

# **ALCHEMY MARKETING TERMS AND CONDITIONS OF SALE**

## **A. STANDARD TERMS**

### **1. DEFINITIONS**

a) These terms shall together with any 'specific' terms in B. and C. below and any other terms contained in any accepted order or contract comprise the whole of the terms ('the Terms') of the agreement ('the Agreement') between the person(s) specified in the order ('the Customer') and Alchemy Marketing LTD address at Fajara Booster Station the Gambia. Company registration NO. 1514032371 ('the supplier').

b) 'Data' means information, graphics, sound and any other form of information supplied as an integral part of any service or services.

c) 'Order' or 'Control' means a signed and dated order received from the customer or if applicable a signed and dated written contract entered into by the customer accepting and resulting in the supply or provision by the supplier of any service, services or product as per the terms stated herein.

For the purposes of this agreement, online sign-up for a service, services or product shall also constitute an order.

d) 'Product' means any additional product (if any) specified or referred to in the order or contract and provided as part of or to complement the service or services.

e) 'Service' or 'Services' means any services provided by the supplier and/or used by the customer under the terms.

f) 'Innovative SMS solutions' means Alchemy's text messaging system.

### **2. SERVICE**

a) The provision of a service, services, and/or product following an order, request or contract shall constitute acceptance of that order, request or contract.

b) Any service or services or product must be paid for in full before being supplied, or by any agreed stages or dates to ensure continued provision.

c) Unless stipulated in a specific written quotation or otherwise agreed in writing by the supplier in an authorised order form signed by one of its agents or employees the price payable for the provision of any service, services, and/or a product relevant to any order or contract will be the quoted list price of the supplier at the time of the acceptance of any such order or the date of any such contract with the customer (in each case exclusive of VAT).

d) The supplier reserves the right to suspend any or all services until any payment due has been made in full. Non-payment of an overdue account may result in the suspension of all services indefinitely and loss of related credit facilities.

e) All services and any product supplied by the supplier shall remain the property of the supplier.

### **3. USE OF SERVICE**

a) Under no circumstances will the storage and transmission of pornographic materials in any form whatsoever be permitted through or on the supplier's servers

and data transmission cables. The definition of the term pornographic materials is purely at the discretion of the supplier's directors and their decision in such matters shall be full and final.

b) The customer accepts sole liability for any information or material including but not restricted to, graphics, data, photographic material, sound and any other form of information supplied to the supplier which is subjected to copyright or is judged to be unlawful or is judged to violate the laws of the Gambia or international law or regulation.

c) The customer acknowledges that any given service or services and/or product may only be used for lawful purposes and that any information or data including but not restricted to any graphic, image, photograph or text which is in violation of any Gambian law or regulation including but not restricted to material which is obscene, indecent, or adjudged by the supplier to be unlawful in the Gambia and/or abroad, threatening, damaging (including by the transfer of any computer virus), in breach of copyright or trade secret, is prohibited whether or not the customer was aware of the content or material and/or the laws pertaining to the material.

d) The supplier will be entitled to suspend and/or terminate any service or services they deem its or their use by the customer to be illegal and/or an infringement of the rights of any other parties under the Gambian and international laws or regulations whether due to or arising from the transmission of any information or data by the customer or otherwise and including but not restricted to material transmitted which is obscene, indecent, libellous or subject to copyright and whether or not the customer was aware of the content or the laws or regulations pertaining to it both in the Gambia and internationally.

e) The customer acknowledges and accepts sole liability for and the customer agrees to pay for and indemnify the supplier against any loss, costs, damages or other claims arising from or attribute to any such illegal or improper use by the customer of any service or services as mentioned in any of items 3a) to 3d) above.

#### **4. THE SUPPLIER'S RESPONSIBILITY**

The customer acknowledges and accepts that the supplier is not obliged to:

a) Check, scan or otherwise verify content, information and data transmitted.

b) Make judgments concerning the appropriateness of communications for transmission.

c) Guarantee the nature, content, truth, accuracy or reliability of any such material.

d) Warrant or guarantee the security or confidentiality of any such information or data.

e) Offer an opinion or express any view on the nature or content of any such information or data.

