

Terms & Conditions: T&C 01

TERMS AND CONDITIONS FOR MOBILE TELEPHONE SERVICE

It is hereby agreed between the Customer and SmarTone Mobile Communications Limited ("the Company") as follows:

SALE OF EQUIPMENT/ ACCESSORY ITEM

1. PAYMENT FOR EQUIPMENT/ ACCESSORY ITEM

1.1 The Customer shall pay the Company the full purchase price or any balance thereof on the delivery of the Equipment/Accessory Item. If the Equipment /Accessory Item has been delivered to the Customer and the balance of the purchase price is not paid by the Customer, the Company shall have the right to forfeit the deposit paid by the Customer and repossess the Equipment/ Accessory Item.

2. TITLE AND RISK

2.1 Title to the Equipment/Accessory Item shall remain vested in the Company until the Company has received full payment of the purchase price but risk shall pass to the Customer upon delivery of the Equipment/Accessory Item to the Customer.

3. DELIVERY

3.1 All delivery dates or times quoted by the Company are estimates only and the Company shall not be liable for the consequences of any delay whatsoever.

4. WARRANTY

- 4.1 The warranty period of the Equipment and the Accessory Item shall start from the date of purchase. The warranty shall continue notwithstanding any transfer of ownership of the Equipment/Accessory Item.
- 4.2 The Customer's sole and exclusive remedy during the warranty period shall be limited to repair or replacement
- 4.3 The warranty will be rendered invalid if the defective Equipment or Accessory Item or any part thereof is caused by (i) undue wear and tear, (ii) negligence, omission or mishandling of the Equipment or Accessory Item; or (iii) alteration or repair made without the authorization of the Company. The Company may at the Customer's request carry out the repair or replacement work not covered by the warranty but subject to the Customer paying the Company's prevailing charges (which are subject to change from time to time) for such services.

PROVISION OF SERVICES

5. THE SERVICES

- 5.1 Subject to the terms and conditions set out herein, the Company shall provide and the Customer shall subscribe to the Company's services ("the Services") in accordance to the selected service plan ("Service Plan"). The Customer can view the most current version of the scope of the Services at the Company's website: smartone.com.
- 5.2 The Services provided to the Customer is subject to the Company's prevailing Service Plan and/or rate of charges for the Services from time to time. The Company reserves the right to vary the Service Plan and/or rate of charges for the Services at any time as it thinks fit by giving prior notice to the Customer. In the case of any increase in the Service Plan and/or rate of charges for the Services, the Company shall give the Customer not less than thirty (30) days prior notice.**
- 5.3 The Customer shall select the features of the Services ("Service Features"). The Company reserves the right at any time to do all such things that is necessary to the Service Features to ensure the quality of the Services.
- 5.4 The Customer may request for the provision of international communication service. The international communication service provided by the Company is subject to the terms and conditions set out herein and the terms and conditions prescribed by the relevant provider of such service from time to time.
- 5.5 The Company does not provide directory entries for the Services.
- 5.6 Roaming service for use of the Services outside Hong Kong is available in countries where there is roaming arrangement with the Company.
- 5.7 For the use of Inter-Operator Short Message Service, the Customer agrees that he will solicit the recipient's explicit consent prior to the sending of Promotional IOSMS. The Company shall have the right to suspend or terminate the Inter-Operator Short Message Service, in case the Customer sends Unsolicited IOSMS. For the purpose of this Clause Promotional IOSMS means those messages which are of promotional or similar nature and 'Unsolicited IOSMS' means those Promotional IOSMS which the recipient has not given his explicit prior consent to receive. A copy of the Code of Practice for Inter-Operator Short Message Service is available upon request.

