

Fone Dynamics Terms and Conditions

1. Agreement of Documents

The following documents will form the Agreement between the parties:

- a. this document, including these terms and conditions and schedules; and
- b. any application or order form for services which we notify you of our acceptance, and any ambiguity or discrepancy between the documents will be resolved and interpreted according to the same order of precedence as the documents are listed above, with the documents higher in the list having higher priority.

2. Service Description

2.1 Supplier to supply Services

- a. The Supplier agrees to supply the Services on the terms and conditions set out in the Agreement for the Term
- b. Services will be supplied to the Customer through the carriers or networks (Carriers). The Customer agrees that the Supplier:
 - i. may change Carriers without reference to the Customer and at any time; and
 - ii. has the Customer's express authorisation to notify any relevant Carrier in respect of and to effect any such change.
- c. As the Services are supplied through the Carriers, the Supplier does not warrant that it will be able to supply the Services and will not be liable for any failure to provide all or part of any of the Services where the Services provided by the Carriers are interrupted for any reason.
- d. The Supplier will provide the Services to the extent and to the standard that Carriers provide Services to the Supplier. When the Customer's connection is disrupted whether caused by the carrier or for any other reason, the Supplier will use its best endeavours to reinstate the Services to the Customer.
- e. When using the Services, the Customer agrees to:
 - i. comply with all statutes, regulations, by-laws or license conditions of any government body; and
 - ii. not breach any person's rights or otherwise cause the Supplier or a Carrier loss, liability or expense.

3. Charges, Invoicing and Payment

3.1 Charges

- o The Customer agrees to pay all Charges in connection with the Services.

3.2 Invoicing and Payment

- b. Recurring Charges are invoiced in advance and usage based Charges are invoiced in arrears, subject to the Supplier agreeing to provide credit terms. The Supplier may invoice and require payment of Charges for any additional Services before provision of those Services.
- c. The Supplier will send a monthly invoice for the Charges to the Customer's address by email. The Supplier aims to include all charges relating to the current billing period on the invoice but the Supplier may invoice the Customer for a Charge which has not been previously billed or which has been previously understated to the Customer if the Supplier provides the Customer details of the Charge by way of a record of the Charge.
- d. The Customer must pay each invoice within fourteen (14) days of the date of the invoice.
- e. If the Supplier identifies an error in an invoice, it will apply an adjustment to the Customer's account which will appear on the next invoice. Any overpayment will be credited to the Customer's account and the Customer must pay the Supplier for any underpayment.

- f. If a Customer payment is dishonoured by the bank or credit or charge card issuer, the Supplier may charge the Customer a dishonour fee equal to the greater of \$5 or 5% of the amount of the dishonoured payment.
- g. Where the Customer makes a payment using a credit card, the Supplier may charge a credit card fee. The Supplier's current credit card fees will be set out on each invoice, and may be varied from time to time.
- h. The Customer acknowledges and agrees that any credit terms and credit limit are subject to approval by the Supplier at its absolute discretion. If at any time the Supplier, acting reasonably, becomes concerned about the Customer's ability to pay the Charges, the Supplier may vary the payment terms, decline to extend further credit or vary the Customer's credit limit and any related conditions. If the Customer fails to pay any amount when due or otherwise breaches the Agreement, becomes bankrupt or insolvent or if the Supplier, acting reasonably, suspects any of those things might occur, the Supplier may cancel the Customer's credit account without prior notice and all balances owing will become immediately due and payable.
- i. The Customer must not set off or deduct any amount from payments it owes the Supplier. The Supplier may set off or deduct any amount it owes to the Customer.

3.3 Failure to pay

If the Customer fails to pay the Charges in accordance with clause 4.2(c), the Supplier may:

- j. suspend the Services in accordance;
- k. terminate the Services;
- l. charge the Customer interest on any overdue amount from the due date until the date payment is received, at a rate of 2% per annum above the Reserve Bank of Australia Cash Rate calculated daily on the unpaid balance; and
- m. charge the Customer \$5 per month while there are any overdue amounts; plus the Supplier's costs of recovering payment for outstanding charges, including debt recovery agent costs and legal costs.

4. Dispute Resolution

4.1 Dispute resolution process

At the Customer's request, the Supplier agrees to review any dispute under the Agreement in accordance with the processes put forward in Telecommunications Act 1997 and inform the Customer of the outcome of that review within fourteen (14) days.

