



# KISS Mobile - TERMS AND CONDITIONS

Kiss Mobile Pty. Ltd. ACN 108 191 920, ABN 17 108 191 920 ("we/us") will supply mobile phone services ("Services") to its customers ("you") on the following terms and conditions.

## 1. The Services that we provide

- 1.1. The Services we provide may include mobile telephone calls, international calls, SMS, voicemail and any other Services that we make available from time to time and which may be used from your mobile phone. You acknowledge and agree that we may withdraw, alter or add to, any of the Services that we provide to you without the provision of further notice to you.
- 1.2. Your agreement with us commences when we receive your signed application form ("Application") (either in its original form or by facsimile) for us to provide the Services. The provision of the Services is subject to us accepting your Application and we may refuse to provide you with the Services at our sole discretion.
- 1.3. We will supply the Services to you through network operators ("Carriers") nominated by us from time to time and you agree that we may change Carriers at any time without providing any notice to you.
- 1.4. If we provide you with a sim-card, that sim-card will remain our property. If you lose your sim-card or mobile phone, please contact us immediately. We may charge you for any replacement sim-card.
- 1.5. We do not warrant that we will be able to supply any of the Services to you. You acknowledge that we will only be able to supply the Services to the extent and to the standard that Carriers provide Services to us. We will not be liable for any failure to supply you with all or any part of the Services and you acknowledge that if the agreement between us and a Carrier is terminated and a Carrier agrees to arrange supply of Services to you, the Carrier may not be able to make those arrangements immediately and if any are made, they may be on the Carrier's current retail terms and conditions.
- 1.6. You acknowledge that we may pay sales agents fees or commission to any dealer or retailer who introduces you to us.
- 1.7. If you transfer services to us from another supplier, you must immediately pay amounts owing to that supplier and you authorise us to instruct that supplier on how to transfer the services.

## 2. Charges and Payment

- 2.1. You agree that you will be liable for all levies and charges for any Services used via your mobile phone (or sim-card), even if you are not the person using those Services, or the Services are used while your mobile phone (or sim-card) is not in your possession. The levies and charges payable will be those levies and charges disclosed to you at the time you submit your Application to us and in accordance with the applicable call plans or rates you have selected ("Charges").
- 2.2. We may increase our Charges at any time on the provision of written notice to you. Such increase will take effect at the date stated on our notice or if not stated, at the commencement of the month following the date that our written notice is provided.
- 2.3. You will pay our current Charges (including charges of any other suppliers to us) from time to time for the Services we provide to you and our invoices must be paid by the due date specified on our invoice. Unless otherwise stated by us in writing, our Charges will be invoiced on a monthly basis and are exclusive of any taxes (including GST) and you agree that we can pass on and you will pay any taxes payable on our Charges (including GST).
- 2.4. If you do not pay an account by the due date specified on our invoice, then we may charge interest at the rate of 1.5% per month or part thereof on the outstanding amount of the account, and/or suspend all or part of your Services pending payment of all outstanding amounts (including interest).
- 2.5. If we transfer the Services to another supplier, you must pay us all our Charges up to the date of transfer.

## 3. Amendments to this agreement

We may vary, alter, replace or revoke any of this agreement upon the provision of written notice to you. Such amendments will take effect from the date specified in our notice.

## 4. Privacy and Information

- 4.1. We collect personal information about you primarily to supply you with the Services you order from us. You agree to provide us with all information which we may request from you in connection with supplying the Services to you and consent to us exchanging information about you with any Carrier.
- 4.2. By agreeing to use the Services, you agree that we may disclose any personal information about you to a third person, which that third person reasonably requires in order to assist us in providing the Services to you. In particular, you agree that we may disclose any personal information that we maintain about you to any Carrier, our solicitors, accountants and other advisers and our subcontractors.
- 4.3. You agree that we, or any of our sub-contractors or agents may contact you on your mobile phone number (or other phone numbers) in relation to the Services or any other matter contemplated by this agreement.

## 5. Credit Check

- 5.1. You undertake that you have provided us with all information which may be relevant to our assessment of your credit rating. You agree that, for the purpose of assessing your credit rating, we may obtain a credit report from a Credit Reporting Agency which contains personal information about you and seek information about your credit history from any credit provider named in such report or your application.
- 5.2. You agree that we may refuse or suspend the provision of any Services to you on the basis of any credit assessment of you.

## 6. Liability

- 6.1. You indemnify us and keep us indemnified against any loss, cost, expense or damage we suffer or incur (including, without limitation, legal costs on a solicitor/client basis, debt collection fees, search fees and administration costs) as a result of you breaching your obligations to us under this agreement.
- 6.2. You acknowledge that we have procured the Carrier to supply the Services to you and consequently, we are not responsible or liable for any act, omission or negligence of the Carrier in supplying the Services to you.

