

## MISCELLANEOUS CHARGES & TERMS

Melbourne Phone Company Pty Ltd (Melbourne Phone) in reference ABN: 58 579 281 068 will provide you, our Customer, with the services in accordance with these terms and conditions and where relevant, the applicable charges notified to you from time to time, the application for service once accepted by us, the customers consent, the authority for transfer of telecommunications services (Agreement).

### 1. PROVISION OF SERVICE

#### 1.1 General:

Melbourne Phone will provide you with local, national, fixed-to-mobile and international long distance services and services of any kind which Melbourne Phone may agree to provide you from time to time (Services). Melbourne Phone will provide the services using our own facilities and services or those of other carriers; telecommunications service providers or equipment suppliers (supplier).

#### 1.2 Variations:

Melbourne Phone may, without reference to you, change any other supplier or its products, or lower our charges at any time and upon 30 days written notice to you vary the services, increase the charges or otherwise vary these terms. At any time, you may obtain an up to date copy of this agreement by contacting Melbourne Phone by telephone, email or accessing the Melbourne Phone website.

#### 1.3 Savings:

The savings that Melbourne Phone is able to make for you through the provision of its services may change from time to time depending on changed circumstances with respect to suppliers.

#### 1.4 Unlimited Plans:

The fixed monthly caps are under the product name of "Unlimited". All plan fees are billed under the company Melbourne Phone Pty Ltd.

### 2. CHARGES AND PAYMENTS FOR SERVICES

#### 2.1 Melbourne Phone's charges may include:

Call connection charges

Per minute charges

Disconnection and reconnection charges (\$49.50 inc GST) early termination fees (\$299 inc GST per line) for other plans under offerings, if applicable

Untimed charges

Fees for dishonour or insufficient charges (\$16.50 inc GST) and overdue charges, if applicable

Third party collections charges, if applicable

Excessive late payment fees (\$132.00 inc GST), if applicable

Credit card payment fees, if applicable

Paper invoice charge (\$4.25 inc GST), if applicable

Non direct debit charge (\$5.45 inc GST), if applicable

Suspension charges (\$38.50 inc GST), if applicable

Phone rental charges, if applicable

Service and equipment charged, if applicable.

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Current charges for services are available on request by calling 1300 887 939 or by accessing [www.mphone.com.au](http://www.mphone.com.au)

2.2 Unless specifically stated, all charges are net of all discounts.

2.3 Melbourne Phone may offer rebates or call credits in conjunction with specific products offered to certain customers. The value of the rebate or call credits will be determined in accordance with standard criteria and provided as part of the agreement of sale.

2.4 Any discounts offered may be adjusted on a pro-rata basis if your monthly spend falls below the amount agreed on your application form.

2.5 If in any product a standard rebate or credit is given, and the amount of the rebate or credit exceeds the billed amount, then the excess of the rebate or credit shall be forfeited

2.6 Melbourne Phone's network records are sufficient evidence of the amount payable unless shown to be incorrect.

2.7 Invoicing:

Melbourne Phone will usually invoice you monthly for services in accordance with our current charges. Melbourne Phone may vary invoice frequency. Melbourne Phone will also invoice one month in advance for all services, hence for the first invoice, there could be charges that are pro-rata according to the day of provisioning of the service(s).

2.8 Method of Billing:

Melbourne Phone will bill you in advance for connection, service fees periodic charges, monthly plan fees and in arrears for usage charges (where applicable).

2.9 Method of Payment:

Various methods of payment are available as indicated on the bill.

2.10 Time for Payment:

All charges must be paid on or before the payment due date as indicated on the bill. Payments received later than the due date will be charged a late payment fee. If any product covered in 2.5 payments is made after the payment due date, the rebate or credit will be forfeited.

2.11 Late Billing:

Charges arising from transactions that have occurred prior to the period covered in any specific billing period will be due and payable upon presentation of invoice in accordance with clause 2.10.

2.12 Charges from other suppliers:

Our charges to you may pass on any changes in other suppliers charges to us (including increases, specials or one-off charges) and will be payable in accordance with clause 2.10.

2.13 Other charges:

You will pay us in accordance with clause 2.1 any charge which any other supplier or other person renders to us: because you approach that other supplier or person directly, or otherwise than through us; or for connection or initiation of any service or for cancellation of any service; or for any changes in other supplier charges to us (including increases and specials or one-off charges)

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### 2.14 Suspension of services:

Melbourne Phone reserves the right to suspend provision of services to you, where charges owing to us or any amount owing remain outstanding after 30 days, unless Melbourne Phone have received written notice from you of a bona fide dispute of those charges.