4.2 Billing disputes

- a. If, in the Customer's reasonable opinion, there is an inaccuracy, omission or error in relation to a charge on an invoice, the Customer may, before the due date for payment of the invoice, dispute the invoice by giving notice to the Supplier's client services team. The notice must, as a minimum, include the date and number of the disputed invoice, itemised details of the charges in dispute, detailed reasons for dispute and any documentation sufficient to support the Customer's claim and to enable the Supplier to investigate it.
- b. The Customer must pay any undisputed amount by the invoice due date.
- c. The Supplier may, at any time, reject a billing dispute if:
 - i. it receives the notice after the due date for payment of the invoice;
 - ii. the notice does not contain the minimum information required by clause 4.2(a);
 - iii. the Customer does not, within 5 Business Days of the Supplier's request, provide such additional information and documentation as the Supplier may reasonably request to enable the Supplier to investigate the billing dispute; or
 - iv. in the Supplier's reasonable opinion, the billing dispute is not genuine.

- d. If the Supplier rejects a billing dispute for any reason under clause 4.2(c), the Customer must pay the whole of the invoice (disputed and undisputed amounts) by the due date, or if the due date has passed, immediately.
- e. Where the Customer gives the Supplier a notice in accordance with clause 4.2(a) and promptly provides such other information and documentation as the Supplier may reasonably request, the Supplier will:
 - i. investigate the dispute within a reasonable period and notify the Customer of its determination and reasons; and
 - ii. not take any legal or recovery action in relation to the disputed amount until a determination has been made.

4.3 Disconnection, restriction and suspension

Notwithstanding any other clause in the Agreement, the Supplier will give the Customer a notice regarding its decision to restrict, suspend or disconnect their Service due to a breach of the Agreement or a Service Agreement

5. GST

Any terms capitalised in this clause and not defined in the Agreement have the same meaning given to those terms in the GST Act. The consideration for a Supply made under or in connection with the Agreement does not include GST.

6. Assignment

6.1 Assignment by Supplier

The Supplier may assign, encumber or otherwise deal with its rights and obligations under the Agreement.

6.2 Assignment by Customer

The Customer may only assign, encumber, or otherwise deal with the Agreement or a right under the Agreement with the written consent of the Supplier.

7. Mutual Confidentiality

7.1 Parties obligations

The Parties agree to keep confidential, and not to use or disclose, other than as permitted by the Agreement, any Confidential Information of the other party provided to or obtained by the other party before or after entry into the Agreement.

7.2 Exclusions

The obligations of confidence in clause 7.1 do not apply to Confidential Information:

- a. that is required to be disclosed by applicable law, or under compulsion of law by a court or government agency, as long as the Customer:
 - i. discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
 - ii. before disclosing any information, gives all available written notice to the Supplier and takes all available steps (whether required by the Supplier or not) to maintain such Confidential Information in confidence; or
- b. that is in the public domain otherwise than as a result of a breach of the Agreement or other obligation of confidence.

8. Indemnity

8.1 Parties indemnities

The parties irrevocably and unconditionally indemnifies and must keep indemnified the other party and their Personnel, from and against all liability, damage, charges, Claims, demands, writs, summonses, suits, proceedings, judgements, orders, decrees, Costs, losses and expenses of any nature whatsoever which the Supplier or any of its Personnel may suffer or incur.

8.2 Compliance with laws

The parties warrants that they will comply with all relevant laws in the provision of the Services, including without limitation, the Privacy Act 1988 (Cth) and the Spam Act 2010 (Cth)

9. Termination

9.1 Termination

If the Customer terminates during the Term, the Customer agrees to pay the Supplier an amount equal to the average of the last three months normal invoiced amounts multiplied by the number of months remaining in the Term.

9.2 Termination by default

If the Customer:

- a. is subject to an Insolvency Event;
- b. breaches any legislative requirements;
- c. breaches any term or condition of the Agreement; or

- d. the (direct or indirect) ownership or Control of the Customer is altered such that a person or group of persons who did not Control the Customer is a competitor of Fone Dynamics,

then the Supplier may terminate the Agreement.

10. Amendments to Terms and Conditions

The Supplier may vary these Terms and Conditions at any time

11. Liability

To the extent permitted by law, the Supplier excludes all liability to the Customer (whether arising in Agreement or tort under statute or otherwise from any cause whatsoever) for any injury, loss, damage, cost or expense relating to or arising from the Agreement, including by the negligence of the Supplier.

