

SIM Card Services Agreement

Standard Terms and Conditions

This agreement consists of these Standard Terms and Conditions, the description of any services from our Website and any requests submitted by you for a SIM Card or Service through our Website.

1. Interpretation

In the interpretation of this agreement:

1.1 References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;

1.2 Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;

1.3 Grammatical forms of defined words or phrases have corresponding meanings;

1.4 Parties must perform their obligations on the dates and times fixed by reference to the capital city of Victoria;

1.5 Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;

1.6 If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next Business Day;

1.7 References to a party are intended to bind their executors, administrators and permitted transferees; and

1.8 Obligations under this agreement affecting more than one party bind them jointly and each of them severally.

2. Commencement and term

2.1 This agreement takes effect from the Commencement Date and shall continue until terminated in accordance with this Agreement.

3. SIM Cards and Services

We will, in accordance with the terms of this Agreement, supply to you the requested SIM Cards and the Services.

4. Terms of Service

4.1 We will use our best endeavours to:

4.1.1 supply the SIM Cards and Services, and perform our other obligations pursuant to this Agreement, in a timely, courteous and professional manner;

4.1.2 we comply with all applicable laws and legal obligations in the provision of the SIM Cards and Services.

4.2 We cannot guarantee that the Services will be continuous or uninterrupted.

4.3 We will endeavour to respond to any enquiries or complaints in a timely manner.

4.4 We are a reseller and may arrange for you to be supplied with Carriage Services by a Carrier or a Carriage Service Provider, however we do not directly provide Carriage Services. In accepting these terms, you acknowledge and agree that:

4.4.1 we are not responsible for any act or omission of any Carrier or Carriage Service Provider who we arrange to supply Carriage Services to you;

4.4.2 we are not responsible for any interruption in, disruption to or suspension by a Carrier or Carriage Service Provider of the Carriage Services supplied to you.

4.5 We do not guarantee:

4.5.1 that our System is free of Viruses;

4.5.2 the security of our System, any interfaces used to connect to our System or information that passes through or is stored in our System;

4.5.3 that access to our System will be free of fault, continuous or accessible at all times.

5. Processing Orders

5.1 You may request us to supply a SIM Card or a Service or make changes to your Data Plan by completing and submitting an application form through our Website, or by calling or emailing us or submitting a request through our Website.

5.2 Once your request is accepted:

5.3.1 payment of any Charges for the SIM Card and Service requested must be made by you;

5.3.2 upon receipt of payment, we will supply the SIM Card or Service requested;

5.3.3 in the event that any request to change your Data Plan is submitted, we will implement that change as soon as practicable.

6. Payment

6.1 You must pay us the Charges for the SIM Cards and Services. Failure to make a payment on the due date will entitle us to charge you interest at the interest rate our bank charges for a business overdraft on the due date. Interest will accrue daily from the due date until the date you make payment in full and must be paid upon issue of invoice.

6.2 Any Charges will be invoiced to you monthly in advance, including any Charges relating to supply of a SIM Card or Service in the previous period to which the invoice relates. Invoices may be issued by email. All invoices must be paid by the due date specified on the invoice or within seven days of issue.

6.3 We may vary any Charges for any SIM Card or Service by providing you at least 30 days' notice of the change.

6.3 Discounts may be offered to our Scheduled Price or our Scheduled Price by agreement. Any discount offered may be revoked or varied at any time by giving you not less than 30 days' notice, or with immediate effect if you are in breach of this agreement.

6.5 Payments must be made by a method specified on our Website, and certain charges may apply to certain payment methods. Any costs, charges, fees or expenses incurred by us as a result of your use of a payment method specified on our Website will be charge to you, including any international payment charges.

6.6 Any disputed claims must be brought to our attention within 90 days of the date of the invoice.

7. GST

7.1 Words defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.

7.2 Unless indicated otherwise, the Charges and all other amounts referred to in this agreement are exclusive of GST. If GST is or will be imposed on a supply made under or in connection with this agreement, to the extent that the consideration otherwise provided for that supply under this agreement is not stated to include an amount in respect of GST on the supply:

7.2.1 the consideration otherwise provided for that supply is increased by the amount of that GST; and

7.2.2 the recipient must pay to us an additional amount equal to the prevailing GST rate on the supply at the same time and in the same manner as the consideration is provided subject to receipt of a valid tax invoice.

7.3 The supplier of a taxable supply under this agreement will issue a tax invoice or adjustment note to the recipient in relation to the supply.

