

# GENERAL TERMS AND CONDITIONS

## APPLYING TO THE PROVISION OF 1300, 1800 AND 13 SERVICES

The terms and conditions set out below will apply as between Delacon Pty Ltd ABN 42074596553 (**Delacon**) and the entity (**Customer**) agreeing to purchase 1300, 1800 and/ or 13 inbound services (**Services**) from Delacon.

### 1. Definitions

1.1 "Agreement" means the agreement for the provision of the Services between Delacon and the Customer, comprising these General Terms and Conditions, the Application for Service or Account application or any other similar document (and any schedule thereto),

Delacon's current schedule of charges applying from time to time, any documentation authorising the transfer of telephone lines to Delacon (and any schedules thereto), and any other terms and conditions by which the parties agree to be bound in relation to the supply of the Services.

1.2 "Carrier" means a telecommunications carrier licensed under the Telecommunications Act 1997 (Cth) as a general carrier or a public mobile telecommunications carrier.

1.3 "Consequential Loss" means:

- (a) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages; and
- (b) any penalties or fines imposed by a regulatory body.

1.4 "Content" means data, information, files, software, scripts, images, graphics, audio, video, text, and any other object or information, whether in written or audio form (e.g. voice messages).

1.6 "Current Supplier" means a Carrier, telecommunications service provider or equipment supplier who supplies telecommunications services or equipment to the Customer at the time of signing the document.

1.7 "Fixed Term" means a period of zero months starting on the date of the commencement of the Agreement (as determined in accordance with clause 8.1).

1.8 "Harmful Code" means any program, routine or device which is designed to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, including without limitation, any 'time bomb', virus, drop dead device, malicious logic, worm, Trojan horse or trap or back door.

1.9 "Loss" means any loss, cost, liability or damage, including reasonable legal costs on a solicitor/ client basis and, unless otherwise stated, includes Consequential Loss.

1.10 "Related Corporation" means, with respect to an entity, a body corporate that is related to that entity in any of the ways specified in section 50 of the *Corporations Act 2001 (Cth)*.

Words not defined in these General Terms and Conditions have the same meaning as in the Telecommunications Act 1997 (Cth).

### 2. Services

2.1 Delacon will provide the Services to the Customer. Delacon may from time to time vary the composition or characteristics of the network used to provide these Services including selection of the Carrier. Delacon will provide services to the extent and standard of its Carriers. Delacon does not warrant that it will be able to provide all services and will not be liable for any failure to do so.

2.2 The Customer must, in connection with its use of the Services, comply with all applicable laws, regulations, by-laws, standards, industry codes and license conditions of any government body.

2.3 The Customer acknowledges and agrees that:

- (a) the Services are not designed, intended, authorised or warranted to be suitable for making calls to emergency services;
- (b) the Services cannot and should not be used to make calls to emergency services; and
- (c) Delacon or any Carrier supplying to Delacon may, at any point:
  - (i) be required to intercept communications sent via the Services; and
  - (ii) monitor usage of the Services and communications sent over them.

### **3. Credit Check**

3.1 Prior to connection of Services Delacon will conduct a credit assessment. The Customer is required to provide all information necessary to complete this assessment. Delacon requires the Customer to provide Delacon with authorisation so that Delacon, if required:

- (a) May obtain from a credit-reporting agency a credit report containing personal information regarding the Customer.
- (b) May seek from any credit provider named in a credit report in the Customer's application, information in relation to the Customer's credit rating including and without limitation, any information about the Customer's credit worthiness, credit history or credit capacity that credit providers give or receive under the *Privacy Act 1988* (Cth).
- (c) May make independent enquiries of third parties concerning the Customer's financial standing and for this purpose the Customer has authorised and permitted such third parties to supply such information regardless of any confidentiality or privilege, which applies to the information sought.
- (d) May provide to any Carrier or its Related Bodies Corporate such information concerning the Customer as Delacon may have or obtain from time to time.

3.2 For the purposes of the ongoing credit management of the Customer's account Delacon may need to disclose to a credit reporting agency:

- (a) the fact that the Customer has applied for the Services, and any credit limit on the Customer's account;
- (b) the Customer's personal identifying details, including name, current and previous addresses, driver's license number, date of birth and employer.
- (c) the amount of any payments which are overdue for at least sixty days on the Customer's account, when steps have been taken by Delacon to recover those overdue payments;
- (d) where an overdue payment has been previously reported, advice that the payment is no longer overdue;
- (e) cheques or credit card payments by the Customer which have been dishonoured;
- (f) Court judgments or bankruptcy orders made against the Customer;
- (g) that in the opinion of Delacon, the Customer has committed a serious credit infringement; and
- (h) when Delacon ceases to provide services to the Customer.

