



Bulk SMS Messages Terms and Conditions of Agreement

Bulk SMS Policy

The SMS Messaging Services ("the Services") offered by Mobile World Online ("MWO") to you ("the customer") are governed by the following terms and conditions:

1. Scope of agreement

The customer agrees to the terms and conditions specified in this Policy and indicate such acceptance by either completing the application form ("the application form") to which this Policy is attached. The agreement between MWO and the customer is deemed to be in effect upon receipt by the customer of the username and password required to use the Service(s). This Policy and the application form (hereinafter collectively referred to as the "agreement") supersede any and all other agreements explicit or implied between the customer and MWO with regard to the Services.

2. Bulk SMS messaging service

2.1 Security and authentication

Upon acceptance of the agreement by MWO and once the registration process is successfully completed, the customer's username and password will be activated and will be sent via SMS to the SIM card used for this Service by the customer. The customer's username and password will be the only identifiers by which MWO will identify the customer whilst using the Service(s). The customer acknowledges that no further verification or authentication of the identity of the customer will be undertaken by MWO and consequently, all activities concluded on the MWO website, which can be traced to the customer's username and password, shall be deemed to have been undertaken exclusively by the





customer and the customer is therefore legally bound for all transactions resultant from such activities. It is therefore the customer's responsibility to ensure that the username and password are handled with care and not subjected to negligent usage. The customer indemnifies MWO against any claims, actions or damages as a result of the fraudulent or unauthorised use of the customer's username and password or loss thereof.

2.2 Risks

Due to the nature of the Service, MWO cannot be held responsible for risks incurred through the use of the Service(s), as well as all risks associated with data security, privacy, availability and reliability of message processing and transmission. Thus, the customer is fully and exclusively liable for any and all risk resultant from the use of the Service(s).

2.3 Limitation of liability

The services and all information, products and other content (including third party information, products and content) included in or accessible from the MWO web site or the service, are provided "as is" and are subject to change at any time without notice to the customer. To the fullest extent permitted by law, MWO disclaims all presentations and warranties (express, implied and statutory, including but not limited to the warranties of merchantability and fitness for a particular purpose, and non-infringement of proprietary rights) as to the services and all information, products and other content (including third party information, products and content) included in or accessible from the MWO web site or the services. In no event shall MWO or any of MWO 's content providers be liable for any damages whatsoever, including but not limited to any direct, indirect, special, consequential, punitive or incidental damages, or damages for loss of use, profits, data or other intangibles, or the cost of procurement of substitute goods and services, arising out of or related to the use, inability to use, unauthorized use, performance or non-performance of the MWO web site or the services, even if MWO has been advised previously of the possibility of such damages and whether such damages arise in contract, negligence, delict, under statute, in equity, at law or otherwise

3. Access to the service

MWO shall use all reasonable endeavours to ensure that the Services are available on a 24 hour, 7 days a week basis. The customer is responsible for obtaining all devices and services necessary to enable access to the Service and the use of such Services.





3.1 Nature of Services

3.1.1 Message delivery

The customer acknowledges and accepts that the provision of the Service may be enabled through MWO's agreements with various telecommunications network operators in various countries and MWO are therefore only able to act under the conditions imposed through such agreements. A list of MWO's telecommunications network from time to time is available on the MWO website. The delivery of SMS messages is subject to the availability and performance of the telecommunications networks and the telecommunications networks technical systems and network and cannot be guaranteed by MWO. Specifically, SMS messages submitted through the MWO website will be transferred to the recipient's mobile terminal within times ranging from a few seconds to a few minutes depending on the conditions prevalent at the time of submission. Also, message delivery performance is subject to the recipient's mobile terminal being switched on and located within an area that is acceptably covered by the recipient's telecommunications service provider. Certain telecommunications networks prevent their subscribers from receiving SMS messages, for reasons beyond MWO's control, and in such cases the delivery of SMS messages is not possible.

3.2 Submission of large message volumes

When the customer requests a large number of messages to be transmitted (> 10 000 messages per hour) the quality of the Service may be degraded due to capacity and technical constraints imposed by telecommunications networks. In such instances, delays may be encountered and MWO cannot be held liable for consequences resulting from such service degradation. However, upon sufficient advance notice (at least one business week) by the customer to MWO of large volume transmission, MWO shall use all reasonable endeavours to ensure, but cannot guarantee, that such delivery shall be made without disruptions.

3.2.1 Message validity

SMS messages submitted to the MWO website for transmission shall have an assigned validity period of 3 days during which time MWO shall, at regular intervals, attempt to effect delivery of the SMS messages. Should the validity of the message expire prior to successful delivery, all unsent messages shall be discarded without notice to the customer.

