

Terms & Conditions T&C V003 (smartmail pro – sms via email)

The following terms and conditions of Supplemental Agreement are supplemental to the Company's Sales and Services Agreement and the terms and conditions therein (the "Agreement") made between the Customer and SmarTone Mobile Communications Limited (the "Company") and shall form an integral part of the Agreement. Defined terms used in this Supplemental Agreement shall have the same meanings as set out in the Agreement.

1. smartmail pro™ - sms via email™

- 1.1 The Company agrees to provide smartmail pro™ - sms via email™ ("smartmail pro -SMS Service") to the Customer subject always to the Customer paying the charges as and when they become due and payable in accordance with the terms herein set out and in the Agreement and due performance and observance of the other terms herein and in the Agreement. All terms and conditions set out in the Agreement applicable to the Services (as defined in the Agreement) shall equally apply to the smartmail pro -SMS Service.

2. Customer's Obligations

- 2.1 The Customer undertakes to use the smartmail pro -SMS Service in accordance with such conditions as may be notified in writing to the Customer by the Company from time to time and in accordance with all laws, rules and regulations, of the relevant government department or other competent authorities.
- 2.2 Without limitation to the generality of the foregoing, the Customer undertakes not to use the smartmail pro -SMS Service :
- (i) for the transmission of any messages which is or intended to be (a) for fraudulent or illegal purpose; or (b) a hoax call to emergency services; or (c) of a defamatory, offensive or abusive or of an obscene or immoral nature or menacing character; or (d) to disparage products or services supplied by the Company or invite customers to replace them; or (e) for mail-spanning; or (f) for unsolicited advertising or promotion information unless with the prior written consent of the recipient, or
 - (ii) in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality) or a violation or infringement of any statutory duty or obligation or any duty or obligation in contract, tort or otherwise, to any third party.
- The Customer shall indemnify and keep indemnified and hold free and harmless the Company against all liabilities, claims, damages, loss and proceedings arising out of or in any way connected with any such use.
- 2.3 If any free service relating to the smartmail pro -SMS Service is offered to the Customer under special offers and the Customer does not notify the Company of termination of such service prior to the expiry of the free service period, the Company shall automatically charge the Customer for the relevant service at the prevailing monthly fee for such service after the expiry of the free service period.

3. The Software

- 3.1 The Company hereby grant to the Customer a non-exclusive and non-transferable licence to store, run and use the Software (i.e. software which is supplied to and installed for the Customer for use of the smartmail pro -SMS Service) subject to:
- i) payment by the Customer of a once off licence fee and a once off installation charge; and
 - ii) the terms and conditions of this Supplemental Agreement and the software licence which accompanies the Software but not further or otherwise.
- 3.2 The Customer shall not, nor allow others to copy, sub-licence, distribute, sell, transfer, exploit, alter, modify, adapt or translate the Software nor decompile, disassemble or reverse engineer the same nor attempt to do such thing.

4. Customer Apparatus

- 4.1 The Customer shall be responsible for obtaining, providing and paying for all telecommunication equipment, computer equipment and software (excluding the Software) or other access devices, necessary to connect to the smartmail pro -SMS Service (collectively "Customer Apparatus").
- 4.2 The Customer shall ensure at all times that the Customer Apparatus be approved for connection by the relevant government department or other competent authority and the Customer shall at all times comply with the conditions of such approval. The Company reserves the right to suspend access to and/or use of the smartmail pro -SMS Service without notice if the Customer does not fulfil his obligations under this Clause 4 or if in the opinion of the Company it is liable to cause the death of, or personal injury to, or damage to the property of the Company or any person engaged in the running of the Company's network or materially impair the quality of any of the smartmail pro -SMS Service or any telecommunication service provided by means of the Company's network.
- 4.3 The Company, its employees or authorized agent shall have the right to perform the installation of the Customer Apparatus and reconfiguration on the Customer's computer for the purpose of provision of the smartmail pro -SMS Service. The Company may charge the Customer a fee for the installation. The amount of the fee shall be determined by SmarTone at its sole discretion.