#### **5. LIMIT ON LIABILITY**

Any liability on the part of the supplier arising any breach of its obligations under these

terms, including but not restricted to damages caused or allegedly caused by any failure to provide the agreed service or services and/or products, error, omission, interruption of service and or delay of transmission of service, loss of electronically stored information due to theft, fire, destruction, unauthorized access to electronic information stored on the supplier's equipment or third party providers utilized by the supplier or by any other means and to the extent (if at all) recoverable under these terms shall be restricted to the following:

- a) In the case of a subscription-based service, including but not limited to SMS shortcodes and virtual mobile numbers, a maximum of the amount paid or payable by the customer for the service or services in any 12month period under this agreement.
- b) In the case of a credit-based service, including but not limited to SMS message credits, a maximum of the amount paid or payable for those credits which failed to be delivered for reasons within the supplier's control.

## **6. PERSONAL DATA**

- a) The customer agrees that the supplier may hold the customer's names and other relevant information in a computerized database. The customer agrees that such data may be processed and may, in certain circumstances, be supplied to and processed by our suppliers, to enable the provision and maintenance of the service and/or products and relevant equipment.
- b) The customer acknowledges and accepts that the supplier may, from time to time, be required under regulations and/or legislation to co-operate with and/or disclose customer's data to, government or other bodies and/or authorities.

## **7. TERMINATION**

Without prejudice to any rights accrued under this agreement or any of its other rights or remedies, the supplier may terminate this agreement either with or without notice as the supplier sees fit without liability to the supplier if:

- a) The customer fails to pay any amount due under this agreement on the due date for payment (an essential term); or
  - b) The customer commits a material breach of any other material term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 7days after being notified to do so (an essential term); or
  - c) The customer repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that the customer's conduct is inconsistent with the customer having the intention or ability to discharge the customer's obligations under or give effect to the terms of this agreement; or
  - d) Any event occurs, or any proceeding is taken, concerning the customer in any jurisdiction to which the customer is subject as a result of which:  
The Customer suspends, or threatens to suspend, payment of the customer's debts or is unable to pay the customer's debts as they fall due or admits inability to pay the customer's debts or is deemed unable to pay the customer's debts within the meaning of the insolvency Act 1992 as appropriate or being (being a partnership) has any partner to whom any of the foregoing apply.
- ii. The customer is the subject of a winding-up or bankruptcy petition as appropriate.

- iii. One or more of the customer's creditors or encumbrances attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the customer's assets and such attachment or process is not discharged within 14 days; or
- iv. (If the customer is acting within the course and space of the customer's business) the customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of the customer's business; or
- v. (Being an individual), the customer dies, falls ill or otherwise becomes (mentally or physically) incapable, is or becomes incapable of managing their own affairs or is or becomes a patient under any mental health legislation.

## **8. GENERAL**

- a) No terms, conditions, reservations or variations whether stipulated by the customer or arising in the course of dealing shall annul, vary or add to any of these conditions unless expressly agreed to in writing by the supplier.
- b) This agreement and these terms represent the entire agreement and understanding between the customer and the supplier with regard to the supply of the service and/or services or of any product to the customer by the supplier, to the exclusion of all prior agreements, arrangements and understandings.
- c) The customer acknowledges and agrees that:
  - i. Any other term which might be implied or incorporated into the agreement, by statute, at common law or otherwise, is excluded, to the fullest extent permitted by law;
  - ii. The supplier shall not be in breach of this agreement, nor be liable for any failure or delay in performance of any obligations under this agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control;
  - iii. Time shall not be of the essence in respect of any of the supplier's obligations under this agreement;
  - iv. In entering into this agreement the customer has not relied upon any oral or written representation, statement of understanding (whether negligently or innocently made) by any of the supplier's employees, agents, sub-contractors or representatives other than as expressly set out in the agreement;
  - v. The customer will have no remedy in respect of any untrue representation innocently or negligently made by the supplier or any of its employees, agents, sub-contractors or representatives prior to entering into agreement upon which the customer may claim to have relied in entering into the agreement whether such representation was made orally or in writing;
  - vi. The only remedy available to the customer for a breach by the supplier of this agreement shall be for breach of contract under the terms of the agreement or for fraudulent misrepresentation.
- d) The agreement shall be governed by and construed in accordance with the laws of The Gambia and the customer agrees to submit to the exclusive jurisdiction of the courts of The Gambia.
- e) In the event that this agreement is translated into any other language, the English language version shall prevail.

