

Family & Friends Prepaid Mobile Service Terms and Conditions

PART 1 – GENERAL TERMS AND CONDITIONS

1. SUPPLY OF SERVICE

1.1 Our obligation to provide Mobile Service

Subject to:

- (a) our acceptance of the Purchase Order signed by you;
- (b) if you are porting a Mobile Number from your existing service provider to us, the porting of that number to us; and
- (c) if you are not porting a Mobile Number from your existing service provider to us, us assigning a Mobile Number to your SIM Card,

we will supply the Mobile Service to you on the terms and conditions set out in the Agreement until you port your Mobile Number to another service provider.

1.2 Limitations of Mobile Service

You acknowledge that:

- (a) the Mobile Service may only be used in the Coverage Areas and, even in the Coverage Areas, may be unavailable as a result of a number of factors beyond our control, including capacity constraints, electromagnetic interference, adverse weather conditions, equipment failure, your location or during scheduled or unscheduled maintenance;
- (b) the Mobile Service and each of its features may be subject to congestion, “drop-outs”, and/or loss of data;
- (c) the Mobile Service does not include the following features and functionality:
 - (i) domestic and international Roaming;
 - (ii) GPRS capability;
 - (iii) MMS capability;
 - (iv) satellite capability; or
 - (v) calls to 1900 numbers;
- (d) we do not warrant the currency, availability, accuracy, security or quality of any information which you receive or can access using the Mobile Service; and
- (e) you are solely responsible for any reliance on or use of any information received or that is accessed when using the Mobile Service.

1.3 Handset blocking

- (a) You may ask us to block your Mobile Phone at the same time, or within one month after, you advise us that your SIM Card has been lost or stolen. We must block your Mobile Phone if we receive such a request from you. The effect of blocking your Mobile Phone is that it will not be able to be used on a Mobile Network to make or receive calls (except calls to emergency “000” and “112” numbers).
- (b) We will not block your Mobile Phone where:
 - (i) to our knowledge your Mobile Phone shares an international mobile equipment identity number with another GSM handset connected to a Mobile Network; or
 - (ii) to do so would adversely impact on another person’s use of the Mobile Service.

(c) We must, on request from you:

- (i) unblock your Mobile Phone if you have previously requested us to block it; or
- (ii) unblock a GSM handset where it has been blocked as a result of us blocking another customer’s GSM handset with which it shares the same international mobile equipment identity number,

provided we are satisfied that you have lawful possession of the handset.

(d) You acknowledge that handset blocking is at all times subject to technical limitations.

1.4 No liability for technical problems

We are not liable to you or any person claiming through you for any breach or failure caused by any event reasonably beyond our control, including any technical problems or limitations relating to a Mobile Network, delay in Connecting, Disconnecting or Reconnecting, or wrongful suspension or Disconnection of a Mobile Number, delay in correcting any fault or your incorrect operation of the Mobile Service.

2 CHARGES AND PAYMENT

2.1 Calculation of Charges

Calls made using the Mobile Service will be charged in accordance with the Pricing Schedule or the Macquarie Standard Price List. We may vary:

- (a) the Macquarie Rates at any time by providing 30 days written notice to you; and
- (b) the Macquarie Standard Price List at any time without notice to you.

2.2 Rounding

We may round up any Charge to the nearest cent before GST is applied.

2.3 Liability for Charges

You must pay all Charges which you incur by using the Mobile Service, and all applicable government taxes and charges. All Charges incurred by you in using the Mobile Service via your SIM Card are your responsibility, irrespective of whether the Mobile Service is used by you or another person (with or without your knowledge or consent, subject to suspension of your SIM Card at your request under clause 4.3).

2.4 No bills

Unless you request us to do so, we will not send you any bills or usage charge records for Charges you incur.

2.5 Creation and use of Prepaid Account

- (a) We will create a personal Prepaid Account for you at the time that we commence providing the Mobile Service to you. You must use the credits in the Prepaid Account to pay for the Charges relating to your use of the Mobile Service.
- (b) You can use the Mobile Service at any time provided that your Prepaid Account has sufficient credits to pay the Charges you have incurred. We will terminate a call made using the Mobile Service if the Prepaid Account balance is insufficient to cover the cost of the call. If the Prepaid Account balance reduces to zero you can continue to receive calls, make account inquiries and emergency service calls.

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- (c) If you lose or permit another person to use your SIM Card, we will use the credits in the Prepaid Account to pay for the Charges incurred in using that SIM Card.

2.6 Adding credits to Prepaid Account

- (a) You can add credits to your Prepaid Account balance by calling the number notified to you by us from time to time and allocating an amount from your credit card. The Prepaid Account will be credited with the amount allocated from the credit card.
- (b) We will not accept any recharge of your Prepaid Account if it will increase the Prepaid Account balance above \$300 (or any other Prepaid Account limit specified by us from time to time).

