

# STANDARD TERMS AND CONDITIONS



## 1. INTERPRETATION

1.1 In these Conditions:

<b>"Company"</b>	Asset Services Limited a company incorporated and registered in England & Wales with company number 02896329 and whose registered office is at 115 Victoria Road, Ferndown, Dorset, BH22 9HU trading as Message Direct.
<b>"Charges"</b>	the charges for the Services payable by the Customer to the Company as more particularly set out in the Order Form together with any charges for Extra Services requested by the Customer in accordance with clause 4, both as amended from time to time in accordance with clause 6.3
<b>"Conditions"</b>	the Standard Terms and Conditions of the Company as displayed on the Company's website ( <a href="http://www.message-direct.co.uk">www.message-direct.co.uk</a> ) from time to time, as amended by the Company acting in its absolute discretion from time to time, together with any special terms and conditions agreed in writing between the Company and the Customer from time to time.
<b>"Confidential Information"</b>	any and all information, data and material of a technical or business nature or relating in any way to the business, products, services, customers and personnel of either the Company or the Customer which the other may receive or obtain in connection with the operation of the Contract or otherwise.
<b>"Contract Start Date"</b>	the contract start date specified on the Order Form.
<b>"Contract"</b>	the Contract for the provision of the Services as governed by the Conditions.
<b>"Customer"</b>	the company firm or person named as such on the Order Form.
<b>"Data Protection Legislation"</b>	the UK Data Protection Legislation and other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
<b>"Extra Services"</b>	all and any extra services (not included in the Services) provided by the Company to the Customer in accordance with a request made pursuant to clause 4.
<b>"Force Majeure"</b>	acts of God explosion flood lightning storm tempest fire or accident war hostilities civil war riot civil commotion or disorder acts restrictions regulations by-laws refusals to grant any licences or permissions prohibitions or measures of any kind on the part of a local state national governmental or supra governmental authority strikes lock-outs or other industrial actions or trade disputes of whatever nature whether involving employees of the affected party or a third party defaults or suppliers or sub-contractors any failure default delay in performance or any act or omission of any nature whatsoever on the part of the Customer or its employees agents suppliers or sub-contractors or, any cause or circumstance whatsoever beyond the Company's reasonable control.
<b>"Minimum Term"</b>	the period of 3 months commencing on the Contract Start Date.
<b>"Network"</b>	the public telecommunications service used from time to time by the Customer via which (inter alia) the Services are provided by the Company.
<b>"Order Form"</b>	the Customer Order Form issued by the Company to the Customer setting out the Customer's contract information together with details of the Services, Charges, Contract Start Date and other information pertinent to the Contract.
<b>"Services"</b>	the telephone answering and message processing services (including any part or part of them) to be provided by the Company under the Contract, as more particularly described in the Order Form.
<b>"UK Data Protection Legislation"</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.2 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.3 The headings in the Conditions are for convenience only and shall not affect their interpretation.

1.4 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. BASIS OF THE PROVISION OF SERVICES

2.1 The Conditions shall apply to the Contract to the exclusion of any other terms and conditions that the Customer may seek to impose on the Contract or the Company, whether expressly or whether such terms are implied by trade, custom, practice or course of dealing.

- 2.2 The Company shall provide the Customer with the Services in accordance with the Conditions.
- 2.3 No variation to the Conditions shall be binding on the Company unless agreed in writing by the authorised representatives of the Company.
- 2.4 In entering into the Contract and accepting the Conditions, the Customer acknowledges that it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract relying upon and warranties or representations which are not so confirmed.

### **3. CONTRACT AND CONTRACT TERMS**

- 3.1 A quotation for the Services given by the Company shall not constitute an offer. A quotation, where applicable, shall only be valid for a period of 30 days from the date of issue.
- 3.2 Any order, whether verbal or in writing, submitted by the Customer constitutes an offer by the Customer to purchase Services in accordance with the Conditions.
- 3.3 An order for Services shall only be deemed to be accepted when the Company issues an Order Form, at which point the Contract shall come into existence. If the Company is unable to accept an order submitted by the Customer, it will notify the Customer in writing as soon as reasonably practicable. For the avoidance of doubt, each Order Form issued by the Company shall constitute a separate Contract.
- 3.4 The Customer shall be responsible to the Company for ensuring the accuracy of any details provided by the Customer and stated in the Order Form (including any applicable specification of the Services).
- 3.5 The Company reserves the right to make any changes to the Services which are required to conform with any applicable law or regulatory requirements.
- 3.6 The Contract shall commence on the Contract Start Date and shall continue in full force and effect until terminated by either the Company or the Customer giving 30 days notice in writing to the other, such notice to be served after expiry of the Minimum Term. A notice given in accordance with this clause 3.6 shall have the effect of terminating the Contract with effect from the Customer's first billing date after expiry of the 30 day notice period.
- 3.7 Any telephone numbers, email addresses or other forms of telecommunication provided by the Company to the Customer as part of the Services shall in all circumstances remain the property of the Company.
- 3.8 The diversion of a telephone line by the Customer to any telephone number provided by the Company shall be a deemed acceptance by the Customer of the Conditions and all other terms of the Contract.

