



Product Terms

SMS Bundle

1. INTERPRETATION

- 1.1 Unless the context clearly indicates the contrary, any term defined in the General Terms when used herein, shall bear the same meaning as defined in the General Terms.
- 1.2 To the extent that there is any contradiction between the General Terms and these Product Terms the following order of precedence shall apply: (i) these Product Terms; and (ii) the General Terms.
- 1.3 By using or subscribing to SMS Bundle Customer agrees that he/she/it has read, understand and are bound by:
 - 1.3.1 the General Terms and Conditions and Use Policies under “**General Terms**” and other notices under “**Notices**” on MWEB Business’ Legal Website; and
 - 1.3.2 the Product Terms set out herein;
(collectively the “**MWEB Business Terms**”).
- 1.4 Customer’s use of SMS Bundle indicates Customer’s acceptance without modification of the MWEB Business Terms, which will constitute a legal agreement between Customer and MWEB Business.
- 1.5 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto:
 - 1.5.1 “**Application Form**” means the application form completed and signed by Customer for the initiation of SMS Bundle, as same may be amended from time to time in terms of the Agreement;
 - 1.5.2 “**General Terms**” means the terms and conditions set out in the general terms and conditions for MWEB Business’ customers, which is available at <http://www.mwebbusiness.co.za/legal/GeneralTerms.aspx> under the heading “General Terms”;
 - 1.5.3 “**Mobile Cellular Telecommunication Service Provider/s**” means mobile cellular telecommunication service provider/s licensed in terms of the ECT Act;
 - 1.5.4 “**SMS**” means short message service;
 - 1.5.5 “**SMS Bundle**” means the Services contemplated in these Product Terms MWEB Business renders to Customer in accordance with Customer’s choices, as set out in the Application Form under such heading or description; and

2. DURATION



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- 2.1 SMS Bundle shall commence on the date of activation, following the acceptance of Customer's Application Form by MWEB Business, of SMS Bundle by MWEB Business and shall, subject to the terms and conditions of the Agreement continue for the period selected by Customer in the Application Form after which period SMS Bundle will automatically terminate irrespective of whether Customer has utilised SMS Bundle fully or not. It is specifically agreed that should Customer not have used SMS Bundle fully he/she/ it shall not be entitled to any credit and/or refund for the unutilised portion in any way whatsoever. Notwithstanding the aforesaid, the provisions of this clause 2.1 are subject to Customer's termination rights detailed in clauses 7.5, 7.6 and 7.11 of the General Terms where clauses 7.5, 7.6 and 7.11 of the General Terms are applicable to Customer.
- 2.2 In the event of a termination, Customer's use of SMS Bundle shall be deemed terminated. However, in the event that Customer logs on to SMS Bundle following a termination, the terms and conditions of the Agreement will apply to Customer and Customer shall be liable to pay the full usage costs to MWEB Business however, this shall in no way constitute a revival of the Agreement between the Parties and MWEB Business shall furthermore be entitled to terminate SMS Bundle without notice to Customer.
- 2.3 To the extent that SMS Bundle provided to Customer is suspended by MWEB Business in terms of the provisions of clauses 9 and 12 of the General Terms or for any other reason whatsoever, Customer acknowledges that it will forfeit its access to and/or use of SMS Bundle, but Customer shall still be liable to pay the Service Fees during such suspension.

3. SERVICE FEES

- 3.1 Customer shall pay MWEB Business the Services Fees specified in the Application Form in accordance with the provisions set out in the General Terms.

4. UNDERTAKINGS AND ACKNOWLEDGEMENTS

- 4.1 MWEB Business undertakes to use its reasonable endeavours to provide Customer with SMS Bundle on a 24 (twenty four) hour per day basis on each and every day for the continued duration of SMS Bundle.
- 4.2 Although MWEB Business uses reasonable care and diligence to ensure that SMS Bundle is available, accurate, complete, correct, error-free, secure, up-to-date and/or reliable MWEB Business does not warrant, represent or in any way guarantee, either expressly or by implication that SMS Bundle is available, accurate, complete, correct, error-free, secure, up-to-date and/or reliable. MWEB Business furthermore does not warrant, represent or in any way guarantee, either expressly or by implication the merchantability or fitness for a particular purpose. Customer therefore agrees that SMS Bundle is rendered "as is" and "as available" and is used at the Customers' own discretion and risk.



