



# General Terms and Conditions Relined

Model: 2019-03

## 1. Definitions

1. In the Master Lease Agreement (including the Appendixes Service Level Agreement and General Terms and Conditions Relined) and Order Forms (and the Annex(es)) the following terms are written with a capital letter and have the following meanings:

**Annex:** An appendix to an Order Form.

**Appendix:** An appendix to the Master Lease Agreement.

**Customer:** The company that enters into the Master Lease Agreement and Order Form(s) with Supplier and/or the company that receives an offer from Supplier.

**Date of Delivery:** The day following the notice that an Optical Fiber Connection is technically ready as set out in article 6.1 of these GTCR.

**Fee(s):** All the fees Customer owes to Supplier under the Master Lease Agreement, Order Form, Service Level Agreement and/or these GTCR.

**Fiber Network Relined:** The complete network of optical fiber cables and ducts of which Supplier is the legal owner, as well as the optical fiber cables and ducts for which Supplier has obtained the right to sublease Optical Fiber Connections to third parties.

**General Terms and Conditions Relined (GTCR):** This document in which the general terms and conditions of Relined are laid down.

**Incident:** Has the meaning given to it in article 3.6 of the Service Level Agreement.

**Leased Property:** has the meaning given to it in article 1.1 of the Master Lease Agreement and is detailed in an Order Form.

**Master Lease Agreement:** The agreement (including Appendix 1: SLA and Appendix 2: GTCR) that contains the general terms and conditions which apply to all Order Forms Parties enter into and have already entered into during the term of the Master Lease Agreement, unless Parties agree otherwise in writing.

**One-off Fee:** The one-off fee to be paid by Customer to Supplier for all required work in connection with the installation and/or the provision of the Leased Property. This concerns the connection and/or the IRU-fee.

**Optical Fiber Connection:** A dark fiber connection between two locations using optical fiber cables in accordance with ITU-specifications.

**Order Form:** The agreement entered into between Parties which forms an integral part of the Master Lease Agreement and which contains all specific information and agreements regarding the Leased Property.

**Parties:** Supplier and Customer together.

**Party:** Supplier or Customer individually.

**Recurring Fee(s):** The recurring lease fee and/or operation and maintenance fee (O&M fee) Customer owes to Supplier for the use of the Leased Property under the Order Form.

**Service Level Agreement (SLA):** Appendix 1 to the Master Lease Agreement, in which the procedures and service levels concerning maintenance and repairs to the Leased Property are set out.

**Supplier:** Relined B.V. or Relined GmbH.

## 2. General

1. The terms and conditions of these GTCR apply to i) all offers and orders concerning the lease and/or sale of goods and/or provision of services by Supplier to Customer, ii) the relevant Master Lease Agreement and iii) all Order Forms.
2. Deviations to these GTCR are only binding between Parties to the extent that they have been accepted by Supplier in writing.
3. Customer agrees that after having entered into an Order Form with Supplier to which these GTCR apply, these GTCR also apply to all subsequent Order Forms entered into between Supplier and Customer.
4. If and as soon as Supplier makes use of a new version of these GTCR and has notified Customer in writing that such new version applies to the Master Lease Agreement and Order Forms, such new version – and thus not the prior version – shall apply to the relevant Master Lease Agreement and Order Forms.

## 3. Entering into agreements

1. All Supplier offers are non-binding, if not stated otherwise.
2. Order Forms are only entered into if the content matter has been set forth in writing by Parties and an authorized representative of both Parties has signed such Order Form.

## 4. Provision of the leased property

1. Supplier coordinates all work required in connection with the installation and/or providing the Leased Property. Parties shall in good consultation determine the date on which Supplier shall provide the Leased Property to Customer.
2. Unless expressly agreed otherwise, any routes of Optical Fiber Connections laid down in Order Forms are only indicative. After entering into an Order Form, Supplier shall carry out detailed engineering which could lead to a different routing.
3. Customer grants Supplier, if and insofar as reasonably necessary, access to the location(s) where the A- and Z-end of an Optical Fiber Connection shall be installed in accordance with the Order Form. If Supplier is not granted access to such location(s) by Customer, a third party or by personnel of Customer and Supplier has complied with the reasonable and common instructions of Customer or third parties designated by Customer, Customer shall be liable to Supplier for the resulting costs and/or damages.
4. If Supplier observes a(n) (technical) obstacle during the installation of an Optical Fiber Connection, caused by or attributable to Customer or for which Supplier is reasonably not responsible, the contractor of Supplier shall remain at the location for 30 minutes after the discovery to enable Customer to resolve the obstacle. If the obstacle is eliminated within that period, the installation shall continue. If the obstacle is not removed within such period, the installation attempts shall end, and all resulting and associated costs shall be for the account of Customer.