8. SIM Cards

8.1 It is your responsibility to inspect any delivered SIM Cards and provide notice to us within 5 Business Days of delivery of any SIM Card defects. Failure to provide such notice, subject to any non-excludable condition or guarantee implied by law, will mean that the SIM Cards are deemed to have been delivered to and accepted by you.

8.2 Ownership of any SIM Card will pass to you upon receipt of payment for the SIM Card.

8.2 We accept any Risk of loss of, or damage to, a SIM Card until the SIM Card has been delivered to you in accordance with this agreement.

9. Purchaser's obligations

9.1 You must ensure that any devices or equipment connected by you to the SIM Cards or the Services are compliant with the specifications for that equipment and able to connect safely with that equipment.

9.2 You must comply with any and all applicable laws and our Policies to the extent that they relate to the provision of the Services to you.

9.3 You must not alter, tamper with, reverse engineer, repair or attempt to repair any SIM Cards or Services or allow any third party to do so, unless they are an accredited technician approved by us.

9.4 You are solely responsible for:

9.4.1 your own equipment, facilities and systems for use and safe operation of any SIM Cards and Services we provide you;

9.4.2 ensuring that your networks and systems are compatible with the SIM Cards and the Services we provide you;

9.4.3 any adverse consequence of use of the SIM Cards and the Services;

9.4.4 the security of any data or information that is sent, received or stored using the SIM Cards or the Services.

9.5 You must use take all appropriate steps to ensure that Viruses do not enter our System.

10. Confidentiality

10.1 You must not disclose any Confidential Information belonging to us or use it except for the purposes of this agreement, with the following exceptions:

10.1.1 to your auditors or professional advisers, so long as they are under a duty not to disclose or use the information except for the purpose of performing their audit or advisory obligations;

10.1.2 to a Government Agency, if compelled to do so.

10.2 Your obligations under this clause are not breached if our Confidential Information:

10.2.1 is in the public domain (other than as a result of a breach of an obligation of confidentiality); or

10.2.2 is disclosed as required by law, provided that you:

(a) notify us of the matter, including who the information is to be or has been disclosed, before or as soon as possible after the disclosure is made;

(b) only disclose our Confidential Information to the extent legally required;

(c) ensure that the Confidential Information is not further disclosed and is not used; and

(d) follow any reasonable direction given by us concerning the disclosure.

11. Indemnity

11.1 You indemnify us against all Loss we suffer or incur as a result of or relating to:

11.1.1 the injury or death of any person; or

11.1.2 loss of or damage to our property or the property of a third party;

11.1.3 an infringement or alleged infringement of a third party's IP or Moral Rights;

11.1.4 your use of the SIM Cards or the Services,

where the Loss arises out of or as a consequence of your Default.

11.2 The amount payable under the indemnity in clause is reduced to the extent that the Loss is caused or contributed to by our Default.

12. Warranties

12.1 Any SIM Card Warranty provided by a Supplier of any SIM Card (other than SIM Cards) will be notified to you.

12.2 If you believe that any SIM Card supplied to you is defective or is covered by a SIM Card Warranty, you must notify us of the defect or right to make a Claim under the SIM Card Warranty. We will then use our best efforts to assist you to make a Claim under the SIM Card Warranty.

12.3 You are responsible for any cost of returning of any SIM Card for repair or replacement under a SIM Card Warranty.

12.4 If there is a manufacturing defect with a SIM Card, we will replace the SIM Card free of charge or refund you the cost of the SIM Card.

13. Cancellation or suspension of a Service

13.1 Notice of cancellation of any Service may be given by emailing us at support@premiummobile.com.au. The supply of a Service that we have suspended may be recommenced at any time at our discretion.

13.2 You will remain liable for payment of any Charges for a Service accrued up to the date of cancellation.

13.3 Any early termination fee specified in a Service Description of a Service, must be paid upon cancellation of that Service.

13.4 We reserve the right to immediately, and without notice, cancel or suspend the supply of a Service to you at any time for the following reasons:

13.4.1 if your use of the Service interferes with or disrupts our System;

13.4.2 if there is any failure to make any due payment to us under this agreement;

13.4.3 if your use of the Service is unlawful or the Services are used by you to commit an offence or allow the commission of an offence by any third party;

13.4.4 if the supply or use of the Service otherwise becomes unlawful;

13.4.5 any other breach of the terms of this agreement by you;

13.4.6 if the Carrier who supplies the Carriage Service supplied to you suspends or asks or directs us to suspend the Service; or

13.4.7 in any other emergency situation.

