

Associated Telecom Solutions Trading As Action Tec Services Limited Terms and Conditions (Mobile). v1.0

1 INTRODUCTION AND DEFINITIONS

- 1.1 The Customer (as defined in clause 1.2 below) understands that in order to receive the Equipment/Services (as defined in clause 1.2 below) and the Airtime services (as defined in clause 1.2 below) it is required to enter into two separate agreements. These are:
- 1.1.1 This agreement with Action Tec Services Limited governs the supply of the equipment and/or services from Action Tec Services Limited to the customer and the Airtime Agreement (as defined in clause 1.2 below) with the relevant Network/Service Provider.
- 1.2 In this agreement, the following words and expressions shall have the meanings set out below:
- “Airtime agreement” means the agreement which governs the provision of airtime services from the relevant network/service provider, a copy of which will be provided with the agreement; “Airtime services” means cellular mobile telecommunications airtime and network capacity procured from a network/service provider; “Connection” means the connection of an end user to a network or service provider such that the end user is capable of accessing and utilising the airtime services; “Customer” means the person or business entity ordering the equipment/services and/or the airtime services whose details are set out on the form overleaf; “Downward Migration” means in respect of a connection, the transfer (at the request of the customer) from one tariff provided by the network/service provider to another tariff provided by that same network/service provider (“the new tariff”) which results in the customer being charged a lower monthly line rental under the new tariff than it was being charged under the original tariff and the phrase downward migrated shall be construed accordingly; “Equipment” means mobile telecommunications handsets and other associated goods; “Minimum terms” means the minimum period of time which the customer has agreed to maintain (a) connection(s) under the airtime agreement; “Monthly subsidiary amount” means the amount which is derived by dividing the subsidy payable for a connection by the number of months in the minimum term applicable to that connection; “Services” means any services ordered by the customer and provided by Action Tec Services Limited; and “Subsidy” means the sum payable by Action Tec Services Limited to the customer as is determined by Action Tec Services Limited in its sole discretion, taking into consideration the number of connections which the customer is taking out, the applicable tariff and the minimum term which the customer is prepared to enter into.
- ## 2 APPLICABLE TERMS
- Unless other terms and conditions are expressly accepted Action Tec Services Limited by means of a specific written amendment signed by a Director of Action Tec Services Limited the supply of equipment and/or the provision of services will be on the terms and conditions set out in this agreement to the exclusion of any other terms and conditions whether or not the same are endorsed upon, delivered with or referred to in any purchase order or other document delivered or sent to the customer by Action Tec Services Limited.
- ## 3 SUPPLY OF CUSTOMER EQUIPMENT
- 3.1 In consideration of the customer entering into the airtime agreement, Action Tec Services Limited undertakes to supply to the customer such equipment/services as is ordered by the customer from time to time.
- 3.2 Action Tec Services Limited shall use its reasonable endeavours to deliver the equipment on the date that is agreed by all the parties but the customer acknowledges that time shall not be of the essence.
- 3.3 Notwithstanding delivery and acceptance of the equipment to the customer. Title to the same will not pass to the customer but will be retained by Action Tec Services Limited until the earlier of either (1) the expiry of the minimum term or (2) the date on which all the undisputed invoices relating to the same (including VAT) have been paid in full to Action Tec Services Limited.
- 3.4 The risk in the equipment will pass to the customer upon delivery and the customer will be liable for any loss or damage of the same as and from the time when the equipment is delivered to the address notified by the customer.
- 3.5 The customer undertakes to notify Action Tec Services Limited as to any alleged defect, shortage or discrepancy in any equipment within 3 days of delivery of the equipment to the customer. In the event that the customer fails to notify Action Tec Services Limited within this period then the customer will be deemed to have accepted the equipment and Action Tec Services Limited shall have no liability to the customer whatsoever in respect of such equipment.
- 3.6 Should the customer for whatever reason cancel their agreement during the first 12 months of the contract they must return all handsets and accessories supplied to them by Action Tec Services Limited in the same condition that they arrived. If the items are not returned or are returned in a non-saleable condition then the charge of the full cost of the item plus a £10 admin fee per item will be invoiced to the customer.
- ## 4 PROVISION OF THE SERVICES
- 4.1 Action Tec Services Limited shall use its reasonable endeavours to provide the services on the dates agreed by the parties.
- 4.2 Action Tec Services Limited shall use its reasonable endeavours to ensure that the services are provided with reasonable skill and care.
- ## 5 CHARGES AND PAYMENT
- 5.1 The customer hereby agrees to pay Action Tec Services Limited for each item of equipment and any services ordered by and provided to the customer within 14 days from the date of a Action Tec Services Limited invoice.
- 5.2 Action Tec Services Limited reserves the right at its absolute discretion to levy a surcharge for all credit card transactions in accordance with Action Tec Services Limited’s tariff applicable form time to time. A copy of which will be available upon request.
- 5.3 Interest at an annual rate of 5% above Barclays Bank Plc base rate from time to time will occur daily and will be calculated on

