

1. Introduction

These terms and conditions (“**Terms**”) govern the purchase and use of SMS messages through MGM Wireless products. These terms and conditions must be read in conjunction with the License Agreement between the User and MGM Wireless and MGM Wireless’ Privacy Policy.

2. Interpretation

1. The words and phrases listed below shall bear the following meanings in these Terms, unless the context clearly indicates otherwise:

“**Account Balance**” means the number of prepaid SMS Message Credits available for use by Users at any one point in time;

“**End user**” or “**recipient**” means any natural or legal person who receives or is intended to receive any message sent by a User using the Services;

“**MGM Wireless**” means the MGM Wireless Holdings Pty Ltd (ACN 104 182 452);

“**Message Credits**” means the pre-purchased right, subject to these Terms, to send SMS messages under a current MGM Wireless License Agreement;

“**Network Operator**” means any party licensed to install, operate and maintain a mobile telephone network;

“**SMS**” means a short message service provided by means of a text or data message to the mobile handset either on request of the handset User or via a pre-configured batch process;

“**Services**” means the sending of SMS messages using MGM Wireless systems under a current MGM Wireless License Agreement;

“**Unauthorised User**” is any natural or legal person who uses the Services either without a current License Agreement or without the proper authorisation of the Licensee to use the Services;

“**User**” shall mean an entity authorised to use the Services by merit of being a party to a current License Agreement with MGM Wireless; and

“**Website**” shall mean all websites published by MGM Wireless entity including but not limited to mgmwireless.com.

2. To the extent that any provision of these Terms conflicts with any law, then to the limited extent of such conflict, such provision shall be severed from these Terms without affecting the enforceability of the remainder of its terms.
3. If the Services are used by an Unauthorised User, these Terms shall be read to insert “Unauthorised User” for the word “User”.

3. Agreement

1. Users must have a current License Agreement with MGM Wireless before the Services can be used. Users who attempt to use the Services without a current License Agreement are Unauthorised Users.
2. By using the Services the User and or the Unauthorised User is bound by these Terms and the License Agreement Terms and Conditions.

3. Unauthorised Users will be liable for to the full extent of any loss suffered as a result of the unauthorised use.
4. Users agree that all Terms contained herein shall be binding on the User and that should there be a contradiction between these Terms and the License Agreement, the License Agreement shall prevail to the limited extent of such conflict.
5. MGM Wireless reserves the right to refuse to accept and/or execute an order or request to do business or to render any Services without giving any reasons. MGM Wireless also reserves the right to cancel orders in whole or in part in MGM Wireless' sole and absolute discretion.

4. Use of the Services

1. MGM Wireless shall make all reasonable endeavours to ensure uninterrupted and continued use of the Services, however the delivery of SMS messages is largely dependent on the effective functioning of Network Operators' mobile networks, network coverage and the SMS recipient's mobile handset. MGM Wireless does not and cannot guarantee the availability of any Service, the delivery of SMS messages or the compatibility between any message or content format and any particular mobile handsets or mobile operating systems.
2. Network Operators may modify, enhance, develop or discontinue components of their services at any time without prior notice, in which event MGM Wireless shall be entitled to modify, enhance, develop or discontinue affected Services to Users without notice.
3. MGM Wireless shall use its reasonable endeavours to provide the User with advance notice of any modification, suspension or termination of its Services and shall endeavour to minimise the duration of any suspension thereof in so far as this is reasonably practicable.
4. MGM Wireless shall have the right to withhold, terminate or suspend the provision of Services to the User at any time.
5. Users acknowledge and understand that MGM Wireless acts as a conduit for the provision of information and content. Users acknowledge that MGM Wireless shall not be responsible or liable for any content transmitted and that full responsibility for content shall rest on the User. Users shall observe all relevant legislation and regulations applicable in their jurisdiction and in the jurisdiction of all persons to whom they cause messages to be delivered. It shall be the sole responsibility of Users to familiarise themselves with all applicable laws, regulations and codes of conduct to which they may be subject and to ensure compliance therewith.
6. Users may not use, or knowingly allow others to use, the Services for any purpose that may bring MGM Wireless' name into disrepute, or for any purpose that, in MGM Wireless' sole and absolute discretion, is improper or undesirable.
7. Users shall not permit, do, nor omit to do, anything which might have the effect of prejudicing or impeding the legitimate activities, interests or goodwill of MGM Wireless nor any Network Operator.
8. Users may not use the Services to send messages without reasonable cause nor for the purpose of causing annoyance, inconvenience or distress to any person.
9. Users acknowledge and agree that all messages sent may be stored and can be audited and reviewed by MGM Wireless or any other person acting on behalf of MGM

Wireless at any time to ensure compliance with these terms and conditions and any applicable law, regulations or code of conduct.

