



THE MESSAGE CENTRE

Extending your Business

TMC- TEXTER

TERMS AND CONDITIONS

1. Service

1.1 The TMC - TEXTER is operated by The Message Centre ("TMC"). Your access to and use of the TMC - TEXTER is governed by these terms and conditions.

These terms and conditions together with your application comprises your Agreement with TMC for the TEXTER services ("Service").

1.2 TMC will provide the Service subject to the following:

- (a) The Service is conveyed on the networks of third party telecommunication carriers ("Network"). As a consequence the Service is provided only within those areas where Network coverage is available. Network coverage is available in those areas publicised by the carriers.
- (b) Depending on the nature of your Service the Service may be dependent on your equipment to send timely and accurate transmissions to TMC. To the extent that the Service involves third party equipment, the internet and computer networks and systems which are not under the sole control of TMC, TMC accepts no responsibility for any failure or malfunction by them which may impact the Service;
- (c) The Service is not warranted to be continuous and may fail due to a variety of technical factors to the Network such as interference from other sources or degraded or non-existent radio reception in or near particular places or technical failure of the internet or our website. Some of these factors are the responsibility of the carriers, interface providers or internet service providers and as such are not within TMC's control;
- (d) It is technically impractical to provide the Service free of fault or error. You acknowledge that the Network and the Service have network coverage limitations, including reception and interference problems, possible faults in transmission equipment, human errors including errors of any carrier and third parties, and the physical location of equipment in relation to transmitters. Additionally, you acknowledge that TMC is not in control of all factors and that carriers and internet service providers do not always alert TMC to technical problems with their network or the internet and that we are not able to take action in these instances, and that carrier's networks may suffer lengthy delays from time to time or lose messages, both factors being out of TMC's control and you indemnify TMC from any consequences or actions in relation to these types of occurrences;
- (e) TMC may, without liability to you, suspend the Service immediately for repairs, for repairs to your equipment, maintenance of any part of the Network, computer network and systems, or where TMC is obliged to comply with the requirements of any relevant authority; and
- (f) As the Service is dependent on the Network, the internet and computer networks and systems, some provided by third parties, TMC makes no representations or warranties about the ability of messages to be delivered, quality of the messages or about the time taken for the dispatch or delivery of messages using the Service.



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2. Fees

- 2.1 You are liable for all messages from the commencement of the Service. You must pay the fees payable to TMC for all messages in accordance with TMC's payment terms. TMC's records will be conclusive evidence of messages sent. You agree to pay to TMC such charges for the Service as are invoiced by TMC in accordance with the terms set out in TMC's invoice. The amount payable to TMC is the amount shown in your Application, subject to change after the expiry of any fixed period as notified by TMC from time to time.
- 2.2 As the Service is dependent on the provision of services from third party carriers, TMC reserves the right issue accounts for messages not previously billed and which occurred earlier than the previous billing period (but not greater than 6 months prior).
- 2.3 Except to the extent that your Service is cancelled or suspended by TMC, you are liable to pay all Service fees to TMC in respect of the Service even if the identity of the person who used the Service changed, or that any messages sent were not authorised by you.
- 2.4 All fees payable to TMC by you in respect of the Service are exclusive of all taxes, duties or levies payable in respect of the Service or this Agreement. You must pay all taxes, including goods and services taxes, relating to the Service and you indemnify TMC and hold TMC harmless against all such taxes, duties and levies
- 2.5 All prices displayed and products and services offered to be supplied on the TMC website are subject to change without notice.
- 2.6 TMC may charge a late payment fee on any overdue amounts due under an invoice at the rate of 2% above the prime lending rate of TMC's principal banker calculated daily. TMC may also impose a charge to cover its reasonable expenses and costs incurred in enforcing any failure or delay in your payment (including the cost of engaging a mercantile agent).

3. Your use of the Service

- 3.1 You acknowledge that TMC supplies the Service to you on the condition you only use them for your own messages or business messaging requirements and that you will not resupply the Service to any person or otherwise sell the Service to any other person on a wholesale basis without first obtaining the written approval of TMC.
- 3.2 Messages can contain up to 160 characters.
- 3.3 TMC recommends the use of Internet Explorer © Version 5.5 or above.
- 3.4 You must not use, or allow any other person to use, the Service in a manner which in TMC's opinion:
- (a) infringes the provisions of the Telecommunications Act 1997 (Cth), the Radio Communications Act 1992 (Cth), or the Privacy Act 1998 (Cth) as amended from time to time or any other applicable statutes, laws, rules or regulations of the Commonwealth or of the States or Territories;
 - (b) intentionally causes damage or injury to any person or property or incites hatred against any person;
 - (c) includes the transmission or publication of any obscene, defamatory, offensive, abusive, indecent, menacing or harassing, mischievous or blasphemous material;
 - (d) includes the conduct of a business or other operation that is illegal or perceived by TMC as unethical or would bring a party into disrepute including without limitation, any conduct which contravenes any industry code relating to the use of SMS;
 - (e) impairs the normal operation of the Network or telecommunications network or equipment of any third party;



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- (f) includes the sending of unsolicited electronic mail messages to anyone, and/ or infringes the Spam Act 2003 (Cth); or
 - (g) knowingly transmits any virus or other disabling feature to the TMC website.
- 3.5 You must comply with any written notice which TMC may give you in relation to any action necessary to be taken, to eliminate any interference or threat to the operation, stability, viability or integrity of the TMC website, the Service or any related Network.

