

mobilizer[™]

Standard Terms & Conditions Agreement

mobilizer[™] (Small Office Solutions Pty Ltd) ABN 33 089 954 129

(Version February 2007)

1. mobilizer[™] Standard Terms & Conditions of Agreement (STCA).

- 1.1.** The STCA includes any signed application form/quotation completed by the Customer, or completed by mobilizer[™] on your behalf.
- 1.2.** The STCA is covered by our current price list (*attached*) which can change from time to time.
- 1.3.** Current prices are available from us on request.
- 1.4.** Two copies of the STCA and relevant attachments are given to the Customer. The Customer is required to read the STCA thoroughly and upon completion sign, date and return one copy to mobilizer[™] and retain a copy for your own records.
- 1.5.** mobilizer[™] may change carriers or suppliers without notice.
- 1.6.** The STCA does not exclude, restrict or modify the rights conferred on the Customer under any law that cannot lawfully be excluded, restricted, or modified. If there is an inconsistency between the mandatory requirements of any law and the STCA, the STCA will, so far as possible, be construed to be consistent with that law and to the extent of the inconsistency, be of no effect.
- 1.7.** If the mandatory requirements of any legislation apply, mobilizer[™]'s liability for breach of a condition or warranty under the respective legislation will, so far as possible be limited to:
 - 1.7.1.** replacement of the Goods or supply of equivalent Goods;
 - 1.7.2.** repair of the Goods
 - 1.7.3.** payment of the costs of replacing the Goods or acquiring equivalent Goods;or
 - 1.7.4.** payment of the cost of having the Goods repaired, and in the case of Services:
 - 1.7.5.** the re-supply of the Service; or
 - 1.7.6.** the cost of re-supplying the Service, as mobilizer[™] may determine.
- 1.8.** If mobilizer[™] fails to insist upon strict performance of any term of any contract between the parties or the STCA, this does not constitute a waiver of any similar or subsequent breach.
- 1.9.** mobilizer[™] may amend, replace or delete these and the new STCA will form the contract between the parties in relation to Orders made or placed after mobilizer[™] has sent 30 days written notice of the new STCA to the Customer's address. Any new or replacement terms and conditions become effective upon written agreement between both parties.
- 1.10.** Any terms and conditions on any document provided by the Customer are not binding, even if the Customer's document states otherwise, unless mobilizer[™] expressly accepts them in writing.

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2. Privacy

- 2.1. mobilizer [™] takes our Customer's privacy very seriously, and strictly adhere to the Privacy Act. Our full Privacy Policy is (*attached*).

3. Information

- 3.1. You consent to mobilizer [™] exchanging any information regarding your telephone services with your current supplier, and our carriers as required to establish and maintain your services.

4. Quotations

- 4.1. Quotations provided to the Customer are not binding on mobilizer [™].
- 4.2. Should an error be found in a quotation by mobilizer [™] whether or not it has received an Order from the Customer for that quotation, mobilizer [™] shall have the right to correct the error and notify the Customer of any change to the price or configuration offered.
- 4.3. The Customer shall have the option to accept the change(s) or cancel all or part of and Order placed based on the respective quotation subject to the Cancellation terms specified herein.

5. Orders

- 5.1. Each Order is subject to acceptance by mobilizer [™] at mobilizer [™]'s address.
- 5.2. All goods and services that mobilizer [™] supplies are deemed to have been supplied in accordance with an Order accepted by mobilizer [™] at mobilizer [™]'s address in the relevant State.
- 5.3. If mobilizer [™] fails to accept an Order orally or in writing within 7 days of the date of receipt of the Order, mobilizer [™] is deemed to have rejected the Order.
- 5.4. The Customer may not cancel any Order, or part of an Order without mobilizer [™]'s prior written consent, such consent not to be reasonably withheld.
- 5.5. If the Customer attempts to cancel any Order, mobilizer [™] may elect to accept that attempt as repudiation and the Customer must pay mobilizer [™] on demand all expenses incurred as a result of the repudiation.

6. Variations

- 6.1. The Customer may not vary any Order unless the proposed variation is in writing and mobilizer [™] accepts it in writing.
- 6.2. The Customer must post any requests for variation to the mobilizer [™]'s Sales Manager at mobilizer [™]'s address. Email to mobilizer [™]'s sales manager is an acceptable form to submit variation request.
- 6.3. mobilizer [™] may send written acceptance of the variation by prepaid postage, email or facsimile to the Customer's address.
- 6.4. Variations may occur from original quote and or order. mobilizer [™] proposed variation is to be in writing to the customer. The customer may sign, date the variation as acceptance of the variation.

7. Credit Check

- 7.1. You will need to supply any information we request to check your credit history.
- 7.2. This information can vary depending on the type of company involved (Sole Trader, Partnership etc)
- 7.3.

