

SMS Messaging Terms and Conditions

Effective April 1, 2005

1. Definitions

In this agreement;

Account means the client's (Your) subscription for the Service including your personal information and Password.

Application Program Interface ('API') means the facility enabling users to open sessions with Our Servers and parse messages through our Service without using the Distribute.IT website.

Messages means a text message sent to a mobile phone using this service.

Password means the combination of Your account details and a password that will be provided by Us to You after you have accepted these Terms and Conditions.

Terms of Service means the terms and conditions contained on this page as amended on the Site from time to time including the copyright and disclaimer provisions.

Service means the services outlined in clause 3.

Website means the website identified by the domain name www.DistributeSMS.com.au.

We, Us or Our means Distribute.IT Pty Ltd (A.C.N 101 292 237)

You or Your means the subscriber to the Service immediately upon completing the registration process and subscribing to the service.

2. Disclaimers, Indemnities and Limitation of Liability

- 2.1 The use of the Service is at your sole risk. The Service is provided on an "as is" and "as available" basis. We do not warrant that the Service will meet Your requirements, that the Service will be uninterrupted, timely, secure, or error free; nor do We warrant the results that may be obtained from the use of the Service.
- 2.2 We will charge you for using the Service at the published rate per message per intended recipient, irrespective of whether the message is successfully delivered to, or received by, the intended recipient. Messages sent to a group will be treated as individual messages sent to each of the group's members and charged accordingly.
- 2.3 You understand and agree that any material and/or data downloaded or otherwise obtained through the use of or from the Service is done at your own discretion and risk. We do not warrant that the information contained on, or delivered by the Site, including your personal details and Messages ('Information') is correct and current and take no responsibility for any error, omission or defect therein.
- 2.4 We will endeavour to use due care and skill in the storage and transmission of Information and will do so in accordance with our privacy and security procedures, however due to the nature of the media and modes of communication used by the Service, and factors out of our reasonable control, We can not guarantee that the Information will not be received or handled other than intended. Accordingly, You understand that We can not be held responsible for the security of the data transmissions between You, the Site or Us, and the intended recipient, including but not limited to the transmission of the payment information such as credit card numbers. You agree that We shall in no event be liable to You or anyone else for any inaccuracy, error or omission in, or loss, injury or damage caused in whole or in part by failures, delays or interruptions of the service generally.
- 2.5 To the extent permitted by law, We and our employees, agents and consultants exclude all liability for any loss or damage (including indirect, special or consequential loss or damage) arising from the use of, or reliance on, the Information whether or not caused by any negligent act or omission. If any law prohibits the exclusion of such liability, Our liability under these Terms of Service or otherwise in connection to provision of the Services is limited to the extent permitted by law.
- 2.6 You agree that We are not liable for any direct, indirect, incidental, special or consequential damages whatsoever.

- 2.7 You agree to indemnify Us and hold Us and our officers and employees harmless from any claim or demand made by any third party due to or arising out of Your use of the Service, your violation of the Terms of Service or your violation of any rights of another.
- 2.8 Any claim or cause of action arising out of or related to use of the Service or these Terms of Service must be filed within 6 months after such claim or cause of action arose or be forever barred.

3. The Service

- 3.1 The Service offered by Distribute.IT to You under these Terms of Service are provided from the Distribute.IT website(s) and/or via Our Application Program Interface (API).
- 3.2 The Service will, amongst other things, enable you to send messages from the Internet to mobile phones.
- 3.3 We reserve the right to modify or suspend the Service with or without notice to you. You agree that Distribute.IT will not be liable to you or any third party for any modification, suspension or discontinuance of the Service.
- 3.4 Distribute.IT lays no claim to its network coverage. Although Distribute.IT and its supply partners focus on providing extensive coverage, mobile networks may choose from time to time to not be a part of Distribute.IT, its supply partners, or their service providers' networks. This may result in messages not being delivered.