2.7 Cancellation of credits in Prepaid Account

Any credit in your Prepaid Account will be cancelled:

- (a) 365 days after you last recharged your Prepaid Account; or
- (b) on termination of the Agreement (except where we terminate the Agreement for a reason other than a breach of the Agreement by you).

2.8 No refund for unused credits

Subject to clause 2.7, we will honour all credits in the Prepaid Account but will not provide any refund for unused credits.

3 YOUR OBLIGATIONS

3.1 Obligations regarding use of Mobile Service

- (a) You must, and must ensure that any other person who uses your Mobile Phone must:
 - (i) only use the Mobile Service in accordance with the Agreement or as otherwise approved by us;
 - (ii) comply with all laws, regulations and guidelines concerning use of the Mobile Service;
 - (iii) co-operate with us and provide us with any information we may require from you in relation to the Mobile Service; and
 - (iv) follow any reasonable instructions from us regarding the use of the Mobile Service.
- (b) You must not, and must not allow any other person who uses your Mobile Phone to:
 - (i) use the Mobile Service for a purpose, or in a way, which:
 - A. is improper, immoral or fraudulent;
 - B. contravenes any applicable laws, regulations, industry codes, standards, content requirements or statements;
 - C. infringes any person's intellectual property rights; or
 - D. restricts or interferes with any other person's use of the Mobile Service or the Mobile Network used to provide the Mobile Service;
 - (ii) resell, distribute or reproduce any part of the Mobile Service;
 - (iii) use the Mobile Service except with equipment that complies with all relevant standards and approvals;
 - (iv) disclose to any person any security number(s) provided by us (including but not limited to your enquiry number(s), barring number(s) or personal identification number(s));
 - (v) place, attempt to place or accept a reverse charge call using the Mobile Service;

- (vi) use calling line identification or information derived from calling line identification except in accordance with the Act.

3.2 Responsibility for SIM Card

- (a) Any SIM Card is at your risk immediately on delivery to you, irrespective of when payment is due from you. If a SIM Card is damaged, lost or stolen after delivery you will still be liable to pay us for it in full.
- (b) You must:
 - (i) keep your SIM Card safe and in good condition;
 - (ii) not transfer, sell, hire or give away your SIM Card;
 - (iii) return your SIM Card to us immediately on request by us or on termination of the Agreement; and
 - (iv) notify us immediately if your SIM Card is damaged, lost or stolen.

4 DEVICES

4.1 Title and risk in Purchased Devices

The following conditions will apply to any Purchased Device:

- (a) title to any Purchased Device does not pass and remains with us until the Purchased Device is paid for in full; and
- (b) the Purchased Equipment is at your risk immediately on delivery to you, irrespective of when payment is due from you. Consequently, if any Purchased Device is damaged, lost or stolen after delivery you will still be liable to pay us for it in full.

4.2 Malfunctioning of Purchased Devices

If a Purchased Device:

- 4.2.1 does not function when it is delivered to you then, subject to you advising us of the malfunction as soon as reasonably practicable after becoming aware of it, we will arrange for the malfunctioning Purchased Device to be collected from you and replaced at no cost to you (other than our standard handling fee);
- 4.2.2 is subject to Early Life Failure then, subject to you advising us of the Early Life Failure within the Early Life Failure Period, we will arrange for the malfunctioning Purchased Device to be collected you and replaced at no cost to you (other than our standard handling fee);
- 4.2.3 ceases to function at any other time during the manufacturer's warranty period for that Purchased Device then on request by you we will provide you with the details of authorised dealers who can arrange for the malfunctioning Purchased Device to be repaired or replaced, in which case you will be responsible for delivering the malfunctioning Purchased Device to a dealer (at your cost), and the Device will be replaced or repaired in accordance with the terms of the manufacturer's warranty; or
- 4.2.4 ceases to function at any time after the manufacturer's warranty period for that Device then on request by you we will provide you with the details of authorised dealers who can arrange for the malfunctioning Purchased Device to be repaired or replaced (at your cost). You will be responsible for delivering the malfunctioning Purchased Device to a dealer (at your cost).