10. Users agree to notify MGM Wireless immediately of any unauthorised use of their account(s) or any other breach of security.

5. Payment and Prices

1. Users are required to purchase Message Credits which shall reduce for each message sent. The number of Message Credits used per individual message depends on the message destination, the messaging route used, and Network Operator charges. The number of Message Credits used per message is subject to change from time to time without prior notice.
2. Users must purchase Message Credits before being able to use the Services. The User Account Balance will be increased by the number of credits purchased within three (3) business days of the purchase transaction.
3. Message prices are quoted per 140 character SMS message and are quoted ex-GST;
4. The Account Balance will be reduced by the number of credits consumed on the same day that the SMS messages are sent.
5. Users may see their Account Balance by logging in to the MGM Wireless software licensed under their current License Agreement.
6. An invoice for the purchase of Message Credits will be generated and issued following the receipt of an order for the purchase of message credits. Payment terms are seven (7) days.
7. Purchases of Message Credits are non-refundable and non-transferrable.
8. Users must maintain an Account Balance above zero at all times. MGM Wireless reserves its right not to allow use of the Services if the use of Message Credits will cause the Account Balance to be below zero.
9. Any Message Credits available at the expiry or termination of the License Agreement between MGM Wireless and the User are forfeited and are not refundable, transferrable or able to be used after the expiry of the current License Agreement.
10. Without prejudice to any other right that it may have in law, MGM Wireless shall have the right to suspend or disable the operation of any User account and the provision of Services to any User where payment of all charges have not been made in full by the due date.

6. Breach

1. Where a User breaches any of these Terms, including terms relating to payment of any amount due to MGM Wireless then, without prejudice to any of its legal rights, MGM Wireless shall be entitled, amongst other things, to cancel its agreement with the User, to suspend or terminate the provision of services to the User, to suspend, disable or terminate the User's account/s, to sue for specific performance by the User, to claim damages and/or to retain any monies already paid by the User in respect of services not utilised by it as damages resulting from such breach and to set off any claims that MGM Wireless may have against the User from any other amounts due to the User by MGM Wireless.

7. Limitation of Liability, Warranties and Indemnities

1. The user hereby indemnifies and holds MGM Wireless harmless against any and all damages, liabilities, fines and risks that may follow from the transgression of these Terms.
2. MGM Wireless shall not be liable for any damage, loss or liability of whatsoever nature arising from the use or inability to use the Services.
3. Furthermore, MGM Wireless makes no representations or warranties, implied or otherwise, that, amongst others, the content and technology are free from errors or omissions or that the Services will be 100% uninterrupted and error free.
4. These Terms together with any other contractual documents between the User and MGM Wireless contain all of the Terms between the User and MGM Wireless.
5. Users agree to hold MGM Wireless harmless and indemnify MGM Wireless fully against any claim by any third party, including message recipients or End Users, as a result of any system failure, message corruption, interruption or termination of services, unsolicited direct marketing, harassment, emotional disturbance, inappropriate or obscene content, breach of privacy or breach of data security, provided that none of the foregoing result from MGM Wireless' own negligence or fraudulent acts.
6. Users indemnify and hold MGM Wireless harmless against all reasonable damages, awards, penalties or legal costs claimed or imposed by any party as a result of any action, commission or omission by the User that constitutes a breach or contravention of any legislation, regulations, code of conduct or network provider codes or practice or acceptable usage policies.
7. Users further indemnify and hold MGM Wireless harmless against any reasonable claims, actions or damages from any party as a result of the fraudulent or unauthorised use of the User's Username and password or loss thereof.
8. Without derogating from the foregoing, in no event shall MGM Wireless be liable for any damages whatsoever, including but not limited to any direct, indirect, special, consequential, punitive or incidental damages, or damages for loss of use, profits, data or other intangibles, or the cost of procurement of substitute goods and services, arising out of or related to the use, inability to use or unauthorised use of the Services.

8. General

1. The failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further rights hereunder. If any provision of these terms and conditions is found to be unenforceable or invalid, such term(s) or condition(s) shall be severable from the remaining terms and conditions. The remaining terms and conditions shall not be affected by such unenforceability or invalidity and shall remain enforceable and applicable.

9. Applicable Law

1. These terms and conditions shall be governed by, construed and interpreted in accordance with the laws of the State of South Australia and the South Australian courts shall have exclusive jurisdiction in respect of any disputes that may arise between the User and MGM Wireless.