3.3 The Customer authorises Delacon to disclose the information described in paragraph 3.2 above to a credit reporting agency.

3.4 Delacon may refuse to supply Services, or cancel the Services, to the Customer on the basis of its credit assessment of the Customer undertaken in accordance with paragraph 3.1 above.

### **4. Transfer of Account from Current Supplier:**

4.1 By signing the Agreement, the Customer irrevocably and unconditionally authorises Delacon to complete and sign, on the Customer's behalf and in its name, any form or other authority required by the Customer's Current Supplier in order to transfer the Customer's current account and/ or services.

4.2 Should it become necessary to change the arrangements with the Customer's Current Supplier in order to provide Services to the Customer, such changes shall be made in accordance with clause 5.

### **5. Transfer from Delacon to another Supplier:**

5.1 In the event of the termination of any of the Services, if the Customer wishes to transfer one or more Services to another supplier:

- (a) it must specify such request to Delacon in writing;
- (b) an administration fee will be payable to Delacon, as follows: \$40 for each number that the Customer requests Delacon to transfer; and
- (c) the Customer will nevertheless remain liable to Delacon for any changes billed or payable under the Agreement until such time as the provision of all Services ceases.

5.2 The provision of Services ceases when Delacon transfers the Customer's account to another supplier and the other supplier takes over full responsibility for the billing of the relevant services.

5.3 With respect to any transfer described in clause 5.2, if, after the date of such transfer, Delacon becomes aware of any other charges which were duly incurred by the Customer in relation to the transferred Services at any time up to and including the date on which Delacon ceased to provide the Services, then the Customer will, promptly upon receipt of Delacon's invoice, pay to Delacon all such amounts.

### **6. Access:**

6.1 The Customer is responsible for ensuring that its PABX or other network equipment is programmed, as specified by Delacon.

6.2 Should Delacon or any Carrier need to install its own equipment at the Customer's premises in connection with the provision of the Services, the Customer will not interfere with such equipment or its installation.

6.3 The Customer will reasonably cooperate with Delacon and any Carrier involved in the provision of the Services to allow Delacon (and any such Carrier) to establish and supply the Services safely and efficiently. This includes following the reasonable requests of Delacon and any Carrier supplying to Delacon to provide the personnel of those entities with safe and prompt access to premises where the Services will be supplied and to relevant equipment, data and information and personnel.

6.4 Any equipment at the Customer's premises used to provide Services to the Customer through another supplier will be disconnected upon transfer to Delacon. It is the Customer's responsibility to notify their Current Supplier of the change in provision of their Services and to arrange forthwith the removal of any equipment.

6.5 Risk any equipment provided by Delacon or any of its Related Bodies Corporate to the Customer from purchase or hire passes to the Customer upon delivery.

6.6 Title to any equipment provided for purchase does not pass to the Customer until all amounts owing to Delacon under the Agreement and the cost of equipment has been paid in full. Until title passes to the Customer, the equipment will be held by the Customer as bailee for Delacon.

6.7 The customer irrevocably grants to Delacon and its agents a license, without the necessity of giving the Customer any notice, to enter at any time onto and into the premises of the Customer, using a reasonable force if necessary to inspect, search for and take possession of any equipment in respect to which payment is overdue. The Customer will indemnify Delacon and hold Delacon harmless against any loss or damage suffered by any person or persons arising from such repossession.

## **7. Customer's obligations and commitments:**

7.1 The Customer will be charged in advance for Services according to Delacon's current prices as published from time to time. Publication will be constituted by the creation of a new schedule of charges or part thereof.

7.2 The Customer will not, in its use of the Services, breach any law, breach any person's rights or otherwise cause loss, liability or expense to Delacon or any Carrier.

7.2A You are responsible for all usage charges in respect of the use of the Service whether or not such usage charges was authorised and including all usage charges in excess of your account balance or in excess of any credit extended to You. It is your responsibility to maintain security of the means of access to the Service and ensure unauthorised use does not occur. You are liable for all usage charges whether or not you have authorised the particular use of the Service by another person and you will continue to be liable for the usage charges if you allow another person to use the Service irrespective of whether you have authorised that person to use the Service

7.3 Delacon may vary, alter, replace or revoke the Agreement, effective upon the expiry of 30 days' written notice (**Notice Period**). The Customer agrees that, unless it terminates the Agreement within the Notice Period, the Customer will be bound by the variation, alteration, replacement or revocation effected by Delacon. Notwithstanding the foregoing terms, Delacon may at any time change the prices applicable to the Services, and such changes will apply to the Customer forthwith.

