

TERMS & CONDITIONS BUSINESS PHONE SYSTEM

VERSION V2 02/18
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By placing an Order with us you agree to the following terms and conditions which apply to the Contract between us.

1. Your Order

Your Order sets out the Equipment and Services you have ordered and the amount you will be charged, including your Toople Business Phone System service charges and Equipment Charges.

2. Cancellation

You may cancel the order by giving notice in writing to Toople. Order cancellations incur a cancellation fee. If you cancel the Contract after the date your Services go live, Toople may charge you an Early Cancellation Fee.

Once we receive your cancellation request, we will issue you with a final invoice for any outstanding charges.

If you cancel the Contract after the date your Equipment is delivered and accepted we will charge you an early cancellation fee comprising the balance of the sums payable for the full outstanding term of the Contract.

3. Your Contract

Your minimum Contract period is stated on your Order.

At the end of this period the Contract shall continue on a monthly rolling basis until either you or we terminate the Contract by giving 30 days' notice in writing.

4. Your Service

Your Toople.com Business Phone System includes the Equipment and call bundle(s) set out in your Order.

5. Charges

We will charge you for your chosen call bundle monthly in advance and this will not change during the life of your initial Contract. You must make all payments by direct debit within 14 days of the beginning of each month. Should your direct debit payments fail for any reason we will charge you an administration fee.

If you have not chosen a call bundle we will charge you monthly in arrears for calls at our standard rates which are published on our Website. These rates may change from time to time.

Any charges outside your call bundle will be charged to you monthly in arrears for calls at our standard rates which are published on our Website. These rates may change from time to time.

We may at our sole discretion and at any time during the lifetime of the Contract impose a credit limit on your account and require payment of a security deposit or interim payment by you. If you exceed this credit limit we may demand immediate payment of the Charges and may suspend the Services.

All charges are subject to VAT.

If you are late in paying any charges we may charge daily interest at 2% above the base rate of HSBC Bank Plc on any outstanding sums until payment in full is received.

6. Obtaining the Service

We will deliver the Equipment to you for installation by you. Any additional cabling or hardware required shall be your responsibility. If a site survey is required this may incur a separate charge.

We will ask you to confirm when the Equipment has been delivered. Delivery will be evidenced by signature by you or an authorised person. The Equipment will be deemed to have been checked and accepted by you on the date of signature.

Any Equipment we supply to you will come with a manufacturer's warranty but we can offer no further warranty in excess of this. Any repairs or replacement beyond the manufacturer's warranty will be at your cost.

Equipment supplied by us will be at your risk immediately on delivery and you must ensure that any Equipment supplied is adequately insured by you. Equipment will remain our property at all times.

7. Supplying the Service

We will use all reasonable skill and care to supply the Equipment and Services to you and you authorise us to act on your behalf in all dealings with any Network operator so that we can provide you with the Services. We may change Network operator in order to provide the Services at any time.

Once the Equipment is installed we will activate your account and connect you to the Network and your Toople Business Phone System will go live.

Due to the nature of VoIP telephony, we cannot guarantee specific levels of performance and shall have no liability for failure of the Service or the Equipment unless and to the extent caused by our negligence.

If we need to suspend the Services for repair, maintenance or improvement we will restore them as soon as is reasonably possible. If necessary you will need to allow us or a Network engineer to access to the Equipment for the purposes of repair maintenance or improvement. Normally this work will be carried out by appointment and during normal working hours, but it may be necessary on occasion that you provide access at other times.

We cannot guarantee that the Equipment or Services will be uninterrupted, secure, error-free, complete, accurate or up to date.

Your Toople Business phone System shall be subject always to what services are made available by the Network and may only be used with Equipment approved for use with the Network.

We will allocate you a number(s) for use of your Business Phone System on the Network. This number(s) belongs to us and in exceptional circumstances we may have to change this number(s).

If requested by you we will use all reasonable efforts to ensure your existing telephone numbers are retained. We will require you provide us with a copy of your most recent telephone bill and you will need to complete our number porting form to enable this to happen.

You must report any stolen or damaged Equipment promptly to us and you may be charged for a replacement. You will be required to pay for all Charges up to the time you notify us that your Equipment is stolen or damaged.

8. Use of Equipment & Services

You will comply with any reasonable instructions issued by us which concern your use of the Services or Equipment and will ensure that the Equipment is used in accordance with any applicable instructions, safety or security procedures.