3.3 Privacy of message content

The handling of messages submitted through the MWO website and network is subject to Namibian privacy laws. MWO may be required to maintain SMS message logs of all transmissions and to further make such SMS message transmission reports available to government and legal authorities upon explicit





request. The customer acknowledges that SMS messages are transmitted in an unencrypted format and as such MWO cannot guarantee against eavesdropping of SMS messages at any stage.

3.4 Changes to service offerings and content

MWO reserves the right to modify, enhance, discontinue and further develop the Service(s) or its service offerings and contents on the MWO website any time without prior notice.

4. Customer's responsibilities and liability

4.1 Malicious disruptions and damages

Should the customer be implicated of malicious disruptions or damages to the Service(s) or MWO's website, the customer shall be liable for all damages (whether direct or indirect) and associated costs resultant from such malicious activity.

4.2 SMS content

The customer accepts full responsibility for the content of SMS messages transmitted by MWO on the customer's behalf. The customer agrees not to submit any SMS messages for transmission by MWO, the content whereof is improper, immoral or unlawful or which contains any violent, offensive, discriminatory, illegal or pornographic material. The customer must reasonably ensure that the content of SMS messages does not cause disturbance or harassment to the recipient thereof. The customer agrees not to submit any SMS messages for transmission by MWO, the content whereof make reference to any





4.3 Customer's responsibilities and liability

MWO reserves the absolute right not to deliver any SMS message unless and until the identification of the originator thereof, or its authorised representative, is known and understood by MWO.

4.4 Termination of the service(s)

At any time during the tenure of this agreement, the customer acknowledges that MWO reserves the right to terminate the customer's username and/ or password, discard and remove any content, for any reason, including without limitation, for non-use of the Service or if MWO, in its reasonable opinion, believes that the customer has contravened or breached any provision of this agreement without notice. MWO may also, at its sole discretion, at any time cease to provide the Service, or any part thereof and to make modifications and changes to the Service and the content of the MWO website from where it is accessed and offered. The customer also fully understands, accepts, and further indemnifies MWO fully against any claims by the customer or any third party as a result of such termination of Service, or part thereof.

5. Billing

5.1 SMS billing methodology

The customer agrees to pay the charges, to MWO, as set out in the application form. Should there be a disputed transaction, MWO shall endeavour to make the necessary investigations to the best of its abilities and attempt to rectify the discrepancy, but should such investigations prove to be inconclusive, the message transaction logs, as maintained by MWO shall be deemed to be true and accurate for accounting purposes. The eventual delivery of SMS messages is largely dependent on the effective functioning of the recipient's mobile terminal and the telecommunications network partner's network, systems and infrastructure. Consequently, MWO cannot guarantee the delivery of messages that may be affected by possible network outages and errors on the part of any telecommunications network and MWO shall not refund the customer for undeliverable messages unless caused by an error on the MWO infrastructure.

6. Complaints

All complaints relating to the services provided to the customer must be directed to MWO, in writing and within 7 business days of the event causing the objection at the following address: PO Box 23719, Windhoek, Namibia or Fax: +264 61 303186 Marked for the attention of the SMS Marketing Manager.





7. Intellectual property rights

The information, media, systems, content and Services provided by MWO through the MWO website for the customer's use, including all intellectual property rights therein, is the sole property of MWO and the customer shall at no stage acquire any rights therein or thereto.

8. Capacity and warranty

The SMS Provider warrants that within 6 (six) months of the effective date it shall generate on average a minimum of 1,000 (one thousand) SMS's per month to flow through the SMS gateway, measured over three monthly periods from the 7th month after the effective date.

9. Applicable law

The laws of the Republic of Namibia govern this contract. The customer fully acknowledges that any disputes resulting in legal intervention shall be concluded within the jurisdiction of the Republic of Namibia and that the applicable laws of the Republic of Namibia shall prevail.

10. Interpretation and nullification of clauses

The customer accepts to agree to all aspects of this agreement and shall comply with all laws, regulations and restrictions that applies to the customer. MWO shall be entitled to modify the terms and conditions of this Policy in writing from time to time. Any delay in the enforcement of any term of this agreement shall not be deemed to be a waiver of such right(s).

11. Addresses

The customer's address for the delivery of all notices, including any legal notices, shall be the physical address provided by the customer when registering for the Service. MWO's address for the delivery of all notices, including any legal notices, shall be

Mobile World Online CC
P.O. Box 23719
Windhoek
Namibia

A party may at any time change that party's address on 10 days notice in writing to the other provided that the chosen address consists of or includes a physical address. Any notice given in connection with this agreement shall be delivered by hand or be sent by prepaid registered post.

Notice as set out above shall be deemed to have been duly given if delivered on the first business day after the date of delivery and if sent by post 10 days after





posting.

