

Comms Group (UK) Limited - Terms and Conditions

Agreement Terms

Capitalised terms are defined in the Agreement Details at the front of this Customer Application Form or in the Definitions in clause 12.

1 This Agreement

This Customer Application Form comprises the Customer Service Agreement Form and associated Terms and Conditions

2 Services

2.1 Comms Group agrees to supply the Customer with the services detailed in the Service Agreement Form on the terms and conditions set out there in and on these Agreement terms together with any special conditions agreed from time to time.

2.2 Comms Group's obligation to supply a service shall commence when this Agreement has been duly executed by both parties. Comms Group shall endeavor to provide service in a timely manner and in accordance with any time scales indicated but shall not have any liability for any delay or failure to provide service.

2.3 Comms Group shall use its reasonable endeavors to provide continuity of service, but the Customer acknowledges that Comms Group cannot guarantee a fault-free service.

2.4 Comms Group shall provide the service with the standard of care expected of a competent telecommunications operator.

3 Maintenance and Faults

3.1 Comms Group shall maintain the service in an appropriate manner. In the event that any routine maintenance is likely to cause any impairment or suspension of the service, Comms Group shall give the Customer reasonable notice of such maintenance.

3.2 Where a fault or impairment occurs to the service, Comms Group shall use its reasonable endeavors to repair such fault or impairment as quickly as possible, once the fault or impairment has been brought to Comms Group's attention.

3.3 Where any fault or impairment is not caused by Comms Group or its Suppliers, Comms Group may levy a reasonable charge for restoring the service.

3.4 Comms Group may suspend service: for maintenance purposes if the Customer has breached any of the terms of this Agreement, including, without limitation, the obligation to pay any sums due, if Comms Group is ordered to do so by any competent authority or because of safety considerations.

4 Billing & Charges

4.1 The tariff for the service is set out in this Agreement or the relevant Price List.

4.2 Unless otherwise stated, any rental or recurring charges are invoiced monthly in advance and call charges and any ad-hoc maintenance or similar charges are invoiced monthly in arrears. Unless otherwise stated, payment terms are 14 days from the date of invoice. Without Prejudice Comms Group may suspend or terminate in writing the provision of service in the event of any delay in payment. Comms Group may levy interest on late payment at a rate equal to 4% above the base lending rate of HSBC Bank plc as published from time to time. Interest may be compounded on a daily basis.

4.3 If in the event the client account is not up to date over a 6 month period then Comms Group will without notice remove any price tariff that had been agreed at the start of the contract. The tariff will revert to BT standard rate.

4.4 To begin service or continue service for customers in default of payment Comms Group may require a deposit or other security for payment of bills.

4.5 Charging will begin on the date on which the service becomes operational. Charges will be based on Comms Group's records.

4.6 VAT or other applicable sales tax will be added to the invoice at the prevailing rate from time to time.

5 Liability

5.1 Each party's liability to the other shall be limited to £250 for any event. This limitation shall not apply to any obligation to pay for services provided or to be provided here under.

5.2 Neither party shall have any liability to the other in contract, tort, including negligence or breach of statutory duty or otherwise for loss of revenue, profits, anticipated savings, business or otherwise for consequential or indirect loss.

5.3 Comms Group will accept no liability for any contractual/financial obligations from any other Service Provider.

5.4 Nothing shall serve to limit Comms Group's liability in respect of death or personal injury.

6 Terms and Termination

6.1 This Agreement shall start on the date that Comms Group first makes the service available to the customer and shall remain in effect for the minimum term set out on the Service Order Form and thereafter for periods of one year unless and until terminated in accordance with this paragraph 6.

6.2 Either party may terminate a service on not less than 90 days notice, not to expire prior to the expiry of any minimum term set out in the relevant Service Order Form or on each anniversary

6.3 If in the event of a termination request all clauses must be adhered to and all account payments must be up to date. No requests will be accepted if accounts payments are not adhered to as in clause 4.2

6.4 In the event of early termination of service charges, line rentals or call traffic by the customer, whether in writing or not and if the required notice period has not been adhered to, Comms Group shall be entitled to charge the customer the monthly service charges or line rental multiplied by the number of months outstanding to the anniversary date of the contract as well as charging for calls not made based upon the average monthly call spend over the last three months invoiced multiplied by the number of months outstanding to the anniversary date of the contract.

6.5 Where the customer has submitted written notice in accordance with clause 6.2, the customer shall have thirty days from the end of the notice period to transfer the services away from Comms Group. In the event that the services are not transferred away from Comms Group within thirty days the agreement will be deemed automatically renewed for a successive period of 12 months.