5 SUSPENSION and TERMINATION

5.1 Our right to suspend

We are entitled, without incurring any liability to you, to suspend or limit the Mobile Service (or any feature of it) or Disconnect any Mobile Number immediately if:

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- (a) you or someone acting on your behalf notifies us that your SIM Card has been lost or stolen;
- (b) in our opinion the amount of Charges incurred is unusually high, having regard to matters including your previous daily Charges and any unusual calling patterns;
- (c) we suspect that there has been fraudulent or illegal use of the Mobile Service or a Mobile Number;
- (d) we believe you have breached the Agreement and have not remedied that breach within 7 days of us requesting you to do so;
- (e) we reasonably believe you are jeopardising the operation or quality of a Mobile Network or the services the operator of that network supplies to its customers;
- (f) it is necessary due to a Force Majeure Event; or
- (g) an Emergency occurs,

and we will Reconnect the Mobile Number or end the suspension as soon as reasonably practicable after the event or circumstance requiring the suspension or Disconnection has ceased.

5.2 Our right to terminate

We are entitled, without incurring any liability to you, to terminate the Agreement if you:

- (a) have breached the Agreement and have not remedied that breach within 7 days of us requesting you to do so;
- (b) access the Mobile Service with a Mobile Phone, SIM Card or any other device which we have not approved;
- (c) fail to recharge your Prepaid Account before the end of any 395 day period since you last recharged it;
- (d) port your Mobile Number from us to another service provider, in which case:
 - (i) we will comply with our obligations under the Act and the Numbering Plan in relation to mobile number portability;
 - (ii) you appoint us as your agent for the purpose of completing a CAF; and
 - (iii) you will be responsible for any costs incurred in porting your number;
- (e) you are declared bankrupt; or
- (f) you die.

5.3 Lost or stolen SIM Card

If notified by you or someone acting on your behalf that your SIM Card has been lost or stolen, we will:

- (a) promptly suspend your Mobile Number; and
- (b) end the suspension as soon as reasonably practicable after we have issued a replacement SIM Card to you.

5.4 Your right to cancel

You may cancel the Mobile Service at any time by notifying us in writing.

5.5 Consequences of termination or cancellation

On cancellation of the Mobile Service or termination of the Agreement:

- (a) we will stop providing the Mobile Service and Disconnect you;
- (b) any remaining credit in your Prepaid Account will be cancelled (except where we terminate the Agreement for a reason other than a breach of the Agreement by you);
- (c) you must return your SIM Card to us. We may require

you to pay us a SIM Card replacement fee if on cancellation or termination your SIM Card is lost, damaged or has been stolen; and

- (d) we will comply with our obligations under the Code in relation to any transfer of your Mobile Number on termination or cancellation. Under the Code it is the responsibility of the gaining service provider to arrange and complete the transfer.

6 LIABILITY AND INDEMNITY

6.1 Our liability to you

- (a) To the extent permitted by law, we are not liable to you (or any party claiming through you) in tort, contract or otherwise for any loss of profits, data, goodwill, business or anticipated savings or any other indirect or consequential damage, even if such loss or damage was reasonably foreseeable.
- (b) To the extent permitted by law, our liability to you in relation to the Mobile Services and the Agreement is limited (at our option) to:
 - (i) in the case of the Mobile Service, resupplying the Mobile Service or paying the cost of having the Mobile Service resupplied; or
 - (ii) in the case of goods, repairing or replacing the goods or paying the cost of having the goods repaired or replaced.
- (c) If, notwithstanding clause 5.1(b), we are liable to you in relation to the Mobile Services or the Agreement, our liability is limited to a sum equal to the total amount paid by you under the Agreement:

for the period of one month prior to the date of the liability arising.

6.2 You indemnify us

You are liable to us for and indemnify us against any loss, damage, claim, proceeding and cost (including all legal costs on an indemnity basis), including as a result of a third party claim against us arising out of the use or attempted use (including fraudulent use) by any person (including you) of the Mobile Service or equipment connected to the Mobile Service.

7 REGULATORY ASPECTS

7.1 Collection and use of information

Subject to the *Privacy Act 1988 (Cth)* (**Privacy Act**), you:

- (a) will promptly provide us with all information that we may reasonably require in order to supply the Mobile Service to you or to fulfil our contractual obligations to any Provider or other supplier;
- (b) authorise us to obtain from any Provider such information as we may need from time to time to supply the Mobile Service to you;
- (c) consent to us collecting and authorise us to use, exchange or disclose any information (including personal information as defined under the Privacy Act) provided by you with any Provider to the extent necessary to supply the Mobile Services and otherwise in accordance with our Privacy Policy, a copy of which is available on our website located at www.macquarietelecom.com.

7.2 Disclosure of information

You consent to us disclosing any information in relation to your account to the extent required by any law enforcement agency without notifying you of the request or the information provided.

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7.3 Interception and monitoring

You acknowledge that we may be required to intercept communications over the Mobile Service and may also monitor usage of the Mobile Service and communications sent over it as required by law.

8 MISCELLANEOUS

7.1 Entire agreement

The Agreement constitutes the entire agreement and understanding between you and us in relation to its subject matter. All previous negotiations and representations (express or implied) are excluded to the maximum extent permitted by law.