- 6.3. You acknowledge that we have not made and will not make any express or implied warranties in relation to the Services or any other goods or services provided by us in accordance with this agreement, other than those warranties contained in this agreement. Subject to clauses 6.5 and 6.6, any term that would be implied into this agreement, including without limitation any condition or warranty, is hereby excluded.
- 6.4. Subject to clauses 6.5 and 6.6, you agree that we will not be liable in respect of any claim by you (whether contractual, tortious, statutory or otherwise) for any direct, special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, revenue or data arising out of or in connection with the provision of the Services or the provision of any other goods or services under this agreement and whether as a result of any breach or default, by us.
- 6.5. If the Trade Practices Act 1974 (Cth) (or analogous legislation) applies to this agreement and permits the limitation of liability for breach of warranty implied by statute, our liability is limited, at our option to:
  - 6.5.1. in the case of goods, any one or more of the following:
    - 6.5.1.1. the replacement of the goods or the supply of equivalent goods;
    - 6.5.1.2. the repair of the goods;
    - 6.5.1.3. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - 6.5.1.4. the payment of the cost of having the goods repaired; and
  - 6.5.2. in the case of services:
    - 6.5.2.1. the supplying of the services again; or
    - 6.5.2.2. the payment of the cost of having the services supplied again.
- 6.6. Any of those terms and conditions which limit or exclude any term, condition or warranty, express or implied, or our liability will apply to the extent permitted by law and will not be construed as excluding, qualifying or limiting your statutory rights or remedies arising by virtue of the breach of any implied term of this agreement where such exclusion, qualification or limitation would be prohibited by statute.

## **7. Commencement and Termination**

- 7.1. This agreement may be terminated by 48 hours written notice by either party. We may terminate this agreement immediately if you have breached this agreement, including failure to make payment for any Services we provide you.
- 7.2. Any termination of this agreement by you will not take effect until the end of the month during which this agreement was terminated.

## **8. Assignment**

Your cannot assign your rights under this agreement without our consent, but we can assign our rights or liabilities without your consent. You irrevocably appoint us as your attorney to execute any and all documents required to give effect to this clause 8.

## **9. Warranty of Authority**

Any person signing this agreement on behalf of another warrants that they have full power and authority to bind the other person in respect of this agreement.

## **10. Governing Law**

This agreement shall be governed by and construed in accordance with the law of Victoria and the parties hereby submit to the jurisdiction of the courts of that State.

## **11. General**

- 11.1. Unless the context otherwise requires, words not defined in this agreement have the same meaning as in the Telecommunications Act 1997 (as amended from time to time).
- 11.2. In the interpretation of this agreement, a reference to this agreement, means the agreement reached between us on the basis of the terms and conditions in this document and the Application. Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning. A reference to the plural includes the singular and vice-versa. A reference to a gender includes all genders.
- 11.3. This agreement supersedes all prior representations, arrangements, understanding and agreements between the parties and represents the entire agreement between the parties in relation to its subject matter.

## Important Notice To Applicant(s) For Credit

### Notice of disclosure of your credit information to a credit reporting agency. (Privacy Act 1988)

KISS Mobile may give information about you to a credit reporting agency, for the following purposes:

- to obtain a consumer credit report about you; and/or
- to allow the credit reporting agency to create or maintain a credit information file containing information about you.

The information is limited to:

- Identity particulars - your name, sex, address (and the previous two addresses) date of birth, name of employer, and drivers licence number.
- your application for credit or commercial credit - the fact that you have applied for credit and the amount.
- The fact that KISS Mobile is a current credit provider to you.
- loan repayments which are overdue by more than 60 days, and for which debt collection action has started.
- advice that your loan repayments are no longer overdue in respect of any default that has been listed.
- information that, in the opinion you have committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with your credit obligations).
- dishonoured cheques - cheques drawn by you for \$100 or more which have been dishonoured more than once.
- that credit provided to you by KISS Mobile has been paid or otherwise discharged.

### **Period to which this understanding applies**

This information may be given before, during or after the provision of credit to you.

## **Statement By Applicant (s) For Credit**

Please read carefully before signing. Where there is more than one applicant, each applicant must sign.

### **1. Giving information to a Credit Reporting Agency**

KISS Mobile has informed me that it may give certain personal information about me to a credit reporting agency.

### **2. Access to Commercial Credit Information**

I/we agree that KISS Mobile may obtain information about me/us from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing my/our application for consumer credit.

### **3. Access to Consumer Credit Information**

I/we agree that KISS Mobile may obtain a consumer credit report containing information about me from a credit reporting agency for the purpose of assessing my/our application for commercial credit.

### **4. Exchange of Credit Worthiness Information (**

I/we agree that KISS Mobile may exchange information with those credit providers named in this application or named in a consumer credit report issued by a credit reporting agency for the following purposes;

- to assess an application by me/us for credit
- to notify other credit providers of a default by me/us
- to exchange information with other credit providers as to the status of this loan where I am in default with other credit providers
- to assess my/our credit worthiness.

I /we understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

### **5. Agreement to a credit provider being given a consumer credit report by a credit reporting agency to assess a guarantor**

I/we agree that KISS Mobile may obtain from a credit reporting agency a consumer credit report containing information about me/us for the purpose of assessing whether to accept me/us as a guarantor for credit applied for by, or provided to, the borrower(s) identified in KISS Mobile's standard terms and conditions as its customer. I/we agree that this agreement commences from the date of this agreement and continues until the credit covered by the borrower(s) application ceases.

**6. Agreement to a credit provider disclosing a report including a consumer credit report to potential or existing guarantor** I/we agree that KISS Mobile may give to a person who is currently a guarantor, or whom I/we indicated is considering becoming a guarantor, a credit report containing information about me/us for the purpose of the guarantor deciding whether to act as a guarantor, or to keep the guarantor informed about the guarantee. I/we understand that the information disclosed can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act, and includes a credit report.

Name (please print) \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_