Address: PO Box 18170, Melbourne Bourke Street, Melbourne Vic 3001 Tel. 1300 887 939  
Web: [www.mphone.com.au](http://www.mphone.com.au)

### 2.15 Dishonoured cheques:

Melbourne Phone reserves the right to terminate the agreement without notice to you in the event that: you have not paid amounts owing to us in accordance with clause 2.10 and 2.14; and cheques provided by you in payment of that invoice are dishonoured without a valid explanation being provided by you.

### 2.16 Unclaimed Amounts:

In the event that your account is terminated and monies are owed to you by Melbourne Phone. In the event you do not claim those monies within 3 months of the date the monies were reasonably considered owed, Melbourne Phone will retain the money, and you agree that you will have no further claim in relation to these monies.

### 2.17 Security Bond:

Melbourne Phone may from time to time require you to lodge a security bond as a condition of us providing services to you. You authorize us to deduct from that bond any amounts remaining to us after 30 days after date of invoice. After 6 months of on time payment of our invoices, Melbourne Phone may either refund the bond or credit your account.

### 2.18 Taxes:

The charges set out in this agreement are inclusive of all State and Commonwealth taxes with the exception of the GST and any stamp duty or transaction duty on this agreement and any related interest, expense, fine, penalty or other charge related to these taxes.

2.19 Where Melbourne Phone becomes liable to any penalties or interest as a result of the late payment of GST due to the customers failure to comply with the terms of this agreement (including this clause), or the customers obligations under the GST law, then an additional amount equal to those penalties and interest will be payable to Melbourne Phone.

## 3. PERIOD OF AGREEMENT

Standard Agreement v2.6

### 3.1 Commencement of Agreement:

This agreement starts on the date the application for service is signed or verbally recorded by both parties and continues until terminated.

### 3.2 Commencement of Services:

The provision of services commences when: your accounts are transferred from your name to ours by your current supplier or; pre selection has been activated upon completion of installation of any necessary equipment or upon completion of any configuration changes made to PABX or other equipment owned by you or any other arrangements with another supplier for the provision of the services have been completed

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### 3.3 Unlimited Plans:

The fixed monthly caps are under the product name of “Unlimited”. All plan fees are billed under the company Melbourne Phone Pty Ltd.

### 3.4 Minimum Period of Agreement:

This agreement will be in force for the length of time indicated on you Melbourne Phone agreement (only if minimum period of agreement is applicable)

## 4. TRANSFER OF YOUR ACCOUNT TO US

### 4.1 Changing your Current Arrangements:

If, in providing the services, Melbourne Phone needs to change your arrangements with your current supplier, then Melbourne Phone will do so in accordance with this clause.

### 4.2 Transfer of services Melbourne Phone.

By signing this agreement you appoint Melbourne Phone to act as your agent and authorize us to sign on your behalf and in your name forms of authority to your current supplier to transfer your accounts into our name.

You agree to give written instructions to your current supplier to transfer your accounts from your name to ours if Melbourne Phone so request.

You will immediately pay to your current supplier all amounts owing up to the time of transfer of your accounts to our name.

4.3 If your current supplier credits us with any amount concerning services provided before the date of transfer, Melbourne Phone will credit that amount to your account.

4.4 If after your current supplier raises a proper charge relating to a service your current supplier provided to you before the commencement of services under clause 3.2, Melbourne Phone will advise you accordingly, and you must pay your current your current supplier that amount.

4.5 Melbourne Phone will not accept any liability for any amounts owing by you to your current for services, which your current supplier provided to you prior to the commencement of services under clause 1.1.

4.6 You must indemnify us against any claims made by your current supplier to us in relation to any such amounts.

## 5. TRANSFER OF YOUR ACCOUNT FROM US TO ANOTHER SUPPLIER

5.1 If in the future you transfer any of the services to another supplier, then you remain responsible to us for the amount payable for the services up to the time your service are taken over by another supplier and tolling with Melbourne Phone stops. You will immediately pay us the amount owing on receipt of our invoice.

5.2 The provision of our services is deemed to have ceased when your newly appointed carrier, commences tolling all of your nominated services.

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5.3 Melbourne Phone will endeavor to bill you for those services within the next normal billing period.

5.4 If, after that Melbourne Phone becomes aware of other proper charges (including fees payable to any other supplier) for those services up to the date of transfer, or Melbourne Phone resolve any dispute so that any liability of our relating to those services is quantified, then you will immediately pay us all such amounts on receipt of our invoice.

5.5 Melbourne Phone will credit you with any amount credited to us by another supplier for those services up to the date of transfer of those accounts to another supplier.

