that all information submitted during the registration process as well as any additional information provided later on or changes made to information provided previously, is true, accurate, up-to-date and complete.

Providing the requested data is a prerequisite for the activation of the Service. Providing incorrect or incomplete information may lead to the suspension of the Service. The information provided by the Client is governed by the Privacy and Cookie Policy which constitutes an integral part of the Terms & Conditions.

During the registration process the Client has to provide the country where they have their permanent address or usually reside.

During the registration process the Client has to provide a password that is needed to access the Client’s personal user account (the “User Account”) and to use the Service. The Client is responsible for all actions that result from the use of the Service through their User Account and password, independently of whether such use was made by themselves or by others.

1.1.2 Using the service

Misterfone grants the Client a non-exclusive and non-transferable right to use the Service subject to the Client’s compliance with the present Terms & Conditions.

The Client expressly acknowledges and agrees to use the Service only for purposes permitted by law. In this respect the Client cannot, without exception:

- Intercept or distort conversations which are not intended for him or her
- Send unsolicited commercial communications
- Make fraudulent use of the Service
- Use the Service in any manner that could result in damage or overload of the Misterfone's technical infrastructure.

1.1.3 Suspension and interruption

Misterfone has the right, without any liability, to limit or suspend the Service to repair, improve or upgrade the Service at any time. Also, Misterfone may interrupt of the Service at any time and without prior notice if it detects abnormal use such as the misuse of promotions, spam, fraud or excessive usage.

1.1.4 Using the Service in emergency situations

The client acknowledges and accepts that the Service does not support emergency calls to special emergency numbers of any type or in any country and the Client can consequently not rely on the Service to be available for such emergency calls.

1.1.5 Actions in the event of an unauthorized use or theft of the access device

In case the device (mobile phone, tablet, etc.) the Client uses to access the Service is stolen or in case the Client becomes aware of an unauthorized use of his or her User Account the Client has to inform Misterfone immediately in order for Misterfone to suspend the Service. The Client accepts that he or she is solely responsible for any charges incurred in his or her User Account as a result of such unauthorized use until the suspension has taken place. Misterfone reserves itself the right to change the Client's password at any time without prior notice.

1.1.6 Service availability

While Misterfone will make all reasonable effort to provide the Service with a minimum of disruptions, Misterfone does not make any express warranty regarding the Service and consequently disclaims any implied warranty. Misterfone does not guarantee, in general, that the Service will always be available without disruptions and, in particular, may exclude certain numbers, groups of numbers, countries or territories at its sole discretion in order to protect its customers and itself against improper use of the Service.

Furthermore, the correct functioning of the Service depends on the availability and correct functioning of the Client's internet connection to initiate the call, on the one hand, and the availability and correct functioning of the mobile or fixed line service of the called party to receive the call, on the other hand. The Client acknowledges that disruptions or degradations in service quality on either side may lead to reductions in the call quality of the Service and that Misterfone is not liable for such disruptions.

Finally, the Client acknowledges that calls over mobile or fixed telecommunications networks are not encrypted and may therefore be subject to interceptions by public authorities or unauthorized third parties. Misterfone is not liable for such interceptions or disruptions as a result thereof.

1.1.7 Service access and applicable terms and conditions

In order to use the Service, the Client requires a working internet connection, such a WiFi or mobile data connection, on his or her mobile device. The Client furthermore acknowledges that using a mobile data connection to use the Service while roaming outside the Client's home country may result in additional roaming charges. The Client understands that the conditions applicable for this access service, i.e. the internet connection, are exclusively regulated by the terms of conditions of the provider of this access service, for example the Client's mobile operator.

Whenever the Client is using the Service he or she will always be bound by the present Terms & Conditions, regardless of any other applicable terms and conditions from other service providers.

1.2 Calling rates and credit recharges

1.2.1 Calling rates

Misterfone publishes its applicable calling rates on its web page at www.misterfone.com as well as through its applications for mobile devices. Misterfone reserves the right to update and change these calling rates from time to time without prior notice. By continuing to use the Service, the Client accepts such changes to the calling rates. If the Client does not accept a change in the calling rates, he or she can cancel their User Account with effect from the date of the rate changes.

1.2.2 Recharging the User Account

In order to use the Service, the Client needs to have a positive credit balance on his or her User Account. The User Account can be recharged either through the Service web site www.misterfone.com or through the application installed on the Clients mobile device, depending on the operating system of the mobile device (the recharge option may not be available for all mobile device operating systems).