### **4. EXTRA SERVICES**

- 4.1 The Customer may at any time during the term of the Contract issue a request to the Company for Extra Services, either verbally or in writing.
- 4.2 The Company shall be entitled to accept or reject the Customer's request for Extra Services in its absolute discretion and on whatever terms that it deems fit. The Charges relating to such Extra Services shall be at the rate specified in the Order Form or, where the Order Form does not address the charges associated with the Extra Services or the charges stated in the Order Form are out of date, the Company shall confirm the charges for the Extra Services to the Customer in writing.
- 4.3 The Company shall supply the Extra Services and the Customer shall pay for the Extra Services in accordance with the Conditions.

### **5. SERVICES**

- 5.1 The Services (and where applicable the Extra Services) shall be provided by the Company using reasonable skill and care.
- 5.2 Subject to the Customer complying in all respects with the Conditions, the Company shall use reasonable endeavours to maintain the Services (and where applicable the Extra Services), however the Customer acknowledges that the Services (and where applicable the Extra Services) will not be uninterrupted or error free and agrees that the existence of such errors or interruptions shall not constitute a breach of the Contract.

### **6. CHARGES AND PAYMENT**

- 6.1 The Charges shall be calculated using the prices set out in the Order Form (as increased from time to time pursuant to clause 6.3 below) and as confirmed by the Company in accordance with clause 4.2 (in respect of Extra Services).
- 6.2 All sums quoted by the Company in quotations and the Order Form (including the Charges) are exclusive of any applicable value added tax which the Customer shall be additionally liable to pay to the Company and the Company shall add to its invoices at the applicable rate in force from time to time.
- 6.3 The Company shall be entitled and reserves the right to increase its Charges at any point during the term of the Contract. Any price increases have historically and shall in the future be reflected in the monthly invoices raised by the Company to the Customer and, where the Customer has not and does not raise any objections to the increase in Charges within 14 calendar days of the date of the first invoice reflecting the increased Charges, the Customer shall be deemed to have accepted the increase in Charges.
- 6.4 The Company reserves the right to make additional charges to the Customer for:
  - 6.4.1 any additional programming required when setting up the Customer's account;
  - 6.4.2 any screen changes required to be made to accounts of the Customer;
  - 6.4.3 calls which are outside the scope of the Services including but not limited to an excess of 15 or more calls taken outside of Standard Office Hours (8am-6pm Monday-Friday) in a billing period;
  - 6.4.4 time taken following a call or other communication received or made by the Company on the Customer's behalf to allow the Company to complete any task associated with such call or communication, known as wrap time; and

- 6.4.5 the rounding of time taken for a call or other communication received or made by the Company on the Customer's behalf, which the Company may undertake and charge for acting in its absolute discretion as it sees fit from time to time.
- 6.5 The Company shall, subject to clause 6.6, invoice the Customer on a monthly basis for all Charges and any additional charges. Charges shall be invoiced monthly in advance whilst additional charges shall be invoiced monthly in arrears.
- 6.6 In the event of breach of this agreement or where the Customer is deemed by the Company, acting in its absolute discretion, to be a credit risk, the Company reserves the right to invoice the Customer on a weekly basis.
- 6.7 All invoices raised by the Company pursuant to the Contract shall be paid as follows:
- 6.7.1 where an invoice raised by the Company in accordance with clause 6.5, the Customer shall pay such invoice either by direct debit, credit or debit card, cheque, electronic bank transfer or by such other means of payment as is acceptable to the Company from time to time within 14 days of the date of the invoice;
- 6.7.2 where an invoice is raised by the Company in accordance with clause 6.6, the Customer shall make payment of the invoice by credit or debit card or by electronic bank transfer immediately upon receipt of the invoice.
- 6.8 In the event that the Customer provides the Company with credit card and/or debit card details for the payment of an invoice and, where payment of an invoice has not been received by the Company by the due date for payment specified in clause 6.7, the Company reserves the right and the Customer acknowledges and accepts that the Company may take payment of the invoice by using the debit or credit card details that the Customer has previously provided to the Company.
- 6.9 If the Customer fails to make payment of an invoice on the due date then without prejudice to any other right or remedy available to the Company the Company shall be entitled, acting in its sole discretion and at the Company's option, to:
- 6.9.1 immediately terminate the Contract or suspend provision of the Services to the Customer;
- 6.9.2 charge the Customer interest (both before and after any judgment) on the amount unpaid at the rate of 6% per annum above the base rate of Lloyds Bank plc from time to time until payment in full is made;
- 6.9.3 in circumstances where the Services have been suspended or disconnected as a result of non-payment by the Customer, charge the Customer a reconnection fee of £25.00; and
- 6.9.4 recover from the Customer the Company's costs of recovering overdue payments to include, non-exhaustively, legal and professional fees and costs.