12. Information

- a. The Customer agrees to provide the Supplier with any information it requests in connection with providing the Services under the Agreement.
- b. The Customer authorises and consents to the following:
 - i. the Supplier exchanging with carriers all information about the Customer and the Services provided including, but not limited to the Customer's name, billing address, street address, relevant telephone numbers, any information obtained for the purpose of the Customer's application and the Agreement;
 - ii. the carrier exchanging with the Supplier any information in the carrier's possession or under its control in relation to the Services including, without limitation, all the Customer's records and, in particular, exchange line details, account information, call charge records and call event records; and
 - iii. the Supplier's and the Carrier's use of the information referred to in paragraphs (ii) and (iii) of this clause.

13. Representations and Warranties

13.1 Customer's representation

The Customer agrees and represents to the Supplier that it acknowledges that it is liable for all taxes, duties or government charges imposed or levied in Australia or overseas in connection with the Agreement; and all costs and expenses which may be incurred by the Customer as a result of the matters referred to, identified in, or to be reasonably inferred from, or contemplated by the Agreement.

13.2 General warranties and representations as to capacity

Each party warrants and represents to the other party that:

- a. it has full authority and all necessary consents to enter into and perform the Agreement;
- b. the Agreement and all other agreements contemplated by the Agreement will, when executed by it, constitute binding obligations of it in accordance with their respective terms;
- c. the execution, delivery and performance by it of the Agreement will not:
 - i. result in a breach of any provision of its constitution;

- ii. result in a breach of, or constitute a default under, any instrument to which it is a party or by which it is bound and which is material in the context of the transactions contemplated by this document; or
- iii. result in a breach of any order, judgment or decree of any court or authority to which it is a party or by which it is bound and which is material in the context of the transactions contemplated by this document.

14. General

14.1 Counterparts

This document may be signed in any number of counterparts. All counterparts together make one instrument.

14.2 Governing law

The Agreement is governed by the laws of Queensland.

14.3 Illegality and severability

- a. If a clause or part of a clause of the Agreement is inconsistent with the Supplier's obligations under the Telecommunications Act, that clause ceases to operate to the extent necessary to comply with the Telecommunications Act, and the remaining clauses or parts of the clause continue in force.
- b. A clause or part of a clause of the Agreement that is illegal or unenforceable may be severed from the Agreement and the remaining clauses or parts of the clause of the Agreement continue in force.
- c. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from the Agreement in the relevant jurisdiction, but the rest of the Agreement will not be affected.

14.4 Survival

Clauses 7,8,11 and 13 survive termination or expiration of the Agreement.

15. Network Maintenance

The Supplier and its suppliers may perform maintenance, upgrade and repair works at any time on the Supplier's network and other networks, equipment, facilities and infrastructure used in connection with providing the Services from time to time. The Supplier will use its best endeavours to ensure such works have minimal or no disruption to the Services.

16. Defined Terms

In the Agreement, the terms set out below have the following defined meaning:

- "\$" means Australian dollar, unless otherwise specified.
- "Agreement" means this document and any other documents that form part of the Agreement pursuant to clause 1 of this document.
- "Business Day" means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland.
- "Charges" means the fees set out the product catalogue (as that term is defined under the Service Agreements).
- "Claim" means any claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
- "Effective Date" means the date set out in the Agreement documents.
- "Confidential Information" means any information:
 - i. relating to the business and affairs of the parties;
 - ii. relating to the customers, clients, employees, or other persons doing business with the parties;
 - iii. which is by its nature confidential;
 - iv. which is designated as confidential by the parties; or
 - v. which the parties know or ought to know, is confidential, and includes all trade secrets, knowhow, financial information and other commercially valuable information of the parties.
- "Control" includes the ability to appoint or direct the board, trustee, or executive management.
- "Customer" means the person identified as the "Customer" on the first page of this document.
- "Insolvency Event" means any of the following events concerning the Customer:
 - i. if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the Corporations Act 2001 (Cth)) is appointed to, or over, any of the property or undertaking of the party;
 - ii. if the party is unable to pay its debts when they become due and payable;
 - iii. if the party ceases to carry on business; or
 - iv. if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.
- "Personnel" means any officer, employee, agent of a party.
- "Services" means the services set out in the Service Agreements.
- "Supplier" means the person identified as the "Supplier" on the first page of the Agreement.
- "Telecommunications Act" means the Telecommunications Act 1997 (Cth) and all regulations, codes and other delegated legislation under the Telecommunications Act 1997 (Cth) as may be in force from time to time.