### **6. NOTICE OF DISCLOSURE OF YOUR CREDIT INFORMATION TO CREDIT REPORTING AGENCY (PRIVACY ACT 1988)**

Melbourne Phone may give information about you to a credit reporting agency for the following purposes: to obtain a consumer and commercial credit report about you, and/or allow the credit reporting agency to create or maintain a credit information file containing information about you.

This information is limited to:

Identity particulars – your name, sex, address (and previous two addresses), date of birth, name of employer, and driver’s license number

your application for credit or commercial credit – the fact that you have applied for credit and the amount

the fact that (name of credit provider) is a current credit provider to you.

loan repayments which are overdue by more than 60 days, and for which debt collection action has started

advice that your loan repayments are no longer overdue in respect of any default that has been listed

information that, in the opinion of Melbourne Phone you have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with your credit obligations)

dishonored cheques – cheques drawn by you for \$150.00 or more which have been dishonored more than once

Period to which this understanding applies:

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

### **7. YOUR COMPLIANCE**

7.1 You will ensure that you comply at all times with all laws and obligations, including license conditions, applicable to the services and their use.

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7.2 You will not use the service to transmit or publish any material which is defamatory of any person, or any material in breach of copyright or any obligations of confidentiality, or otherwise in breach of any law, and you will indemnify us for any loss or expense Melbourne Phone suffer as a result of you doing so.

### 8. USE OF CUSTOMER PREMISES SWITCH AND OR PROGRAMING OF PABX

8.1 Installation and programming of equipment: You will assist us in ensuring that any equipment necessary for you to receive the services is installed and programmed.

8.2 You will make access to you PABX available to us if applicable, prior to the commencement of the services, or at any time during the provision of the services, so that calls to destinations nominated by us from time to time are, so far as possible, switched by the PABX to the best services available.

### 9. EQUIPMENT MELBOURNE PHONE SUPPLY TO YOU

9.1 In any situation where Melbourne Phone supplies equipment to you which is not sold to you then: that equipment always remains our property; you warrant that, to the extent possible under the terms of your occupation of the premises where the equipment is installed, you will allow us to and, where applicable, will ensure that the landlord allows us to, remove the equipment upon expiry or termination of the agreement; you will not part with possession of the equipment except to us.

9.2 Melbourne Phone may at any time, and from time to time, change the equipment referred to in clause 9.1 as Melbourne Phone see fit.

9.3 You will allow us access to the equipment during your normal business hours (or at such other time as Melbourne Phone arrange with you), and this right of access will not end until all equipment is returned to us, even if the agreement has terminated in the meanwhile.

9.4 You will ensure that our equipment, and any other equipment except by servicemen approved by us.

9.5 Electricity:  
You will make available an adequate power supply for the operation of any equipment used in the provision of services.

9.6 Return:  
On the termination of this agreement for any reason, you will immediately return all our equipment, or make it available for collection.

### 10. TERMINATION

10.1 Either of us may terminate the agreement by giving 30 days written notice. In the event you terminate the agreement and your services are subject to a minimum service term, a cancellation fee of \$299 per line inc GST will be applied to your final invoice. This may be applicable for some of the products listed in this website. However for the \$39 Fixed Line Rental product, this will not be applicable.

10.2 Immediate Termination:

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Melbourne Phone may terminate this agreement immediately by notice if: you have breached this agreement, or a liquidator or receiver or receiver and manager or any other administrator of your business or assets is appointed or, you enter into any composition with your creditors.

10.3 If Melbourne Phone provide a service for a particular term and Melbourne Phone allow you a discount on payment over that term and you cancel this agreement before that term ends, then you will be liable to pay the full undiscounted amount for the period which has elapsed and Melbourne Phone will bill you for the amount of the discount allowed to you during the elapsed period on your next bill.

10.4 You remain liable for all charges payable under the agreement in respect of services up to the time of termination and you must pay all outstanding amounts immediately on receipt of our invoice.

10.5 Termination does not preclude any liability you have for payment for any services we provide up to the time when all of your services have been transferred.

### 11. SERVICE SUSPENSION

11.1 The services may be suspended immediately (including without notice) where:

The services of other carriers on which Melbourne Phone depends require maintenance.

There is a failure by you to pay any charges due to Melbourne Phone.

An event specified in clauses 10.1 to 10.4 occurs.

A suspension fee of (\$34.65 inc GST), if applicable will be applied to your account in the event your service is suspended for non payment.

### 12. LIMITATION OF LIABILITY

12.1 Performance:

Because the performance of some services may be affected by your levels of use, the levels of use of other users and of other facilities related to providing the service, Melbourne Phone do not warrant that services will be free of congestion, delays or faults of this kind and Melbourne Phone will not be responsible for any loss or damage to your business which may result.

