

curveball

SPECIFIC TERMS AND CONDITIONS FOR AIRTIME CONTRACTS

1. Introduction

- 1.1 These specific terms and conditions and our General terms ("Order Terms") apply to this Agreement between Us and the Customer in order to receive the Equipment/Services and the Airtime Supply (as defined in clause 2.1 below). The Customer agrees to enter into this Agreement with Us governing the supply of Equipment and/or Services and the Airtime Contract with the relevant network.

2. Definitions

- 2.1 In these conditions, the following expressions shall have the following meanings;
- "Airtime Contract"** means the agreement between the Customer and the relevant network. A copy of the Airtime contract will be given to the customer with this Agreement;
- "Airtime Supply"** means cellular mobile telecommunications airtime and network capacity procured from a network;
- "Connection"** means the connection of the customer's end user(s) to a network such that the end user(s) is (are) capable of accessing the Airtime Supply;
- "Contract Term"** the term is as defined in clause 12 of our General Terms. If a connection is removed from this account then penalty charges will apply, which will include line rentals until the end of the agreement and an average ARPU payment on the account.
- "Downward Migrate"** means the change of tariffs, on the same network, at the request of the Customer which results in the customer paying a lower monthly line rental.
- "Customer"** **"You"** means the entity named on the Airtime Contract for whom we have agreed to supply the Services.
- "Equipment"** means any mobile phone hardware or associated technology
- "Extended Term"** has the meaning given in Clause 12.5
- "Funding"** means the amount payable by Us to the Customer as agreed between Us and the Customer. This amount will take into consideration the number of connections, the applicable tariffs and the Contract Term, the Customer agrees to take under the Airtime Contract.
- "Initial Term"** means the initial term set out within the Order Form
- "Monthly Funding"** means the amount of Funding payable per connection divided by the Contract Term.
- "Services"** mean any service ordered by the Customer and provided by Us.
- "Service Level Agreement"** means the Service Levels We will provide to the Customer under this agreement.
- "SIM"** means the Subscriber Identity Module provided by Us.
- "We" "Us" "Our"** means Curveball Solutions UK Limited whose address is at Unit 8, Deacon Business Park, Moorgate Road, Knowsley, Liverpool, Merseyside, L33 7RX, Company No. 09310243.

3. Key Points

- 3.1. We are providing You with Mobile Services using approved phones, SIM's and network resources provided by our network provider who procure elements from one or more Mobile Network Operators (MNO)
- 3.2. The terms for Service only cover the terms on which You may use the Services. They do not cover your purchase of your Handset.
- 3.3. Services will be provided within our network provider, or its MNO's network area in the UK and by

roaming on to other networks but it's always possible that the quality of coverage may be affected at times.

- 3.4. You must not use the Services for any illegal or improper purposes. Any under the age of 18 is not permitted to access Age Restricted Services.
- 3.5. You agree that We may provide your personal data to our network provider and that we and our network provider, or their MNO, can process your organisations information and users personal data, which we collect or which You submit to Us during any sales or registration process, for a number of purposes, including to open and manage and account for Services, to deliver products and services ordered for You, for security and emergency service support, for credit checking and fraud prevention, and for product analysis and direct marketing (subject to your preferences) as set out in our "Privacy Notice" in the Terms for Services. Upon written notice to you by our network provider all of Our rights and obligations, including all accrued rights and obligations, under this Agreement will be assigned and transferred to our network provider or to its nominee.

4. Applicable Terms

The Customer acknowledges that the supply of Equipment and/or Airtime Supply of services or any other business undertaken by Us is transacted subject to these terms and conditions and our General Terms and Conditions and each condition shall be deemed to be incorporated in and to be a condition of any agreement between Us and the Customer. No other terms or conditions stipulated, or referred to, in any documentation (for instance a purchase order issued by the Customer) passing between the Customer and Us, shall be incorporated at any time into this agreement between Us and the Customer.

