

What's changed

Global Service Agreement

Clause reference	What's changed
Clause 1	After the words 'Service Schedules(s)' the words 'Acceptable Use Policy' have been inserted.
Clause 1	After the word 'agreement' the words '(this Agreement)' have been inserted. Prior to the word 'Customer' the word 'the' has been inserted.
Clause 4 a)	The words 'subject to' have been replaced by the word 'incorporating'. Prior to the word 'Agreement' the word 'Global' has been inserted. After the word 'Agreement' the words 'the Service Schedule(s) and the Acceptable Use Policy' have been inserted. In the fourth sentence, after the word 'Affiliate' the words 'by provisioning the Service(s) set out in that Service Order' have been inserted.
Clause 4 b)	After the words 'Service Order' the words 'by provisioning the Service(s) set out in that Service Order' have been inserted.
Clause 4 c)	Before the word 'addendum' the word 'the' has been replaced with the word 'an'.
Clause 5 b)	The words 'some form of' have been deleted and replaced with the word 'reasonable'.
Clause 7 b) ii	The word 'Megaport's' has been deleted and replaced with 'the'.
Clause 9 a) ii	The word 'Megaport's' has been deleted and replaced with 'the'.
Clause 8 f)	Has been amended to read: <ul style="list-style-type: none"> f) Megaport may vary the charges at any time: <ul style="list-style-type: none"> i. on thirty (30) days' notice, if Megaport provides a Service to Reseller that does not have a Minimum Term; or ii. on thirty (30) days' notice, if Megaport continues to provide a Service to Reseller after the Minimum Term of that Service has expired and the Service is being provided on a month to month basis.
Clause 17 b), c) and d)	Have been amended to read: <ul style="list-style-type: none"> b) This Global Service Agreement (together with the Acceptable Use Policy) is part of the terms of any and all Service Orders. If there is any inconsistency between the documents that form this Agreement, the order of precedence is (i) the Service Schedule(s), (ii) the Service Order, (iii) this Global Service Agreement and then (iv) the Acceptable Use Policy. c) The terms applicable to a Service Order (including this Global Services Agreement) are governed by the law governing the respective Service Order. Unless the parties have agreed otherwise, each Service Order is governed by the laws of the jurisdiction in which the relevant Service is provided, or if provided in more than one jurisdiction, where the relevant Service originates. d) Customer and Megaport agree to submit all questions in connection with the terms of a Service Order, (including issues arising from this Global Services Agreement) to any exclusive jurisdiction agreed in the respective Service Order. If the parties do not agree on an exclusive jurisdiction in a Service Order, they submit to the non-exclusive jurisdiction of the courts of the jurisdiction where the Service is provided, or if provided in more than one jurisdiction, where the Service originates, and to the non-exclusive jurisdiction of the courts of New York.

Addendum - Singapore	<p>The Introduction has been amended to read: 'The Global Service Agreement is amended to give effect to the terms set out below for all Services that are provided in Singapore under a Service Order governed by Singapore law. In the event of an inconsistency or a conflict between the terms of this Addendum and the Global Services Agreement, the terms of this Addendum prevail'</p>
Addendum – Germany	<p>New Addendum that reads:</p> <p>1. Introduction</p> <p>The Global Service Agreement is amended as set out below for all Services that are provided in Germany under a Service Order governed by German law. In the event of an inconsistency or a conflict between the terms of this Addendum and the Global Services Agreement, the terms of this Addendum prevail.</p> <p>2. Credit and Security</p> <p>Clause 5(a), sentence 2 is replaced by the following: Megaport may transfer information on outstanding claims to credit reporting agencies according to §28a Federal Data Protection Act (<i>Bundesdatenschutzgesetz</i>, BDSG).</p> <p>3. Services</p> <p>Clause 6(b) is amended by inserting the following sentence at the end of the clause: To the extent, however, that the failure to meet a service level materially affects the value of the services that Customer receives under a service order, Customer's statutory rights in respect of such failure (e.g. any statutory right to reduce, withhold or reclaim all or part of the service fees paid or secured) continue to apply. For the avoidance of doubt, Clause 10 remains unaffected.</p> <p>Clause 6 (c) is replaced by the following clause: Megaport may replace or modify an existing Service at any time provided that the replacement or modification does not result in a material change of the content, quantity or quality of the service or would otherwise be unacceptable to a reasonable customer. Megaport may replace or modify an existing Service in all other cases, if it is required by law to do so or if it is necessary to enable or facilitate (i) an upgrade to networks or services in line with technical progress; or (ii) the interfacing of networks. In these circumstances, Megaport will provide at least six weeks' prior notice in text form of the change and Customer may terminate the affected Service within six weeks of receipt of such notice, with effect on the effective date of the change. For the avoidance of doubt, Clause 14 remains unaffected.</p> <p>4. Customer responsibilities</p> <p>Clause 7 (c) sentence 2 is replaced by the following: Customer must pay all charges in connection with the usage of a Service, even if that usage was not authorised by Customer, unless Customer provides sufficient evidence that Customer is not responsible for the use.</p> <p>5. Charges and Payment</p> <p>Clause 8 (d) is replaced by the following: If Customer does not pay an invoice in full by the due date, Megaport may charge Customer a default fee ("<i>Verzugszinsen</i>") on the unpaid amount on a daily basis from the due date until payment is made at the rate of nine per cent (9%) above the base rate of the European Central Bank. For the avoidance of doubt, any other rights that Megaport may have with respect to such default under this agreement or by law remain unaffected.</p> <p>Clause 8(f) is amended by the following: Megaport will provide Customer with at least six weeks' prior written notice of any increase to the charges as permitted above. Customer may terminate any affected Service within six weeks of receipt of such notice, with effect on the effective date of the increase.</p>

6. Liability

Clause 10 is replaced by the following:

- a) Megaport is liable for acts committed with intent or negligence resulting in injury to life, body or health without limitation. In the event of other damages, Megaport is liable if the damage results from an act committed with intent or gross negligence.
- b) Megaport is liable for damages arising from any intentional or negligent breach of essential contractual duties. An essential duty of contract is a duty (i) the fulfilment of which is essential to the proper execution of the contract; (ii) the non-execution of which endangers the purpose of the contract; and (iii) the execution of which the customer may trust. In such cases liability is limited to typically foreseeable damage.
- c) Megaport is liable for any claims (i) under the German Product Liability Act (Produkthaftungsgesetz); (ii) based on fraudulently concealed (arglistig verschwiegen) defects; or (iii) arising from any warranty that Megaport has granted.
- d) The liability of Megaport for all other damages is excluded.
- e) § 44a Telecommunication Act (Telekommunikationsgesetz, TKG) remains unaffected.

7. Changes to this Agreement

Clause 15 (b) is replaced by the following: Megaport may change the terms of this Agreement (other than the charges) at any time other than in accordance with Clause 15 (a) by giving Customer six weeks' prior notice in text form (**Notice Period**), including (but not limited to) cases in which Megaport is required by law or by public authorities to change the terms of this Agreement. If Customer does not agree with the change, Customer may contradict the change by giving Megaport notice in text form prior to the expiry of the Notice Period. If Customer provides such notice, the terms of this Agreement remain in force (to the extent they are enforceable) and Megaport may terminate the affected Service within fourteen (14) days after the expiry of the Notice Period. If Customer takes no action during the Notice Period and continues to receive the Service, Customer will be deemed to have accepted the changes.