- 5.8 The Services and / or the Service Features shall only be used by the Customer for private non-commercial use and is not for resale.
- 5.9 The Customer must use the Services with settings [including but not limited to the APN setting (only applicable to data services)] and devices specified by the Company. Customer can check with the Company's front-line staffs for the latest information on setting and devices. If the Customer does not follow this specification in the use of the Services, the Company has the right to forthwith suspend / terminate the Services without notice. Also the Company has the right to charge the Customer use of the Services at the Company's prevailing rate.
- 5.10 The Services shall not be used under any one of the following circumstances, including but without limitation (i) using the Services in any manner which adversely affects the Company's ability to provide, complete or maintain the level or quality of its network or other services; and (ii) in any manner which is designed to cause loss or damage to the Company such as using the Services for commercial purposes or reselling the Services.
- 5.11 If the Customer fails to comply with any of the prohibitions specified in Clause 5.10; or upon the occurrence of any one or more of the circumstances specified in Clause 5.10; or if in the reasonable opinion of the Company, the Customer's use of the Services adversely affects the Company's ability to provide, complete or maintain the level or quality of its Network or other services or to cause loss or damage to the Company, the Company may forthwith take such steps it considers reasonably necessary or appropriate including but not limited to restricting, limiting, suspending or terminating the Services to the Customer without notice.
- 5.12 Unless otherwise notified by the Customer, the Customer agrees to receive information sent from the Company for any or all of the following purposes:
 - (a) marketing of goods and/or services by the Company, its agents, affiliates or subsidiaries in relation to the Services;
 - (b) improvement such as updates and upgrades of goods and/or services in relation to provisioning of the Services;
 - (c) any benefits arising out of or in connection with the Services;
 - (d) facilitate complete or confirm the provision of the Services by the Company to the Customer under this Agreement.

6. SUBSCRIBER IDENTITY MODULE CARD

- 6.1 The Company will issue to the Customer a Subscriber Identity Module Card (SIM Card) for his use of the Services.
- 6.2 The provision of the SIM Card is subject to and conditional upon the communication equipment in which the SIM Card shall be installed is of a type approved by the Communications Authority in Hong Kong.
- 6.3 The SIM Card provided by the Company can support Near Field Communication services ("NFC Services") which are provided by third party service providers ("NFC Service Providers"), including but not limited to NFC mobile payment services ("Mobile Payment Services") provided by financial institutions. The NFC Services are provided by the NFC Service Providers directly and not the Company. The Customer will use a compatible device as specified by the NFC Service Provider for the use of NFC Services. The Customer will provide the NFC Service Providers with the mobile number for the use of the NFC Service. The Customer will immediately inform the NFC Service Providers of replacement of SIM Card or change of mobile number for use of the NFC Services.
- 6.4 The SIM Card shall at all times remain the Company's property and the Customer shall not claim or acquire any interest therein or right thereto.
- 6.5 The Customer acknowledges that the Company is the absolute and exclusive owner of all information written into, incorporated, stated or otherwise included in the SIM Card (excluding information stored by the Customer) and undertakes to keep all such information confidential at all times.
- 6.6 The Customer shall return the SIM Card to the Company forthwith upon the Company's demand or upon the termination or disconnection of the Services. If the Customer shall fail to do so, the Customer shall pay the Company charges in such amounts as the Company shall determine.
- 6.7 The Customer shall take proper care of the SIM Card and shall not permit any person (other than the Company or authorized users under the Account of the Customer) to take possession or control of the SIM Card. The Customer shall not copy, extract, alter, tamper with or otherwise misappropriate any information in the SIM Card or allow, permit or authorize any other person to do so.
- 6.8 The Customer shall indemnify the Company against all or any losses, damages, costs, expenses and other liabilities whatsoever suffered, sustained or incurred by the Company arising from (directly or indirectly) any loss of or damage to or blocking of the SIM Card or any misuse of the SIM Card by the Customer or any authorized users under the Account of the Customer or any other person. In addition and without prejudice to the above, the Customer shall pay to the Company all charges in such amounts as the Company may determine.