You will only use the Services in good faith and not so as to artificially increase or create revenues for telecommunications services supplied by you or any other person. You will not use the Services to generate calls which are disproportionate to the flow of calls which would be expected from good faith commercial usage of the Network.

You agree not to use or allow others to use the Services for any purposes that are unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, facilitate illegal activity, depict sexually explicit images, promote unlawful violence, are discriminatory based on race, gender, colour, religious belief, sexual orientation, disability or in a manner that is otherwise illegal or may cause damage or injury to any person or property.

We provide the Services for your use only. You may not re-sell, transfer, assign or sub-license the whole or any part of the Services to any third party or use the Services to provide telecommunications services to any third party. In using the Services, you will comply with the Legislation or any other relevant regulations or licences regarding the provision and use of the Services and you shall ensure that your telecommunications equipment shall at all times conform to the applicable standards. We may suspend the Services if your equipment does not comply with the Legislation or if we reasonably believe it is likely to cause death, personal injury or damage to property or to impair the quality of any Services provided by us or put us in breach of our obligations to any third party.

We may monitor and record all usage by you. If you exceed your agreed monthly call bundle (as set out in your Order) we will charge you monthly in arrears at our standard rates which are published on our Website. These rates may change from time to time.

We may still charge you for excessive usage which we reasonably believe indicates bad faith, improper or fraudulent use of the Service. We will inform you if we detect bad faith, improper or fraudulent use and you will be charged for any such use. You will also be charged outside any agreed bundle for calls to service numbers starting 0844, 0845, 0870, 09xx and 118xxx at the rate specified on our Website.

To try to help protect your business all outbound calls to premium rate lines or other known high risk numbers are barred. If you do need access to any of these numbers please contact us.

You shall be responsible for the cost of replacing any Equipment that is lost, stolen or damaged. At the end of your Contract you must return any Equipment to us unless otherwise agreed.

Please be aware that the Toople Business Phone System may not connect you to the public emergency service or may not provide your phone number and location details to the operator if you make a public emergency services call. You therefore agree that we are authorised to supply any details provided by you in your Order to the emergency services as required.

Please also note that the Toople Business Phone System is not a Publicly Available Telephone Service (PATS) and your rights of redress via regulatory bodies such as OFCOM may therefore be limited.

9. Termination

If you breach this Contract (for example if you fail to pay the Charges) we will notify you in writing and give you 14 days to remedy the breach. If you do not remedy the breach, we may terminate or suspend the Contract or some or all of the Services immediately. We may also terminate or suspend the Contract or some or all of the Services if

- you are subject to a resolution for winding up or a petition for bankruptcy or liquidation or there is a proposal, or you enter into, any arrangement or composition with your or for your creditors, or a receiver or liquidator or trustee in bankruptcy is appointed over you or any of your assets or any similar circumstances; or
- if we are required to do so by OFCOM or other regulatory authority.

When this Contract is terminated or suspended:

- we may immediately stop supplying the relevant Services (and will not be responsible for any damage to or loss of data generated, stored, transmitted or used via or in connection with the Services);
- any Charges due from you shall remain payable by you and any Charges already paid by you will be non-refundable;
- all rights in and title to the Equipment shall revert to us.

10. Privacy

We may store and process personal data provided by you as part of the Order for internal use and for the purposes of providing the Service.

We may also keep information about how you use the internet to help us understand and manage the Service, including IP addresses and other internet traffic data. By law we have to keep certain information about how you use the internet for 12 months. This information may be used by law enforcement agencies to prevent and detect crime and to protect national security.

Any personal data we do keep will be stored securely to prevent unauthorised access by third parties and we will not sell or otherwise disclose your personal information to third parties, unless required to do so by law or court order.

We may also pass your details to third parties in the event that we sell all or any part of our business, in order that you continue to receive the Services.

We may transfer your personal information to countries outside of the European Economic Area for the purposes of providing the Services.

You can request a copy of your personal information held by us.

11. Limitation of liability

We expressly exclude any warranty as to the suitability, quality or reliability of the Services or that they will be fit or suitable for your purposes.

We will not be not be liable to you for any loss arising from or in connection with loss of revenues, profits, contracts or business or failure to realise anticipated savings, any loss of or damage to data, any loss of goodwill or reputation or any indirect or consequential losses, suffered or incurred by you and arising in connection with this Contract.