## 5. Demarcation of optical fiber connections

1. The locations to be connected by means of the Optical Fiber Connection shall be set out in the Order Form. The manner in which Relined finishes an Optical Fiber Connection depends on the type of location an Optical Fiber Connection ends. Relined distinguishes three types of locations: handhole, data centre and customer location. The location types that apply to the Optical Fiber Connection are set out in the Order Form.

**Demarcation in handhole**

2. If an Optical Fiber Connection ends in a handhole, such handhole shall be owned by Supplier. To the extent that such handhole does not yet exist at the time of entering into the Order Form, Supplier shall install such handhole at the location of the coordinates set out in the Order Form. If, however Supplier does not acquire all required permits and approvals for this and/or Customer requests a different location, Parties shall consult to jointly determine a new location. Any additional costs shall be for the account of Customer.
3. Supplier shall install a closure (property of Supplier) in the handhole which shall be the demarcation point for the Optical Fiber Connection delivered by Supplier.
4. Customer is responsible for providing an optical fiber cable to Supplier's handhole, with a minimum overlength of 15 meters. In the same work step as described in article 4 of these GTCR, Supplier shall insert this optical fiber cable in the handhole and splice it in the closure of Supplier. If this work cannot be done in the same work step caused by or attributable to Customer, any additional costs shall be for the account of Customer.
5. Customer is not permitted to open Supplier's handholes, or to perform work in or to these handholes, unless Supplier has given its prior written approval for this.

**Demarcation in data centre**

6. If an Optical Fiber Connection ends in a data centre, the demarcation of the Optical Fiber Connection will be Supplier's ODF in a Supplier cabinet. Customer is solely responsible for ordering cross-connects between Supplier's cabinet and Customer's cabinet, unless otherwise agreed in an Order Form. Customer shall inform Supplier of the identification numbers and/or patch labels of such cross-connects without delay.

**Demarcation in customer location**

7. If an Optical Fiber Connection ends at a customer location, the demarcation point of the Optical Fiber Connection is a Supplier ODF, which is installed either (1) in the basement directly against the exterior wall at a maximum distance of 3 meters from the building entry as set out in the Order Form or (2) in a 19" cabinet of Customer as set out in the Order Form. Customer must provide a building entry point and cable tray(s) to enable Supplier to install the Optical Fiber Connection. Customer is also responsible for any fire proofing.
8. Provisions deemed necessary by Customer at the end of an Optical Fiber Connection are, after prior written approval by Supplier, performed for the account and risk of Customer. Supplier may attach conditions to the approval in order to ensure proper conditions in, at or around the respective Optical Fiber Connection.

**6. Delivery of leased property**

1. After completion of the installation and/or connection of an Optical Fiber Connection, Supplier shall notify Customer that the Optical Fiber Connection is ready for service. The day following this notification is the Date of Delivery.
2. Supplier shall record the test results, patch positions and the Date of Delivery in a handover protocol. The handover protocol shall be sent by Supplier to Customer within a few days after the ready for service notification and must be signed and returned by Customer within 5 working days. If the signed handover protocol is not received within such period and Customer has not made any written communications in this regard, the Optical Fiber Connection shall be deemed to have been accepted by Customer.
3. Acceptance of an Optical Fiber Connection may not be refused by Customer i) on grounds other than those related to the technical specifications expressly agreed between Customer and Supplier, and ii) due to the existence of small defects, being defects which reasonably do not hinder the operational or productive commissioning of the Optical Fiber Connection by Customer, without prejudice to Supplier's obligation to remedy such small defects.
4. If due to the actions of Customer, Supplier is unable to perform, complete and/or deliver the Optical Fiber Connection and this situation lasts for more than one month, Supplier is

entitled to charge Customer a monthly delay fee equalling the agreed Recurring Fees for the Optical Fiber Connection.

## 7. Technical specifications

1. Optical Fiber Connections consist of optical fiber cables in accordance with ITU-specifications G652, G653, G654, G655 and/or G657.
2. To the extent that Supplier provides (cabinet) space to Customer for the installation of equipment, Customer shall assume that this concerns an unconditioned area and that there are no emergency, redundant electrical and fire extinguishing facilities present, unless expressly set out otherwise in the Order Form.