1.2.3 Value Added Tax (VAT)

Under current legislation (*Council Directive 2008/8/EC of 12 February 2008*), Misterfone applies the appropriate sales tax that corresponds to the Member State where the customer has his or her permanent address or usually resides on all top-ups made by anyone within the European Union. Misterfone does not offer its services in those areas in the EU where VAT exemptions exist. By accepting the present Terms & Conditions and by recharging his or her User Account the Client expressly waives any right to repayment of VAT by Misterfone.

Unless otherwise stated, all fees and calling rates shown on Misterfone's web page and in Misterfone applications are in Euros and do not include VAT or other taxes and applicable fees.

1.2.4 Refund of recharged amounts

Misterfone does not allow the reimbursement of amounts charged in the Clients' User Accounts. If a Client does not want to continue using the Service and wants to close his or her User Account then he or she must spend the remaining balance first and then close the User Account.

As an exception to this rule amounts may be reimbursed where it can be demonstrated that a recharge was done fraudulently by a third party. In any case payments that are older than 90 days are non-refundable.

1.2.5 Call records and receipts for recharges

Misterfone provides each of its Clients with call history inside the installed applications, containing information about the call records and the current account balance. Misterfone also sends an email receipt for each recharge made for the Service. It is the Clients' responsibility to keep copies of the call history and receipts for their records. Misterfone will make commercially reasonable efforts to correct any technical errors related to the Clients' call records within a reasonable time.

1.2.6 Calls charged in error

In case a Client believes that he or she has been charged for certain calls in error, the Client must send a written request for reimbursement of the associated call charges to Misterfone's customer service (see contact section) within 90 days when the alleged charges occurred.

1.2.7 Validity of credit balance

The Client's credit balance in his or her User Account expires 12 months after the last recharge has been made. If no recharge has been made within the last 12 months the remaining credit balance will automatically expire and the Client's credit balance will be set to zero.

1.3 Termination or cancellation of the agreement

1.3.1 Service termination for breach of the Terms & Conditions by the Client

If the Client breaches any representations made to Misterfone or fails to fulfil any of the undertakings he or she committed to in the Terms & Conditions, then Misterfone will consider the Client to be in breach of the Terms & Conditions and may, without prior notice, terminate the agreement between the Client and Misterfone as well as suspend the Service for such Client.

1.3.2 Cancellation of the Services by the Client

The Client may cancel the Service at any point by sending a written notice to Misterfone's customer service through the contact section of application installed on the Client's mobile device. The Client's User Account will be cancelled within 15 days from the receipt of such notice.

1.3.3 Limitation of Misterfone's Liability

The Client acknowledges that Misterfone is not liable for the following:

- General Service outages
- Service interruptions or other temporary limitations
- Acts or omission by other providers related to the use of the Service such as, for example, the provider of the Client's internet connection
- Failure of any of the devices used by the Client to access Misterfone's web page or Service
- Loss or interception of information transmitted through the Client's device(s)
- Accidents, economic loss, injuries to persons or damages to property as well as incidental, punitive or consequential damages as a result of using the Service
- Any other incidents that are beyond reasonable control of Misterfone

In any case Misterfone's liability and for any alleged failure or wrongdoing shall in no event exceed the Service charges incurred during the period for which such alleged liability is claimed.

In case there exists any national legislation in another country that imposes liability greater than the one described in this article, it is understood that Misterfone does not extend the provision of the Service to such jurisdiction. The use of the Service by a Client in such jurisdictions will be regarded as not approved by Misterfone and consequently will be the sole responsibility of the Client.

The validity of this article shall survive the termination of the present Terms & Conditions.

1.4 Finishing clauses

1.4.1 Intellectual property

Any intellectual property rights such as trademarks, patents or copyrights (for example, texts, images, logos, videos, software, etc.) that is part of the Service or shown on Misterfone's web page either belongs to Misterfone or has been licensed to Misterfone by the corresponding rights owner. All rights for such IP are reserved.

1.4.2 Assignment of the Terms & Conditions

Misterfone reserves itself the right to assign all or a part of the Terms & Conditions, without prior notice and without any resulting liability. Such an assignment would not be considered a change to the present Terms & Conditions. The Client is not allowed to assign the Terms & Conditions without obtaining written approval from Misterfone.

