

BUSINESS1300 CUSTOMER TERMS

1. INTRODUCTION

- 1.1. This is Business1300's Standard Form of Agreement under Section 479 of the Telecommunication Act 1997, called 'Business1300 Customer Terms'.
- 1.2. A reference to 'Business1300' or 'we' or 'us' or 'our' means Business1300 Pty Ltd (ACN 165 627 216).

2. GENERAL TERMS

- 2.1. These Terms and Conditions ("Terms"):
 - 2.1.1. apply to the sale and supply of Services to You by Business1300 during the Term except where otherwise set out in writing by Business1300;
 - 2.1.2. otherwise prevail over any other terms whether contained or implied in or from any communications from You or from any conduct of or representations made by You or Business1300 (except any separate written terms prescribed by Business1300 in relation to specific Services, which shall prevail over these Terms to the extent of any inconsistency);
 - 2.1.3. shall be deemed incorporated in any Account or Service Application placed by You;
 - 2.1.4. shall not be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010, the Privacy Act 1988 or the Telecommunications Act 1997) and which by law cannot be excluded, restricted or modified.
- 2.2. The entire Agreement between Business1300 and You comprises these Terms as well as any terms and conditions relating to specific Services which Business1300 may prescribe from time to time. The Agreement also includes Business1300's current price list which can be found on the website www.business1300.com.au or provided to You at Your request.
- 2.3. Our Agreement with You also includes Your application and/or Service order form submitted to Business1300 via telephone, online or via the facsimile and/or in person, which You complete and provide to Business1300. Business1300 may accept and rely on facsimile copy of the application or order form as if it was the original. Business1300 may accept an online form submission as if it was an original. You will be bound to all terms and conditions including the contract term and obligations as if it was an original in paper form.
- 2.4. For the purposes of these terms, the following terms are defined below. Words not defined in these Terms have the same meaning as in the Telecommunications Act 1997:
 - 2.4.1. **Carriers** means third party telecommunications service providers.
 - 2.4.2. **Charges** means any amounts payable for Services supplied by Business1300 as invoiced as well as any fees or charges payable on set-up or otherwise under these General Terms and Conditions.

- 2.4.3. **Electronically** means by electronic communication to your nominated email address or by making particulars of changes available on our website.
- 2.4.4. **Services** means 13, 1300 or 1800 inbound telephony services; live telephone answering and reception services; fax to email and email to fax services; purchase of smartnumbers; and any other Services that may be listed on the Account and Service Application.
- 2.4.5. **Service Providers** means third party service providers.
- 2.4.6. **Spam** is the result of the abuse of electronic messaging systems to indiscriminately send unsolicited bulk messages.
- 2.4.7. **Term** means the period set out in Account and Service Application.
- 2.4.8. **You** and **Your** refers to the Customer, as named in the Account and Service Application, or any other customer to whom the use and responsibility for the Services have been assigned by You.

3. SERVICES

- 3.1. As soon as practicable after the acceptance of your Account Application, Business1300 will commence providing the Services.
- 3.2. Services will be supplied to You through third party Carriers or Networks and Service Providers that Business1300 nominates from time to time. In providing the Services:
 - 3.2.1. Business1300 may retain the services of such third party Carriers or Service Providers as it selects at its discretion;
 - 3.2.2. Business1300 may change Carriers without notice to You;
 - 3.2.3. and You irrevocably authorise Business1300 to liaise with the relevant Carriers and/or Service Providers on your behalf in order for Business1300 to change or retain third party Carriers and/or Service Providers.
- 3.3. Business1300 provides no warranty that it will be able to supply Services at all times and Business1300 is not liable for any failure to provide all or part of any of the Services. However, to the extent and to the standard that Carriers and/or Service Providers provide Services to Business1300, those Services will be provided by Business1300 to You. If your connection or service provision is disrupted, Business1300 will use its best endeavors to reinstate the Services as soon as possible and Business1300 will not be liable for any loss or damage You incur as a result of any delay in reinstating the Services.
- 3.4. If Your account is transferred or assigned to another supplier and the other supplier takes over full billing of those services, Business1300's obligations under these Terms will cease.
- 3.5. If You transfer any Services ("Transferred Services") from a Carrier, a telecommunications service provider or any other Service Provider at the time of signing this agreement ("Current Supplier") to Business1300, You authorise Business1300 to act as your attorney to sign on your behalf and in your name any forms required by the Current Supplier to transfer the Transferred Services as Business1300 directs. In this respect, You agree to immediately pay directly to the Current Supplier any amounts owing for the Transferred

Services up to the date of the transfer and You acknowledge that Business1300 has no liability for payment of such amounts.

3.6. During the Term, You agree to:

- 3.6.1. comply with all statutes, regulations, by-laws or licence conditions of any government body; and
- 3.6.2. not breach the rights of any third party or otherwise cause Business1300 or a Carrier or a Service Provider any loss, liability or expense.

4. VIRTUAL FAX SERVICES

4.1. Business1300 provides no warranty that it will be able to supply the identical services to the Services that you have requested pursuant to these terms nor does Business 1300 give any warranty or accept any liability to You or any Third party in relation to or arising out of:

- 4.1.1. the quality accuracy and contents of the information of messages as received or in Outbounds being the optional services of sending faxes, SMS messaging and voice messaging from Your computer;
- 4.1.2. how voice calls, voicemails, voice messages SMS and faxes are used by You;
- 4.1.3. third party delays and failures of SMS delivery;
- 4.1.4. receipt or delivery of any messages sent to You subsequent to a cancellation or suspension of the Service;
- 4.1.5. the withdrawal of the Service without notice for any reason;
- 4.1.6. the security of any information transmitted on the internet.

4.2. Business1300 has no obligation to You and is entitled to cancel the Service immediately with no notice and without recourse to Business 1300 in circumstances where:

- 4.2.1. there has been wrongful use of the Service by You;
- 4.2.2. You have been involved or associated with the making of any representations to any person regarding any fact or circumstance including an attempt to misrepresent an identity or create a false identity mobile address or header;
- 4.2.3. You have been involved or associated with the transmission of anything (without limitation) words and or images that are defamatory, discriminatory, obscene, lewd, offensive threatening, abusive, harassing, harmful or which contains child or violent pornography, religious or racial slurs, or threatens or encourages bodily harm or the like or which may violate any person's rights regardless of whether such content is accessed, transmitted, propagated, distributed, created or stored in a public or private context;
- 4.2.4. use the Service to 'Spam' or cause mischief to others;
- 4.2.5. there is any cause whatsoever to believe that the Service is being used to contravene any law.

- 4.3. You agree and acknowledge that Business 1300 shall not be liable for any claims of whatsoever kind or nature, including claims for negligence, that might arise directly or indirectly out of any act or omission, use or misuse of the Service for anything else done or not done by You. To the extent this Clause fails to fully and completely exclude any claim and/or to the extent that any third party might make any claim against the Business 1300 in any way related to the use or misuse of the Service or anything done or not done by Business 1300 then the Subscriber hereby indemnifies the Reseller against any and all liabilities, losses, expenses and costs that might be suffered or incurred by the Subscriber as a direct or indirect consequence of any such claims being made.
- 4.4. You exclude all and any liabilities, costs, damages, losses or expenses of whatsoever kind or nature which may be claimed by the Subscriber or any third party against the Reseller, including claims for negligence in relation to any matter whatsoever arising from this Agreement.
- 4.5. For the Service to operate, it is necessary for You to have access to a computer with a functioning image reader, voice capability, and Internet connection.

5. SMART NUMBERS

- 5.1. Business1300 administration fee is non-refundable once paid regardless of the outcome of the ACMA transaction or if You cancel the application to purchase the number.
- 5.2. Business1300 does not guarantee the outcome of the transaction and is fully indemnified from any type of losses incurred as a result of its outcome.
- 5.3. You acknowledge and agree that Business1300 must abide by ACMA terms and conditions as set out on the ACMA website www.smartnumbers.com.au and that these terms and conditions extend to Your order.
- 5.4. In the event Business1300 is unsuccessful in purchasing or securing the nominated number through ACMA, Business1300 accepts no responsibility and is fully indemnified from any type of losses incurred by You.
- 5.5. You acknowledge and agree that until the number is fully transferred and connected under Your name it is not guaranteed to be available to You.
- 5.6. The use of all inbound numbers is governed by the ACMA terms and conditions. You acknowledge and agree that it is Your full responsibility to ensure that You are familiar with those terms and Business1300 accepts no responsibility for providing that information to You.

6. CHARGES AND PAYMENT

- 6.1. All prices and charges are quoted excluding GST.
- 6.2. Business1300 will periodically render a Tax Invoice to you for amounts payable by you under these Terms.
- 6.3. You acknowledge and agree that:

- 6.3.1. You will be liable to Business1300 for full payment of such Tax Invoices irrespective of whether the Services are used by You directly or by another party under your account;
- 6.3.2. You will be liable to Business1300 for full payment of such Tax Invoices irrespective of whether the Services have been authorised;
- 6.3.3. all charges set out by Business1300 from time to time are exclusive of taxes and levies which are also payable by You when required to do so by Business1300;
- 6.3.4. You will pay each invoiced amount by the due date specified in the relevant Tax Invoice;
- 6.3.5. You authorise Business1300 to vary the rates of service charged to You at any time following the expiration of any minimum term set out in the Service Application by giving to You at least thirty (30) days written notice;
- 6.4. You authorise Business1300 or its authorised representative to deduct payment for each Tax Invoice from Your bank account or credit card as set out in the application form.
- 6.5. You acknowledge and agree that:
 - 6.5.1. Business1300 will process the direct debit seven (7) days after the issue date of the Tax Invoice.
 - 6.5.2. The standard 10 business days before applying a direct debit from the time of the Tax Invoice assumed to have been received does not apply any transactions with Business1300.
- 6.6. In the event that a bank account or credit card debit in accordance with Clause 3.3 is declined:
 - 6.6.1. Business1300 will advise You and You must make payment of the outstanding monies by clear funds by such alternative method as required by Business1300 within two (2) days of being so advised; and
 - 6.6.2. You must pay a Dishonour Payment Fee of \$5.
- 6.7. If your nominated bank account or credit card is closed or cancelled, You must notify Business1300 within two (2) business days and You must provide Business1300 with the details for an alternative bank account or credit card. If You fail to do so, or if You do not have an alternative bank account or credit card from which Business1300 can deduct payment of Tax Invoices, then Business1300 may cancel the Agreement immediately.
- 6.8. Business1300 may suspend part or all of its ongoing supply of the Services to You if any payments remain outstanding for more than fourteen (14) days and will cancel such supply if any payments remain outstanding for more than thirty (30) days, in which event You will forfeit any amounts already paid under these Terms. In order to reconnect the services You must pay any outstanding amounts plus a reconnection fee of \$15 per service.
- 6.9. Should any Tax Invoice or part thereof not be paid on time, then You must pay a Late Payment Administration Fee of \$15 and the amount owing shall become a debt immediately due and payable and shall attract interest at a rate being 2% above the

penalty interest rate fixed from time to time under the Penalty Interest Rates Act 1983 (Vic), which interest shall accrue from the date of default until the date of payment of the whole of the amount outstanding. Further, Business1300 may adjust its charges to You for the future provision of the Services.

- 6.10. To avoid doubt, and in accordance with Section 5.1.5 of the Telecommunications Consumer Protections Code C628:2007 Business1300 may immediately suspend or restrict your Services without further notice if:
 - 6.10.1. You fail to pay a current bill and have a history of late payments, dishonoured payments or failures to pay;
 - 6.10.2. Your direct debit is dishonoured three or more times.
- 6.11. If any amounts are outstanding and owing to Business1300, You indemnify Business1300 against any costs incurred by Business1300 in the retrieval of overdue monies. This includes but is not limited to collection agency costs, solicitor's fees on an indemnity basis and court costs.
- 6.12. If You dispute in good faith an amount of a Tax Invoice, You must notify Business1300 in writing within fourteen (14) days setting out reasons for the dispute and the amount in dispute. Notwithstanding any dispute as to any amount of any charge, You must pay the whole amount of each account by the date specified in the Tax Invoice without deduction.
- 6.13. If You direct Business1300, or authorise another carrier, to transfer any of the Services to another supplier, you must pay in full, and prior to Business1300 releasing or transferring any of your telephone numbers:
 - 6.13.1. all amounts invoiced to you by Business1300 for the period prior to and including the date Business1300 ceases to provide the Services;
 - 6.13.2. a port-away fee for each of the Inbound Number Services we provided to you; and
 - 6.13.3. all other proper charges that Business1300 becomes aware of after the date of transfer that relate to the Services.
- 6.14. If You are a corporation, Your Directors jointly and severally personally guarantee the payment of all monies owing by You to Business1300. This guarantee shall be a continuing guarantee to Business1300 for all or any debts that shall be due by You from time to time to Business1300 in respect of the goods and Services supplied to You by Business1300. Business1300 may at any time at its absolute discretion and without giving any notice whatsoever, refuse further credit or supplies of goods and the Services to You. If at any time administrators/receivers or liquidators are appointed to You, You agree to relinquish any rights (preferences) to Business1300, for an amount equal to Your outstanding debtor account with Business1300. If at any time Business1300 transfers or sells the outstanding debtor account balance to a related entity or third party, You and Your Directors remain bound by this guarantee.

7. CREDIT APPLICATION

- 7.1. In order for Business1300 to assess your application for credit, you must provide Business1300 with all information it requires including your credit rating, credit worthiness, credit history or credit capacity.
- 7.2. Pursuant to the Privacy Act 1988 (Cth) You give your consent for Business1300 to:
 - 7.2.1. seek consumer credit information if Business1300 considers it relevant to assessing your application for commercial credit and You agree to Business1300 obtaining from a credit reporting agency a credit report containing personal credit information about you in relation to commercial credit provided by Business1300;
 - 7.2.2. exchange information with other credit providers and You agree to Business1300 obtaining personal information about you from other credit providers, whose names you may have provided for Business1300 or that may be named in a credit report, for the purpose of assessing your application for commercial credit made to Business1300;
 - 7.2.3. make independent enquiries of third parties concerning your financial standing and for this purpose You authorise and permit such third parties to supply such information regardless of any confidentiality or privilege which applies to the information sought;
 - 7.2.4. give a credit provider a consumer credit report to collect overdue payments on commercial credit and You agree that Business1300 may obtain a consumer credit report about you from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by you; and
 - 7.2.5. provide any information that we obtain about You to the relevant Carrier.

8. YOUR OTHER OBLIGATIONS AND ACKNOWLEDGMENTS

- 8.1. In addition to any other obligations set out in these Terms, You must provide Business1300 with all necessary information as requested in its discretion from time to time including:
 - 8.1.1. current personal, email, telephone and postal details for You and, if You are a company, your key personnel;
 - 8.1.2. any changes to the bank account or credit card particulars provided by You; and
 - 8.1.3. such written authorities as Business1300 may request in order to effect the debit payments set out in these Terms and You agree to indemnify Business1300 against any loss, claims, actions of demands suffered by Business1300 as a consequence of You failing to do so.
- 8.2. You must keep Business1300 indemnified against any loss, claims or damage suffered by Business1300 or its agents and which is caused by any act or omission to act by You, your agents or personnel.
- 8.3. You consent to:

- 8.3.1. Business1300 conducting a physical audit of the Services and any equipment supplied in respect of the Services should Business1300 consider it necessary in its sole discretion;
 - 8.3.2. Business1300 exchanging with Carriers information about You and the Services provided to You in Business1300's possession or control including, but not limited to, Your name, billing address, street address, relevant telephone numbers, any information obtained by Business1300 for the purpose of Your application, these Terms and the Agreement;
 - 8.3.3. The Carrier exchanging with us any information in the Carrier's possession or under its control in relation to the Services including, without limitation, all Your records and, in particular, exchange line details, account information, call charge records and call event records;
 - 8.3.4. The use by Business1300 and the Carrier of the information referred to in this sub-clause 4.b.
- 8.4. Without limiting any other terms of these Terms, You acknowledge and agree that:
- 8.4.1. You have read and understood these Terms;
 - 8.4.2. all intellectual property in the Services and any material produced or provided by Business1300 will remain the property of Business1300 during and after the Term;
 - 8.4.3. You are not entitled to a refund of any monies paid to Business1300 for change of mind after the date these Terms are accepted (except if required by law);
 - 8.4.4. Business1300 may email You with details of other products or services from time to time unless You provide a written request not to receive such emails;
 - 8.4.5. Business1300 may retain and use Your personal information, in which respect Business1300 agrees to store such information securely and not to disclose such information to third parties.

9. TERM AND CANCELLATION

- 9.1. The Term of the agreement is dependent upon the contract term applicable to the individual service as detailed in the service application form.
- 9.2. At the end of the Term, the Agreement will automatically be renewed for a further Term of one (1) months, unless, not less than one month prior to the expiry date of any such period, either party gives the other a notice of non-renewal of the Agreement, in which event the Agreement shall expire at the end of the Term.
- 9.3. Business1300 may immediately terminate this agreement by written notice at any time if, without Business1300's prior written consent:
 - 9.3.1. You breach any of these Terms or any other terms of the Agreement as a whole and such failure has not been remedied within fourteen (14) days after receiving notice in writing to remedy such default;
 - 9.3.2. If You are a corporation and are wound up or have a liquidator appointed;

- 9.3.3. If You commit any act of bankruptcy or are made bankrupt or enter into a scheme of composition or the like with any creditors, or if You enter into any scheme of arrangement or composition with your creditors or have a receiver or manager appointed;
 - 9.3.4. If any of Your assets are attached as a result of any litigation or enforcement proceedings;
 - 9.3.5. If You are convicted of an indictable criminal offence;
 - 9.3.6. If You charge or attempt to charge or assign any of Your assets and undertaking without the prior consent of Business1300 (which consent shall not be unreasonably withheld);
 - 9.3.7. If, being an individual, You die or become of unsound mind or infirm;
 - 9.3.8. If there is a change in the majority shareholding or unit holding by You without the prior approval in writing of Business1300 (which approval shall not be unreasonably withheld);
 - 9.3.9. If You assign or otherwise deal with your rights under these Terms;
 - 9.3.10. If You cease to carry on business;
 - 9.3.11. If there is a material change in Your direct or indirect ownership or control.
- 9.4. Business1300 may also immediately terminate the Agreement at any time by written notice if, for reasons outside Business1300's control, the Carriers and/or Service Providers cease to provide necessary services to Business1300.
- 9.5. If Business1300 terminates the Agreement in accordance with this clause and a Carrier or Service Provider arranges to supply You services other than through Business1300, You acknowledge that:
- 9.5.1. the Carrier or Service Provider may not be able to make those arrangements immediately; and
 - 9.5.2. once the Carrier or Service Provider has made arrangements, the services acquired by You from the Carrier or Service Provider will be acquired on the Carrier's or Service Provider's then current tariffs and terms and conditions and the Carrier or Service Provider will bill you accordingly.

10. WARRANTIES

- 10.1. The only conditions and warranties which are binding on Business1300 in respect of the state, quality or condition of the goods or services provided by Business1300 are those imposed and required to be binding by statute (including the Competition and Consumer Act 2010) and which obligations cannot otherwise be excluded by the provisions of these terms.
- 10.2. If goods are provided by Business1300 and those goods are not manufactured by Business1300 then You accept the guarantee or warranty of the manufacturer of those goods that is the only guarantee given to You in respect of the goods.

- 10.3. Upon receiving a request from You, Business1300 agrees to assign to You the benefit of any warranty or entitlement to the goods that the manufacturer has granted to Business1300 under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- 10.4. Except as expressly provided herein, Business1300 shall not be liable to You for any liability, (including liability in negligence) loss or damage of whatsoever nature, consequential or otherwise, howsoever suffered or incurred by You, caused by or resulting directly or indirectly from the goods or services provided by Business1300 whether that loss or damage arises as a result of the provision or the failure to provide the Services.
- 10.5. Business1300's liability to You for any breach of any provisions of these Terms, implied or otherwise (other than an implied warranty of title) is limited, at Business1300's option, to refunding the price of the goods or Services in respect of which the breach occurred, or to providing, replacing or repairing those goods or providing those Services again.
- 10.6. You acknowledge that Business1300 may rely on third parties in order to provide the Services and Business1300 is not liable to you for any act or omission to act by such third parties, nor is Business1300 liable to You for any delay in the connection or failure in the operation of the Services. You acknowledge that any liability of any Carrier to You in relation to the Services is governed by the terms and conditions on which that Carrier from time to time supplies that service to its own retail customers.