5. Supply of Customer Equipment and Airtime Supply

- 5.1. We will use Our best endeavours to deliver the Equipment and Airtime Supply ordered by the Customer on the date agreed by the parties.
- 5.2. Where equipment has been given to the Customer as "funding", the Customer acknowledges that title to the equipment never passes to the Customer and that it is a condition of this contract that such equipment is returned to Us if the Customer either disconnects or downward migrates during the contract term. Once the contract term has expired, the Customer has an opportunity to purchase the equipment from Us at the original cost price less 50%, or return the equipment in full working order. If the equipment is not in full working order the Customer agrees to pay the original cost price less 50%. This will be invoiced by Us and the Customer agrees this invoice is payable upon request.
- 5.3. It is the Customer's responsibility to obtain the Porting Authorisation Code (PAC). However, We may support the Customer in obtaining the PAC and by signing this agreement the Customer gives Us express authorisation to obtain the PAC on their behalf.

6. Charges and Payment

- 6.1. Where the Customer has Equipment, the cost of which is not set off against Funding, the Customer agrees to pay for such Equipment within 30 days of delivery.

7. Payment and Recovery of Funding

- 7.1. We may, at their sole discretion and subject to the remaining provisions of this clause, provide the Customer with Funding as a consequence of the Customer entering into the Airtime contract with the network. Funding will only be provided to the customer subject to the following conditions:
 - 7.1.1. The connection(s) is (are) active on the network on the Funding payment (or instalment payment) date; and
 - 7.1.2. The Funding is claimed during the Contract Term.
- 7.2. Where the conditions and timescales set out in 7.1 are not met then the Customer's right to Funding shall cease.
- 7.3. In relation to the Customer's entitlement to Funding the Customer recognises that it is always conditional upon the Customer using and maintain the Connection(s) for the Contract Term and not Downward Migrating the Connections during the Contract Term and other such conditions as are

notified by Us to the Customer from time to time.

- 7.4. Where the Customer withdraws from the Airtime Contract or disconnects connection(s) or Downward Migrates.
- a. Connection(s), or the network withholds or reclaims the connection commission due or paid to Us or any part of it (for whatever reason) before the end of the Contract Term, We shall be entitled to recover the Funding (or portion of it) paid to the Customer or withhold any further Funding to be paid to the Customer. We will be entitled to recover, from the Customer, the Monthly Funding amount for each connection for each month of the remaining unexpired months of the Contract Term and part months to be pro-rated. The Customer accepts this is a genuine estimate of Our loss.
 - b. We will invoice the Customer any amounts due or withheld as set out in this clause 7 and such amounts shall be payable by the Customer on presentation of Our invoice.

8. Warranties

- 8.1. We will not exchange or replace Equipment that complies with the Customer's specification. In exceptional circumstances, We may exchange equipment at the Customer's request and cost.
- 8.2. In the event that any of the equipment supplied to the Customer is faulty or the equipment becomes faulty subsequently, We will handle the returns process for the Customer and determine whether the fault is covered by Manufacturers Warranty, Insurance or Our Protection Plan. We will ensure the fault is handled in the most efficient manner for the benefit of the Customer and the Customer agrees to pay any cost for repairing the fault in the event of the fault not being covered by the main warranty, Insurance or Our Protection Plan.

9. Limitation and Liability

- 9.1. Besides from death or personal injury resulting from Our negligence, We shall not be liable to the Customer for any loss as a result of electromagnetic frequencies or any similar result from use of the equipment.

10. General

- 10.1. All notices given pursuant to any of these Conditions must be given by facsimile or letter. Whereby any such notice is given by facsimile, it shall be deemed to be given at the time when it is received by the recipient and in the case of any notice given by letter, it shall be deemed to have been given at the time when it would have been delivered to the recipient in the ordinary course of post. All notices to Us must be delivered to its address specified above. Any notices to the customer will be valid if sent to the Customer's last known place of business or to the Customer's registered office and if there is more than one such business to any one of such businesses.