Our aggregate liability to you for any loss or damage of whatsoever nature and howsoever caused, shall not exceed a sum equal to one month's billing for the Services by us to you based on the average billing for the Services over the previous 3 months.

We shall not be liable to you for the loss of the Services caused by any event beyond our reasonable control including but not limited to any fault in or suspension of the Network of any third party, any force majeure, fire, power failure or any loss or change to or loss of telecommunications equipment or any act of any authority or third party.

We shall not be liable in respect of any non-performance of our obligations under the Contract which arise out of your own acts, omissions, negligence or default.

Nothing in this Contract shall exclude or restrict our liability for death or personal injury resulting from our negligence or for fraud or fraudulent misrepresentation or for any other liability which cannot be excluded by law.

12. Other

Indemnity - you will indemnify us against any loss, liability, cost, expense or damage (including reasonable legal fees) arising directly or indirectly out of any claim, suit action or judgment brought against us by any third party relating to any content submitted, posted, or transmitted by you via the Services, or to your use of the Services, or to your connection to the Services, or to any act or omission by you in breach of this Contract or to any breach by you of any applicable laws or regulations or of any rights of another person or entity.

Confidentiality - neither we nor you shall during the term of the Contract or thereafter disclose any of the other's confidential information nor any details of the other's commercial or technical activities or policy except insofar as is strictly necessary for fulfilling its obligations hereunder and except for any disclosure required by statute or law and save for information which is or subsequently enters the public domain.

Assignment and subcontracting - we may assign the Contract or subcontract the whole or any part of the performance of the Services to any person, firm or company without your prior written consent. You shall not assign or delegate or otherwise deal with all or any of your rights or obligations under the Contract without our prior written consent.

Notices - any notice, invoice or other document which may be given by either you or us under these conditions shall be deemed to have been duly given if left at or sent by post to the nominated address, or the other's usual or last known place of abode or business and such notice shall be deemed to be served immediately if left at the above address for notice or 72 hours after posting if posted as aforesaid.

Entire Contract - the Contract represents the entire understanding between you and us in relation to the subject matter hereof and supersedes all other Contracts and representations made by either you or us, whether oral or written. No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement, or communication or made verbally by any of our agents or employees shall be construed to enlarge, vary or override in any way any of these conditions. We may revise these terms and conditions at any time in order to comply with regulatory or business requirements or otherwise. Any such changes will be published on the Website and your continued use such Equipment and / or Services after such change shall signify your irrevocable acceptance to any such change.

No waiver - Failure by us to exercise or enforce any right conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof of any other right on any later occasion.

Severability - If a court of competent jurisdiction holds any part of this Contract as unenforceable then the rest of the Contract shall remain in force to the maximum extent permissible by law.

Governing Law and Jurisdiction - the Contract shall be governed by and construed and interpreted in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

13. What it all means:

In these terms and conditions:

"Contract" means the contract between us and you for the supply of Equipment and Services, including any Order completed by you and these terms and conditions;

"Charges" means all charges we make for supplying you with Equipment and Services;

"Equipment" means such telecommunications equipment to be supplied by us pursuant to the Contract, as further specified in the Order;

"Group Company" means any holding company of a company or any subsidiary of such company "Legislation" means the Telecommunications Act 1984 and any amendments, modifications, re-enactments or replacements of the Act that may be made from time to time and any other applicable legislation;

“Legislation” means the Wireless Telegraphy Acts 1949 to 1972, the Telecommunications Act 1984, the Communications Act 2003 and all other relevant legislation and statutory instruments;

“Network” means any telecommunications network underlying the Services;

“Order” means your order for Equipment and Services (whether by completion by you of the online application process via the Website and/or your agreement to the quotation provided to you via the Website and/or your electronic signature accepting these terms and conditions as applicable);

"Services" means the Toople.com Business phone System to be supplied by us, as specified in the Order;

“Toople Business Phone System” means the VoIP (Voice over Internet Protocol) telephony services provided by us under this Contract as set out in your Order.

“VAT” means Value Added Tax at the prevailing rate.

“Website” means the website owned and operated by us and located at www.Toople.com.

"You" and "your" means the party placing the Order for Equipment and / or Services.

Toople.com

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