7. DEPOSIT/ADVANCE PAYMENT

- 7.1 The Company shall have the right at any time to require the Customer to pay a deposit and/or advance payment as security for the due performance and discharge by the Customer of his obligations and liabilities relating to the provision of the Services or otherwise under this Agreement. The amount of the deposit and/or advance payment shall be determined by the Company at its sole discretion. The Company reserves the right to increase the amount of the deposit and/or advance payment from time to time. The deposit shall be retained by the Company free of any interest to the Customer.
- 7.2 Without prejudice to any other rights or remedies which the Company may have against the Customer, the Company shall be entitled to apply and set off the deposit and/or advance payment against any sum due or owing by the Customer under this Agreement or under any of the Customer's other account for the Services or for any loss or damage suffered or sustained by the Company as a result of any non-performance or non-observance by the Customer of any terms and conditions under this Agreement or under any of the Customer's other account for the Services.
- 7.3 Subject to the above, the deposit shall be refunded to the Customer without interest after the termination of this Agreement or the settlement of the last outstanding claim by the Company against the Customer under this Agreement; whichever shall occur later.

8. PAYMENT FOR THE SERVICES

- 8.1 The Customer shall, forthwith upon signing this Agreement, pay in advance the charges for the first month of the Service Plan and any other charges as the Company may require and in such amount as the Company may in its sole and absolute discretion determine. Any sum so paid to the Company shall not bear interest for the Customer. All advance payments are non-refundable under whatever circumstances.
- 8.2 Charges for the Service Plan are charged on a monthly billing cycle and payable in advance. The Charges shown in the first month's bill will cover the period from the service effective date to the next bill date of the second billing cycle. The Charges for the period from the service effective date to first bill date are therefore charged on a pro-rata basis in the first month's bill. If this Agreement or the Services ends on a day which is not the last day of the monthly billing cycle, the Customer shall remain liable for the full payment of the charges for the relevant month. For the avoidance of doubt, all monies already paid by the Customer for the Services are non-refundable under whatever circumstances.
- 8.3 The Company reserves the right to vary the billing frequency at any time without prior notice or issue an interim bill for accrued charges, which will become immediately due and payable. The amounts shown on each bill shall be final and binding on the Customer.
- 8.4 The Customer shall pay and settle in full each bill on or before the due date for payment as specified therein or otherwise forthwith upon demand by the Company.
- 8.5 The Customer shall raise any dispute regarding any amount shown on any monthly bill within ten (10) days from the date of such monthly bill; failing which the Customer shall be deemed to have waived all his right against the Company.
- 8.6 All sums payable to the Company hereunder shall be in full without any deductions or set-offs. All sums shall be paid in Hong Kong Dollars and in such manner as the Company may from time to time specify.
- 8.7 Payments made by post shall be at the Customer's risk and a payment shall not be deemed to have been paid until the payment is received by the Company.
- 8.8 Time of payment is of essence. The Company shall be entitled to charge interest at the rate of two percent (2%) per month on any overdue amount from the due date until the date on which payment in full is received by the Company. Such interest shall accrue from day to day.
- 8.9 Where the Customer has registered more than one Services in an Account, the Company shall have the right to transfer any credit balance of charges paid under any one of the Services in the Account to settle the outstanding charges of another Services in the Account.
- 8.10 Where the Customer has registered more than one Account in his name with the Company, the Company shall have the right to transfer any credit balance of charges paid under any one of the Account to settle the outstanding charges in another Account.
- 8.11 Where the Customer has registered more than one Account in his name with the Company, the Company shall have the right to consolidate the outstanding balance of all accounts into one for payment settlement arrangement.
- 8.12 Deposits for IDD (including 001 and / or 1638 IDD services) will be waived if the Customer pays the monthly charges for the provision of the Services and Service Features by autopay by credit card. If for whatever reason, the Customer changes to other payment methods which is not autopay by credit card, the Company shall automatically terminate the IDD (including 001 and / or 1638 IDD and / or other IDD related services) without prior notice.
- 8.13 On the porting in of the mobile telephone number to the Company, the Customer shall pay the Company a Mobile Number Porting Charge as prescribed in the Company's tariff plan from time to time.

8.14 The Customer agrees to pay charges in connection to the Services as prescribed in the Company's tariff plan from time to time.

9. TERMINATION

- 9.1 Either the Company or the Customer may at any time terminate this Agreement by giving to the other party three (3) working days prior written notice to that effect.
- 9.2 In addition and without prejudice to other provisions contained in this Agreement, the Company shall be entitled to forthwith terminate this Agreement or disconnect the Services or any part thereof without notice, upon the occurrence of any one or more of the following events:
- (a) if any charges or other sums whatsoever payable by the Customer hereunder remain unpaid after becoming due; or
 - (b) if the Customer commits a breach of any of the terms and conditions contained herein; or
 - (c) if the Customer or any authorized user under the Account of the Customer misuses the Services; or
 - (d) if the Customer dies or is subject to the law of insolvency and/or bankruptcy or makes any arrangement or composition with his creditor or has a Receiver appointed or enters into liquidation; or
 - (e) if the SIM Card is or becomes lost or stolen property; or
 - (f) if the Customer copies, extracts, alters, tampers with or otherwise misappropriate any information written into, incorporated, stored or otherwise included in the SIM Card or allows, permits or authorize any other person to do so; or
 - (g) if the Customer modifies, alters or otherwise tampers with the communication equipment for the Services or allows, permits or authorize any other person to do so; or
 - (h) if the Customer or any authorised user under the Account of the Customer use the Services for any fraudulent or unlawful purposes or uses abusive, threatening, harassing, vulgar or obscene language to other Customers or employees of the Company through the Services, or allows, permits or authorizes any other person to do so; or
 - (i) if the Customer fails to pay the deposit and/or advance payment specified in Clause 7; or
 - (j) if the call charges for the use of the Services exceed the credit limit specified by the Company from time to time; or
 - (k) if the Customer furnishes information to the Company which he knows to be false or misleading; or
 - (l) if it is necessary for the Company to comply with an order, instruction, determination or direction of a judicial body, government or regulatory authority; or
 - (m) (applicable to Mobile Payment Services) if the Customer withdraws authorization to the Company to release information on the service status to the relevant financial institution; or the financial institution requests the Company to suspend or terminate the Mobile Payment Service to the Customer.
- 9.3 If the Customer has registered more than one Services in an Account or more than one Account in his name, the Company shall have the right to forthwith terminate or disconnect all the other Services in the Account(s) if any charges under anyone of the Services in the Account remain unpaid after becoming due or if the Company terminates this Agreement pursuant to Clause 9.2.
- 9.4 Termination hereunder shall be without prejudice to any rights and/or claims that the Company may have against the Customer prior to the date of termination and shall not relieve the Customer from fulfilling his obligations including payment of all outstanding charges prior to the date of termination. Any amount accrued and unpaid shall be due and payable forthwith upon termination.
- 9.5 In the case of termination pursuant to Clause 9.1 by the Customer, the Customer shall continue to be liable for all charges payable hereunder until notice of termination is actually received by the Company and becomes effective.
- 9.6 The Company shall have the right to assign the Customer's service number for the Services to another customer after the Services provided to the Customer is terminated or disconnected.

RECONNECTION

- 10.1 If the Services is disconnected for reasons set out in Clause 9 or upon the Customer's request, the Company may upon the Customer's request reconnect the Services subject to payment by the Customer of all sums due or owing to the Company, a deposit requested by the Company, advance payment of monthly fee and a reconnection charge. The amount of the deposit and the reconnection charge shall be determined by the Company in its sole and absolute discretion.

11. LOST OR STOLEN COMMUNICATION EQUIPMENT AND/OR SIM CARD

- 11.1 If the communication equipment registered for the Services or the SIM Card is lost or stolen or if the SIM Card is converted, tampered with or otherwise misappropriated, the Customer must immediately report such incident to the Company and notify the Company of disconnection of the Services. The Customer shall confirm such incident and disconnection in writing within three (3) working days.
- 11.2 Notwithstanding such report, the Customer shall continue to be liable for all call or service charge payable under this Agreement attributable to the period during which the communication equipment registered for the Services or the SIM Card is lost or stolen or the SIM Card is converted, tampered with or otherwise misappropriated until such time when the Company shall have actually received the written notice specified in Clause 11 .1 and the Services to the item concerned is disconnected.
- 11.3 If the Customer recovers the lost or stolen communication equipment registered for the Services or the SIM Card, the Company may upon the request of the Customer reconnect the Services to the item concerned subject to payment by the Customer of all items due or owing to the Company and a reconnection charge. The amount of the reconnection charge shall be determined by the Company in its sole and absolute discretion. The Company may require a pre-service inspection of the communication equipment and/or SIM Card prior to reconnection.
- 11.4 For SIM Card with NFC Services (as described in Clause 6.3), the Customer also has to immediately report to the NFC Service Providers of any loss or replacement of the SIM Card or any unauthorized use of the SIM Card.

