

Terms & Conditions

Effective 26-10-2022

1. Your Agreement

1.1 Terms & Conditions of Service

- (a) These Terms and Conditions (**T&Cs**) apply to the supply of services by 1300 Australia Pty Ltd (ABN 77 108 792 016) (**we, us, our**) to you as a user and customer. They should be read in conjunction with your Service Order.
- (b) Your agreement with us (**Agreement**) is made up of:
 - (i) your Service Order;
 - (ii) these T&Cs; and
 - (iii) our [Privacy Policy](#).

1.2 Term and renewal

- (a) Your Agreement commences when the Service Order has been signed by both parties (**Commencement Date**). Your Service will commence on the date on which you are notified that your Service has been provisioned (**Effective Date**), or if you are not notified of an Effective Date, your Services will commence on the Commencement Date, and continues for the term listed in your Service Order (**Term**).
- (b) At the end of the Term, your Agreement will automatically continue unless you give us written notice of termination at least 30 days before the end of the Term. If the Term has ended and the Agreement is continuing, you may terminate your Agreement at any time by giving us at least 30 days written notice of termination.

1.3 Our Services

The Services we provide to you may include:

- (a) a Licensed Number or Phoneword (**Phoneword**);
- (b) Inbound calls and/or outbound calls (**Call Services**);
- (c) Integration Suite (**Integration Suite**);
- (d) SMS Services (**SMS Services**);
- (e) other services that we may offer from time to time.

2. Phonewords

2.1 Usage of Phoneword

- (a) You may only use the Phoneword in the form set out in your Service Order, as a telephone number and not as a trade mark.
- (b) You can only use the Phoneword in conjunction with the type of goods or services associated with the Phoneword.
- (c) You must not sublicense your right to use the Phoneword to any person without our written permission.
- (d) If requested by us, you must provide us with samples of how the Phoneword is used, including its use on documents, labels, artwork, advertising and other materials.

2.2 Phoneword with no Call Services

If your Service Order is solely for a Phoneword (with no Call Services):

- (a) you are responsible for acquiring the telecommunication service to be used with the Phoneword and must provide us with the details of the service within 14 days of connection;
- (b) you must connect the telecommunication service within 35 days of the Commencement Date or we may terminate this Agreement and license the Phoneword to another party;
- (c) you may change your telecommunication service at any time but must provide us with updated details of the new service within 14 days.

2.3 Phoneword with Call Services

If your Service Order includes Call Services, the conditions below will apply:

- (a) We will supply the Call Services in accordance with our practices and procedures. We may vary those practices and procedures from time to time, including the selection of our suppliers. We will endeavour to advise you of any changes that are likely to materially affect your use of the Call Services.
- (b) The plans and features available in relation to the Call Service are specified in your Service Order. Contact us if you want to change your selected plan or features. Your Fees will vary from the date the requested change takes effect, provided that you cannot reduce your Fees during the Term. A reconfiguration fee of \$45 per 15 minutes or part thereof applies to implement any change.

- (c) Call charges are calculated per call with the number of seconds multiplied by your Per Second Call Rate and each call charge is rounded up to the nearest cent ex GST. The Call Rate and billing increment is specified in your Account Plan Details and rounded to two decimal places.

2.4 Trademarks

- (a) You agree that you have no rights to any trademark that incorporates the Phoneword **and** you must not register a trademark, domain name, company name, business name or other trading name that incorporates the Phoneword.
- (b) You acknowledge that we may license the Phoneword to others after your Service Order has ended and you must not challenge our rights or future licensee's rights in relation to the Phoneword or any trademark, company name, business name, domain name or other trading name that incorporates the Phoneword.
- (c) You acknowledge that third parties may own or use names, trademarks, brands or telephone numbers similar to the Phoneword.
- (d) You should notify us if you become aware of any third party using any trademark, company name, business name, domain name or other trading name that incorporates the Phoneword.

3. Integration Suite

3.1 Credentials and Access

You must maintain the confidentiality and security of log-ins to the Integration Suite and will notify us immediately if any of the credentials are compromised or improperly disclosed. We may terminate or suspend your access to the Suite without notice if we reasonably believe that you or your authorised user has violated these terms.

3.2 Applicable Data and Privacy

Any content, data, information or material provided or submitted by you in the course of using the Suite or generated by the use of the Suite that result from queries, will remain your sole and exclusive property. You acknowledge that the Suite is hosted by a third party provider which may be removed or updated at any time. Our third party supplier may collect and aggregate data derived from the operation of the Suite to use such data for the purposes of operating its business, monitoring performance and/or improving its services. The use of such aggregated data will not reveal any of Customer confidential information or personally identifiable information.