## 8. Fees

1. In regard of the Optical Fiber Connection(s) and/or use of the Optical Fiber Connection, Customer is due to Supplier the Fees set out in an Order Form.
2. Supplier is authorised to index the Recurring Fees that apply pursuant to an Order Form on an annual basis with a percentage of 2,75% each time, whereby the first indexation shall take place on the next 1 January at least 6 months after the signing of the Order Form.
3. If Parties agreed an IRU-fee, the following applies. At the end of the period mentioned in the Order Form, the contract shall automatically be renewed, unless Parties agree otherwise. In case of automatic renewal, Supplier shall apply a monthly Recurring Fee in accordance with the following formula: the applicable operation and maintenance (O&M) fee plus the IRU-fee divided by the initial contract term in months (=months) increased with indexation from the date of signing of the respective Order Form (=indexation), both multiplied by the factor 1.25. I.e. the applied monthly Recurring Fee = ( monthly O&M fee + IRU fee / months x indexation ) × 1.25.

## 9. Payment

1. Customer shall pay the Fee(s) within 30 days after the date of invoice. Payment shall take place to the bank account of Supplier as indicated in the Master Lease Agreement. Without prior express written permission of Supplier, Customer is not authorised to offset any amount.
2. In case Customer has not timely – as set out in article 1 above – paid any outstanding Fee(s), Supplier shall send to Customer a notice of default and Customer shall be in default from the date of such notice. Term interest accrues on such amounts due are calculated based on the legal conditions. In addition, Customer shall then compensate Supplier for all possible (extrajudicial) administration and collection costs, with a minimum of € 25.- or the percentage allowed by law, without prejudice to Supplier's right to compensation for the damages and legal expenses actually incurred.
3. Subject to counter evidence provided by Customer, an extract from Supplier's administration - also regarding Fee(s) due - shall be considered as complete evidence towards Customer.
4. If Customer does not or not timely fulfil its payment obligation or any other obligations arising from the Master Lease Agreement and/or the Order Form, Supplier has the right to postpone the execution of the Master Lease Agreement and/or the Order Form. This expressly also includes the suspension of the provision/delivery of the Leased Property. Such suspension shall not affect Customer's payment obligations.

## 10. Taxes

1. All Fees are exclusive of value added tax (VAT) or other relevant (sales) taxes.
2. If in future new or higher taxes, duties, rating levies or other charges of whatever nature will be imposed by any taxing or central or local government authority with regard to the Leased Property, Supplier has the right to pass on these costs to Customer.

## 11. Terms and termination

1. The terms and conditions in this article apply in addition to the terms and conditions in the Master Lease Agreement and the Order Form(s) on term and termination.
2. Either Party may terminate the Master Lease Agreement upon giving a 12-month notice period to the other Party. Such termination will not affect the validity of the existing Order Forms and the terms and conditions of the Master Lease Agreement and these GTCR shall continue to apply to such Order Form.
3. An Order Form will automatically renew at the end of the term, or, when applicable, the extended term, with a period of one year, unless terminated by giving three months prior notice before the end of such term.
4. Customer is not permitted to terminate an Order Form before the end of the (then current) term, unless Parties have expressly agreed on Customer's right to do so.
5. Supplier is permitted to terminate the Master Lease Agreement and/or Order Forms, in whole or in part and without intervention of the courts, without being due any damages and/or costs to Customer, if:
  - i. Supplier is compelled to do so in connection with changes in the laws and regulations, for example any applicable telecommunications act;
  - ii. Supplier is required to do so in connection with safeguarding the (legal) interests of the (legal) owners of Fiber Network Relined; whereby during a period of 3 months, Supplier will undertake all efforts to offer an alternative.
  - iii. The Leased Property has been made available by Customer to a third party for use, without Supplier's written permission;
  - iv. Right of ways will be terminated and Supplier is not able to rescue and/or reroute the Optical Fiber Connection.
  - v. In Supplier's opinion, Customer incompetently uses or allows the incompetent use of the Leased Property;
  - vi. Customer having adequately been served a notice of material breach, continues to breach any obligation arising out of or in connection with the Master Lease Agreement and/or an Order Form.
6. Each Party is entitled to terminate the Master Lease Agreement and Order Forms - by means of a written notice to the counterparty - with immediate effect if:
  - i. The counterparty loses the control over its assets, other than in the cases as referred to in article 17 of these GTCR;
  - ii. The counterparty has been granted suspension of payments or has been declared bankrupt by means of a court ruling;
  - iii. The counterparty is dissolved;
  - iv. There is a situation of force majeure and it is virtually certain that the situation of force majeure will last longer than 90 days after the day such situation started.
7. If the Master Lease Agreement and/or an Order Form ends before the end of the (then current) term as referred to in paragraph 5 or paragraph 6 of this article, all Supplier claims and/or amounts (to be) due shall be payable immediately.
8. Changes, additions and/or adjustments to the Master Lease Agreement and/or Order Form(s) – with the exception of changes, additions and/or adjustments which Supplier is allowed to make unilaterally based on the Master Lease Agreement - shall enter into force once these changes, additions and/or adjustments have been laid down in writing and signed by Supplier and Customer and from that moment shall be deemed to be part of the Master Lease Agreement and/or the Order Form.