f) If any provision, clause or sub-clause of the agreement or the application of it to any person shall, for any reason, be held or adjudged by any competent authority to be void, voidable, illegal, invalid or otherwise unenforceable, but would be valid and/or enforceable if any part of such provision, clause or sub-clause shall apply with such deletion or modification as may be necessary to make it valid and/or enforceable and such judgment shall not affect the remainder of the agreement which shall continue in full force effect.

g) In the event of any inconsistency between the standard and specific terms then the standard terms shall prevail.

h) References to:

i. The singular includes the plural and vice versa;

ii. One gender includes all other genders and vice versa.

g) A person who is not privy to this agreement has no rights under this agreement to enforce any term of the agreement, but this does not affect any right or remedy of any third party which exists or is available apart from privity of contract.

j) Neither the customer nor the supplier may commence any court proceedings in relation to any dispute arising out of any alleged breach of this agreement until whichever party alleges a breach has occurred has attempted to settle the dispute by arbitration and either the arbitration has terminated or the other party has failed to participate in the arbitration, provided that the rights proceedings are not prejudiced by any delay in this respect or (if the supplier has the right issue) the only alleged breach involves the non-payment of monies properly owing to the supplier but not paid by the customer.

## **9. NOTICES**

a) The customer agrees to keep the contact details which the customer has provided to the supplier up to date. Any notices or other information to be served by the supplier on the customer in accordance with this agreement will be validly served if in writing and sent either by email to the customer's last known address or email address.

b) Any notice sent by email will be deemed served on the day that is sent if evidenced by a valid delivery receipt.

c) Any notice to be served on the supplier must be in writing and sent either by to our registered office or to such other address as may be specified by us to the customer for this purpose from time to time. Any notice sent in accordance with this sub-clause will only be deemed served if and when the customer has received a written acknowledgement from the supplier.

## **10. CUSTOMER SERVICE LEVEL COMMITMENT**

a) The supplier is committed to providing a timely and effective level of service with responses proportional to the severity of the problem reported by the customer.

b) The supplier's telephone helpline will be manned as a minimum during office hours which are currently 9:00am to 5:00pm. Outside these hours, during weekends and public holidays there will often be a response but we do not

guarantee this.

c) Online chat is available most evenings and weekends; messages can be left using this means which will be dealt with by email if no one is available to respond to a chat request.

d) The main support email inbox, help desk [info@alchemymarketinggm.com](mailto:info@alchemymarketinggm.com) regularly monitored at all times.

e) During office hours we aim to respond to all service requests within one hour. Outside these hours we aim to respond within four hours but this can be longer overnight and at weekends.

f) In most cases responses will be much faster than stated above and will result in an immediate resolution of the customer's request. At times however resolution will take longer, due to extended investigation, or unavailability of specialist staff out of working hours. In such cases, a work-around will be sought and the customer kept up to date with progress.

g) If the customer is dissatisfied with our service, he/she should contact our customer services manager informally to seek a remedy. If the customer wishes to make a formal complaint, then our complaints policy should be referred to.

## **B. SPECIFIC TERMS – SMS Text Messaging Services**

### **1. NETWORK OPERATOR CONDITIONS**

**a) REQUIREMENTS** The services are provided by the supplier to the customer subject to the applicable network operator conditions. The customer agrees to comply with such network operator conditions and agrees that a breach of, or non-compliance with the network operator conditions by the customer will be deemed to be a material breach of this agreement.

Explanatory Note: (Wikipedia Definition) "a mobile network operator or MNO is a provider of wireless communications services that owns or controls all the elements necessary to sell and deliver services to an end-user including radio spectrum allocation, wireless network infrastructure, backhaul infrastructure, billing, customer care, provisioning computer systems and marketing and repair organizations".