7.4A The Due Date for payment of the proceeding month's monthly recurring fee will be the last business day of each month and payment will be made in accordance with clause 14. It is the Customer's responsibility to ensure there is sufficient credit on the Customer's nominated credit card or bank account to pay for the proceeding month's monthly recurring fee. In the event that the Customer's nominated credit card is declined, or the Direct Debit is declined Delacon will not extend any credit to the Customer and the services to the Customer will be terminated forthwith without notice.

7.4B The Due Date for payment of the proceeding month's call charges will be the last business day of each month and payment will be made in accordance with clause 14. It is the Customer's responsibility to ensure there is sufficient credit on the Customer's nominated credit card or bank account to pay for the proceeding month's monthly recurring fee. In the event that the Customer's nominated credit card is declined, or the Direct Debit is declined Delacon will not extend any credit to the Customer and the services to the Customer will be terminated forthwith without notice.

7.4C If in any month the Customer's account credit falls below \$100, Delacon will automatically deduct from the Customer's nominated credit card or bank account an amount equal to the greatest monthly call charges incurred by the Customer over the preceding six months. It is the Customer's responsibility to ensure there is sufficient credit on the Customer's nominated credit card or bank account to pay for the proceeding month's call charges. In the event that the Customer's nominated credit card or bank account is declined, Delacon will not extend any credit to the Customer and the services to the Customer will be terminated forthwith without notice. Delacon will send an email to the Customer when the Customer's account credit falls below \$100 notifying the Customer that the account credit has fallen below \$100 and the amount deducted from the Customer's credit card or bank account

7.4 Payment of an invoice must be made by the date specified in the invoice (**Due Date**). If the Customer disputes in good faith an amount in the invoice, the Customer must pay the whole amount of each invoice by the Due Date.

7.5 If the Customer does not pay the invoice by the Due Date then Delacon may charge interest at the rate of 1.5% per month or part thereof on the outstanding amount of the invoice and suspend any or all of the Customer's Service pending payment of outstanding amounts on the invoice. Nothing in this clause affects Delacon's rights to terminate the Agreement.

7.6 If the Customer has not paid by the Due Date, Delacon reserves the right to adjust the prices at its discretion.

7.7 The Customer acknowledges that Delacon may not be able to provide all services required by the Customer and the Customer authorises Delacon to select and engage any carrier to supply the service on behalf of the Customer.

7.8 Delacon may include in any account rendered to the Customer any changes for services provided to the Customer by any carrier that has been rendered to Delacon.

7.9 The Customer acknowledges that local calls may not be itemised in the account and agrees that Delacon shall not be required to provide itemisation of local calls at any time.

7.10 If a good and services or similar value added tax ("GST") applies to the Agreement for any reason the Customer must pay the GST or reimburse Delacon for any GST paid or payable by Delacon.

7.11 The Customer will comply with:

- (a) all reasonable directions issued by Delacon to assist it or any Carrier involved in the supply of the Services in complying with any applicable regulatory obligations, and in particular directions relating to:
  - (i) the provision of information to the police and other law enforcement agencies;
  - (ii) the provision of information for directory purposes; and
  - (iii) the provision of emergency services;
- (b) all laws, regulations, directions, orders, codes and guidelines concerning privacy, including (without limitation) all laws, regulations, directions, orders, codes and guidelines applying to the recording of telephone calls; and
- (c) all directions, orders, codes and guidelines issued by any regulatory body from time to time to the extent that such directions or orders may affect in any way the supply of the Services to the Customer.

7.12 Customer undertakes to Delacon that it will not transmit to or through any electronic device or network owned or operated by Delacon any Content containing any Harmful Code.

7.13 The Customer irrevocably and unconditionally indemnifies Delacon, any Carrier involved in the supply of the Services, and each of their respective Related Corporations (each, an "**Entity**"), in full against any and all Loss incurred by or awarded against an Entity as a result of, or in connection with:

- (a) any breach of the Agreement by the Customer;
- (b) any fraud by the Customer or any third person associated with the Customer who uses or purports to use the Services;
- (c) any claim by the Customer or any third party against Delacon or any Carrier involved in the supply of the Services, in connection with the supply or use of the Services;
- (d) any infringement or non-compliance by the Customer, any of the Customer's customers or any third party user of a Service of any law, regulation, direction, order, code or guideline concerning privacy, including (without limitation) any law, regulation, direction, order, code or guideline applying to the recording of telephone calls; or
- (e) any transmission by Customer or its customers or end users of any Harmful Code to or through any electronic device or network owned or operated by Delacon (and regardless of whether or not Customer was at any time aware of such transmission of Harmful Code);