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- 7.4. If your organisation is a member of a Trust, you may be required to complete a Trust Compliance Form.
- 7.5. You give us permission to disclose this information to a credit reporting agency, as it permitted under the Privacy Act.
- 7.6. If ownership of the business changes we may complete another credit check, and we can withhold services if the "new owner" does not meet our credit terms.

8. Limit of Liability

- 8.1. As permitted by law, we will not be liable to any customers for
 - 8.1.1. Indirect or consequential losses, loss of data, loss of profit or the costs of procuring substitute goods.
 - 8.1.2. All statutory conditions and warranties (whether express or implied) are excluded.
 - 8.1.3. The Customer accepts we do not guarantee 100% fault free service.
- 8.2. We accept any liability as guaranteed to you under the *Trade Practices Act*.
- 8.3. mobilizer [™]'s liability shall not exceed the amounts paid by customer under this agreement.

9. Goods & Services

- 9.1. Includes, goods, materials, equipment and services.
- 9.2. mobilizer [™] need not deliver any Goods or perform any Services until all money owed by the Customer for prior Orders is paid.
- 9.3. If mobilizer [™] elects as a result of the Customer's indebtedness to retain possession of Goods, the delivery or completion date referred to in any Order will be replaced by a date thirty days from the date of satisfaction by the Customer of the Customer's indebtedness to mobilizer [™].
- 9.4. mobilizer [™] may ship ordered goods in whole or in part.
- 9.5. Partial shipment will only occur after agreement between both parties. If the goods are shipped in part, then the Customer will also be invoiced in part accordingly.
- 9.6. The customer must pay part invoices within the agreed credit terms if provided as if they were a complete shipment.
- 9.7. The Customer must inspect all Goods immediately on delivery.
- 9.8. The Customer must give mobilizer [™] written notice of any claim relating to any defect in manufacture of goods and or services or defect in any Services performed by mobilizer [™], or any other nonconformity to an Order, comply with clauses 1.8, 18.1, 18.2 and 18.3, and deliver that notice by fax, email, security mail or its equivalent to the Sales Manager at mobilizer [™]'s address within 10 business days of delivery or collection of the Goods or performance of the Services.
- 9.9. If mobilizer [™] does not receive the notice complying with clauses 1.8, 18.1, 18.2 and 18.3, within the specified period, the Customer is deemed to have accepted the Goods or Services.
- 9.10. The Customer may not return Goods conforming to an Order.
- 9.11. Until the Customer has paid for the Goods and services in full and owes no other money to mobilizer [™], mobilizer [™] retains ownership of the Goods for any items or part thereof that are listed on an unpaid invoice.

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10. Force Majeure

- 10.1. The Customer indemnifies mobilizer [™] against any claim, of whatever nature, for any loss or damage arising from handling, display or use of the goods and services, after the goods and services have been delivered to the Customer.
- 10.2. If mobilizer [™] delays or cancels an Order due to force majeure, the Customer must pay mobilizer [™] for any Goods already delivered, or Services already performed at the date of the notice.
- 10.3. We will not be liable for any delay in goods being delivered or the delay in the connection of services.
- 10.4. Or if in mobilizer [™]'s opinion, mobilizer [™] is unable to complete an order because of force majeure, mobilizer [™] may, by written notice to the customer, and upon customer's written approval extend the time for delivery of goods or the performance of any services until the force majeure has ceased or cancel the Order.

11. Security Bond

- 11.1. We require payment of a security bond for Services and Goods. One month and one month in advance.

12. Types and Amount of Charges

- 12.1. This varies as to services or goods required and order by you. Charges for the services or goods you have, are set out in your mobilizer [™] acceptance of quotation and are also attached to the STCA, or otherwise as notified to you.
- 12.2. Note calls received and placed through the platform will be charged as per the Mobilizer Call Rate Table, to the STCA or otherwise notified to you.
- 12.3. If mobilizer [™] you receive any charges from your previous supplier you will need to pay those amounts.
- 12.4. Call Rates may increase due to a pricing restructure by our Wholesale Supplier and this price increase will be passed on accordingly.
- 12.5. Call Charges shall apply for any answered call whether that be an answering service, disconnected notice, wrong number or service switched off announcement etc, or actual conversation time, and begins when the call is answered by the recipient and end when the call is terminated.

13. Accounts

- 13.1. You will receive an account for all services, and any other charges, and have 14 days to pay your account. Billing period from 1st of the month to the end of month.
- 13.2. Month total paid in advance.
- 13.3. Accounts are normally issued monthly, by mail and email.
- 13.4. Payment is accepted through EFT or Credit Card.
- 13.5. Occasionally, due to network processing, charges from previous months can appear on your current account.
- 13.6. mobilizer [™] is not obliged to provide credit terms you. If mobilizer [™] does provide credit terms, they will be for the period determined by mobilizer [™] on a case by case basis.
- 13.7. mobilizer [™] may terminate any credit account granted to the Customer at any time by notice in writing.

