

# TERMS & CONDITIONS TOOPLE.COM MOBILE

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 Mobile 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 as detailed on our Website.

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

### **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 Mobile Service includes SIM card(s) and call / data / text bundle(s) set out in your Order.

### **5. Charges**

We will charge you for your chosen call / text / data bundle monthly in advance and this will not change during the life of your 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.

Any charges outside your call / text / data 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.

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**

Any Equipment you buy from us 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.

## **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 you have activated your new SIM card in the Mobile section of your 'My Account' portal we will connect you to the Network and your Toople Mobile service will go live.

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

We cannot guarantee that the Equipment or Services, or any data generated, stored, transmitted or used via or in connection with the Services, will be uninterrupted, secure, error-free, complete, accurate or up to date. We do not provide a back-up or guarantee the integrity of your data for disaster recovery purposes.

Your Toople Mobile shall be subject always to those services available by the Network and may only be used with Equipment and SIMs approved for use with the Network.

We will allocate you a number for use of your mobile phone on the Network. This number belongs to us and in exceptional circumstances we may have to change this number. If requested by you we will use all reasonable efforts to ensure your existing mobile number is retained. You will need to provide us with the appropriate PAC code from your previous supplier.

We own the SIM card and the software within it and licence it to you so that you can use the Services. If you have ordered SIMs only, we will have no liability at all for any handset issues encountered by you. You must report any lost, stolen or damaged Equipment (including any SIM card) 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 lost or stolen.

We will try to give you access to networks in other countries where there is a roaming arrangement for the Network but may require the payment of a deposit from you if you want to make international calls or use our international roaming service. Note that some overseas networks are limited in quality and coverage and additional Charges may apply.

Mobile handsets which use the Windows operating system will not support use of the Toople App (if applicable). As a consequence all calls made from such handsets will be charged outside any agreed Business Telephony call bundle (if applicable) at standard Network rates.

## **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.

If you use the Services and Equipment to access the internet you are entirely responsible for all content, data and information accessed, uploaded, downloaded, emailed or otherwise transmitted via internet access.

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/text/data 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. You will also be charged outside any agreed bundle for calls to service numbers starting 0844, 0845, 0870, 09xx and 118xxx and certain other destinations as outlined 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 at our request you must return any Equipment to us unless otherwise agreed.

## **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 mobile telecommunications equipment, including mobile handsets and SIM cards, 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;

"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 or your agreement to the quotation provided to you via the Website or your electronic signature accepting these terms and conditions as applicable);

"Services" means the Toople Mobile services to be supplied by us, as specified in the Order;

"Toople App" means the mobile app developed by Toople and installed on your mobile handset which allows voice and data to be transferred from the Network to Toople's Business Telephony (if applicable).

"Toople Mobile" means the mobile 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](http://www.Toople.com).

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

## Toople.com

Grenville Court, Britwell Road, Burnham, Buckinghamshire, SL1 8DF

08000 499 499