4. Term and Termination

- 4.1 This Agreement will automatically terminate if TMC's right to provide the Service ceases for any reason.
- 4.2 You may terminate this Agreement by giving TMC 1 month notice in writing at the end of which time this Agreement and your obligations to TMC will be at an end. Until the expiry of the period you must continue to pay TMC all message charges and all fees.
- 4.3 TMC may immediately suspend or discontinue the provision of the Service to you and any person using your Service or terminate this Agreement with immediate effect by giving notice to you at any time if, in TMC's opinion:
- (a) (a) You or any person using your Service breach any terms of this Agreement (including any terms relating to payment or use of the Service);
 - (b) (b) Your use of the TMC website or the Service threatens the operation or stability of the TMC website, the Service or any related Network.
 - (c) (c) You enter, or threaten to enter into, or are in jeopardy of becoming subject to any form of insolvency administration, whether formal or informal;
 - (d) (d) You cease, or threaten to cease, or are in jeopardy of ceasing to conduct any business carried on by you in the normal manner;
 - (e) (e) You fail to make any payment or breach any other term of this Agreement;
 - (f) (f) You or any person using the your Service breaches any licence, permit, authorisation or law relating to the use of the equipment or the Service;
 - (g) (g) TMC's right to provide the Service or any carrier's right to provide access to the Network ceases or is suspended or interrupted for any reason;
 - (h) (h) Your use of the Service is unlawful, improper or otherwise objectionable;
 - (i) (i) You fail to pass our credit checks or you become an unacceptable credit risk;
 - (j) (j) Your conduct or the conduct of any person using your Service is likely to adversely affect any communications network; or
 - (k) (k) Any carrier or related supplier is required to undertake repairs or maintenance to any part of the Network or to comply with a request from any regulatory or government authority.

5. General Provisions

- 5.1 TMC is not liable to you or any other person using your Service in any circumstances.
- You indemnify and hold TMC harmless for:
- (a) (any economic loss or damage including, any loss of revenue, profits, actual or potential business opportunities, contracts or anticipated savings or profits;
 - (b) any indirect or consequential loss or damage; or
 - (c) any loss or damage relating to the acts or omissions of any carrier or other third party, and all other matters beyond our control; or



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- (d) any failure to provide part or all of the Service or to deliver any messages or any delay in the delivery of messages;
 - (e) suffered or incurred by you or any other person using your Service.
- 5.2 To the extent permitted by law, TMC excludes all liability for breach of any express or implied term or warranty and also excludes all liability for TMC's negligence in connection with the performance of its obligations under this Agreement.
- 5.3 Where liability for any term implied by law cannot be excluded, and to the extent permitted by law, TMC's liability for any breach of such an implied term is limited to (at our election):
 - (a) (a) in the case of services, the cost of having the Service supplied again; and
 - (b) (b) in the case of goods, the lower of the cost of replacing the goods, acquiring equivalent goods or having the goods repaired.
- 5.4 TMC will not be liable for any loss, damage, expense or claim suffered or incurred by you or any person using your Service because of a failure or delay in TMC complying with the terms of this Agreement if that failure or delay has arisen as a result of causes beyond the reasonable control of TMC.
- 5.5 You indemnify TMC, its employees and agents against loss, damage, expense or claim arising from a breach of this Agreement by you and any breach of these terms by any person using your Service.
- 5.6 Where you comprise more than one person, this Agreement binds each of you jointly and severally.
- 5.7 This Agreement and your Application constitute the entire agreement between you and TMC in relation to its subject matter. All previous negotiations and representations are excluded. TMC however reserves the right to alter these terms, including pricing, and to pass on terms required by any carrier or telecommunications supplier, at any time on notice to you. For the purposes of this clause, adequate notice will include posting of a notice on the TMC website.
- 5.8 TMC may at any time assign or deal with the whole or any part of this Agreement. You may not assign or deal with your rights or obligations under this Agreement without TMC's prior written consent.
- 5.9 TMC reserves the right to vary and update these Terms and Conditions, including pricing, at any time upon notice to you. You will be deemed to have accepted any such variation if you continue to use the Service after such notice is provided.
- 5.10 Terms used in this document have a corresponding meaning to those in your Application.
- 5.11 If any term of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement will otherwise remain in full force, apart from that term, which will be deemed to be deleted.
- 5.12 This Agreement is governed by the law in force in the State of Victoria. The parties agree to submit to the non-exclusive jurisdiction of the Victorian courts and tribunals for determining any dispute concerning this Agreement.

The Message Centre