**b) RESERVATION OF RIGHTS** If a network operator changes the network operator conditions and/or the technical standards for the delivery of services, the supplier may modify the terms and conditions governing such services upon written notice to the customer. Upon receipt of a notice from the supplier, the agreement, order form and/or provisioning form, as applicable, will be deemed amended and the customer will:

(i) comply with such change(s) as of the date stated in the notice; or

(ii) request additional time to comply with such change(s), and will suspend any affected users/usage of the services as of the date in the notice, until such later time as the customer can comply with such change(s); or

(iii) immediately cease using the services as of the date stated in the notice if the customer cannot or will not comply with any such change(s).

### **2) ACCESS AND CONNECTIVITY**

**a) THE SUPPLIER'S NETWORK CONNECTION** The customer is solely responsible, at its own expense, for establishing and maintaining its equipment,

software, facilities, and its connection to the supplier's network.

**b) NO PRIVACY** The customer acknowledges that messages will be transmitted over the supplier network in an unencrypted format, which is a characteristic feature of SMS messaging. To the extent permitted by law, the supplier may intercept and disclose any messages transmitted over the supplier's network to the extent reasonably necessary to protect the supplier's rights or property, including without limitation, to protect the operation of the supplier's network, or to comply with any legal, regulatory, governmental and/or network operator inquiries or requirements.

### **3) CUSTOMER RESPONSIBILITIES**

**a) SUBSCRIBER OPT-IN/OPT-OUT REQUIREMENTS** The customer will send messages only subscribers who have consented or "opted-in" to receiving the quantity, frequency and types of messages to be sent and who been informed of their rights to and the free process for cancelling receipt or "opted-out" of receiving future messages. The customer will stop sending messages to a subscriber who has "opted-out" from receiving such messages as soon as possible but in no case later than twenty-four (24) hours after receipt of the opt-out request (or any shorter time period if necessary to meet or comply with any legal, regulatory, governmental and/or network operator request or requirement). The customer will, within twenty-four (24) hours of receiving a written request from the supplier, provide the supplier with proof of subscriber opt-in requests, opt-out request and/or the customer's response time for discontinuing the provision of messages to the supplier's satisfaction. The customer agrees to keep such records during the term of this agreement and for one (1) year after termination.

**b) PROVISION OF PROJECTS TO SUBSCRIBERS** The supplier shall act as a mere conduit only, and the customer will be solely responsible for its contractual relationship with its own customers.

**c) CUSTOMER CONTENT** The customer agrees that the supplier exercises no control whatsoever over the customer's content and messages and is a mere conduit in transmitting and handling content and messages. The customer shall bear sole responsibility for (i) the content transmitted using the services; (ii) any acts, omissions or breaches with respect to the use of the services and the messages, including but not limited to the content.

**d) INAPPROPRIATE CONTENT** The customer may not use the services or permit the services to be used to transmit inappropriate content. For purposes of this agreement, "Inappropriate content" will mean any content that

(i) it is unsolicited, including without limitation, "junk mail", "bulk mail", spam or other unsolicited advertising material;

(ii) it causes the introduction of "viruses", "worms", "Trojan horses", "mail bombs", "cancelbots" or other similar destructive computer programming routines into the supplier's network or subscribers' handsets;

(iii) it violates any legal, regulatory, governmental or network operator requirements or codes of practice;

(iv) it is obscene, offensive, threatening, defamatory, discriminatory, misleading or inaccurate; or

(v) it infringes the intellectual property of any person or entity.

#### **e) SECURITY MEASURES**

The customer will, at their own expense, take all security measures to

(i) protect the supplier's extranet and the supplier's network from unauthorized access, copying or use; and

(ii) prevent third party access to the customer's password(s) to the supplier's extranet and the supplier's network. Any password issued to the customer is subject to cancellation or suspension by the supplier at any time. The customer will immediately inform the supplier if the customer becomes aware of any possible or actual unauthorized use or misuse of the service or the messages under any project.

**f) COMPLIANCE AUDIT** The customer will promptly provide such information as the supplier may request, (i) to confirm the customer's compliance with its obligations under this agreement, and (ii) in response to any request made by any network operator and/or regulatory or governmental, legal or statutory body.