6.6 Either party may terminate the provision of a service in the event of a material breach of the terms of this Agreement relating to the provision of such service, such breach being capable of remedy by the other party, which breach remains un-remedied 14 days after notice has been given of such breach.

6.7 Either party may terminate the provision of a service forthwith in the event of a material breach of the terms of this Agreement relating to the provision of such service, where such breach is incapable of remedy.

7 Obligations of Customer relating to the provision of services

7.1 The Customer:

(a) Must ensure that all equipment connected to the services by, or on behalf of the Customer is technically compatible with the relevant service(s)

and that both its Premises and equipment comply with all relevant regulatory conditions (including any applicable legislation)

(b) Must ensure that the details provided to Comms Group in order to enable Comms Group to provide the services is complete and accurate

(c) Must ensure that all equipment connected to the services complies with and is used in accordance with all reasonable procedures (including security and safety procedures) and possesses all approvals, necessary to allow it to be connected to the services

(d) Must not alter, tamper, reverse engineer, repair or attempt to repair the services or cause, or allow, a third party to do any of these acts

(e) is solely responsible for selecting, supplying and maintaining its own facilities and equipment and the purpose(s) for which it acquires and uses the services

(f) is solely responsible for the content and security of any data or information which it sends or receives using the services and warrants that it, and its employees, contractors and agents will not use the services for any purpose that may be unlawful, illegal or defamatory

(g) acknowledges that where it applies for the Line Rental Service from Comms Group, this application is also for Comms Group's Carrier Pre-Select or

Indirect Access Service (1XXX) that will be provisioned if the customer does not already subscribe to either of these usage-based outbound call services from Comms Group. The Customer agrees not to use any other service provider to make outbound calls. In the event that Comms Group believes that the Customer is using any other provider for calls, Comms Group reserves the right to suspend service and to terminate this Agreement forthwith. In such case, the Customer agrees to pay Comms Group for the minimum service term at Comms Group's line-rental only price from time to time.

8 Suspensions or Cancellation of Services

8.1 Comms Group may without notice suspend, limit or cancel the provision of services to the Customer at any time:

(a) In the event of an emergency or whenever Comms Group considers it necessary or reasonable in order to provide resources to emergency and other essential services

(b) If the supply of a service is or is to become unlawful

(c) If in the opinion of Comms Group the provision of a service or continued provision of a service is liable to cause death or personal injury or damage to property

(d) If Regulatory Restrictions apply to the supply and/or the use of a service

(e) The Customers use of a service interferes with the efficiency of Comms Group's or a service Providers, network and Customer fails to rectify the situation or

8.2 Comms Group may suspend, limit or cancel the provision of a service at any time by notice to the Customer:

(a) If the Customer defaults in the due payment of any charges for a service

(b) If a Service Provider ceases to supply, or gives Comms Group notice of its intention to cease to supply, services necessary for Comms Group to supply a service to the Customer

(c) If the Customer breaches the terms of clause 8.1

(d) If a third party holding an encumbrance takes possession of the whole or a substantial part of the undertaking or property of the Customer or the Customer becomes unable to pay its debts when they are due or enters into, or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors generally.

8.3 Where provision of a service has been suspended under clause 8.2(a), re-supply may be subject to the payment by the Customer of a re-supply charge which will be advised to the Customer by Comms Group prior to the service being re-supplied.

8.4 If Comms Group cancels a service; it may enter the Premises and remove any Facility belonging to Comms Group connected with that service. If Comms Group is unable to gain access to the Premises it may recover the value of the Facility from the Customer as a debt due to Comms Group.

9 Confidentiality

Confidential Information

9.1 The Customer and Comms Group must treat as confidential information:

(a) The provisions of this Agreement and

(b) All information provided by the other party under this Agreement, including without limitation in the case of the Customer, Comms Group's invoices.

Disclosure

9.2 A party must not disclose the other parties' confidential information to any person except:

(a) To employees (which for Comms Group includes its sub-contractors) on a need-to-know basis provided those persons first agree to observe the confidentiality of the information

(b) To legal and financial advisers

(c) With the other parties prior written consent

(d) If required by law or the rules of any relevant any stock exchange or

(e) If it is in the public domain.

9.3 Nothing in the Agreement shall prevent Comms Group disclosing any of the Customers confidential information to its employees, sub-contractors, advisers and other consultants on a need-to-know basis provided those persons are aware of the confidential nature of the information and in accordance with the Data Protection Act 1988.

10 Dispute Resolution

10.1 The parties agree to use best endeavors to resolve in good faith:

(a) A dispute about an invoice or the performance of a service or

(b) Any claim arising under a domestic or international law, connected to this Agreement. Each party must follow the procedures in this clause 13 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).