12. VERIFICATION

- 12.1 The Customer shall on the request of the Company provide all necessary documents which would verify the truth or correctness of the information furnished by the Customer to the Company. The Company reserves the right not to provide the Services until the Company has established the truth or correctness of the information from the documents furnished by the Customer.
- 12.2 Individual Customer must be over the age of eighteen (18) to enter this Agreement.

13. USE OF CUSTOMER INFORMATION

- 13.1 The Company is hereby authorized, in relation to any information it has relating to the Customer or the authorized user under the Customer's Account, to use and/or disclose such information for the purpose of the Company performing its obligation or enforcing its rights under this Agreement or any other purpose reasonably incidental thereto or in contemplation thereof.

14. LIMITATION OF LIABILITY

- 14.1 Save and except for any liability of the Company which cannot be excluded by law, the Company shall not be liable for any cost, claim, expenses, damage or loss of whatsoever nature suffered, sustained or incurred by the Customer or any person arising from or out of or relating to the provision of the Services, the value added services and/or Service Features offered under the Services including without limitation (i) any interruption or failure of the Services, the value added service and/ or the Service Features, or (ii) any failure, delay or mistake in establishing communication between the Customer and any other person, or (iii) any failure or delay while the Customer is communicating any message in the use of the Services; or (iv) any failure or delay in activating or deactivating the Services, or (v) any unauthorized use of the Customer's communication equipment.
- 14.2 The Company shall under no circumstances be liable for any loss (whether direct or indirect) of revenue, loss of profits or any consequential loss whatsoever suffered, sustained or incurred by the Customer or by other person arising (directly or indirectly) from or out of or relating to the provision of the Services or this Agreement.
- 14.3 Information supplied through the value-added services are supplied by third party information providers. The Company and the third party information provider make no warranties of any kind in relation to the information provided and accept no responsibilities for its accuracy or completeness and/or consistency or for any loss or damage whatsoever and howsoever suffered or incurred by any party. With the use or access to the information provided, the Customer or any party irrevocably and unconditionally accepts and agrees to be bound by this disclaimer.

- 14.4 The Company does not guarantee the quality of the Near Field Communication services (“NFC Services”) and any other goods, services or mobile application provided by third party service providers (“Third Party Service Provider”). Any disputes or complaints in connection with NFC Services and such other goods and services must be directed to the Third Party Service Providers. The Company will not be liable for any matters arising from or in connection with the NFC Services and such other goods and services and/or any loss and expenses incurred or suffered by the Customer or any other persons due to unauthorized use of the NFC Services or any loss of the SIM Card for use of the NFC Services. The Company excludes all loss, damage, cost, expense, liability and penalty arising out of the NFC Services and such other goods and services and mobile application.

GENERAL

15. VARIATION

- 15.1 The Company shall be entitled, at any time, or from time to time, by giving prior notice to the Customer, to vary all or any of these terms and conditions and to impose new terms.**

16. ASSIGNMENT

- 16.1 The Customer shall not assign, transfer, convey, license or otherwise dispose of any of its rights and obligations under this Agreement to any other party without the prior consent of the Company.
- 16.2 Consent will only be given by the Company on condition that the Customer and the transferee signing a transfer agreement in the form specified by the Company and the Customer settling all outstanding charges under this Agreement.
- 16.3 The Customer shall not assign, transfer, convey, license or otherwise dispose of the service number which has been allocated by the Company to the Customer for the use of the Services.

17. APPLICABLE LAW

- 17.1 This Agreement shall be construed in accordance with the laws of Hong Kong Special Administrative Region and the parties shall submit to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region in the event of dispute.