11. Ending this agreement & Disconnection of Services

- 11.1 You and We may end this Agreement in accordance with clause 12 of our General Terms. You must also pay a Cancellation Fee.
- 11.2. We may also end this Agreement in the following ways;
- 11.2.1. on giving you 30 days' notice;
 - 11.2.2. immediately if:
 - 11.2.2.1. you fail to make any payment requested within seven days of the date in the letter Email or appropriate correspondence requesting such payment;
 - 11.2.2.2. Two consecutive direct debit requests are rejected and/or you fail to make any payment on the due date where there have been two preceding failures which were remedied within the seven day period;
 - 11.2.2.3. If We believe that your use of our Services, is jeopardising the operation of our network, our network provider's or its MNO network, or is of an

- unacceptable nature or in the event of your bankruptcy, insolvency or death; or
- 11.2.2.4. If we no longer have access to other operator's networks which we need to provide Services, or if we are no longer able to provide Services due to factors beyond our control or because we cease business.
- 11.3. If you are a consumer, any statutory rights which you may have, which cannot be excluded or limited, will not be affected by this clause. For more information about your statutory rights please contact your local authority Trading Standards Department or Citizens Advice Bureau.
- 11.4. If a request is received to port a mobile telephone number to another network provider, we will not be obliged to provide a porting authorisation code to you unless;
- 11.4.1. The minimum contract term (if applicable) has expired; and
- 11.4.2. There are no outstanding amounts due from you to us in relation to this Agreement.
- 11.5. In the event that you cancel, suspend or amend any direct debit arrangements set up for the purposes of making payment due to us in respect of the Charges without our express written consent, we reserve the right to charge you the current monthly billed amount or the commitment amount upfront for the remainder of the contract term.

12. Effect of this agreement ending

- 12.1. If this agreement ends, we will close your account and disconnect you and you will not be able to use any Services or make emergency calls.
- 12.2. You must immediately pay all Charges you owe up to the date the agreement ends. If we end the agreement due to your conduct or if you end your Agreement within the Minimum Term, the Charges will include a Cancellation Fee.
- 12.3. You will not be entitled to any remaining Hardware Fund or Airtime Fund following termination of these Agreements.
- 12.4. You shall return all equipment to us in accordance with clause 5.3.

12.5. The Agreement between You and Us shall come into effect on the date of signing of the Order Form and, subject to the other provisions of the Agreement, shall continue in force for the Initial Term, and shall, unless either party serves 3 months' prior written notice upon the other that they do not wish the Agreement to be renewed (such notice to expire no sooner than the end of the Initial Term) be automatically renewed thereafter for successive terms of 2 years each (Extended Terms), unless and until terminated by either party giving to the other no less than 3 months' prior written notice, such notice to expire no sooner than the end of the relevant Extended Term, or otherwise until the termination of the Agreement in accordance with any of its provisions.

- 12.6. We reserve the right to pass on to You any increase in charges from a third party provider.

13. Variations to your agreement or prices

- 13.1. We may vary any of the terms of your Agreement on the following basis: we will make best endeavours to let you know at least 30 days in advance if we decide to:
- 13.1.1. Discontinue the Services;
- 13.1.2. Make any variations to your agreement which are likely to be of detriment to you; or
- 13.1.3. Increase the fixed periodic charges for the Services (if applicable) by an amount which is more than the percentage increase in the Retail Prices Index Figure (or any future equivalent) in any twelve month period.
- 13.2. You can end the agreement for such variations as explained in clause 13.1.2. Subject to the above, you will not be able to end the agreement if such variation or increase;
- 13.2.1. is due to changes to the law, government regulation or license which affects us; or
- 13.2.2. relates solely to Additional Services.
- 13.3. If you carry on using our Services after the variation commences, you will be deemed to have accepted the variation and such variation does not require the signature of either party.

- 13.4. The following are agreed to be short notice price variable services: premium rate services, roaming services, international services, personal number services, special numbers, short codes, directory assistance numbers and any other service being subject to price changes that we cannot reasonably avoid. For short notice price variable services we will pass on the burden of any cost increase by giving you 30 days' notice where possible, or such lesser notice given to use by a relevant third party.

14. Third Party Rights

- 14.1. This agreement is entered into by us for the benefit of us, our network provider and their MNO.
- 14.2. For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is intended that our network provider and its MNO will have the right to enforce any rights conferred on it under this agreement and to that extent our network provider and its MNO will have the same rights against you as would be available if they were a party to this agreement.

15. GSM Gateways and VoIP

- 15.1. You shall not connect any GSM Gateway to the network for illegal purposes including the unlawful provision of electronic communication services (as defined in the Communications Act 2003) to a third party or which is not compliant with any relevant laws or the MNO's commercial policy. You shall not use the Services for the purposes of Voice-over-Internet-Protocol service or similar service, unless otherwise agreed in writing by us.