4. Use of the Service

- 4.1 In order to use the Distribute.IT SMS service, you must:
 - (a) Complete the registration process and acknowledge that you have read and accept these Terms and Conditions, as updated on the Website from time to time;
 - (b) Correctly and accurately provide Your contact details on our Application Form; and
 - (c) Abide by these Terms and Conditions and all applicable laws.
- 4.2 You, the client, are responsible for the content of the Messages that you send and receive using the service. You must not transmit any Message which includes any unlawful, harassing, libelous, abusive, threatening, harmful, obscene, spam (as governed by Australia's Spam Legislation), or otherwise objectionable material of any kind, or any material that violates the rights of a third party, including but not limited to the intellectual property rights of that party. You agree that Distribute.IT or any of its subsidiaries will not be liable or responsible for the content and nature of the Messages.
- 4.3 By way of example, and not as a limitation, the User agrees not to:
 - (a) Use the Service in connection with chain letters, junk Speedmail, junk SMS messages, spamming or any unsolicited messages (commercial or otherwise);
 - (a) Harvest or otherwise collect information about others, including email addresses, without their consent;
 - (b) Create a false identity or forged Speedmail or mobile phone address or header, or otherwise attempt to mislead others as to the identity of the sender or the origin of the message;
 - (c) Transmit through the Service, associate with the Service or publishing with the Service unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature;
 - (d) Transmit any material that may infringe the intellectual property rights or other rights of third parties, including trademark, copyright or right of publicity;
 - (e) Libel, defame or slander any person, or infringe upon any person's privacy rights;
 - (f) Transmit any material that contains viruses, Trojan horses, worms, time bombs, cancelbots, or any other harmful or deleterious programs;
 - (g) Interfere with or disrupt networks connected to the Service or violate the regulations, policies or procedures of such networks;

- (h) Attempt to gain unauthorised access to the Service, other accounts, computer systems or networks connected to the Service, through password mining or any other means;
- (i) Interfere with another User's use and enjoyment of the Service or another entity's use and enjoyment of similar services; or
- (j) Engage in any other activity that Distribute.IT believes could subject it to criminal liability or civil penalty or judgment.

5. Privacy

- 5.1 You must keep Your Password and Account details confidential, and You are entirely responsible for any use of the Services or any other acts that occur under or in relation to Your Password or Account as a result of Your failure to keep Your Password and Account details secret. You agree to immediately notify us of any disclosure or unauthorised use of your Password or Account or any other breach of security.
- 5.2 We collect information, including the personal information provided by You to Us for purposes including:
- (a) To register You for the Service and provide you with the Service;
 - (b) To gather general demographic information of subscribers to the Service and the use of the Service; and
 - (d) To provide a more customised service as part of the Service.
- 5.3 We will not disclose your personal information to anyone except in accordance with these Terms and Conditions, as authorised by you or as required by law. We may, however, disclose to third parties aggregate data, provided that no individual is identifiable in such data.

6. Changes to the Terms and Conditions

- 6.1 We reserve the right to change these Terms and Conditions, and Service Prices at any time and will notify you of the changes by posting the new Terms and Conditions and/or Pricing Schedule on the Site.
- 6.2 You agree that you will be responsible for regularly reviewing these Terms and Conditions. You will be bound by the Terms and Conditions as they appear on the Website, including any amendments.

7. Fees and Payments

- 7.1 In consideration for the use of Distribute.IT services, You shall pay to Distribute.IT a transaction or subscription fee (as appropriate) for messages delivered or partially delivered using any available delivery method, at the applicable rate then in effect.
- 7.2 All fees are payable upfront unless prior arrangements are made.

8. Termination

- 8.1 You may terminate your Account at any time by notifying us in writing by email, facsimile or postal mail. Termination will be effective once you confirm the termination of your account by notice to us.
- 8.2 Upon termination of your account by you, any unused SMS credits will be void and non-refundable. Where You have a credit account with Us, all unpaid invoices must be paid immediately upon termination of your account.
- 8.3 We may terminate your Account immediately if it is our opinion that you have violated these Terms and Conditions.
- 8.4 Distribute.IT reserves the right to terminate any unused messages in Your Account where You have not used Your Account for a period of not less than six (6) months. We will provide

written notice of our intentions to delete unused messages, providing a minimum three (3) months prior warning.

9. Acceptance of Terms of Service

9.1 You agree that these Terms and Conditions contain the full and entire agreement covering Your use of the Distribute.IT service, and are agreeing to be bound by these Terms and Conditions.