## **7. OBLIGATIONS OF THE CUSTOMER**

- 7.1 The Customer accepts and acknowledges that the provision of the Services is reliant upon the Network (and the third parties who operate the Network) and therefore the Customer hereby undertakes to the Company that it shall not:
- 7.1.1 use the Network or the Services for any unlawful immoral or improper purpose;
- 7.1.2 act or omit to act in any way which may damage or prejudice the Customer's access to the Network or cause the quality of the Services to be impaired or to jeopardise the provision of the Services or the Network in any way.
- 7.2 During the term of the Contract, the Customer:
- 7.2.1 shall cooperate with the Company in all matters relating to the provision of the Services and shall comply with all applicable laws at all times;
- 7.2.2 shall provide the Company with such information as the Company may reasonably request or require in order for it to perform the Services and shall ensure that such information is accurate in all material respects;
- 7.2.3 accepts and acknowledges that atmospheric conditions may cause interference to the provision of the Services;
- 7.2.4 accepts and acknowledges that calls may be routed over national and international public telecommunications systems, the Network and other telecommunications networks which are outside of the control of the Company.
- 7.3 The Customer is liable for any call diversion costs incurred as a process of diverting calls to the Company and it is the sole responsibility of the Customer to effect the successful diversion of calls from its normal telephone number to the number provided for the provision of the Services by the Company.
- 7.4 The Customer shall keep the Company indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company as a result of or in connection with any breach by the Customer of any terms of the Contract.

## **8. LIMITATION OF LIABILITY**

- 8.1 Nothing in these terms and conditions shall limit or exclude the Company's liability for:
- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 8.1.2 fraud or fraudulent misrepresentation;
- 8.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- 8.1.4 any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 8.2 Subject to clause 8.1, the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.3 Subject to clause 8.1, the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill and indirect or consequential loss.

- 8.4 The Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid to the Company by the Customer under the Contract in the 12 months prior to the liability arising.
- 8.5 The Company shall not be liable for the acts or omissions of any other party.
- 8.6 This clause 8 shall survive termination of the Contract.

## 9. FORCE MAJEURE

- 9.1 Neither the Company nor any of its employees, agents or sub-contractors shall be considered in breach of the Contract or under any liability whatsoever to the Customer for non-performance, part performance, defective performance or delay in performance of any obligation performed or to be performed by the Company, its employees, agents or subcontractors under the Contract which is directly or indirectly caused or is a result of an event of Force Majeure and the timescales for performance of the Services shall be extended by a fair and reasonable period of time which is sufficient to enable the Company to perform or re-perform the relevant contact obligation.
- 9.2 Upon becoming aware of an occurrence of the relevant event of Force Majeure the Company shall promptly issue a notice in writing to the Customer detailing such event and its anticipated effect upon the performance of the Contract by the Company.

## 10. MODIFICATIONS TO SERVICES & SUSPENSION OF SERVICES

- 10.1 The Company shall be entitled at any time during the continuance of the Contract to:
  - 10.1.1 make such modifications or additions to the Services as it may reasonably require and as the Company in its absolute discretion deems fit, provided the Services are not thereby materially prejudiced;
  - 10.1.2 at the Company's absolute discretion suspend the provisions of the Services or any part or parts thereof upon:
    - 10.1.2.1 an event of Force Majeure;
    - 10.1.2.2 non-payment on the due date of all and any sums payable by the Customer pursuant to these Conditions;
    - 10.1.2.3 the occurrence of any event giving the Company a right to immediately terminate the Contract and cease providing the Services.