14. Liability

14.1 The *Australian Consumer Law* provides certain guarantees to consumers in relation to the SIM Cards and Services that cannot be excluded. Our liability for breach of any guarantee implied by the Australian Consumer Law is, to the extent permitted by the Australian Consumer Law, limited to:

14.1.1 in the case of goods – the repair of the goods, or, at our option, the replacement of the goods or the supply of equivalent goods or the payment of the cost of repair, replacement or supply of equivalent goods; and

14.1.2 in the case of services – the resupply of those services or payment of the cost of having those services resupplied.

14.2 You are not entitled to recover damages from us for any Default or otherwise under this agreement for indirect or consequential loss, including loss of use, loss of profits, loss of opportunity, damage to reputation or special, exemplary or punitive damages.

14.3 To the fullest extent permitted by law, all terms which might be implied by statute are excluded and our liability for any Claim relating to the SIM Cards or Services, whether pursuant to contract, tort, statute law or otherwise, is limited to the resupply of our SIM Cards and Services.

15. Complaints

15.1 Any Complaint must be notified to us by email at support@premiummobile.com.au.

15.2 If any Complaint cannot be resolved within 14 days after notification, the Complaint will be referred to a senior manager nominated by us who will attempt to resolve the Complaint by negotiation.

15.3 If the Complaint still cannot be resolved after being referred to senior management, either party may refer the Complaint for mediation by a mediator appointed by the Institute of Arbitrators and Mediators Australia or another mediator agreed by the parties.

15.4 You must not commence litigation in respect of a Complaint unless reasonable attempts have been made to resolve the Complaint in line with this clause.

16. Force Majeure

16.1 If a Force Majeure Event occurs, the obligations of any affected party are suspended so long as the effects of the Force Majeure Event have that effect. An obligation to make a payment to a party cannot be an affected obligation.

16.2 The affected party must give the other party notice of the Force Majeure Event as soon as practicable after becoming aware that the Force Majeure Event has occurred. The affected party must use its best efforts to minimise any effects of the Force Majeure Event.

17. Termination

17.1 If:

17.1.1 you are or become insolvent or commit an act of bankruptcy or make an assignment for the benefit of your creditors;

17.1.2 an order is made or resolution passed for your winding up of your company or a controller is appointed over all or any part of your company's assets;

17.1.3 you fail to make any due payment to us under this agreement; or

17.1.4 you are in breach of any other terms of this agreement, we may terminate this agreement immediately or with effect from a date specified in any written notice to you.

17.2 Either party may, by written notice, terminate this agreement if a Force Majeure Event occurs and any affected obligations are suspended for more than 14 days.

17.3 You may terminate this agreement for any reason by the provision of 30 days written notice.

17.4 Our rights to receipt of payment of any Charges accrued up to the date of termination are not affected by termination.

18. Variation

18.1 We reserve the right to make changes to this agreement unilaterally and at our discretion.

18.2 Changes to this agreement may be made in the event that a Carrier or Carriage Service Provider who we arrange to supply Carriage Services to you changes or terminates a service or changes the terms on which it supplies a service that it supplies to you or us.

18.3 Any change to this agreement will be notified to you in advance. If we publish the changed agreement on the Website and the date on which the change takes effect, you are deemed to have received notice of the change and the date on which the change takes effect.

18.4 You are bound by any changed agreement published on our Website with effect from the date we notify you is the date on which the change will take effect.

19. Communications

19.1 You may communicate with us by emailing us at support@premiummobile.com.au.

19.2 We may rely and act on any request, instruction or communication received by us from any person who we understand to be your authorised representative.

20. Intellectual Property

20.1 You acknowledge and agree that you do not own or acquire any rights in our IP.

20.2 You must not contest our title to Our IP or take any action that may have a detrimental effect on our title to Our IP.

21. General

21.1 You must not assign all or any of your rights given to you under this agreement without our prior written consent.

21.2 This agreement is to be read and construed according to the laws of Victoria, Australia and the parties submit to the jurisdiction of that State.

21.3 If any provision of this agreement is held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation it is to be severed so that the validity and enforceability of the remaining provisions are not affected.

21.4 All stamp duties and governmental charges arising out of or incidental to this agreement are the responsibility of and must be paid by you.

21.5 Each party must do all acts and execute all documents necessary to give effect to this agreement.

23. Definitions

In this document, unless a contrary intention appears:

Application means the online application form on our Website.