- a daily basis on overdue accounts from the due date until payment.
- ## 6 PAYMENT AND RECLAMATION OF SUBSIDIES
- 6.1 Subject to the remaining provisions of this clause 6, Action Tec Services Limited may, acting in its sole discretion, provide the customer with a subsidy as a result of the customer entering into the airtime agreement with a network/service provider.
- 6.2 In the event that Action Tec Services Limited does provide the customer with a subsidy this may be provided at the sole discretion of Action Tec Services Limited, using the following methods set out below or any combination of them;
- 6.2.1 Deducting this from the value of the equipment or services which the customer orders from Action Tec Services, or
- 6.2.2 The payment of monies (representing the amount of the subsidy) to the customer and such monies shall be paid to the customer, in full after the expiry of 3 months from the connection date where the applicable minimum term is 24 months.
- 6.2.3 Using such amount to discharge any termination charges levied upon the customer by the relevant network/service provider for terminating their previous airtime agreement subject to Action Tec Services Limited being provided with a copy of the relevant invoice from such network/service provider.
- 6.3 Any subsidy (or instalment payment of a subsidy) is payable by Action Tec Services Limited within 30 days from the date the customer presents an invoice to Action Tec Services Limited (save that no invoice shall be necessary where the subsidy is being deducted from the price of the equipment/services ordered by the customer pursuant to clause 6.2.1) provided that;
- 6.3.1 At all times the connection is still active on the relevant payment date that the subsidy (or instalment payment of the subsidy) is due;
- 6.3.2 Where the invoice is payable in instalments or after a prescribed period of time the appropriate trigger date has passed.
- 6.3.3 The invoice has been raised in accordance with the provisions of this agreement, and
- 6.3.4 Where the;
- (a) Invoice is for termination charges pursuant to clause 6.2.3, this amount is invoiced within three months of the connection date; and or
- (b) Invoice is for the payment of monies pursuant to clause 6.2.2. This amount is for the payment of monies pursuant to clause 6.2.2 This amount is invoiced within the minimum term; and or Amount claimed is being deducted from the price of equipment/services ordered by the customer pursuant to clause 6.2.1, this amount is claimed during the minimum term; and in the event that the customer fails to invoice/claim the subsidy within the timescale set out in clause 6.3.4 (a) to (c) (inclusive) then the customer’s right to the subsidy shall cease
- 6.4 The customer acknowledges that;
- 6.4.1 The payment of the subsidy is conditional upon;
- (a) The customer maintaining each connection for the minimum term, and
- (b) The customer not downward migrating any connection during the minimum term, and
- (c) Such other conditions as are notified from time to time by Action Tec Services Limited.
- 6.4.2 Action Tec Services Limited will provide the subsidy prior to the satisfaction of the conditions set out in clause 6.4.1 and hence the need for clause 6.5
- 6.5 Action Tec Services Limited shall be entitled to reclaim from the customer the subsidy (or such proportion of the subsidy) already paid to the customer (or withhold such amount from any subsidy or instalment of a subsidy to be paid to the customer) in the event that;
- 6.5.1 A connection is for whatever reason disconnected prior to the expiry of the minimum term; or
- 6.5.2 A connection is for whatever reason upgraded/resigned without the relevant written permission from a Director of Action Tec Services Limited prior to the expiry of the minimum term; or
- 6.5.3 A connection or care of a connection is transferred to another network/service provider/dealership/broker prior to the expiry of the minimum term, or
- 6.5.4 A connection is for whatever reason downward migrated during the minimum term; or
- 6.5.5 The relevant network/service provider (for whatever reason) reclaims or withholds in any part from Action Tec Services Limited any of the connection commission paid to Action Tec Services Limited by the network/service provider in respect of that connection; and the proportion of the subsidy that Action Tec Services Limited shall be entitled to reclaim from the customer shall be the monthly subsidy amount for each month (and such pro rata amount for each incomplete month) of the balance of the minimum term which is unexpired at the date of disconnection, downward migration, upgrade/resign or transfer
- 6.6 Any such sum reclaimed (or withheld) pursuant to clause 6.5 shall be invoiced to the customer and such sum shall be payable (unless withheld) within 14 days of the date of the Action Tec Services Limited invoice.
- 6.7 In the event that a customer cancels prior to the connection, disconnects a connection prior to the expiry of the minimum term, upgrades/resigns a connection for whatever reason without the relevant written permission from a Director of Action Tec Services Limited prior to the expiry of the minimum term, transfers a connection or care of a connection to another network/service provider/dealership/broker prior to the expiry of the minimum term, or a connection is downward migrated during the minimum term then Action Tec Services Limited shall be entitled to charge the customer an administration charge of £250 for each connection. The customer agrees that this amount is a pre estimate of the loss incurred by Action Tec Services Limited and not an attempt by Action Tec Services Limited to penalise the customer for ending their agreement with Action Tec Services Limited
- ## 7 WARRANTIES
- 7.1 The customer acknowledges that Action Tec Services Limited is not the manufacturer of the equipment, and accordingly, that the warranty given by Action Tec Services Limited is limited as follows. If any equipment is proven to the reasonable satisfaction of Action Tec Services Limited to be defective in material or workmanship then;

