

Terms of Service
for the KYPS service and website

by

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in the following "KYPS" or "KYPS service"

§1 General definitions

- (1) Within the scope of this contract, the following terms are defined as follows.
 1. *Computer*: The term 'computer' includes computers, laptops, notebooks, mobile phones, smartphones, digital assistants, PDAs, game consoles, and similar devices.
 2. *Third-party account*: An account that is maintained at a third party website, such as an account maintained at a web-based email service provider.

§2 Purpose of the contract and the service

- (1) This contract regulates the relationship between KYPS and its users (customers).
- (2) Terms and conditions on the part of the customer that deviate from the following provisions shall be binding on KYPS only to the extent that KYPS has expressly agreed to be bound by them.
- (3) Purpose of the KYPS service
 1. KYPS enables the customer to log into third-party accounts without requiring him to disclose his password to the computer he uses. The KYPS service itself also does not disclose the customer's password to the computer used, unless the computer used by the customer and the computer which is being logged into (i.e. the computer hosting the third-party account) are one and the same computer.
 2. The non-disclosure of the customer's password to the computer he uses to log into a third-party account, which is facilitated by the KYPS service, provides protection against password theft by malicious software and hardware (e.g. spyware and keyloggers) that may be installed on that computer. If, despite the usage of KYPS, the customer's password is disclosed to the computer he uses, for example by the customer himself or by the website he logs into, then this protection is of course no longer effective.
 3. KYPS does not provide protection against other risks that are associated with the usage of an untrustworthy computer. KYPS is a security service that the customer can use in situations where he would use an untrustworthy computer. In such situations, KYPS typically reduces the risk level, but does not eliminate all risks. KYPS is by no means an invitation to use untrustworthy computers.

§3 Service description

(1) Basic KYPS service

1. KYPS provides a registration function to the customer. By registering his email address using this function, the customer can create a KYPS account. If registration is successful, then KYPS generates and provides to the customer an administration code. The customer may also request KYPS to send this code to his email address.
2. The customer's KYPS account is tied to his email address.
3. KYPS provides an administration function to the customer. In order to use this function, the customer must enter his administration code. The administration function enables the user to
 1. register the number of his mobile phone,
 2. register one or more third-party accounts,
 3. view, update and irrevocably delete his personal information, and
 4. for each registered third-part account
 1. register and update the password, and
 2. request a list of one-time codes. If the password for the third-party account is registered at the time of the request, then KYPS generates the one-time codes in a variety of formats and enables the customer to download the codes. Otherwise KYPS sends a Java Applet to the customer's computer which generates the one-time codes on the customer's computer in a particular format. The customer has to type the password for the third-party account into that Java Applet.
4. KYPS does not check whether or not the customer is the legitimate owner of any registered third-party account.
5. KYPS provides a login function to the customer. The customer can use this function, in conjunction with the one-time codes he obtained from KYPS, in order to log into previously registered third-party accounts. As part of the login function, the customer is required to provide a particular one-time code from one of the lists that he previously obtained from KYPS. Every attempt to log into the third-party account via the KYPS login function – no matter if successful or not – leads to the invalidation of the one-time code that the customer is required to provide.
6. KYPS does not verify the customer's identity as part of the login function. KYPS merely tries to log the customer into a registered third-party account, using the access credentials (user name and password) that were provided by the customer through the administration function.
7. After the customer logs into a third-party site via KYPS, the web pages that he visits are provided to him via the KYPS service by means of a special 'proxy' function. This function may cause certain elements of the visited web pages, for example graphics or menus, to not render correctly in the browser. The function may also cause the functionality of the visited web pages to be lost partially or entirely.
8. KYPS is not compatible with every website. Third-party accounts, which are being maintained at websites that are not compatible with KYPS, cannot be registered with KYPS, and/or cannot be logged into via the KYPS login function.

(2) Additional services

1. KYPS enables the customer to use, in addition to the basic service described in paragraph (1) above, the 'SMS service'. The SMS service cannot be used to log into registered third-party accounts for which the password has not been registered.