1.4.3 Indemnity claims against Misterfone

The Client agrees to indemnify and hold Misterfone as well as its officers, agents, partners and employees harmless from any claim or demand, including without limitation legal fees, made by any third party due to or arising out of the Client's:

- Use of Misterfone web site
- Use of the Service
- Violation of the Terms & Conditions
- Violation of the rights of any other person or legal entity

1.4.4 Applicable law and jurisdictional restrictions

The present Terms & Conditions shall be governed by and interpreted in accordance with the laws of Luxembourg. Any legal proceedings arising out of or relating to the present Terms & Conditions or the Client's relationship with Misterfone will be exclusively subject to the jurisdiction of the courts of the district of Luxembourg.

If the Client resides in a jurisdiction where it is prohibited by law to offer or use internet telephony services in general or the Misterfone Service in particular, then the Client may not enter into this agreement.

1.4.5 Entire agreement

The present Terms & Conditions represent the entire agreement between the Client and Misterfone and supersedes all prior offers, promotions, contracts, agreements and representations.

In case any part of the Terms & Conditions is found to be illegal, invalid or unenforceable by a competent jurisdiction, then this part of the Terms & Conditions shall be removed without affecting the validity or enforceability of the rest of the Terms & Conditions.

SECTION 2 PRIVACY AND COOKIE POLICY

Misterfone is committed to protecting the privacy and the confidentiality of its clients' personal and traffic data.

Clients who would like to view or rectify their personal data on file with Misterfone should contact Misterfone's customer service (see the contact section on the web site or in the application).

2.1 Registering for the Service

To be able to use Misterfone's service (the "Service") you (the "Client") need to register with Misterfone. By registering with Misterfone the Client confirms that he or she is of legal age and that the personal information provided during the registration process is true and complete.

2.2 Use of personal information

Misterfone uses its Clients' personal information exclusively for the following purposes:

- Providing the Service
- Improving the Service
- Providing customer attention

The personal information may be stored and processed in Luxembourg or Spain or in any other country where Misterfone or any of its group companies have physical operations. By registering for and using the Service, the Client automatically consents to the transfer of information outside his or her country. Misterfone has taken the appropriate organizational and technical measures to protect the personal data provided by its Clients and the traffic data collected by Misterfone in line with the applicable obligations under the relevant legislation.

Misterfone will not disclose the Clients personal information outside Misterfone and its group companies and without the Clients' consent, except as described in this privacy policy. However, Misterfone may use other companies to provide certain services on its behalf, such as for example emailing, customer support, hosting of web sites, billing or statistical analysis. Such companies will only be allowed access to the personal information that is strictly necessary to deliver the service they have been contracted for and they are strictly prohibited from using this information for other purposes than the one agreed in the service contracts with them.

Furthermore, Misterfone may access and disclose your personal information in the following cases:

- Comply with a court order requiring such disclosure
- Protect and defend its rights or property
- Urgencies where it is necessary to protect the personal safety of its Clients or others

2.3 Security of the Clients' personal information

Misterfone uses advanced technology and procedures to protect its Clients' personal information from unauthorised access. The Clients' details are stored on computer systems with limited access and in controlled facilities and credit card numbers and passwords are protected through encryption when being transferred over the internet.

The Clients' passwords protect the Client's User Accounts and the personal information stored in them, and therefore it is the Clients' responsibility to keep their passwords safe and confidential. Clients should never share their passwords with others.

2.4 Change of communication preferences

The Client can opt out of receiving alerts and/or promotional emails by switching off the option in the mobile app. This does not apply to mandatory Service communications that are considered part of the Service.

2.5 Use of the Clients' IP addresses

Misterfone uses the Clients' IP addresses to diagnose potential server problems and to administer the Service.

2.6 Cookies

Misterfone uses cookies for its web site to improve the user experience. A cookie is a small piece of data sent from a website and stored in a user's web browser while the user is browsing that website. They do not identify the visitor of a web site, only the visitor's computer. They can be viewed, blocked or deleted by the user by accessing the settings section of the user's web browser.

SECTION 3 OWNERSHIP OF THE WEB SITE AND SERVICE

The owner of the web site www.misterfone.com and the Service is the company Misterfone S.à r.l., duly registered in Luxembourg with identity number 2013 24 30838.

For any queries related to the Service or the Terms and Conditions, the Clients must use the contact form that is available in the section “Contact” on the web site www.misterfone.com or through the application installed on the Client’s mobile device.