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4.3 Customer acknowledges that the following circumstances and events may impact upon its use of SMS Bundle and further that these circumstances and/or events are beyond MWEB Business' control: (i) use of SMS Bundle by other customers; (ii) limitations upon national and/or international bandwidth capacity; (iii) telecommunication service operator failures, which includes telecommunication links and line failures; (iv) mobile telecommunication service operator failures; (v) mobile network failures; (vi) operating systems; (vii) access technology failures; (viii) quality of service of telecommunication links or lines; (ix) any action, omission and/or failure by Customer and/or his/her/its systems, software, network and/or equipment which has an impact on SMS Bundle; (x) any other action, omission and/or failure not within MWEB Business' control which has an impact on SMS Bundle; and (xi) geographical whereabouts of recipients, physical features such as buildings and underpass as well as atmospheric conditions and other causes of interference to send SMS's to recipients.

5. TERMS AND CONDITIONS SPECIFIC TO SMS BUNDLE

- 5.1 MWEB Business hereby grants Customer a limited, non-perpetual, non-exclusive, non-transferable right to use the SMS Bundle, including the software of SMS Bundle (the “**Software**”) in accordance with these Product Terms only for the duration of SMS Bundle.
- 5.2 SMS Bundle can only be used in conjunction with MWEB Business ASP Services and then only with those contemplated in the Application Form.
- 5.3 Only one SMS Bundle Service is allowed to be assigned to each relevant MWEB Business ASP Service, as contemplated in the Application Form and a SMS Bundle Service is not allowed to be divided between more than one such MWEB Business ASP Services.
- 5.4 Customer acknowledges that all title and intellectual property rights in SMS Bundle, including Software, is owned by and shall remain vested in MWEB Business and/or its licensors. Accordingly, Customer may not reverse engineer, decompile, or disassemble the Software nor may Customer directly or indirectly transfer, distribute, re-distribute, copy, sell, re-sell, lease, rent, lend, license, sub-license SMS Bundle or the Software in whole or in part in any way whatsoever to any third party without MWEB Business' prior written consent.
- 5.5 Customer acknowledges further that it may not make any copies of the Software nor make copies of any printed materials which may accompany SMS Bundle or the Software.
- 5.6 Upon termination of SMS Bundle for any reason whatsoever, Customer shall immediately cease any use of the Software.
- 5.7 Customer acknowledges and agrees that:



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- 5.7.1 SMS Bundle is provided "as is" and "as available", without any guarantees, warranties and/or representations of any kind, either express or implied and Customer is therefore using SMS Bundle at its own discretion and risk. Although MWEB Business will use its reasonable endeavours to deliver/transmit/send all SMS messages, as scheduled by Customer it shall, without limiting the generality of the Agreement, assume no responsibility for the failure, delay or interruption of the delivery/transmission/sending of any SMS message, or loss of any SMS message and shall not refund or in any way credit Customer for any failed, delayed, interrupted and or lost SMS message;
- 5.7.2 it shall only be able to use SMS Bundle to send SMS's to cellular numbers registered on the South African network of Mobile Cellular Telecommunication Service Providers;
- 5.7.3 it shall at all times ensure that it uses the correct and complete numbers when sending SMS messages. MWEB Business shall, without limiting the generality of the Agreement, not be held responsible for any SMS messages delivered/ transmitted/ sent to wrong recipients, wrong and/or incomplete numbers or numbers that cannot receive SMS messages in terms of these Product Terms and shall not refund or in any way credit Customer for any SMS messages sent to such wrong recipients, wrong and/or incomplete numbers or numbers that cannot receive SMS messages in terms of these Product Terms; and
- 5.7.4 for the purposes of these Product Terms an SMS will be deemed to have been delivered/ transmitted/ sent by Customer the moment Customer activates such SMS to be sent using SMS Bundle.
- 5.8 Without limiting the generality of the General Terms and Use Policy Customer shall:
- 5.8.1 comply with all relevant law, legislation, rules and/or regulations relating to the use of SMS Bundle, sending of SMS' and/or the content of such SMS's including, but not limited to the provisions of the ECT Act;
- 5.8.2 not use SMS Bundle for any illegal activity;
- 5.8.3 abide by the Use Policies and the relevant Mobile Cellular Telecommunication Service Providers' terms and conditions, rules, regulations and/or policies applicable regarding the sending of SMS and mass SMS messages. Without limiting the generality of the aforesaid Customer specifically agrees not to submit any SMS messages via SMS Bundle with defamatory, discriminatory, illegal, obscene, offensive, threatening, abusive, harassing, harmful, or hateful content or which carries child pornography, religious or racial slurs or threatens or encourages bodily harm or the like or which may violate any person's personality rights;
- 5.8.4 not use SMS Bundle to infringe the intellectual property rights or other proprietary rights of MWEB Business and/or any other person or to post or transmit anything which contains viruses or any other destructive features, regardless of whether or not damage is intended;



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- 5.8.5 not use SMS Bundle to engage in any spamming, including the transmission or sending of unsolicited messages with the same or substantially the same message to recipients that did not request to receive such messages;
- 5.8.6 ensure that the content of SMS messages do not cause disturbance or harassment to the recipient thereof;
- 5.8.7 not send SMS messages to recipients who have advised Customer that they do not wish to receive SMS messages of any particular or any kind; and
- 5.8.8 include a valid originating number in all SMS's;
- 5.9 Customer accepts full responsibility for the content of and/or any SMS message delivered/ transmitted/ sent via SMS Bundle. Customer furthermore agrees that MWEB Business has no interest in the contents of any SMS and agrees that nothing that MWEB Business does in the performance of its obligations in terms of SMS Bundle shall be construed as an assumption of responsibility or liability by MWEB Business for any SMS message delivered/ transmitted/ sent on behalf of Customer and/or the content of such SMS message, whether or not MWEB Business had knowledge of such content. Without limiting the generality of the General Terms and Use Policies, Customer hereby indemnifies MWEB Business and holds it harmless against any liability and/or any claim of whatever nature made by any person for any loss or damage suffered or arising directly or indirectly from the delivering/ transmitting/ sending of SMS message and/or the content of such SMS message via SMS Bundle.
- 5.10 Without limiting the generality of the General Terms and Use Policies MWEB Business will use its reasonable endeavours, to protect the confidentiality and security of Customer's information (including numbers where SMS messages are sent to) as well as the content of such SMS's, but will only do so to the extent that it is under the control of MWEB Business. MWEB Business however does not warrant that the use of SMS Bundle will be confidential and secure and hereby expressly disclaims all warranties of any kind, whether express, or implied, for the confidentiality and security of Customers information or the content transmitted through SMS Bundle. MWEB Business will however undertake not to use such information and/or SMS content for its own benefit or disclose and/or sell such information and/or content to any third party.
- 5.11 MWEB Business reserves the right to include in each SMS message sent by Customer, a notice indicating that such SMS message was sent by SMS Bundle or any other notice MWEB Business may deem fit and Customer agrees not to remove any such message or any other headers or footers inserted by SMS Bundle.
- 5.12 MWEB Business shall not be responsible for archiving any SMS messages sent through SMS Bundle. Notwithstanding the foregoing, MWEB Business will use reasonable endeavours to keep a record of all SMS message batch reports sent through SMS Bundle for a period of 6 (six) months calculated from the date the batch was sent.



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