2. The SMS service enables the customer to instruct KYPS to dispatch individual one-time codes to the customer on demand. In particular, as part of the KYPS login function, the customer can do this by instructing KYPS to send a one-time code to the customer's mobile phone. The SMS service requires a paid subscription.
 1. When the customer instructs KYPS to dispatch a one-time code via SMS to the customer's mobile phone, then KYPS generates an SMS message that contains the one-time code, and forwards it to an 'SMS gateway'. The SMS gateway then forwards the SMS message to the networks of mobile network operators. Neither the forwarding of the SMS message into the networks of mobile network operators, nor the final delivery of SMS messages are part of the KYPS service.
 2. KYPS currently uses the SMS gateway provided by clickatell.com. The list of mobile network operators and countries that are supported by this SMS gateway, is available under the 'standard MT coverage' section of the <http://clickatell.com> website.

§4 Customer obligations

- (1) The customer acknowledges that the usage of the KYPS service requires that his access credentials (user name and password) for registered third-party accounts are made available to the KYPS service. Before registering a third-party account with KYPS, the customer is obliged to check whether or not he is allowed to do so. If the customer is not allowed to register a particular third-party account with KYPS, for example because the terms of service of the website, where the third-party account is maintained, prohibit the usage of login services like KYPS, then the customer must not register that account with KYPS.
- (2) The customer must not use the KYPS service in direct or indirect connection with the commission of offenses or criminal activities of any kind.
- (3) The customer is obliged to keep his KYPS one-time codes secret. This includes ensuring that (a) the codes are obtained from and, (if applicable) stored on, a 'clean', i.e. free from any malicious software and hardware (including spyware), computer, (b) no-one has access to the codes while they are displayed on the computer monitor and/or stored in the storage media chosen by the customer, (c) the codes are printed on paper as soon as possible and are subsequently irrevocably deleted from storage, and (d) no-one except the customer himself has access to the printed codes. If the customer suspects that someone may have had access to his codes, then he must immediately delete the affected accounts and data from the KYPS database using his administration code, and/or change his password at the affected third-party website(s).
- (4) If the customer has registered his mobile phone number with KYPS, then he is obliged to ensure that no-one except himself has access to the corresponding mobile phone and SIM card. If the customer loses his mobile phone or SIM card, or if they get stolen, then he must immediately update his mobile phone number using the administration function.
- (5) The customer must keep his administration code and his SMS password secret, to the same extent as he is obliged to keep his one-time codes secret.

§5 Conclusion and validity period of the contract

- (1) Conclusion of the contract
 1. The website invites visitors to use the KYPS service subject to the provisions of the present terms of service.
 2. A website visitor who wishes to use the KYPS service, starts the registration procedure by entering his email address on the website. By doing this, the visitor makes a binding offer

to enter the present agreement.

3. After receiving the visitor's email address, KYPS sends an email message containing a unique registration code to this address. This email message is not an acceptance of the visitor's offer to enter this agreement, but merely a confirmation that his offer was received by KYPS.
 4. The contract is concluded when the customer uses the registration code in order to register a KYPS account and, as a result, is in the position to register third-party accounts and subsequently use the KYPS login function, and when he is informed about the above in text form.
- (2) Validity period of the contract
1. This contract runs for an indefinite period of time, and may be terminated, at any point in time, by either party without a notice period. The customer may terminate the contract by deleting all his personal data from the KYPS database by making use of the KYPS administration function and his administration code.
 2. If the customer has bought a subscription, then, in deviation of number 1 above, the contract is concluded for the duration of the subscription. The right of both parties to prematurely cancel the contract due to some important reason remains unaffected. When the subscription expires, number 1 above applies.

§6 Prices and payments

- (1) The basic KYPS service is free of charge.
- (2) The customer may buy a subscription for the SMS service. The customer may choose from a number of different subscription types.
 1. The duration of subscriptions and their price is according to the price list. The price of any additional fees that are charged by KYPS (if applicable), are also documented in the price list.
 2. The amount of value added tax (VAT), if such tax applies, and the total amount payable, are shown to the customer before conclusion of the payment.
 3. The subscription starts after payment has cleared. The KYPS service informs the customer about the subscription expiry date by email.
 4. Each subscription has an upper limit for the number of SMS messages that may be dispatched by KYPS during the subscription period (SMS credits). If this limit has been reached, then KYPS will not dispatch further SMS messages to the customer. The limits for each subscription type are documented in the price list.
 5. A subscription is valid for all third party accounts that are registered under the customer's KYPS account. However, it is not possible to transfer subscriptions from one KYPS account to another, neither entirely nor partially. This also holds for KYPS accounts that belong to the same customer or person.
 6. The customer may buy a new subscription even before the current one expires. The new subscription starts automatically when the current subscription expires, or when the SMS credits of the current subscription are exhausted.

