

Copies of Terms and Conditions are available upon request at SmarTone Stores or by calling 24-hour hotline or retrieved from web site www.smartone.com.

Supplemental Terms & Conditions for Fax Service T&C H05
(Fixed Term Service Contract)

The following terms and conditions are supplemental to the Sales and Services Agreement and the terms and conditions therein (the "Agreement") made between the Customer and SmarTone Communications Limited (the "Company") and shall form an integral part of the Agreement. Unless otherwise stated, defined terms used herein shall have the same meanings as set out in the Agreement.

1. FAX SERVICE

1.1 The Company agrees to provide Fax Service to the Customer subject always to the Customer paying the charges as and when they become due and payable in accordance with the terms herein set out and in the Agreement and due performance and observance of the other terms herein and in the Agreement. All terms and conditions set out in the Agreement applicable to the Services (as defined in the Agreement) shall equally apply to the Fax Service.

2. CUSTOMER'S OBLIGATIONS

2.1 The Customer undertakes:

- (i) to use the Fax Service in accordance with such conditions as may be notified in writing to the Customer by the Company from time to time and in accordance with all laws, rules and regulations of the Telecommunications Authority, the relevant government department or other competent authorities;
- (ii) not to use or allow others to use the Fax Service for any purpose which the Company considers improper, immoral, defamatory, fraudulent or otherwise unlawful;
- (iii) not to use or allow others to use the Fax Service to publish, distribute, transmit or circulate any unsolicited advertising or promotion information or any content that is obscene, indecent, seditious, offensive, defamatory, threatening, liable to incite hatred, discriminating, menacing or for mail-spamming;
- (iv) not to use or allow others to use the Fax Service in any way which may breach any confidence, copyright or other intellectual property or similar rights of the Company or any third parties, nor copy, distribute or disseminate or otherwise exploit any Content or use any Content other than for personal use, except to the extent otherwise expressly authorised;
- (v) not, nor allow others to, act in such a way that may jeopardize or impair the provision of the Fax Service in Hong Kong or any parts of the world;
- (vi) not use, nor allow others to use the Fax Service for voice transmission purposes;
- (vii) not hack, break into, access, use or attempt to hack, break into, access or use any part of the Fax Service, any Content, or any areas on the Fax Service server for which the Company has not authorised access to the Customer;
- (viii) not resell Fax Service to any person by whatever means.

3. FAX MODEM ('THE DEVICE')

3.1 The Company shall loan the Device to the Customer for the use of the Fax Service. The Fax Service is not available without the Device supplied by the Company.

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3.2 The Customer shall:

- (i) use the Device supplied by the Company for Fax Service at all times. No other device should be used with the Fax Service.
- (ii) permit the Company and any person authorized by the Company at all reasonable times to enter upon the premises where the Device is installed for the purpose of inspection, repair, replacement, removal or recovery of the Device;
- (iii) cause the Device to be used and operated in a proper manner;
- (iv) not at any time or under any circumstances alter or tamper with the Device nor repair nor attempt to repair nor permit to be repaired the same or any parts thereof nor remove or permit the Device to be removed from the position in which the same was installed save by the Company;
- (v) not change, remove or obscure any insignia, name, plates, lettering or other markings on the Device;
- (vi) indemnify the Company against loss of or damage to the Device or any part thereof from whatever cause arising and whether or not such loss or damage results from the negligence of the Customer.

3.3 The Company will at the request of the Customer effect all necessary repairs or supplied a replacement of the Device as may from time to time be necessary. The Company shall not be subject to any liability or responsibility by reason of any delay in effecting such repairs or supplying the replacement.

The costs of repairs and replacement of the Device shall be provided free of charge to the Customer except damage of the Device is caused by any one of the following:

- (i) accidents, negligence, fault or improper use on the part of any person other than staff of the Company;
- (ii) fire, flood, act of God or any other cause beyond the control of either party hereto;
- (iii) the Customer's failure to maintain, use or operate the Device properly.

All costs or repairs arising from causes under sub-clauses (i) to (iii) above shall be additionally charged to the Customer by the Company at the prevailing rates. The Company reserves the right to review the rate of charges from time to time.

4. TERMINATION/DISCONNECTION OF FAX SERVICE

4.1 The Company shall have the right to assign the Fax number to another customer of the Fax Service upon termination or disconnection of the Fax Service or upon termination of the Agreement.

4.2 The Company may upon the Customer's request reconnect the Fax Service after termination or disconnection of the Fax Service subject to the payment by the Customer of all sums due or owing to the Company.

4.3 The Customer shall return the Device to the Company within fourteen (14) days after termination of the Fax Service. In the event the Customer fails to deliver the Device to the Company upon the termination of the Fax Service or the Device is damaged upon delivery back to the Company, the Customer shall pay the Company for the cost of the Device being the pre-estimated anticipated loss suffered by the Company in respect of the Customer's failure to return the Device or damage to the Device.

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5. DISCLAIMER OF WARRANTIES

5.1 The Company and its licensor make no warranty that (i) the Fax Service will meet the Customer's requirements, (ii) the Fax Service will be uninterrupted, timely, secure, or error free, (iii) the results that may be obtained from the use of Fax Service will be accurate or reliable, (iv) the quality of any products, services, information, or other material purchased or obtained by you through the Fax Service will meet the Customer's expectations, and (v) any errors in the technology will be corrected. Any material obtained through the use of the Fax Service is done at the Customer's own discretion and risk and the Customer is responsible for any damage to the Customer's Apparatus or loss of data that results from any such material. No advice or information, whether oral or written, obtained by the Customer from the Company or through or from the Fax Service will create any warranty not stated in these terms.

6. INDEMNIFICATION

6.1 The Customer agrees to indemnify, defend and hold harmless the Company and its licensor from any and all third-party claims, liability, damages, expenses and costs (including, but not limited to, attorney fees) arising out of or related to his use of the Fax Service, the Customer's violation of the terms herein or the infringement by the Customer or infringement by any other user of the Customer's account, of any intellectual property or other right of anyone.

7. EXCLUSION OF LIABILITY

7.1 The Company will under no circumstances be liable whether in contract, tort, statute or otherwise (including without limitation for negligence, breach of contract, defamation, or intellectual property right infringement) for any special, direct, indirect or consequential loss or damage (including without limitation, loss of revenue, loss of data or goodwill or loss of any equipment or software or any loss or damage caused by viruses) arising from or out of or relating to the use of the Fax Service .

8. LIQUIDATED DAMAGES

8.1 The Customer shall pay the Company liquidated damages specified in the Sales and Services Agreement upon the occurrence of any of the following events before the expiry of the fixed contract term for use of the Fixed Service (as specified in the Sales and Service Agreement):

- (i) if the Customer changes the wireless fixedline telephone number for the Fax Service;
- (ii) if the Customer changes the registered name for the wireless fixedline telephone number for the Fax Service;
- (iii) if the Customer changes the selected Service Plan for the Fax Service; or
- (iv) if the Customer's wireless fixedline telephone number for the Fax Service and/or the related Fax Service is terminated/disconnected for whatever reason.