## 12. End of order form

1. At the end of the Order Form, Customer shall return the Leased Property to Supplier free of use, free of any cross-connects owned- or ordered by Customer and free of any user rights. All cross-connects installed by or on behalf of Customer at the demarcation points of the respective Optical Fiber Connection(s) must be removed from Supplier's ODF on the date on which the Order Form ends so that Supplier has complete, full and free possession of the Optical Fiber Connection(s) again.
2. If Supplier observes at any time after the date on which the Order Form has ended that Customer still makes use of the Leased Property, or that Customer did not return the Leased Property in accordance with the terms and conditions of paragraph 1 of this article, then Customer shall be due the full Recurring Fee for the respective Optical Fiber Connection retroactively, increased with a percentage of at least 50% for indemnification of all kinds of damage, losses and delays, until Customer returns the Leased Property in accordance with the terms and conditions of paragraph 1 of this article, without prejudice to Supplier's rights to compensation for its additional damages and reasonable costs.
3. At the end of the term of the Order Form, Customer shall grant Supplier access to its building for the return of the property made available by Supplier.

## 13. Provision of additional services

1. The nature and scope of the Leased Property and the associated service levels to be provided by Supplier are explicitly described in the Master Lease Agreement, Service Level Agreement and Order Form. Activities that Supplier performs for Customer that are not described in the Master Lease Agreement, Service Level Agreement or an Order Form, are not part of the service provision and can be charged additionally by Supplier to Customer.

## 14. Obligations of customer

1. To prevent damage to the Leased Property or the Fiber Network Relined in general, Customer shall take all necessary preventive measures including the use of expert personnel.
2. Customer is required to comply with all requirements pursuant to or in connection with any applicable telecommunications act and associated regulations, protocols and decisions. If Supplier is approached by third parties or institutions in regard of compliance with regulatory obligations that can only be complied with by Customer, Supplier shall immediately inform Customer thereof, so that Customer can take the necessary measures. Customer shall indemnify Supplier for all associated claims of third parties or institutions.
3. Customer shall ensure that the facilities/measures installed/provided by Supplier are handled with due care.

## 15. Liability

1. Both Supplier and Customer are required to take all reasonably possible measures to prevent and/or limit damages to the other Party and shall inform each other as soon as possible if damage has occurred or is expected to occur.
2. Notwithstanding any other documentation relating to Supplier, Supplier shall be liable for damage, for any legal reason whatsoever, only and exclusively according the following provisions. Supplier's liability shall be limited as follows:
  - i. Damage to property: only direct damages, capped at a maximum of € 750,000 per event or series of related events and € 1,500,000 in total for all events arising in any twelve month period.
  - ii. Other damages: € 250,000 per event or series of related events and € 500,000 in total for all events arising in any twelve month period.