#### **4. SMS CREDITS**

**a. CREDITS PER MESSAGE** In general terms one message credit is consumed for each 160 character text messages sent to a Gambia mobile network. 160 character text messages sent to other destinations, including but not limited to, non-Gambian networks, will consume 2 message credits, unless stated otherwise.

**b. SPECIAL CHARACTERS** Some special characters, particularly less common punctuation or currency symbols, can take up two of the 160 characters comprising an SMS message. If sending a large number please refer to [info@alchemymarketinggm.com](mailto:info@alchemymarketinggm.com) for further information. The supplier accepts no liability for extra credits consumed if special characters cause a message to exceed 160 characters.

**c. CONCATENATED MESSAGES** Up to three text messages can be linked (concatenated) to provide users with a message of up to 459 characters. Depending on the length of the message, an additional one or two message credits may be consumed for National (Gambia) messages, and an additional four or six for International (non-Gambian) messages.

**d. EXPIRY OF MESSAGE CREDITS** Message credits from Alchemy Marketing Ltd. do not expire. However, if an account has been inactive for twelve months or more, the supplier retains the right to archive the inactive account for housekeeping purposes. If the customer wishes to reactivate an archived account they must put that request in writing to: [info@alchemymarketinggm.com](mailto:info@alchemymarketinggm.com) confirming account details, and the account will be restored together with unspent credits. Although unused message credits remain usable indefinitely refunds are not available for unused credits.

**e. INCORRECTLY FORMATTED NUMBERS AND MESSAGES** It is important that the outbound phone numbers used Alchemy Marketing LTD are currently formatted and full guidance on the required format is provided within the alchemy marketing support center at [info@alchemymarketinggm.com](mailto:info@alchemymarketinggm.com). If messages reach the wrong destination because of incorrect formatting of any kind, message credits will still be consumed and no refunds on such credits will be given. It is the customer's responsibility in all instances to ensure phone numbers and message content are correctly formatted.

**f. MESSAGE STATUSES** A range of message statuses are reported by Alchemy



Marketing LTD to indicate whether a message has been successfully delivered; these status codes can be viewed within the Alchemy marketing LTD support center at [info@alchemymarketinggm.com](mailto:info@alchemymarketinggm.com). If a message is successfully delivered to the receiving mobile network the message will consume message credits. In some circumstances the mobile network will fail to deliver to the handset – phone out service, inbox full, etc. but the message credit will still be charged if the failure is between the mobile network and the handset.

interface, non- infringement, reliability timelines, or security and any warranties arising from course of performance, course of dealing or usage or trade. The customer acknowledges that (i) the services have not been specifically designed to meet the customer's, any of the customer's customers and/or any subscriber's individual requirements; and (i) the services will not be error-free, uninterrupted, free from unauthorized access (including third party hackers or denial of service attacks), or that all messages will be delivered. Except as stated in this agreement, the services are provided on an 'as is' and as available' basis.

## **C. SPECIFIC TERMS –SMS Inbound Numbers**

### **1. TYPES OF INBOUND NUMBER**

a) The Gambia virtual mobile number is a 7 digit Gambia mobile number that can receive text messages but not voice messages. It acts like a mobile phone as far as the sender of the message is concerned but forwards the text messages it receives to the inbox of the customer's alchemy marketing account and, optionally, from there to an email address, and/or to another web address and/or to a mobile phone.

b) An SMS short code a 4, 5, 6digit mobile phone number (e.g. 87007) which operates

### **5) WARRANTIES AND DISCLAIMER**

#### **a) LEGAL AND REGULATORY COMPLIANCE**

The customer warrants and undertakes that it will

(i) use the services for lawful purposes and comply with all laws and regulations and/or network operator conditions relating to the content, messages or services; and

(ii) continue to obtain all necessary permits, consents, authorizations or certifications for the use of the content (including without limitation those from owners of database, copyrights or performing rights organizations) and that the content does not infringe the intellectual property or other rights of any person;

(iii) provide promptly any information relating to the content, messages or services reasonably requested by any network operator and/or legal, governmental, regulatory or statutory authority; and

(iv) immediately comply with such directions as may be issued from time to time by a network by a network operator and/or legal, regulatory, governmental and/or statutory authority in relation to the content, messages or services and will fully cooperate with the supplier's request for assistance in conforming the services to any new requirements or determinations. The customer will immediately inform the supplier if any third party makes or threatens any claim or action against the customer, or the supplier, or any other party relating to any content, message or services.

