

# Telephonic

## Terms and Conditions

### For the provision of telecommunications services

#### 1. Definitions

1.1 In these conditions (unless the context otherwise requires):

"the Act" means the Telecommunications act 1984 and any amendments, modifications, re-enactments or replacements of the Act that may be made from time to time;

"we", "us" and "our" means Telephonic Ltd. And its successors in title and assigns from time to time;

"contract" means using the supply of our services and you being bound by these terms by using the supply of such services.

"the Hire Agreement" means the hire agreement for the automatic dialler (if any) made between the Customer and the Company of even date herewith;

"you" and "your" means the person with whom the contract is made;

"the Services" means the telecommunications services to be supplied by us pursuant to the Contract.

1.2 Words in the singular shall include the plural and vice versa, references to any gender shall include the others and not references to legal persons shall include natural persons vice versa.

1.3 The headings in these conditions are intended for reference only and shall not affect their construction.

#### 2. General

2.1 These conditions shall apply to the Contract to the exclusion of any terms and conditions contained or referred to in any order, letter, form of contract or other communication sent by you by us and the provisions of these conditions shall prevail unless expressly varied in writing and signed by a director on our behalf. Where we specifically terms with you in writing those terms shall prevail over any conflicting terms in these conditions.

2.2 Any concession made or latitude allowed by us to you shall not affect our strict rights under the Contract.

2.3 If in any particular case any of these conditions shall be or be held to be invalid or shall not apply to the Contract the other conditions shall continue in force and effect.

#### 3. The Services

3.1 We undertake to provide you with the services in accordance with these conditions.

3.2 If appropriate, you authorise us, our agents, our employees or other authorised personnel, to reprogram and/or install access equipment, in order to provide the Services.

3.3 All times, dates and periods given for performance of the Services are given in good faith but without any responsibility on our part.

#### 4. Length of the Contract

4.1 The contract shall come into force on and with effect from the date of acceptance by us stated overleaf ("the Commencement date") and shall continue (subject to the other provisions for termination contained in these conditions) until either we or you give one month's written notice to the other and such notice may be given at any time.

#### 5. Your use of the Services

5.1 You undertake not to contravene the Act of any other relevant regulations or licences regarding the provision and use of the telecommunications services.

5.2 You shall ensure that your telecommunications apparatus shall at all times conform to the relevant standard or standards (if any) for the time being designated under the Act and we shall not be under any obligation to connect or keep connected any of your apparatus if it does not conform or if in our reasonable opinion it is liable to cause death, personal injury or damage to property or to impair the quality of any services provided by us or to put us in breach of our obligations to any third party. You shall also comply with all relevant statutes, regulations or other legislation in force from time to time.

5.3 You undertake to use the Services in accordance with the Act, and any licence granted thereunder. You further undertake not to use the Services:

- as a means of communications for a purpose other than that for which the services are provided; or
- for the transmission of any material which is defamatory, offensive or of an abusive or obscene or menacing character or is of a nature which if transmitted would constitute a criminal offence or which infringes the rights of any third party including but not limited to contractual rights and intellectual property rights; or
- for any purpose which we may notify to you from time to time by reason of any relevant legislation which comes into force.

5.4 You shall indemnify us from all losses, fines, damages, claims, costs and expenses suffered or incurred by us arising from or in connection with your use of the Services in contravention of the provisions of this condition 5 or in breach of any other provision of the Contract.

#### 6. Allocation and use of Telephone Numbers

6.1 In the event that the Company allocates any telephone numbers to the Customer for the purpose of providing the Services the Customer acknowledges that it shall not acquire any legal, equitable or proprietary right to any such numbers and the Company shall be entitled to withdraw or change any telephone number or code or group of numbers or codes upon giving the Customer reasonable written notice.

6.2 For the avoidance or doubt, any and all intellectual property rights in any such telephone number shall at all times, as between the Company and the Customer, remain vested in the Company.