12.2 Except as provided in clause 12.1, and subject to clause 12.3, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied, statutory or otherwise, relating to the provision by us of the services are excluded, and Melbourne Phone will not be under any other liability in respect of any loss or damage (including consequential loss or damage) however caused (whether by negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly in respect of the services.

12.3 Our liability for any breach of any term, condition, warranty or under any remedy implied by law (which cannot be excluded), will be limited at our option to the repair or re-supply of equipment or services or the payment of the cost of having the equipment of services re-supplied.

12.4 Melbourne Phone has no liability to you or to any other person for:

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acts or defaults of other suppliers, nor

faults or defects in services which are caused to any material extent by your own conduct or misuse, nor

faults or defects that arise in telecommunication services not provided under this agreement (even if they are connected with our consent to services which Melbourne Phone have arranged under this agreement) which are due to incompatibility with the services.

Faults or defects of equipment supplied by a linked third party in conjunction with the services Melbourne Phone will use its best efforts to address and remedy complaints regarding churned accounts but makes no guarantee whatsoever as to the time it takes to provide that remedy.

### 13. FAULT REPORTING AND COMPLAINTS

13.1 Melbourne Phone will attend to faults and complaints with your service during Australian business hours (EST). Customer service contact numbers can be found on your bill. Melbourne Phone will handle all complaints in accordance with its complaints procedure, a copy of which will be supplied upon request.

13.2 Melbourne Phone

- Is not responsible for any fault which is within a network supplier
- Will notify that supplier of the fault and request that the fault be corrected promptly
- Will report back to you as to status of the fault
- But Melbourne Phone will bear no further liability or responsibility

### 14. CONFIDENTIALITY

14.1 Melbourne Phone retains all intellectual property rights in any information relating to the services, the design or operation of our network and other technical information relating to the provision of the services (Confidential Information)

14.2 You will keep the confidential information confidential and will not allow any written or electronically recorded material to be copied.

14.3 On the termination of this agreement for any reason, you will return all confidential information to us. If you have destroyed these, or any of them, then you will give us a written declaration accordingly.

14.4 You will keep confidential the manner in which Melbourne Phone arrange services under this agreement, including our charges and discounts, and other financial information. You will not use information which you acquire from us for any purpose unauthorized in writing by us or in any manner which may.

### 15. FORCE MAJEURE

15.1 Melbourne Phone is not liable for:

any delay in installing any service

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any delay in correcting any fault in any service, failure or incorrect operation of any service, or any other default in performance under this agreement, if it is caused by any event reasonably beyond our control, including but not limited to war, plague, accident, act of God, industrial action, embargo, terrorist act, military coup, delay, failure or default by any other supplier.

### 16. ASSIGNMENT

16.1 you will not assign charge or otherwise deal with your rights under this agreement except with our prior written consent.

### 17. GENERAL

17.1 Melbourne Phone may give and receive from other suppliers' information about your account, including particulars of calls and call charges.

17.2 This agreement is governed by the laws of Victoria.

17.3 This agreement contains the whole understanding between us to the exclusion of any prior or collateral agreement or understanding of any kind relating to the services.

17.4 You acknowledge that you enter into this agreement entirely because of your own enquiries and that you do not rely on any statement, representation or promise by us or on our behalf not expressly set out in this agreement.

17.5 You accordingly release us and each of our officers, agents and advisors from all claims, suites and demands of every kind (including negligence) arising from the relationship of the parties concerning this agreement before it was signed, and from the negotiations leading to it.

17.6 The failure by either party to exercise any right nor remedy under this agreement in a timely manner does not constitute acceptance of the matter which gave rise to the right or remedy, nor that parties waiver if such right or remedy.

17.7 To the extent applicable, the customer service guarantee applies to the provision of services under this agreement.

17.8 You acknowledge that our supplier may claim payment for network services if you the end user have not paid Melbourne Phone for the services and hence leaving Melbourne Phone unable to pay its supplier.

17.9 If a provision of this Standard Agreement is void, inapplicable or unenforceable or the invalid part severed, the remainder of this agreement will not be affected.

### 18. VARIATION

18.1 Subject to section 480 of the Telecommunications Act, Melbourne Phone may vary any part of this agreement at any time.

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### 19. PRIVACY ACT

19.1 By signing the customer application form or verbally recording your authorization you also agree that Melbourne Phone may collect, use and disclose personal information about you, in accordance with the Privacy Act. You can access Melbourne Phone's Privacy Policy by visiting [www.mphone.com.au](http://www.mphone.com.au)