§7 Customer service

- (1) The customer may contact KYPS under the email address support@kyps.net.
- (2) In the case of a breach of duty on the part of KYPS, the customer is entitled to claims according to the relevant statutory provisions and with respect to the provisions within the present terms and conditions.

§8 Liability

- (1) In case of simple negligence on the part of KYPS, and irrespective of the legal grounds, KYPS is liable only for damages that arise from (a) impairment of life, physical injury, and impairment of health, and (b) the violation of a cardinal obligation (an obligation that necessarily has to be fulfilled for the orderly implementation of the contract, and whose fulfillment may be reasonably expected by the customer). In the case of (b), KYPS is liable to maximally compensate for damages that, on average, are typical for the contract and that could have been reasonably foreseen by KYPS at the time of the conclusion of the contract. The above liability limitations do not apply if, and to the extent to which, KYPS provides an explicit guarantee about the nature of a service.
- (2) The above liability limitations apply to the same extent to, and for the benefit of, the agents, legal representatives, employees, and the assistants, of KYPS.

§9 Data protection

- (1) KYPS processes and uses personal data of the customer according to the provisions of the law. The personal data that the customer provides in order to use the service (e.g. email address, mobile phone number, access credentials for third-party accounts) are used by KYPS for the fulfillment of the contract. This data is treated confidentially and is not shared with any third parties, except where this is necessary for the fulfillment of the contract. The customer has the right to (a) ask for and obtain a copy of the personal information that KYPS holds about him, (b) have incorrect personal data corrected, and (c) to ask for and have his personal data deleted, provided that no data retention law prohibits this.
- (2) Further details regarding the processing of personal data is documented in the privacy policy of KYPS.

§10 Cancellation notice

- (1) **The customer may request his contract with us to be canceled within one month without specification of reasons. The cancellation request has to be made in writing (e.g. letter, email). The one-month period does not start before (a) the customer has received the present notice in text form, (b) the conclusion of the contract, (c) we have fulfilled our duties to provide information according to article 246 section §2 EGBGB (German introductory act to the civil code) in connection with section §1 paragraphs 1 and 2 EGBGB, and (d) we have fulfilled our duties according to section §312e paragraph 1 sentence 1 BGB (German civil code) in connection with article 246 section §3 EGBGB. Sending the contract cancellation request in time is sufficient for the observation of the one-month deadline. The customer must send his cancellation request to:**

**XRTC UG (haftungsbeschränkt)
Kammerstrasse 99
47057 Duisburg, Germany
Email: support@kyps.net**

- (2) **Consequences of cancellation: In case of an effective cancellation, the benefits received on both sides have to be returned, and, if applicable, interest has to be released. If the customer cannot return to us the benefit received, either wholly or partially, or only in a worsened condition, then he has to, if applicable, pay compensation for the lost value. This means that the customer may be obliged to pay for consumption for the period until the contract cancellation. Compensation must be paid within 30 days. This period**

starts for the customer on the day he sends the cancellation notice, and for us on the day we receive his cancellation notice.

- (3) The customer's right to request cancellation of the contract expires prematurely if, before exercising this right, the contract has been fully fulfilled by both parties with the customer's explicit consent.**

§11 Place of jurisdiction and applicable law

- (1) If the customer is an entrepreneur in terms of the HGB (German commercial code), a legal entity under public law, or special property under public law, then Duisburg in Germany is the place of jurisdiction. In this case KYPS reserves the right to instead take action against the customer at his place of general jurisdiction. The above also applies if the customer has no place of general jurisdiction in Germany, if he has relocated his place of general jurisdiction outside of Germany, or if his place of permanent residence is unknown at the time the action is taken.
- (2) The contract according to the provisions of the present terms of service is subject exclusively to the law of the Federal Republic of Germany. Application of the United Nations Convention on the International Sale of Goods is hereby excluded. If the customer is a consumer according to §13 of the BGB (German civil code) that has his permanent residence outside Germany, then the mandatory provisions of the law of that state remain unaffected.
- (3) If individual provisions of the present terms of service are invalid or ineffective or contradict the law of the Federal Republic of Germany, then this does not affect the remainder of the contract.

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