Authorisation means:

- (a) an authorisation, consent, exemption or licence, however it is described, required to do something that would otherwise be prohibited or restricted by law; or
- (b) in relation to something that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken.

Business Day means a day other than a day that is a Saturday, Sunday or national public holiday.

Carriage Service has the meaning given in the *Telecommunications Act 1997 (Cth)*.

Carriage Service Provider has the meaning given in the *Telecommunications Act 1997 (Cth)*.

Carrier has the meaning given in the *Telecommunications Act 1997 (Cth)*.

Claim means a cause of action, claim, demand, suit or proceeding of any kind, including by way of court proceedings, proceedings in the nature of arbitration, mediation or other methods of dispute resolution and administrative claims and proceedings.

Commencement Date means the date on which we accept your application to open an account with us using the online application form on our Website.

Charges means the prices, charges and fees that you must pay for the SIM Cards and the Services as specified in the applicable Product Descriptions or Services Descriptions or these Terms and Conditions including:

- (a) the monthly fee for your selected Data Plan;
- (b) any usage fees and charges;

(c) any other fees and charges that we publish on our Website and that apply to the Services.

Complaint means a complaint you have about the supply of a SIM Card or a Service or a dispute or difference between you and us arising out of or in connection with this agreement.

Confidential Information means information relating to us or any of our Related Bodies Corporate that:

- (a) you know or ought to know is confidential
- (b) is by its nature confidential;
- (c) is designated by us as confidential;

but not including information that:

- (a) you establish has been independently developed or acquired by you; or
- (b) is or becomes public knowledge otherwise than by a breach of this agreement or another confidentiality obligation.

Corporations Act means the *Corporations Act 2001 (Cth)*.

Data Plan means a plan that we provide that allows you to use a fixed monthly amount of data for a fixed price and includes an excess usage charge if you exceed the allowance.

Default means an act or omission that:

- (a) is a contravention of a written law; or
- (b) amounts to negligence or a breach of a duty or a breach of an agreement or other document.

Force Majeure Event means an event that prevents a party from performing its obligations under this agreement, being an event that is beyond the reasonable control of the party, but not an event that is, or is caused wholly or partly by a Default of the affected party.

Government Agency means a person or body performing governmental functions, including any of the following:

- (a) a body politic;
- (b) a government or government department or other similar body;
- (c) a governmental, semi-governmental or judicial person;
- (d) a person charged with the administration of a law.

GST Act means the *A New Tax System (SIM Cards and Services Tax) Act 1999 (Cth)*.

GST Law has the meaning given to that term in the *GST Act*.

IP or Intellectual Property means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trade marks, registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity recognised in law.

Loss means any liability, loss, damage, compensation and costs and expenses and any legal costs and expenses in relation thereto on a solicitor and own client basis.

Material includes documents, goods, equipment, reports, software, specifications, reports, information and data.

Moral Right means a right conferred by Part IX of the *Copyright Act 1968 (Cth)* and a right of a similar nature conferred by statute that exists, or may come to exist, anywhere in the world.

Order means a request by you for a SIM Card or a Service or a change to a Service.

Policies means the policies that are described on our Website, including our access and acceptable use policy.

Product Description means, in respect of a good we supply, the description of that good on our Website.

Related Body Corporate has the meaning given to that term in the *Corporations Act*.

Scheduled Price means the price for a SIM Card or a Service specified in the Product Description of that SIM Card or the Service Description of that Service.

Service means a service that we will supply to you under this agreement as specified in an Order.

SIM Card means a subscriber identity module card that may be fitted to or removed from a device by hand.

Supplier means a person who supplies SIM Cards to us on terms that we may resupply the SIM Cards to third parties, including you.

System means the system of computer equipment, software, processes and interfaces that comprises the infrastructure used by us to provide the Services, including Our Website, the Services Portal and the Control Centre, but not including any infrastructure used by a Carrier or Carriage Services Provider to supply a Carriage Service to you or us.

Virus means:

- (a) any program code, programming instruction or set of instructions intentionally constructed to damage, interfere with or otherwise adversely affect computer programs, data files or operations;
- (b) any device that would, if introduced into a system or software used to provide the SIM Cards or the Services, prevent that system or software from performing the functions it is designed to perform, or interfere with or otherwise adversely affect that performance; or
- (c) any other code or device which a person in the IT industry would reasonably consider to be a virus.

Website means our website at www.premiummobile.com.au.