7.2 Assignment by us

We may at any time assign the whole or any part of the Agreement to a related body corporate or a third party without your consent.

7.3 Assignment by you

You may assign or deal with your rights or obligations under the Agreement with our prior written consent, which we will not unreasonably withhold.

7.4 Enforceability

If a part of the Agreement is held to be void, voidable or unenforceable or an invalid part severed, the remainder of the Agreement is not affected.

7.5 Variation of Agreement

We may vary the Agreement at any time by giving you 30 days prior notice.

7.6 Waiver

No waiver by us, whether express or implied, of any provision in the Agreement or of any breach or default by you will constitute a continuing waiver or a waiver of any other provision of the Agreement, unless expressly so provided in writing and signed by our authorised representative.

7.7 Governing law and jurisdiction

The laws of New South Wales govern the Agreement and both parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.

PART 2 - DICTIONARY

1. Definitions

In the Agreement:

ACA means the Australian Communications Authority.

Act means the *Telecommunications Act 1997 (Cth)* or any Act which replaces the Act and definitions used in the Act have that meaning unless the contrary intention otherwise appears.

Agreement means the agreement between us and you for the supply of the Mobile Service, which includes these terms and conditions and the Purchase Order.

CAF means a customer authorisation form substantially in the form prescribed by us.

Charges means the amounts payable by you for the provision of the Mobile Service, based on the Macquarie Rates and the Macquarie Standard Price List.

Code means the ACIF Mobile Number Portability Code (or any code which replaces that code).

Coverage Areas means the geographic limits within Australia where our nominated Provider's Mobile Network operates.

Device means a Mobile Phone and any equipment or accessories that are capable of being used with that device by an end user.

Disconnection means the disconnection of a Connection and **Disconnect**, **Disconnected** and **Disconnecting** have a corresponding meaning.

Early Life Failure means a Purchased Device ceases to function within the Early Life Failure Period (other than as a result of any damage caused by you or any other third party).

Early Life Failure Period means the period specified by the manufacturer of the Purchased Device.

Emergency means a situation that, unless immediately remedied, has the potential to jeopardise human life or safety or to cause immediate risk to property.

Force Majeure Event means any cause beyond a party's reasonable control affecting the performance of its obligations under the Agreement, including, but not limited to, fire, flood, explosion, accident, war, strike, embargo, governmental requirement, civil or military authority, Act of God, inability to secure materials, industrial disputes, and acts or omissions of other providers of telecommunications services.

GPRS means a general packet radio service.

Macquarie Rates means any rates specified in a Pricing Schedule to be used to calculate the applicable Charges for the Mobile Service.

Macquarie Standard Price List means the price list specifying standard rates for the Services that are used to calculate the Charges in the absence of a particular Macquarie Rate, as modified by us from time to time. The Macquarie Standard Price List is available electronically through the website located at www.mspl.macquarie.net.au.

MMS means a multimedia message service (including Vodafone's PXT service).

Mobile Network means a 2G Network, a 2.5G Network, a 3G Network or any other Network used to supply the Mobile Service.

Mobile Number means the mobile number that you port to us or any new number we assign to your SIM Card.

Mobile Phone means a device capable of enabling use of the Mobile Services (including transmitting and receiving messages).

Mobile Service means any or all mobile telecommunications services supplied by us to you using the Mobile Number.

Network has the same meaning as "*Telecommunications Network*" in the Act.

Numbering Plan means the Numbering Plan made by the ACA under the Act.

Prepaid Account means the bank account established by us and maintained by you for the purpose of paying for the use of the Mobile Service.

Pricing Schedule means the Schedule attached to each Purchase Order (or amended in accordance with the Agreement) that specifies the Macquarie Rates.

Provider means a carrier, service provider or other supplier used by us to provide some or all of the Mobile Service to you.

Purchased Device means a Device purchased by you from us.

Purchase Order means a purchase order for the Mobile Service in the form prescribed by us.

Reconnection means the re-activation of a Connection which has been Disconnected and **Reconnect**, **Reconnected** and **Reconnecting** have a corresponding meaning.

Roaming means where you use a mobile service on another Provider's Network to make calls or access mobile services either within or outside Australia.

SIM Card means a subscriber identity module card, provided by us to be used with a Mobile Phone.

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we, us and **our** means Macquarie Telecom Pty Limited ABN 21 082 930 916 and includes our directors, employees, subcontractors and authorised representatives.

you and **your** means the person who signs the Purchase Order.

2. Interpretation

In the Agreement:

- (a) the singular includes the plural and vice versa;
- (b) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (c) a reference to a document includes any amendment, replacement or novation of it;
- (d) a reference to a party includes its successors and assigns; and
- (e) a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced.