

# my1300 Pty Ltd - TERMS AND CONDITIONS

1. DEFINITIONS & INTERPRETATION
  - 1.1 Definitions

In this Agreement, any term set out in the Details on the front of this Agreement has the same meaning in these conditions and, unless the context otherwise requires:

Acceptable Use Policy means any policy adopted by us for use of Custom Numbers, as published on our website from time to time.

Custom Number means a number with the prefix 13, 1300, 1800 or another prefix licensed by us which, when the last digits of the number are converted on a standard alphanumeric keyboard make a word and in the case of the number covered by this Agreement, means the Custom Number set out in the Details.

Details means the details of the Customer and the Custom Number and all other details set out on the front page of this Agreement.

Fee Increase Notice means a notice by us to you to increase the Licence Fee upon a renewal of this Agreement at the end of the Term pursuant to clause 3.2.

Fees means any fees payable to us pursuant to this Agreement, including the Licence Fee and the Late Payment Fee.

Late Payment Fee means the fee payable pursuant to clause 3.3.

Licence Fee means our fee for use of the Custom Number set out in the Details, as varied from time to time.

my1300 Agreement means this Agreement or if the context allows, any other agreement for a Custom Number that you have with us.

Non-Renewal Notice means a notice by us to you that we will not renew this Agreement after the end of the Term.

Term means the period of this Agreement as defined in the Details and clause 2.2, and where applicable includes any extended or renewed Term.
  - 1.2 Interpretation
    - (a) A reference to (i) a person includes a company, corporation and unincorporated association; (ii) a statute includes a reference to that statute as amended, modified or replaced and includes all orders, ordinances, regulations, rules and by-laws made pursuant to it; (iii) a clause, sub-clause, paragraph or sub-paragraph herein is, unless otherwise stated, a reference to a clause, sub-clause, paragraph, sub-paragraph of this Agreement; (iv) any party to this Agreement or any other agreement or document includes the party's successors and permitted assigns; (v) conduct includes any omission and any statement or undertaking, whether or not in writing; and (vi) writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
    - (b) A right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally. The singular number includes the plural and vice versa, and the neuter gender includes the masculine and feminine genders and vice versa. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning. Headings are for convenience only and do not affect the meaning of any provision of this Agreement.
2. YOUR RIGHT TO USE THE NUMBER
  - 2.1 Grant of the Right

We grant to you an exclusive, revocable and non transferable licence (subject to clause 9.5) to use the Custom Number for the Term:

    - (a) if national use is specified in the Details, then nationally within Australia; or
    - (b) if one or more States (including any Territory of Australia) are specified in the Details, then in those States or Territories only.

If your licence is not for national use, then we may license other persons to use the Custom Number outside the specified State or Territory.
  - 2.2 Term
    - (a) Unless paragraph (b) applies, you have the right to use the Custom Number for the Term, starting on the Activation Date (unless otherwise stated, expected to be not more than 1 month after the date of this Agreement) and ending on the last day of the Term, subject to any early termination under clause 5.3.
    - (b) We may take up to 3 months to activate the Custom Number after the date of this Agreement. If we take more than 3 months, you may cancel this agreement by notice to us and we will refund your deposit. We will not have any liability to you (except for repayment of the deposit) if we are unable to activate the Custom Number and you cancel this Agreement.
  - 2.3 Your Use of the Custom Number

You may start to use the Custom Number at any time after the Activation Date and must do so within 1 year of the Activation Date. Once activated, you must continue to use the Custom Number for the balance of the Term. Your right to use the Custom Number and your obligation to pay the Licence Fee are not limited or delayed by any failure or delay by you in starting to use the Custom Number.
  - 2.4 Renewal
    - (a) Between 3 months and 1 month prior to the last day of the Term (and in the case of a renewed Agreement, of the renewed Term):
      - (i) we may give you either (1) a Non-Renewal Notice or (2) a Fee Increase Notice (see clause 3.2);
      - (ii) you must give us written notice that you do not wish to renew this Agreement 1 month prior to the last day of the Term.
    - (b) The Term will be automatically renewed for a further period equal to the period of the (then) current Term unless a notice is given under clause 2.4(a).
    - (c) The renewed agreement will be on the same conditions as the current agreement, unless a Fee Increase Notice has been given in which case clause 3.2 will apply.
  - 2.5 No right other than licence to use for Term

The rights granted to you under this Agreement do not entitle you to any other rights than the right to use the Custom Number for the Term.
3. YOU MUST PAY LICENCE FEE
  - 3.1 Licence Fee

You must pay the Licence Fee for use of the Custom Number in accordance with the Details. You are liable to pay the whole Licence Fee immediately upon signing this Agreement, but we will not demand full payment and we will allow you to pay the Licence Fee by the deposit and the instalments set out in the Details if you make those payments on the due date. Payment must be made by credit card or bank direct debit. The account from which we are paid, must be kept current and in funds so that we are paid on time.
  - 3.2 Increase on Renewal

We may increase the Licence Fee from the start of each renewed Term by giving you a Fee Increase Notice in the period commencing 3 months and ending 1 month before the last day of the Term. If you do not give notice of non-renewal during the allowed period following receipt of our Fee Increase Notice, the Licence Fee payable during the renewed Term will be adjusted to the Licence Fee specified in our Fee Increase Notice.
  - 3.3 Late Payment Fee

If you do not pay the Licence Fee on time, you must pay us our standard Late Payment Fee as published on our website for each month that payment is not made. You authorise us to debit the account you use to pay us, i.e., your Bank account or credit card account.
  - 3.4 Interest

If you fail to pay on time, you must pay interest on any overdue amount. The interest will be calculated daily on the overdue amount from the date the original amount became overdue and will be compounded monthly. The rate of interest is the penalty interest rate set from time to time under the Penalty Interest Rates Act (Vic)1983.
4. YOUR OTHER OBLIGATIONS
  - 4.1 Credit Information

You must provide us with any information we reasonably require to determine your credit status at the commencement of this Agreement. You must notify us of any change in information likely to be relevant to our credit arrangements with you, including changes in your legal name, address and telephone number(s) and creditor payment history.
  - 4.2 Telecommunications Services

You must pay all charges associated with the activation and use of Number. We are not a telecommunications carriage service provider. You must make your own contractual arrangements for the activation and maintenance of telecommunications services to enable you to use the Custom Number. We or one of our affiliated companies may assist you to obtain telecommunications services and, as a result, may be paid a fee or commission by the service provider.
  - 4.3 Dealings with your Telecommunications Carriage Service Provider

You irrevocably appoint us (being the right of use owner) as your agent and attorney to act at any time after any default by you or termination of this Agreement, in any dealing with your carriage service provider in relation to the Custom Number, including to authorise on your behalf suspension or restriction of access to the Custom Number or diversion to our call centre or nominated telephone number or transfer to us. A statutory declaration by any of our managers will be sufficient proof of default by you or termination of this Agreement.
  - 4.4 Acceptable Use Policy

From time to time, we may publish a policy for acceptable use of Custom Numbers on our website. This Acceptable Use Policy may include restrictions or prohibitions on the use of Custom Numbers in relation to illegal activities or inappropriate content. You must comply with our Acceptable Use Policy.
5. DEFAULT
  - 5.1 Suspension or Restriction upon Default

We may suspend or restrict you access to the Custom Number at any time after having given notice as set out below:

    - (a) if you fail to pay our Licence Fee (including any instalments) by the due date for payment;
    - (b) if you become bankrupt or insolvent or enter into a scheme of arrangement or composition with your creditors or, being a corporation, are placed in liquidation, receivership or under administration; or
    - (c) if you breach any condition of this Agreement other than the obligation to pay Licence Fee.

We are not required to provide you with prior notice of the suspension or restriction before we suspend or restrict the Custom Number. If we have an active email address for you, we will provide you with notice of the suspension or restriction by e-mail once it has been effected.
  - 5.2 Status During Period of Suspension or Restriction

Our rights in respect of the Licence Fee continues during, and the Term is not extended by, any period of suspension or restriction of your use of the Custom Number.
  - 5.3 Termination Upon Default by Customer

We may terminate this Agreement by written notice to you if:

    - (a) you fail to pay the Licence Fee or any instalment by the due date for payment under this Agreement;
    - (b) you breach any other condition of this Agreement:
      - (i) that is not capable of remedy; or
      - (ii) if capable of remedy, that is not remedied by you within any period that we may allow to remedy the breach;
    - (c) we terminate any other my1300 Agreement that you have with us;
    - (d) you become bankrupt or insolvent or enter into a scheme of arrangement or composition with your creditors or, being a corporation, are placed in liquidation, receivership or under administration; or
    - (e) you use the Custom Number in a contravention of any applicable law or our Acceptable Use Policy.

5.4	<p>Our rights upon termination</p> <p>If this Agreement is terminated other than under clauses 2.2 or expiry, you must pay to us:</p> <p>(a) the balance of the Licence Fee remaining unpaid and other Fees that are overdue; and</p> <p>(b) all interest that is due or accruing on any Fees until the date of payment.</p>	9.5	<p>You may not assign any of your rights and benefits under this Agreement without our prior written consent. We may withhold our consent at our discretion. We may charge a standard fee for processing our consent.</p>
6.	<p><b>PRIVACY</b></p> <p>We may disclose your personal information (i) for the purpose for which it is primarily held by us or for any related secondary purpose and (ii) when we are under a legal duty to do so. Our privacy policy is disclosed on our website.</p> <p>Prior to accepting your application, you have provided to us all information relevant to our assessment of your credit rating. You consent and acknowledge that you: Understand that the (Section 18(E)(1) Privacy Act 1988) allows us to give a credit reporting agency certain personal information about you; The information we disclose to a credit reporting agency includes permitted information which will allow you to be identified, the fact that you have applied for credit and the amount, the fact that we are a current credit provider to you, repayments that are more than 60 days overdue and for which debt collection action has started, information that in our opinion you have committed a serious credit infringement (that is, acted fraudulently or shown as intention not to comply with your credit obligations) and cheques drawn by you for \$100 or more which have been dishonored more than once; Agree to our obtaining from a credit reporting agency a credit report containing information about your personal credit worthiness for all purposes of assessing your application and assisting in collecting overdue payments and to our obtaining information about your commercial activities or commercial credit worthiness (Section 18L(4) Privacy Act 1988) from any business which provides information about the commercial credit worthiness of persons, your accountant or any other supplier to you; Agree to our giving to and obtaining from any credit provider named in your Application or in a credit report (Section 18N Privacy Act 1988) on you issued by a credit reporting agency, information about your credit arrangements for the purpose of assessing your Application, notifying a default by you, allowing another credit provider to ascertain the status of your arrangements with us where you are in default with one or more other credit providers and generally assessing your credit worthiness; and Understand the information exchanged can include any information about your business, personal and/or commercial credit worthiness, credit standing, credit history or credit capacity which the Privacy Act allows credit providers to give to or receive from each other.</p>	9.6	<p>This Agreement is governed by and must be construed in accordance with the laws of Victoria and each party submits to the non-exclusive jurisdiction of the Courts and tribunals of or exercising jurisdiction in Victoria.</p>
7.	<p><b>LIMITATION OF OUR LIABILITY</b></p> <p>Except as expressly set out in this clause or as implied by legislation, our services are provided on an "as is" basis and:</p> <p>(a) we do not make any express or implied representations or warranties regarding your use of the Custom Number;</p> <p>(b) no oral advice or written information given by us, our employees or contractors will create a warranty and you are not entitled to rely on any such information or advice except as expressly set out in this Agreement.</p>	9.7	<p>Each party must, at all times and from time to time, do all further acts and execute and deliver all further deeds, documents and instruments that may be necessary or desirable in order fully to perform and give effect to and carry out the terms of this Agreement.</p>
7.1	<p>Except as expressly set out in this clause or as implied by legislation, our services are provided on an "as is" basis and:</p> <p>(a) we do not make any express or implied representations or warranties regarding your use of the Custom Number;</p> <p>(b) no oral advice or written information given by us, our employees or contractors will create a warranty and you are not entitled to rely on any such information or advice except as expressly set out in this Agreement.</p>	9.8	<p>A failure of a party to comply with any of its obligations or to fulfil any conditions in this Agreement may be waived in writing by the other parties. The waiver shall be effective only in the specific instance and for the purpose for which it was given. No failure by a party to exercise, and no delay in exercising, any right shall operate as a waiver, and any single or partial exercise of any right by that party shall not preclude any other or future exercise of that right or any other right by that party.</p>
7.2	<p>We exclude any condition or warranty implied into this Agreement by the Trade Practices Act 1974 or equivalent State or Territory legislation to the extent we are able to do so but to the extent we may not exclude that liability, our maximum liability for breach of a condition or warranty implied by any such statute is limited to supplying the services again or payment of the costs of having the services supplied again.</p>	9.9	<p>If any provision of this Agreement shall be deemed or judged to be invalid or unenforceable for any reason, the invalidity or unenforceability shall not affect the validity or operation of any other provision of this Agreement and this Agreement shall be constituted as if the invalid or unenforceable provision had never been contained in this Agreement provided that this clause shall not apply where it could be reasonably expected that a party would not have entered into this Agreement if the invalid or unenforceable provision was not originally included in this Agreement.</p>
7.3	<p>Subject to clause 7.2 neither we nor any of our affiliates, employees or contractors will be liable for any incidental, special or other consequential damages (including downtime costs or lost profits and goodwill) in relation to the supply of any services.</p>	9.10	<p>Except as otherwise expressly provided, this Agreement and its various provisions shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties.</p>
7.4	<p>You acknowledge that the Custom Number is a number and that it may create one or more words based upon a normal 12 key (3 x 4) telephone keypad, but that keypads may vary. We do not warrant that any particular word will be available with any Custom Number.</p>	9.11	<p>You must keep the terms of this Agreement confidential and not disclose them without our prior written consent, which may be withheld in our sole discretion.</p>
8.	<p><b>INDEMNITY</b></p> <p>You agree to indemnify us, our employees and contractors, from any claim, liability, loss or expense, including legal costs, arising out of or relating to your conduct in relation to the matters contemplated in this Agreement and your use of the Custom Number, including defamation and any other breach of the rights of any third person.</p>	9.12	<p>This Agreement is subject to any special conditions shown in a separate schedule to this Agreement. If any special conditions are included, these conditions must be interpreted subject to those special conditions.</p>
9.	<p><b>GENERAL</b></p>	9.13	<p>This Agreement, to the extent possible, will constitute a tax invoice with respect to the Licence Fee.</p>
9.1	<p>Any notices, consent, offer, demand, request or other communications required or permitted hereunder must be in writing and may be delivered personally or sent by facsimile or registered or certified mail, postage prepaid, addressed to the relevant address in this Agreement or by email to the email address disclosed by you or to any changed address properly notified under this clause. Any party may change the address to which such notices, requests, demands or communications are to be directed to it by giving written notice to the other parties in the manner specified in this clause.</p>		
9.2	<p>This Agreement contains the entire agreement in relation to your use of the Custom Number.</p>		
9.3	<p>The Licence Fee (except for any allowed increase) may not be varied. Otherwise, we may make standard variations to the conditions of all our my1300 Agreements by disclosure of the details of the variation on our website, with only an email to you that the variation has occurred. Otherwise, this Agreement may only be varied in writing in a document signed by the parties.</p>		
9.4	<p>We may assign our rights and benefits under this Agreement to any person at any time without the need for your consent.</p>		