18. FORCE MAJEURE

- 18.1 The Company shall not be liable for any loss or damage resulting from delay or failure to perform this Agreement either in whole or in part where such delay or failure shall be due to causes beyond its reasonable control, or which is not occasioned by its fault or negligence, including but not limited to, war, the threat of imminent war, riots or other acts of civil disobedience, insurrection, acts of God, restraints imposed by governments or any other supranational legal authority or any other industrial or trade disputes, fires, explosions, storms, floods, lightening, earthquakes and other natural calamities.

19. NOTICES

- 19.1 Any notice or consent to be given by the Company to the Customer may be given by the Company either personally to the Customer or by post, facsimile to the address specified in the Agreement or any address as notified by the Customer or by electronic means addressed to the Customer. Such notice or consent shall be deemed to have been received by the Customer immediately if transmitted by facsimile or electronic means or when personally delivered and twenty-four (24) hours after despatch if sent by post.

20. NON-WAIVER

- 20.1 No failure or delay on the part of the parties hereto to exercise any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by either of the party of any right, power or remedy. The rights, powers and remedies provided herein are cumulative and are not exclusive of any rights, powers or remedies by law.

21. SEVERABILITY

- 21.1 If any provisions of this Agreement shall be construed to be illegal or invalid, they shall not affect the legality, validity and enforceability of the other provisions of this Agreement. The illegal or invalid provision shall be deleted from this Agreement and no longer incorporated herein but all other provisions of this Agreement shall continue.

22. ENTIRE AGREEMENT

- 22.1 This Agreement embodies the entire understanding between the parties and there are no promises, terms or conditions, oral or written expressed or implied other than those contained herein.
- 22.2 Save for Clause 15, this Agreement may only be amended in writing and signed by or on behalf of the Company and the Customer.

23. INTERPRETATION

- 23.1 Reference to the plural shall include the singular and vice versa; words importing a gender shall include every gender; references herein to any person shall include references to individual, firm, body corporate or unincorporate.
- 23.2 The terms and conditions of this Agreement are written in both English and Chinese. A copy of the Chinese version is available upon request at any of the Company's stores or by calling the Company's hotline or retrieved from the Company's web site.

24. Change of Ownership

- 24.1 The New Customer and the Company undertake to perform and observe the terms and conditions of the Sales and Services Agreement and (i) Terms & Conditions T&C01); (ii) the Company's policy and practices in relation to personal data under the Personal Data (Privacy) Ordinance (Terms & Conditions: T&C04) and (iii) relevant Terms and Conditions (whichever applicable) entered between the Departing Customer and the Company (the "Original Agreement") and to be bound thereby as if the New Customer was a party to the Original Agreement in lieu of the Departing Customer.
- 24.2 The Company hereby releases and discharges the Departing Customer from all claims, demands and liability under the Original Agreement subject to the following terms:
- 24.2.1 The Departing Customer is liable to the Company for all charges under the Original Agreement accrued prior to the date of this Agreement and will pay such charges on or before the due date for payment as specified therein or otherwise forthwith upon demand by the Company; and
- 24.2.2 Upon the signing of this Agreement, the New Customer will pay to the Company on demand an advance service fee and a deposit in such amount as specified by the Company.
- 24.3 If the Departing Customer has accrued any free minutes of the mobile service under the Original Agreement (other than the monthly free minutes under the relevant service plan), the Departing Customer agrees to release the Company from providing such free minutes under the Original Agreement and New Customer will not be entitled to such free minutes.

25. ADVERTISEMENT AND DEALINGS WITH ADVERTISERS

- 25.1 The Customer understands and agrees that the Services may include advertisements.
- 25.2 The Company is not a party to and is not otherwise involved in any manner in any correspondence or business dealings with, or participation in promotion of, advertisers found on or through the Service, including payment and delivery of goods or services and any other terms, conditions, warranties or representations associated with such dealings which are solely between the Customer and such advertiser. The Customer agrees that the Company shall not be responsible or liable for any loss or damage whatsoever incurred as a result of any such dealings or as the result of the presence of such advertisers on the Service.