## **8. Terms of Agreement:**

8.1 The Agreement will commence on the date of Delacon's acceptance (whether in writing or by conduct) of the Customer's Application for Service, and will continue until either party gives 30 days' written notice of termination to the other party. However, notwithstanding the foregoing sentence:

- (a) if the Customer issues a notice of termination to Delacon under this clause 8.1 and the date on which termination is to take effect falls within the Fixed Term, the Customer will become immediately liable to pay all monthly fees that would have been chargeable by Delacon in accordance with clause 2.4 (and the other terms of the Agreement) during the period starting on the date of the Customer's notice of termination and ending on the final day of the Fixed Term; and
- (b) Delacon may, by giving written notice to the Customer, terminate this Agreement forthwith and without prejudice to any rights or remedies existing at the date thereof if:
  - the Customer has breached any term or condition of this Agreement; or
  - a receiver has been appointed over any of the property of the Customer; or

- a liquidator or provisional liquidator is appointed to the Customer; or
- the Customer enters into any arrangements with creditors; or
- the Customer assigns or otherwise deals with his rights under this Agreement; or
- the Customer ceases to carry on business; or
- where the Customer is an individual, the Customer dies or becomes bankrupt, or there is a threat of the Customer becoming bankrupt; or
- there is a material change in the Customer's direct or indirect ownership or control, which occurs without Delacon's prior written consent.

8.2 In the event that the Carriers cease to provide any necessary services to Delacon, Delacon may, at any time, terminate the Agreement with immediate effect by giving notice to the Customer.

8.3 The Customer acknowledges that, if the Agreement is terminated in accordance with clause 8.2 and a Carrier arranges to supply the Customer other than through Delacon, the Carrier may not be able to make those arrangements immediately and once the Carrier has made those arrangements the services acquired by the Customer from the Carrier may be acquired on the then applicable Carrier's tariffs and terms and conditions and the Carrier will bill the Customer.

8.4 On the termination of the Agreement for any reason, the Customer will immediately return all equipment owned by Delacon or make such equipment available for collection, such equipment will be returned or surrendered in the same condition that it was originally supplied, fair wear and tear excepted, any costs to remove or repair will be charged or billed to the account of the Customer.

#### **9. Confidentiality:**

9.1 The Customer will keep confidential all information supplied by Delacon or the Carriers and Delacon will keep confidential all information supplied by the Customer except as provided under Clause 3 or for the purposes of recovery of amounts due.

#### **10: Transfer of the Agreement:**

10.1 The Customer's rights under the Agreement are personal and the Customer cannot assign or attempt to assign any right or obligation under the Agreement. Delacon may assign any or all of its rights and obligations under the Agreement at any time, by notifying the Customer in writing of the same.

#### **11: Limitation of Liability:**

11.1 Save for the provisions of clause 11.4 all terms, conditions, warranties, undertakings, inducements and presentations, whether express or implied, statutory or otherwise, relating to the services provided by Delacon are excluded.

11.2 TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER DELACON, NOR ANY OF ITS SUPPLIERS, LICENSORS, CONTRACTORS, EMPLOYEES OR OFFICERS, WILL HAVE ANY LIABILITY TO CUSTOMER OR ANY THIRD PARTY:

(A) WHERE SUCH PURPORTED LIABILITY IN ANY WAY ARISES OUT OF OR RELATES TO THE CONDUCT OF THE CUSTOMER, OR ANY OF ITS CUSTOMERS, SUPPLIERS, LICENSORS, CONTRACTORS, EMPLOYEES OR OFFICERS, OR ANY OTHER PERSON FOR WHOM IT IS RESPONSIBLE; OR

(B) FOR ANY LOSS OF PROFIT, LOSS OF ACTUAL OR POTENTIAL BUSINESS OPPORTUNITIES, LOSS OR CORRUPTION OF DATA, BUSINESS INTERRUPTION, LOSS OF REVENUE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR ECONOMIC LOSS OF ANY KIND, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND WHETHER OR NOT DELACON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THE AGREEMENT.

FURTHERMORE, IN NO EVENT SHALL DELACON'S LIABILITY UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) FOR ANY ACT OR OMISSION ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING ACTS AND OMISSIONS OF ITS SUPPLIERS, LICENSORS CONTRACTORS, EMPLOYEES AND OFFICERS) EXCEED THE SUM OF FEES PAID BY CUSTOMER FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

THE CUSTOMER AGREES THAT THIS CLAUSE 11.2 REPRESENTS A REASONABLE ALLOCATION OF RISK.