4.4 Prior to the installation of the Customer Apparatus, the Customer has the responsibility to back up any data stored in its computer and inform the Company if any configuration or installation by the Company is likely to invalidate any support arrangements or other facilities stored in or of the Customer's computer.

5. User ID and Password

- 5.1 The Company shall assign an User ID and Password to the Customer for the use of the smartmail pro –SMS Service.
- 5.2 The Company shall have the right to withdraw the User ID and Password and forthwith assign a new User ID and Password to the Customer at no extra charge where the Company has reason to believe the User ID and Password has been discovered and/or used by a person without the knowledge, content, permission, expressed or implied, of the Customer, its servants, employees or agents and on such other occasion as the Company shall deem necessary in its reasonable opinion.
- 5.3 The Company shall have the right to withdraw the User ID and Password from the Customer:
- (i) if the Agreement and/or this Supplemental Agreement is terminated; or
 - (ii) where in the Company's opinion there are reasonable grounds for believing the Customer has not complied, is not complying or is likely not to comply with its obligations under the Agreement and/or this Supplemental Agreement.
- 5.4 The Customer shall keep the User ID and Password confidential and shall not reveal or disclose the User ID and Password to any person except to its authorized employees or agents whose names have been prior notified in writing by the Customer to the Company.
- 5.5 The Customer shall :
- (i) use the User ID and Password in accordance to the instructions given by the Company to the Customer from time to time; and
 - (ii) notify the Company immediately where there are grounds for suspecting or believing that a third party is using the User ID and Password without the knowledge, consent or permission of the Company, the Customer or its servants, employees or agents; and
 - (iii) be responsible for all charges incurred through use of the smartmail pro -SMS Service when use/access to the smartmail pro -SMS Service is obtained through the use of the User ID and/or Password.
- 5.6 The Customer shall indemnify the Company against all actions, proceedings, damages, costs, claims, demands or expenses which may be sustained or suffered by the Company arising out of or in connection with any unauthorized usage of the smartmail pro -SMS Service. This obligation of confidentiality shall survive the termination of the Agreement and/or this Supplemental Agreement.

6. Termination/Disconnection of smartmail pro -SMS Service

- 6.1 Upon termination or disconnection of the smartmail pro -SMS Service for whatever reason, the Customer:
- i) shall cease to the use the User ID and Password; and
 - ii) erase all the Software and cease to use the same.
- 6.2 Data stored or saved at or by means of the smartmail pro -SMS Service will be erased without prior notice upon the termination or disconnection of the smartmail pro -SMS Service and the Company is not liable whatsoever for the loss of such data stored or saved at or by means of the smartmail pro -SMS Service.
- 6.3 The Company shall have the right to assign the User ID and Password of the Customer to another customer of the smartmail pro -SMS Service upon termination or disconnection of the smartmail pro -SMS Service or upon termination of the Agreement and/or this Supplemental Agreement.
- 6.4 The Company may upon the Customer's request reconnect the smartmail pro -SMS Service after termination or disconnection of the smartmail pro -SMS Service subject to the payment by the Customer of:
- i) all sums due or owing to the Company;
 - ii) a deposit requested by the Company and a reconnection charge. The amount of the deposit and the reconnection charge shall be determined by the Company at its sole and absolute discretion.

7. Exclusion of Liability

- 7.1 The Company will under no circumstances be liable whether in contract, tort, statute or otherwise (including without limitation for negligence, breach of contract, defamation, or intellectual property right infringement) for any special, direct, indirect or consequential loss or damage (including without limitation, loss of revenue, loss of data or goodwill or loss of any equipment or software or any loss or damage caused by viruses) arising from or out of or relating to the use of the smartmail pro -SMS Service.

URL: http://www.smarttone.com/other/english/t&c-v003_e.pdf