- iii. In case of simple negligence only if and to the extent a fundamental contractual obligation is violated.
    - iv. In case of gross negligence only if and to the extent such damage was typically foreseeable.
  3. Without prejudice to the terms and conditions of paragraph 2 of this article 15 - Customer and Supplier are only liable for direct damage and only if such direct damage results from a material breach of the Master Lease Agreement and/or the Order Form by the respective Party. The provisions in the previous sentence also mean that liability for consequential damage and/or indirect damage is excluded, which in any case includes loss of profits, personnel expense, immaterial damage and other forms of financial loss and/or damage of third parties which the other Party suffers or will suffering.
  4. Nothing in this GTCR excludes or limits the liability:
    - i. For death or personal injury.
    - ii. In case of damages caused by intentional act or gross negligence (if foreseeable).
    - iii. For anything else which cannot be excluded or limited by applicable law (e.g. product liability).
  5. The liability limits set out in this article apply mutatis mutandis to:
    - i. The subordinates or employees of Supplier; and,
    - ii. Third parties that are involved in the delivery of the Leased Property and the associated service delivery by order or at the request of Supplier.
  6. Customer shall indemnify Supplier for all third-party claims concerning compensation of damages, including but not limited to damage incurred by third parties as a result of negligent acts or omissions of Customer personnel or Customer engaged third parties.
  7. For the protection of Supplier or third-party technicians and other personnel and to prevent damage to the Fiber Network Relined, the use of laser class higher than 3R on the Fiber Network Relined is expressly not allowed. Customer indemnifies and holds harmless Supplier for all damages, under any title and without limitation, caused by the use of laser class higher than 3R.
  8. Supplier is not liable for damage incurred by Customer if the damage causing event or connected series of events was not reported by Customer to Supplier in writing within 14 calendar days after the damage occurred.
  9. Customer is liable towards Supplier for damage to facilities, equipment and/or an Optical Fiber Connection made available by Supplier to Customer, among other things as a result of fire, loss, theft and destruction, including the whole or partial destruction of the facilities and/or equipment, and shall obtain adequate insurance in this regard.
  10. If a damage causing event or a series of connected events, could entitle Customer to compensation based on the SLA, Customer is not entitled to any other (additional) compensation on the basis of this article 15 or otherwise. Supplier shall never be held to pay an amount – whether based on the SLA or in the form of damages – higher than the maximum liability based on this article.

## 16. Confidentiality

1. Parties acknowledge that the content of their relationship, as well as the information which they (shall) mutually receive in the context of the Master Lease Agreement and Order Forms, is strictly confidential.
2. Parties shall ensure strict confidentiality of each other's confidential information and only make use of such information to the extent necessary for the proper execution of the Master Lease Agreement and Order Forms and shall be responsible for their employees and/or advisors who gain access to confidential information in the context of the execution of the Master Lease Agreement and Order Forms. Each Party shall exercise no lesser degree of care in relation to confidential information than it would apply to its own confidential information.

3. Within the context of the provisions in the first two paragraph of this article 16, Parties do not have a confidentiality obligation with regard to information which:
  - i. was already disclosed to the public domain by the beneficial owner;
  - ii. is in a Party's possession free of any obligation of confidence at the time of disclosure by the disclosing Party thereof to the receiving Party;
  - iii. is developed by a Party independently of and without reference to any of the disclosing Party's confidential information or other information which the disclosing Party disclosed in confidence to any third party;
  - iv. is rightfully obtained by a Party from a third party, authorised to make such disclosure without restriction.
4. In the event a Party is required by law, regulation or pursuant to an order of a competent authority to disclose any of the confidential information, the Party will, if not prohibited by law, promptly notify the other Party in writing prior to making any such disclosure in order to facilitate the other Party in seeking a protective order or other appropriate remedy from the proper authority.
5. The provisions of this article 16 shall survive the termination or expiry of the Master Lease Agreement and Order Forms for a period of five (5) years, except to the extent the confidentiality obligation applies to KMZ maps, in which case it will apply without limit of time.

## 17. Transfer of rights

1. Without prior written permission of Supplier, Customer shall not lease or sublease the Leased Property to third parties, or allow third parties to use the Leased Property in any way. This provision, as far as the Optical Fiber Connection is concerned, is meant to be a prohibition on the lease or sublease of dark fiber, not a prohibition on providing services by the Customer to third parties.
2. The Parties shall not transfer their rights and/or obligations under the Master Lease Agreement and/or Order Forms in whole or in part to third parties without prior written consent of the counterparty, which consent shall not be refused on unreasonable grounds.
3. Supplier is authorised to transfer its business and/or its optical fiber network (including the Leased Property) to a third party without Customer being permitted to terminate, dissolve or cancel the Master Lease Agreement and/or Order Forms.

## 18. Other

1. Notices that Supplier and Customer send to each other related to the Master Lease Agreement and/or Order Forms shall be in writing. Oral notifications, commitments or agreements are not binding between Parties unless confirmed in writing by both Parties. In case of communications and/or notices regarding the Master Lease Agreement and/or Order Forms, the applicable contact persons are set out in the Master Lease Agreement.
2. Supplier is authorised to have third parties perform the execution of the Master Lease Agreement and/or Order Forms in whole or in part.