#### **b) DISCLAIMER**

Except as expressly provided in these terms, the supplier makes no warranties or

representations in connection with the supplier's network or the supply of services as contemplated in this agreement and disclaims all other warranties, representations, and terms whether written or oral, contractual or statutory, express or implied or otherwise including, with limitation, merchantability, fitness for a particular purpose or use, title, in a similar fashion to a VRN. It is possible for a customer to acquire an SMS short code dedicated to its sole use but this is unusual due to the high cost involved. More common is for customers to rent one or more keywords on a shared SMS short code.

c) It is possible to source short codes outside of the Gambia on request but can be time consuming and expensive.

## **2. FEATURES OF INBOUND NUMBERS**

a) Inbound numbers enable customers to receive inbound SMS text messages to their alchemy marketing inbox.

b) Inbound text messages can also be forwarded to a mobile phone or VMN but will consume message credits in the same way as any other outbound message.

c) Inbound text messages can be forwarded to multiple email addresses and/or URLs. The supplier cannot guarantee any timescale within which the forwarded messages will reach their target as they will pass through systems over which we have no control.

d) The customer can set up an unlimited number of keywords on VMN at no additional cost. These keywords can be used to trigger a variety of actions or responses to the inbound message.

e) The customer can rent one or more keywords on a shared short code. As with VMNs each keyword can trigger actions or responses to inbound messages.

## **3. EXPIRY OF CONTRACT AND LOSS OF ALCHEMY MARKETING SERVICE**

a) An alchemy marketing VMN is rented on an annual basis with a minimum contract term of 1 year.

b) A keyword on shared short code is rented on a monthly basis with a minimum contract term of 1 month.

c) Please note that VMNs and short codes are subscription-based services that need to be renewed and paid for by the customer 14 days prior to the expiry date of the customer's contract ('expiry date').

d) The supplier will use its best endeavours to remind the customer of the expiry date of the customer's contract. However ultimately responsibility rests with the customer to diarize and not miss the expiry date.

e) If the VMN or short code keyword is not renewed in time this will result in its permanent removal from the customer's Alchemy Account. All the customer's inbound text message and related data will then be lost. The supplier can accept **no** responsibility for the loss of any such messages or any related data. Neither will the supplier be responsible for any other costs incurred due to the loss of the VMN or keyword, including, but not limited to, costs of re-printing brochures, letterheads or publicity displaying the expired number or keyword.

f) In addition, even if the customer re-subscribes after the expiry date there is

no guarantee that the same VMN or keyword will be available. The network could take the number back or the supplier may have re-allocated the number of keywords to another client.

g) It is the customer's sole responsibility to update the supplier of any changes in the customer's contact details.

h) In view of their importance, the customer's responsibilities to notify the supplier on a timely basis of the above are essential terms of the customer's contract with us.

#### **4. WITHDRAWAL OF SERVICE**

a) The supplier reserves the right to replace a customer's VMN if, for example, the network operator demands the return of a number or if the quality of the VMN service is not, in the opinion of the supplier, at a satisfactory level. A replacement VMN will always be provided in such cases.

b) The supplier can accept no responsibility for any costs, inconvenience, loss or damage of any kind which the customer may experience as a result of the changing of a VMN.

c) If the customer's VMN or short code keyword is not renewed in time (as above), the supplier will remove the VMN from the customer's account within 24 hours of the expiry date.

#### **5. COSTS**

a) A subscription for Gambia inbound numbers and shared short code keywords are listed prominently on the Alchemy website [www.alchemymarketinggm.com](http://www.alchemymarketinggm.com).

b) Subscription costs are subject to change however they will only change when the customer next renews the customer's subscription. The customer will be alerted of any price changes no less than 1 month prior to the customer's next renewal date.

c) The cost of sending a text to the customer's virtual mobile number for the sender will be the sender's standard rate.

d) The cost of transferring on inbound messages to a mobile phone will be charged at our current rates as specified on our website.