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- 13.8.** You must, in addition to any other money payable under these Conditions, pay any applicable GST in respect of any goods and services at the same time and in the same manner as it pays for that goods and service.
- 13.9.** Some orders will require the customer to make three (3) progress payments.
 - 13.9.1.** First payment of 20% on acceptance of order
 - 13.9.2.** Second payment of 60% on completion of installation
 - 13.9.3.** Final payment of 20% on completion of any service or training required.

14. Late Account Policy

- 14.1.** If an account is unpaid, we will charge an administration fee/late payment fee of \$25.00 on an overdue account.
- 14.2.** We may terminate your service.
- 14.3.** If you do not pay your account, we reserve the right to disclose personal information about you to assist in the recovery of monies owing. The debt recovery agency will assume responsibility for collecting monies owing, and an 18% surcharge and/or legal fees can be charged.
- 14.4.** mobilizer[™] will charge you the interest on any money owing calculated daily at the Reserve Bank of Australia cash rate, from the date of invoice until the date of payment.
- 14.5.** When the account becomes more than 14 days overdue, you will receive a Reminder Notice, followed by a Final Notice, which will then lead to account suspension.

15. Disputed Amounts

- 15.1.** If you dispute your account, you must pay the entire amount as indicated on the disputed account. If we find a billing error we will refund any monies owing.
- 15.2.** If you do not raise any dispute within 14 days of receiving the bill, no claim can be made against us.

16. Terms of the Agreement, Suspension, Cancellation, or Part Cancellation of a Product or Termination.

- 16.1.** Any agreement commences the day it is signed by you until the contract expires.
- 16.2.** If you breach any of the STCA, we may cancel the agreement with you.
- 16.3.** We can suspend your service/s if at any time:
 - 16.3.1.** You do not have a satisfactory credit assessment
 - 16.3.2.** If you breach any of the STCA, and the breach is not corrected within 10 days
 - 16.3.3.** You do not pay any amounts owing to us by the due date
 - 16.3.4.** We cannot, for any reason, provide you with whole or part of a service.
- 16.4.** If we do suspend your services, you still must pay any monies owing to us.
- 16.5.** If services are suspended for not following the STCA there is a charge of \$75 to reactivate each service.
- 16.6.** If you cancel or we terminate the service.
 - 16.6.1.** You must pay all reasonable costs and expenses involved.
 - 16.6.2.** If you cancel or terminate you must pay any amounts due for the remainder of the agreement period, and an administration fee of \$275.

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17. Other Costs

- 17.1 Unless agreed otherwise in writing, the Customer will pay for freight and insurance costs to the stated delivery address.

18. Notices

- 18.1. All notices and other documents to be given by one party to another party under these Conditions will be in writing and may be sent by personal delivery, prepaid post, email, or facsimile to the relevant address.
- 18.2. A party will be deemed to have received a pre-paid document two business days after posting. A facsimile is regarded as received when successfully transmitted.
- 18.3. An email is regarded as received when delivered to the party's address, unless the sending party informs the received party within 24 hours of delivery that the email is illegible, incomplete or corrupted.

19. Communications & Content

- 19.1. You are responsible for the content of any messages you send using our service, and you must not use the service to conduct illegal activities.
- 19.2. We will only send you information and offers as relating to the services we provide, and this email is not Spam. If you do not wish to receive information of this nature from us, you may unsubscribe.

20. Network Security

- 20.1. The security of your network and equipment is your responsibility.
- 20.2. We are in no way responsible or liable for your network security.
- 20.3. Virus protection and/or firewalls are your responsibility.

21. Change of Customer Details

- 21.1 The Customer must notify mobilizer[™] immediately of any change of the Customer's address, telephone number, facsimile number or delivery address.

22. Complaints

- 22.1 Our objective is to resolve complaints quickly, efficiently and effectively and we have a complaint handling policy in place, call +61 2 8668 9222.

23. Support & Fault Reporting

- 23.1 To report faults, call +61 2 8668 9230 or email support@mobilizer.com.au

24. Amendments to the Terms & Conditions

- 24.1 If we need to change the Terms and Conditions we will do so with 20 days written notice to you, and the change will be effective 20 days from the date of the alteration.

25. Project Responsibility

- 25.1 **The to nominate/provide an IT Liaison Manager and to be the one point of contact throughout the project. The person will be responsible, and have an understanding and assist with the project. Will also be responsible for the administration set-up and Train the Trainer/Training for the platform.**

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