11.3 The exemptions, limitations, terms and conditions set out in these terms or conditions shall apply whether or not any damage is caused by negligence or actions constituting a fundamental breach of contract.

11.4 Insofar as any goods or services supplied by Delacon are not of a kind ordinarily acquired for personal domestic or household consumption, and unless the Customer establishes that reliance on this provision would not be fair and reasonable, any liability for a breach of a condition or warranty implied into this contract by the Competition and Consumer Act 2010 (or any other applicable legislation) is expressly limited, as follows:

(a) in the case of goods, to any one of the following, as determined by Delacon:

I: the replacement of goods or the supply of equivalent goods; or

II: the payment of the costs of having the goods repaired; and

(b) in the case of services, to any one of the following, as determined by Delacon:

I: the supply of the services again; or

II: the payment of the cost of having the services supplied again.

11.5 The Customer acknowledges that any liability of any Carrier to the Customer in relation to the services is governed by the Terms and Conditions on which the Carrier from time to time supplies that service to its own retail Customers.

## **12. Miscellaneous:**

12.1 Any notice, demand, consent or other communication between Delacon and the Customer may be delivered personally or sent prepaid mail or by facsimile to the address of the other as last notified.

12.2 Clauses 3, 5, 6, 7, 8, 9, 11 and 12.2 shall survive the termination of the Agreement.

12.3 The Agreement (as varied from time to time by Delacon) contains the entire agreement between Delacon and the Customer to the exclusion of any and all prior agreements, whether written or oral. We may revise these Terms & Conditions at any time by updating this posting. You should visit this web page periodically to review the Terms & Conditions, because they are binding on You.

12.4 The Agreement will be governed by and constructed in accordance with the laws of New South Wales and shall hereby submit to the jurisdiction of the courts of that State.

12.5 If any part of the Agreement is found to be invalid or of no force or effect, the Agreement shall be constructed as though such part had not been inserted and the remainder of the Agreement shall retain its full force and effect.

12.6 The persons signing the Agreement on behalf of the Customer warrant that they have full power of authority to bind the Customer in respect of the Agreement.

## **13. Guarantee:**

In consideration of Delacon agreeing, at the Guarantor's request, to provide services to the Customer, the Guarantor irrevocably and unconditionally guarantees to Delacon the due and punctual payment by the Customer of all moneys payable to Delacon in respect of any and all Services provided, as and when such moneys become due and payable by the Customer. This guarantee shall be a continuing guarantee and shall not be discharged or affected by:

(a) Delacon at any time granting to the Customer any waiver, consent or extension of time or credit; or

(b) any amendment to, or any agreement in respect of, the terms and conditions governing the supply of Services.

## **14. Automatic Payment Authority:**

14.1 Delacon will confirm the details of the "AutoPay" debit arrangement prior to the first drawing and directly debit the account nominated by the Customer. Delacon will make deductions on the invoice Due Date. If the Due Date falls on a day that is not a business day Delacon will debit the Customer's account on the following business day.

Delacon may vary any details of the Agreement at any time, by giving the Customer at least 14 days notice. Delacon will keep information relating to the Customer's nominated financial institution or credit card account, confidential, except where disclosure of such information is (a) permitted by law, or (b) required for conducting direct debits or processing credit card payments with the Customer's financial institution or credit card provider, or (c) made in respect of a query, dispute or claim relating to any matter described in (a) or (b). Delacon will take reasonable steps to protect personal information held by it against loss and against access, use, modification or disclosure that is unauthorised.

14.2 By signing the Automatic Payment Authority the Customer is authorising Delacon to arrange for funds to be debited from the Customer's account. The Customer may alter the debit drawing arrangements at any time. The Customer may dispute any debit drawing or terminate the deductions at any time by notifying Delacon in writing not less than 7 days before the next scheduled debit drawing. It is the Customer's responsibility to ensure that: (a) there are sufficient clear funds available in its nominated account at all times, (b) the account it nominates permits direct debiting and the authorisation given to draw on the nominated account is identical to the account signing instructions held by the financial institution where the account is based, (c) it notifies Delacon if the nominated account is transferred or closed, (d) it pays Delacon by an alternative method if the direct debit arrangements are cancelled (whether by the Customer or Delacon) and (e) it checks its invoices against items in its financial institution

account statement or credit card statement, and Delacon will have no liability or responsibility whatsoever in respect of any of the foregoing matters.