11. VARIATIONS TO TERMS

- 11.1. No manager, employee, servant, agent or representative of Business1300 (other than a Director and then only in writing) has any authority to vary these Terms and without limiting the generality of the foregoing no warranty, representation, promise, agreement, term or condition whether express or implied made by any such person will be deemed to be included in or form part of these Terms or operate in any way collateral to these Terms other than those warranties, representations, promises, agreements, terms or conditions which expressly appear in these Terms or which are implied by law and not excluded by these Terms.
- 11.2. If You are not a Consumer as defined by the Competition and Consumer Act 2010, Business1300 may change these Terms at any time in its discretion or by written agreement between You and Business1300. Where Business1300 changes these Terms without your agreement:
 - 11.2.1. if the change would cause detriment to you Business1300 will publish an advertisement advising of the change or use its best endeavours to notify you directly in writing (either in hard copy or electronically);
 - 11.2.2. if the change would not cause detriment to you Business1300 may make the change without advertising or notifying you directly.
- 11.3. You must ensure that you access your designated email account to receive notice of changes and you must access the Business1300 website at www.business1300.com.au regularly. Your continued use of the Services after changes to these Terms will constitute acceptance of those changes.

12. MISCELLANEOUS

- 12.1. You will not be entitled to withhold or set off payment of any amount due to Business1300 under these Terms whether in respect to any claim by You deriving from faulty or defective goods, materials or services or for any other reason which is contested or liability for which is not admitted by Business1300.
- 12.2. These Terms shall include all terms implied by operation of law.
- 12.3. Your rights under these Terms are personal. You must not:
 - 12.3.1. assign or attempt to assign any right or obligation under these Terms; or
 - 12.3.2. resell, re-brand, restructure, license or otherwise deal with any part of the Services without the prior written consent of Business1300 in its sole and absolute discretion. Business1300 may assign all or any of its rights and obligations under these Terms at any time by notifying You in writing.
- 12.4. Any persons signing these Terms on your behalf warrant that they have full power and authority to bind You in respect of these Terms.
- 12.5. Any delay in or failure by Business1300 to insist upon strict performance of any term, warranty or condition of these Terms will not be deemed a waiver thereof or of any rights Business1300 may have and no express waiver will be deemed a waiver of any subsequent breach of any term, warranty or condition.
- 12.6. If any provision of this Agreement is determined by any statute or any court having jurisdiction in relation thereto to be illegal, invalid, void, voidable or unenforceable the legality validity or enforceability of the remainder of these Terms will not be affected and the illegal, invalid, void, voidable or unenforceable provision will be deemed deleted to the same extent and effect as if never incorporated in these Terms but the remainder of these Terms will continue in full force and effect.
- 12.7. A provision of these Terms which can, and is intended to, operate after termination remains effective.
- 12.8. These Terms are strictly confidential and You must not reproduce them or disclose them to any third party without the prior written approval of Business1300.
- 12.9. These Terms will survive any accepted repudiation or other termination of the contract to supply goods or services existing between Business1300 and You.
- 12.10. You agree to execute all such further documentation and to do all such things as may be reasonably necessary or desirable to give full effect to the provisions of these Terms.
- 12.11. Any dispute concerning these Terms or their interpretation shall be referred for mediation to a mediator as may be agreed by the parties or failing agreement then by a suitably qualified and experienced mediator appointed by the president (or his/her delegate) of the Law Institute of Victoria (or such like or succeeding institution). This provision shall not prevent a party from applying to a competent court for urgent injunctive or other relief.
- 12.12. These Terms will be governed and interpreted according to the laws of Victoria and the parties agree to submit to the jurisdiction of the courts of Victoria.