3.3 Service Levels

The Suite will be available and operational 99.8% of the time each month (**Uptime Percentage**). The Uptime Percentage is calculated by subtracting from 100% the percentage of 1-minute periods (or any portion thereof) during any calendar month in which the Suite is not available out of the total number of minutes in that calendar month. The monthly Uptime Percentage will be measured based on the industry standard monitoring and testing tools utilised by our third party supplier.

The following availability issues will be excluded from Uptime Percentage calculations including:

- (a) regular scheduled maintenance;
- (b) any problems arising outside of our control including faults in computing or networking hardware, your equipment or software, the internet, other issues with electronic communications, or events of force majeure such as natural disaster, war, acts of terror, actions of authorities or civil unrest;
- (c) problems arising from your internet or internet service providers, VPN issues, DNS availability or other similar issues;
- (d) authentication issues;
- (e) any changes, restrictions, discontinuations or other issues related to any third party API;
- (f) your failure to purchase adequate capacity of these services.

4. SMS Services

4.1 Conditions of Use

- (a) You must not use SMS Services:
 - (i) in contravention of the Spam Act 2003 (Cth);
 - (ii) to transmit any defamatory, offensive, abusive, indecent, menacing or harassing material;
 - (iii) in any manner which constitutes a violation or an infringement of a contractual obligation, or any intellectual property rights owned or licensed by a third party;
 - (iv) in connection with the commission of an illegal offence;
 - (v) to impair or cause network interference to the normal operation of the SMS Services platform or the telecommunications network or equipment of any third party.
- (b) You can use SMS Services for:

- (i) telemetry, messaging and control functions;
- (ii) the provision of permission-based information, personal communications, social media or entertainment;
- (iii) person to person communication;
- (iv) the promotion of products and services.

4.2 Customer acknowledgements

- (a) SMS is not necessarily a secure and confidential method of communication and you transmit material via SMS at your own risk.
- (b) We cannot be responsible for ensuring that any material sent or received by means of the SMS Services is sent or received correctly.
- (c) Messages sent via SMS Services to others will provide delivery details to the extent made available by the network provider of other end users.
- (d) The provision of SMS Services may not be continuous or fault free, and may not successfully terminate, or terminate in a timely manner on all devices.

5. Porting of Numbers

- (a) You acknowledge that by porting the telephone number(s) listed in your Service Order:
 - (i) the service associated with that telephone number will be disconnected from the existing service provider's network and may result in the closure of the account for that service;
 - (ii) any DSL/Spectrum Sharing service associated with that telephone number will be disconnected and may result in finalisation of the DSL Spectrum Sharing account for that service; and
 - (iii) there may be costs and obligations associated with the port which may include early termination fees and porting fees.
- (b) The service to the telephone number to be ported must remain active whilst porting to our service. If the service providing the telephone number is disconnected during the porting process the porting may be rejected and telephone number may be lost and allocated to another user.
- (c) You should only disconnect your service **after** the number has successfully ported over to 1300 Australia.

6. Fees and payment

6.1 Invoicing

- (a) The Fees that we will invoice you are set out in your Service Order.
- (b) We will invoice and you must pay us:
 - (i) any Once Off Fee at or before commencement of your Service;
 - (ii) fixed or recurring Fees monthly in advance; and
 - (iii) any variable Fees monthly in arrears.
- (c) If you do not pay the Fees when due, we may charge you a \$25 administrative fee and interest at the Reserve Bank of Australia's official cash rate plus 5% until the Fees are paid in full.
- (d) You must pay us any legal costs incurred by us on a solicitor/client basis, any court or service fees incurred by us, and any fees paid to a debt collector or mercantile agent, in respect of any action or proceedings undertaken in relation to recovering monies you owe us.

6.2 GST and other Taxes

- (a) If we must pay GST on a supply made in connection with this Agreement, then you must pay us an additional amount equal to that GST. We will provide you with a tax invoice. You must pay to us any taxes levied on or in relation to the Licensed Number, Phoneword or any other Service.

7. Warranty, liability and indemnity

7.1 Our warranties

- (a) We warrant that we have the right to license the Phoneword and, if your Service Order includes Call Services, we further warrant we have the right to provide the call service to you. You acknowledge that we may have obtained the right to license the Phoneword from a third party.
- (b) We do not make any representations or warranties in relation to the services other than the warranty in clause 7.1(a).
- (c) It is your responsibility to assess whether the services you have selected meet the requirements of your business and to develop and implement marketing that complements the Phoneword.
- (d) You may have additional rights under the Competition and Consumer Act 2010 (Cth). Nothing in this Agreement excludes, restricts or modifies rights that a party may have under any legislation that cannot be lawfully excluded, restricted or modified.