#### 7. Our Access to your Premises and Provision of information by you to us

7.1 To enable us to perform our obligations under the Contract:

- you shall permit or procure permission for us, our agents, employees and any other persons authorised by us to have access to your premises and shall provide such reasonable assistance and information as we shall request from time to time;
- we will normally carry out work by appointment and during normal working hours, but may request that you provide us access to your premises at other times but such requests shall not obligate you to provide such access;
- at your request, we may agree to work outside normal working hours and you shall pay our usual charges for complying with such a request.

7.2 You shall permit us to request and manage as a whole any transactions to connect you to C.P.S. (carrier pre select) and sign on your behalf if necessary any forms that are to be submitted to British Telecom in order to use this service.

#### 8. Suspension of Service by us

8.1 We may at our sole discretion upon giving you written notice elect to suspend forthwith provision of the Services until further notice without compensation on noting you either orally (confirming such notification in writing) or in writing in the event that:

- we are entitled to terminate this agreement, or
- we are obliged to comply with an order, instruction or request of the UK Government, an emergency services organisation, the provision of telecommunications services or the establishment of networks or any information provided across them or other competent administrative authority.
- We need to carry out any emergency works to the network or any equipment installed at your premises by us for the purpose of providing the services.

8.2 Where any suspension of the Services is implemented as a consequence of your breach, fault or omission (but not otherwise), you shall reimburse us for all costs and expenses incurred by our implementation of such suspension and/or the recommencement of the provision of the Services as appropriate.

8.3 If we exercise our right to suspend the Services this shall not restrict our right to terminate the Contract.

#### 9. Our Liability

9.1 In these conditions we do not exclude or restrict our liability for death or personal injury resulting from our negligence or the negligence of our employees while acting in the course of their employment insofar as the is prohibited by United Kingdom statute.

9.2 In the event that the Services fail and your calls are diverted to another carrier, we shall not be obliged to pay any charges incurred by you with that carrier. We shall only be entitled to charge your usage charges for calls which you make through to us pursuant to the Contract.

9.3 Nothing in these conditions shall impose any liability upon us in respect of any non-performance or Services which are not performed in accordance with the Contract arising out of your own acts, omissions, negligence or default.

#### 10. Charges and Payments

10.1 Unless otherwise agreed, you agree to pay for the Services by direct debit or credit card, within fourteen days of the date of our invoice, such invoice to be rendered once in each calendar month during the continuance of the Contract.

10.1.1 If the terms of payment are credit card, we reserve the right to hold your credit card details within a secure area of our systems. This can be taken by us as payment of invoices for our services when they fall due within our terms.

10.2 You shall pay the price for the services as set out in our proposal. We shall be entitled to decrease our prices at any time, such decreases to apply to all Services provided after the date of the decrease and to be reflected in our next invoice. We shall be entitled to increase our charges at any time and shall give you 30 day's notice of any such increase; such increase will take effect after the expiry of such notice. Upon notification of any such increase you shall be entitled to cancel the Contract immediately by giving to us notice in writing within 30 days of the date of our notice of the increase in the charges.

10.3 We shall prepare and send invoices for usage charges each calendar month in arrears or in such other form and manner as shall be agreed with you. Usage charges payable shall be calculated by reference to data recorded or logged by us and not by reference to any data recorded or logged by you and such data shall, in the absence of manifest error, be final and binding.

10.4 The time of payment shall be of the essence of the Contract.

10.5 Without prejudice to any other rights it may have, we are entitled (both before and after any judgement) to charge daily interest on amounts outstanding 14 days after the date of our invoice until payment in full is received, at a rate equal to 2 per cent per annum above the National Westminster Bank plc base lending rate as current from time to time. Interest shall continue to accrue notwithstanding termination of the Contract.

10.6 All sums referred to in the Contract are stated exclusive of Value Added Tax and any other taxes of a similar nature which may from time to time be introduced which shall (if applicable) be charged by us and payable by you in the same manner as the usage charges.