10.2 If a dispute or claim arises between the parties that cannot be resolved promptly between the Comms Group contact person and the Customers contact person, either party may notify the other party of a formal dispute, in which case each party shall nominate a senior executive to meet within 7 days of such nomination (or another agreed period) to resolve the dispute.

11 General Notices

11.1 All notices, approvals consents and other communications must be in writing and sent to the addresses or fax numbers for notices specified in the Agreement Details. Notices must not be sent by email unless otherwise provided in this Agreement.

11.2 Notices sent

(a) By hand are deemed to be received when delivered

(b) By post to an address in the UK are deemed to be received by the third Business Day after posting

(c) By post to an address outside the UK are deemed to be received by the seventh Business Day after posting

(d) By fax are deemed to be received when the senders fax machine issues a successful transmission report.

Severability

11.3 If any clause or part of any clause is held by the court to be invalid or unenforceable, that clause or part of a clause is to be regarded as having been deleted from this Agreement and this Agreement otherwise remains in full force and effect.

Waiver of rights

11.4 A condition of this Agreement, or a right created by it, may only be waived by a party by giving notice.

11.5 A waiver of a breach of this Agreement does not waive any other breach.

Warranties

11.6 The Customer and Comms Group each warrant to the other that entering into and performing its obligations under this Agreement does not breach any of its contractual obligations to any other person.

11.7 The Customer warrants that it has not relied on any representations or warranties by Comms Group other than those in this Agreement.

Assignment

11.8 Neither the Customer nor Comms Group may assign its rights or novate any obligations under this Agreement without the prior written consent of the other save that either party may assign its rights to an associated company.

No third party rights

11.9 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no third party shall have the benefit of or the right to enforce any term of this Agreement.

Force Majeure

11.10 Neither party is liable for not performing an obligation in whole or in part, or for not performing it on time (except an obligation to pay money), because of an event beyond that party's reasonable control.

11.11 If an event beyond a party's reasonable control occurs, that party must:

(a) Give the other party notice of the event promptly and an estimate of the non-performance and delay

(b) Take all reasonable steps to overcome the effects of the event (but this does not require the settlement of industrial disputes or other claims on unreasonable terms) and

(c) Resume compliance as soon as practicable after the event no longer affects either party.

Situation or New Services

11.12 Any variations to the service or new services shall be recorded in writing and signed by both Parties. Where no Agreement Terms are specified, these Agreement terms shall apply.

Governing law

11.13 This Agreement is governed by the laws of England. The Customer and Comms Group submit to the non-exclusive jurisdiction of the courts of England.

Interpretation

11.14 In this Agreement:

(a) A reference to this Agreement includes all its parts described in clause 1.1, and includes any amendment to or replacement of them

(b) A reference to a statute or other law includes regulations and other instruments under it and amendments, re-enactments or replacements of any of them

(c) The singular includes the plural, and vice versa

(d) Includes, including, for example, such as and similar terms are not used, and are not to be interpreted as, words of limitation

(e) Unless otherwise indicated, a reference to a day is to a calendar day.

12 Definitions

Business Day - means any day other than a Saturday, Sunday or recognized public holiday in the Relevant Jurisdiction.

Customer - the individual, company or body named in the Agreement Details and includes successors and permitted assigns.

Facility - includes any line, equipment, tower, mast, antenna, tunnel, hole, pit or pole used in connection with a service.

Initial Period - for a service means the initial period set out in the relevant Service Details of a Service Schedule for that service.

Regulatory Restriction - means

(a) Legal or regulatory restrictions

(b) Restrictions due to domestic or foreign government policy

(c) Other restrictions imposed on telecommunication operators in relation to providing telecommunication services (including, without limitation, licensing requirements and restrictions relating to reselling services), which operate such that the Agreement or any action taken or required to be taken in accordance with the Agreement, including without limitation the provision of the Global Services to the Customer, contravenes or may contravene any provision of any applicable law in force in the jurisdiction where the Global Services are being used or the Global Services are being supplied or used.

Customer Application Form - This Agreement and associated Schedules for the services that the Customer has agreed to acquire under this application.

Service - a service set out in a Customer Application Form agreed to be supplied by Comms Group to the Customer.

Service Start Date - means the date set out in each relevant Service Schedule on which the Service Term for services to which the Customer Application Form relates will commence.

Service Term - means the Initial Period set out in this Customer Application Form and any renewal period, for that service.

13 Exclusions

13.1 Any package that incorporates inclusive or unlimited calls to 01 or 02 numbers refers only to voice calls. Data calls will be charged as per the Tariff Release Document.

*Any reference to Comms Group relates to Comms Group (UK) Limited