- 7.1.1 If the equipment is returned to Action Tec Services Limited within 14 days of the date of their delivery then Action Tec Services Limited will at its option (a) repair the equipment, (b) replace the equipment, (c) substitute substantially equivalent goods, or (d) credit the customer in respect of any such equipment for the avoidance of doubt, where Action Tec Services Limited replaces equipment or provides substitute goods, the original equipment returned by the customer will belong to Action Tec Services Limited provided that these obligations on the part of Action Tec Services Limited will not apply where;
- (a) The equipment has been altered in any way whatsoever or has been subjected to misuse, damage or unauthorised repair; or
- (b) The customer has failed to observe any maintenance requirements relating to the equipment; or
- (c) The equipment has been improperly installed or connected (unless Action Tec Services Limited carried out such installation and connection); or
- (d) The equipment has been expressly sold on a “No Warranty” basis or in respect of any promotional items supplied from time to time with or in connection with the equipment.
- 7.2 Save as provided in this agreement Action Tec Services Limited hereby excludes all conditions, warranties and stipulations express or implied, statutory, customary or otherwise which but for such exclusion would or may subsist in the favour of the customer.
- ## 8 LIMITATION OF LIABILITY
- 8.1 Action Tec Services Limited liability for loss of damage of any kind whatsoever (however such liability arises and whether in contract, tort, for the breach of statutory duty or otherwise) under or in connection with;
- (a) This agreement and/or
- (b) Any matter collateral to this agreement and/or in respect of any representation or misrepresentation (other than a fraudulent misrepresentation made by or on behalf of Action Tec Services Limited); shall in no circumstances exceed the sum paid by the customer to Action Tec Services Limited in respect of the equipment of services with which such liability arises provided that nothing in this clause shall limit or exclude liability for death or personal injury arising from Action Tec Services Limited negligence.
- 8.2 Save as otherwise provided, Action Tec Services Limited will be under no liability under this agreement for any personal injury, death, loss or damage of any kind whatsoever (other than death or personal injury resulting from Action Tec Services Limited negligence) whether consequential or otherwise including but not limited to loss or profits, pure economic loss, loss of business, and depletion or goodwill.
- 8.3 Save for death or personal injury resulting from Action Tec Services Limited negligence, Action Tec Services Limited shall not be liable for any loss as a result of electromagnetic frequencies or any similar result from use of the equipment.
- ## 9 GENERAL
- 9.1 Action Tec Services Limited will be entitled to assign, subcontract or sub let this agreement or any part thereof. The customer shall not be permitted to assign or sublet this agreement or any part thereof without the written consent of Action Tec Services Limited.
- 9.2 Failure by Action Tec Services Limited to enforce any of the provisions of this agreement will not be construed as a waiver of any of its rights hereunder.
- 9.3 Action Tec Services Limited shall be entitled to amend any of the terms of this agreement upon the giving of 7 days written notice to the customer.
- 9.4 In relation to all obligations of the customer under this agreement, the time of performance is of the essence.
- 9.5 The illegality, invalidity or unenforceability of any clause or part of the agreement will not affect the legality, validity or enforceability of the remainder. If any such clause is found by any competent court or authority to be illegal, invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.
- 9.6 Each of the parties hereto is an independent contractor and nothing contained in this agreement shall be construed to imply that there is any relationship between the parties of partnership or of principle/agent or of employer/employee.
- 9.7 The legal construction of these clauses shall not be affected by their headings which are for convenience or reference only.
- 9.8 Any demand, notice or communication shall be deemed to of been duly served;
- 9.8.1 If delivered by hand, when left at the proper address for service.
- 9.8.2 If given or made by prepaid first class post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays).
- 9.8.3 If given or made by fax at the time of transmission subject to the receipt of the appropriate “clear” transmission report provided that where in the case of delivery by hand or transmission by fax such delivery of transmission occurs either after 4.00pm on a business day or on a day other than a business day service shall be deemed to occur at 10.00am on the next following business day (such times being local time at the address recipient). For the purpose of this clause a “business day” is a day when the banks in the location of the recipient are open for a full range of banking transactions. Any demand, notice or communication shall be made in writing or by fax addressed to the recipient at its registered office or its address stated in this agreement (or such other address or fax number as may be notified in writing from time to time).
- 9.9 No variation to this agreement may be made unless set out in writing and signed by a director of Action Tec Services Limited.
- 9.10 This agreement shall be governed by English Law and parties submit to the exclusive jurisdiction of the English courts.