10.7 The price for the Services shall be due in full to us in accordance with the terms of the Contract and you shall not be entitled to exercise any set off, lien or any other similar right or claim.

#### 11. Termination of the Contract

11.1 Notwithstanding any other provision of these conditions, either we or you (without prejudice to its other rights) may terminate the Contract with immediate effect by giving notice in writing to the other, in the event that:

- the other is in breach of any provision of the Contract and (where such breach is remediable) fails to remedy that breach within 14 days of a written notice from the non-defaulting party specifying the breach;
- the other is subject to bankruptcy or insolvency proceedings which shall mean bankruptcy proceedings, becoming insolvent, making any composition or arrangement with creditors or an assignment for their benefit, any execution distress or seizure;
- the Hire Agreement terminates for any agreement.

11.2 Notwithstanding any other provision express or implied in these conditions, we (without prejudice to our other rights) may terminate the Contract with immediate effect in the event that:

- any licence under which you have the right to run your own telecommunication system and connect it to our system is revoked, amended or otherwise ceases to be valid; or
- you fail to make any payment when it becomes due to us.

11.3 On termination of the Contract for any reason you must pay us any outstanding usage charges for your usage of the Services up to the date of termination.

#### 12. Matters beyond reasonable control

12.1 Neither we nor you shall be liable to the other for any loss or damage which may be suffered by the other due to any cause beyond its reasonable control including without limitation any act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning, or fire strike, lock out or trade dispute or labour disturbance, any act or omission of Government, highways authorities, acts of terrorism, other public telecommunication operators or other competent authority, production or supply of services by third parties.

#### 13. No liability for loss of profits and date

13.1 We shall not be liable for any costs, claims, damages or expenses arising out of our negligence or our breach of contract or statutory duty calculated by reference to your loss or profits or income or production or by reference to the accrual of any such costs, claims, damages or expenses on a time basis.

13.2 We shall not be liable to you for any costs, claims, damages, or expenses arising as a result of our negligence or for our breach of contractor statutory duty calculated by reference to any loss of anticipated savings or profits whatsoever or for the corruption or destruction of data.

#### 14. Limitation of liability

14.1 Our aggregate liability (whether in contract or for negligence or breach of statutory duty or otherwise howsoever) to you for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed a sum equal to one month's billing for the Services by us to you based on the average billing for the Services by us to you over the previous 3 months or since the commencement of the Contract if the contract commenced within 3 months of the date of the claim concerned.

#### 15. Representations

15.1 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement, or communication or made verbally by any of our agents or employees shall be construed to enlarge, vary or override in any way any of these conditions.

#### 16. Confidentiality

16.1 Neither we nor you shall whilst the Contract is in force or thereafter disclose any of the other's confidential information nor any details of the other's commercial or technical activities or policy except insofar as is strictly necessary for fulfilling its obligations hereunder and except for any disclosure required by statute or law and save for information which is or subsequently enters the public domain.

#### 17. Assignment and sub-contracting

17.1 We may assign the Contract with you or sub-contract the whole or any part of the performance of the Services to any person, firm or company without your prior written consent.

17.2 You shall not assign or delegate or otherwise deal with all or any of its rights or obligations under the Contract without our prior written consent.

#### 18. General

18.1 The Contract together with the Hire Agreement represents the entire understanding between you and us in relation to the subject matter hereof and supersedes all other agreements and representations made by either you or us, whether oral or written and the Contract may only be modified if such modification is in writing and signed by a duly authorised representative of each of you and us.

18.2 Failure by either you or us to exercise or enforce any right conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof of any other right on any later occasion.

18.3 Any notice, invoice or other document which may be given by either you or us under these conditions shall be deemed to have been duly given if left at or sent by post to your nominated address, invoices or other documents may be sent, or the other's usual or last known place of abode or business and such notice shall be deemed to be served immediately if left at the above address for notice or 72 hours after posting if posted as aforesaid.

18.4 The Contract shall be governed by and construed and interpreted in accordance with English law and the parties hereby submit to the non-exclusive of the English courts.