7.2 Your warranties

- (a) You warrant that your use of the Phoneword will comply with all laws, industry codes and regulations, and not infringe the rights of any person or be misleading or deceptive or constitute passing off.
- (b) If a third party claims that your use of the Phoneword infringes their rights or is misleading or deceptive, or is likely to mislead or deceive or constitutes passing off, it is your responsibility to obtain legal advice and resolve the matter with the third party.
- (c) You indemnify us against any Loss suffered or incurred by us in connection with any breach by you of this Agreement, including the above warranties.

7.3 Limitation of liability

- (a) Subject to clause 7.3(b), our aggregate liability for any Loss suffered by you during any year (from 1 July to 30 June) of the Term is limited to the total amount of Fees paid by you to us in that year.
- (b) Our liability for a breach of a consumer guarantee under the Competition and Consumer Act 2010 (Cth) is limited to, at our option, supplying equivalent goods or paying the cost of supplying equivalent goods or resupplying the services or paying the cost of resupplying the services (as applicable).

8. Suspension & Termination

8.1 Suspension

We may suspend your Service if:

- (a) you fail to comply with these T&Cs;
- (b) a supplier suspends the Service (or a part thereof); or
- (c) it is necessary or desirable to do so as a result of an event outside our reasonable control (including a Regulatory Event).

8.2 Termination

- (a) We may terminate the Service Agreement by written notice to you:
 - (i) if you fail to remedy a material breach of this Agreement within 30 days of being asked to do so;
 - (ii) if you become subject to any form of external administration, fail to comply with a statutory demand, are unable to pay your debts when they fall due; or
 - (iii) if a Regulatory Event occurs.
- (b) You may terminate this Agreement by written notice if we breach this Agreement and do not rectify the breach within 30 days of being asked in writing to do so.

8.3 Cancellation fee

If this Agreement is terminated during the Term other than under clause 8.2(b) we may charge you a cancellation fee equal to 50% of the Minimum Monthly Fees listed in your Service Order due for the remainder of the Term (**Cancellation Fee**). The Cancellation Fee is a genuine pre-estimate of the loss we will incur from early termination.

8.4 Consequences of termination or expiration

- (a) Upon termination or expiry of this agreement, you must:
 - (i) cease using the Services immediately;
 - (ii) not use '1300', '1800' or '13' as part of a trademark, company name, business name or domain name;
 - (iii) transfer to us or cancel, at our option, any trademark application or registration, domain name, company name, or business name that incorporates the Phoneword;
 - (iv) take reasonable steps to inform your customers and other interested persons that you can no longer be contacted using the Licensed Number or Phoneword; and
 - (v) execute all documents and do all things to give effect to the above.
- (b) Clauses 2.4, 6, 7.2, 7.3, 8.4 and 9 survive termination or expiration of this Agreement.

9. General

- (a) We and you agree not to disclose information provided by the other under this Agreement that is not publicly available (including the terms of this Agreement) except to its officers, employees, advisers and auditors or as required by any law or stock exchange, or to enforce the terms of this Agreement.
- (b) We may subcontract performance of this Agreement.
- (c) You may not assign, transfer or encumber your rights or obligations under this Agreement other than to a person who is purchasing your business.
- (d) The indemnities in this Agreement are independent and continuing obligations and continue after this Agreement ends. It is not necessary to incur expense or make payment before enforcing a right of indemnity.
- (e) We may use any of your logo(s) and image(s) for marketing and advertising activities.
- (f) This Agreement is governed by the law of Victoria, Australia. Each party submits to the exclusive jurisdiction of the courts of Victoria, Australia.

10. Definitions and interpretation

10.1 Definitions

Fees means all fees identified in the Service Order (including under the Account Plan Details) which may include Once Off Fee, Minimum Monthly Fee, usage charges and Licence Fee for the Phonenumber or similar. The Licence Fee and Minimum Monthly Fees are fixed monthly recurring fees and Call Charges are variable fees.

Loss means any loss, liability, cost or expense (including legal expenses on a full indemnity basis).

Phonenumber is an EROU (Enhanced Rights of Use) number that includes any alphanumeric translation of that EROU number.

Regulatory Event means an event that, in our reasonable opinion, prevents us from licensing the Licensed Number or providing the Service to you.

Services means the services that we supply to you under you have ordered from us under your Service Order, and includes any additional Services

Service Order means the order form which you have executed which sets out your Service Details and Fees and incorporates Account Plan Details and Porting Authority Form.

10.2 Interpretation

Unless the contrary intention appears, a reference in this Agreement to (i) a document includes any variation or replacement of it; (ii) a statute or other law includes all instruments under it and all amendments, re-enactments or replacements of any of them; (iii) the singular includes the plural and vice versa; (iv) a "person" includes an individual, a body corporate, a partnership, an unincorporated association or a government agency; (v) a person, includes that person's executors, administrators, successors, substitutes and assigns; and (vi) the words "include" or "including" are not used as words of limitation.