## 11. TERMINATION

- 11.1 Notwithstanding any other provision of the Conditions and without prejudice to any other rights claims or remedies of the Company the Company may by notice to the Customer terminate the provision of the Services and the Contract immediately upon the happening of any one of the following events:
  - 11.1.1 if the Customer shall (in the case of an individual or sole trader) become bankrupt or (in the case of a corporate entity) become insolvent, be wound up, make any arrangements or composition with its creditors, pass a resolution for or is the subject of a winding up order or any event should occur which is analogous to the aforementioned events;
  - 11.1.2 if the Customer shall commit any breach of any of its obligations hereunder and fails to remedy such breach if capable of remedy within 14 days of receipt of the Company's written notice specifying such breach;
  - 11.1.3 in the event of non-payment by the Customer of any amount due under the Contract by the due date for payment;
  - 11.1.4 upon or subsequent to the happening of an event of Force Majeure.
- 11.2 Termination of the Contract shall not affect the rights and liabilities of either party subsisting at the date of termination.
- 11.3 On termination of the Contract for any reason:
  - 11.3.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice to the Customer, which shall be payable immediately on receipt;
  - 11.3.2 the Customer shall immediately cease to make use of the Services in their entirety, including but not limited to ceasing to use any telephone lines provided by the Company and ceasing to divert calls to the Company; and
  - 11.3.3 on termination of the Contract (however arising), the clauses 6, 7, 8, 12 and 20 shall survive and continue in full force and effect.

## 12. CONFIDENTIALITY

- 12.1 Each of the Company and the Customer undertakes to the other that it will not disclose the terms of the Contract or divulge, cause or knowingly permit any third party to become aware of any Confidential Information relating to the other provided that this clause 12.1 shall not restrict the disclosure of any Confidential Information to the extent that:
  - 12.1.1 such disclosure is required by law or any judicial or regulatory authority;
  - 12.1.2 such information is or becomes (otherwise than by reason of a breach of this undertaking) within the public domain;
  - 12.1.3 subject to clause 12.2, such disclosure is necessary to enable either party to perform or enforce any of its rights under the Contract.
- 12.2 Each of the Company and the Customer shall be entitled to use the information received from the other for the purposes of the Contract only and shall not disclose such Confidential Information or any part thereof to any other person, firm or corporation except to its employees, agents or third parties to whom it is necessary for them to have access to it in order to perform the disclosing party's contractual obligations provided that the entity to whom such disclosure is made receives and holds the Confidential Information on the same basis as it is held by the disclosing party under the terms of the Contract.

## 13. DATA PROTECTION

- 13.1 Each of the Company and the Customer undertake to the other that they will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 13, **Applicable Laws** means (for so long as and to the extent that they apply to the Company and the Customer) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK. The terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach**, **processing** and **appropriate technical measures** shall have meaning given to them in the Data Protection Legislation.
- 13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Company is the processor.
- 13.3 Without prejudice to the generality of clause 13.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.
- 13.4 By entering into the Contract, the Customer consents to the Company processing personal data for the purposes of taking telephone and other telecommunication messages from customers, clients and third parties trying to contact the Customer who have been diverted to the Company and for the Company to pass those customers, clients or third parties details and messages to the Customer.
- 13.5 Without prejudice to the generality of clause 13.1, the Company shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 13.5.1 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 13.5.2 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 13.5.3 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- 13.5.3.1 the Customer or the Company has provided appropriate safeguards in relation to the transfer;
- 13.5.3.2 the data subject has enforceable rights and effective legal remedies;
- 13.5.3.3 the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- 13.5.3.4 the Company complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 13.5.4 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 13.5.5 notify the Customer without undue delay on becoming aware of a personal data breach; and
- 13.5.6 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data.

## 14. ASSIGNMENT

- 14.1 The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 14.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.

## 15. NOTICES

- 15.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 15.2 Any notice or communication shall be deemed to have been received:
- 15.2.1 if delivered by hand, on signature of a delivery receipt; and
- 15.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.
- 15.3 This clause 15 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

## 16. WAIVER

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right

or remedy.

## **17. VARIATION OF CONTRACT TERMS**

Save as otherwise provided for in the Conditions, no variation of the Contract shall be effective unless it is in writing and agreed by the parties (or their authorised representatives).

## **18. NO PARTNERSHIP**

Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the Customer and the Company or constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

## **19. THIRD PARTY RIGHTS**

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## **20. ENTIRE AGREEMENT**

- 20.1 The Contract constitutes the entire agreement between the Customer and the Company and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 The Company and the Customer agrees that they shall have no remedies against each other in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

## **21. GOVERNING LAW AND JURISDICTION**

- 21.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 21.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.