

eTXT™ Terms of Use

Read these terms carefully. If you do not agree with these terms you must not use eTXT. If you use eTXT you are deemed to accept, and will be bound by, these terms.

1. Definitions

In these terms:

"**eTXT**" means the eTXT™ application, which enables you to send messages to single and/or multiple recipients from a PC or your text capable Telecom mobile phone.

"**we**", "**us**" or "**our**" means Telecom Mobile Limited and any of Telecom Mobile Limited's related companies.

"**you**" or "**your**" means you, a registered user of eTXT who has successfully completed the registration process, or (as the context requires) a person designated by a registered user of eTXT in accordance with paragraph 8.1 of these terms.

2. Terms

2.1 Unless otherwise stated in these terms, each existing agreement we have with you for the provision of telecommunications services ("**Standard Terms**") applies to your use of eTXT in addition to the terms set out below. Where there is a conflict between these terms and the Standard Terms in relation to your use of eTXT, these terms take priority.

2.2 We may change these terms. We can:

(a) change our charges for eTXT on one week's notice to you to reasonably take into account changes in foreign exchange rates and/or changes in the charges that Telecom is required to pay to third party service providers;

(b) make any other changes to these terms and eTXT at any time and if we do so we will notify you within a reasonable timeframe.

2.3 We will notify you of changes by sending an email to the email address that you have given us. This notice will be deemed received by you one day after it is sent.

3. Use of eTXT

3.1 If you are, or we reasonably suspect that you are, using eTXT principally for the purposes of your business ("**business user**"):

(a) you must only use eTXT to send messages to and between:

- (i) your officers, employees, contractors or agents; and
- (ii) other persons who have agreed to receive text messages from you.

(b) if more than 500 eTXT messages are sent in any 24 hour period (“**business cap**”) by users of your account with us, we may immediately suspend or terminate your right to use eTXT or may reduce your business cap to not less than 100 messages (and the reduced cap will become the business cap).

3.2 If you are not a business user, you may use eTXT to send up to 30 messages in any 24 hour period, to any person. Messages sent in excess of this limit may not be delivered (but may be charged for).

4. Your responsibilities

4.1 In addition to your responsibilities under the Standard Terms you, and every person using your eTXT account, will:

- (a) use eTXT in a responsible manner and in accordance with our instructions;
- (b) not, and will not allow any other party to, use eTXT or our telecommunications network to receive or transmit material which violates any law or regulation, which is obscene, threatening, menacing, offensive, defamatory, in breach of confidence, in breach of any third party right (including copyright), or otherwise unlawful;
- (c) not, and not allow others to, perform any activity such as cracking or hacking (to circumvent the authentication or security of any host, network, web server or account) or denial of service attacks, or introduce anything (including any virus), that may harm our, or any third party, equipment or software;
- (d) not use eTXT to spam, mail bomb, send chain messages or abusive, discriminatory, defamatory, obscene or malicious messages, publish any offensive or unlawful material, harvest information about others or create a false identity;
- (e) identify yourself to the recipient as the sender of any eTXT message you send;
- (f) keep each username and password assigned to your account secure and not let them become public knowledge or be stored anywhere on a computer in plain text;
- (g) monitor the use of eTXT by any person accessing eTXT using any password that is assigned to them by you, and any other use of eTXT by your employees and any other persons under your control;
- (h) not breach any intellectual property right in anything forming part of, or accessed using, eTXT;
- (i) pay our charges for use of eTXT and any additional charges levied by your telecommunications or Internet service provider for access to or use of eTXT;
- (j) provide all equipment necessary to connect to the Internet and our network; and
- (k) comply with all applicable laws and our instructions from time to time (as set out at www.telecom.co.nz/etxt or otherwise advised to you).

You acknowledge that any breach of these responsibilities will entitle us to immediately terminate your right to use eTXT without notice.

4.2 You will fully indemnify and keep us indemnified against all actions, proceedings, losses, liabilities, damages, claims, demands, costs and expenses suffered or incurred by us resulting from:

- (a) any negligent act or omission by you;
- (b) your use or misuse of eTXT;
- (c) your breach of these terms.

4.3 You acknowledge that you are responsible for ensuring that no unauthorised access to eTXT is obtained through your account and that you are liable for all activities conducted through your account, whether authorised or not.

5. Suspension and Termination of eTXT

5.1 We may suspend or terminate access to eTXT without notice if:

- (a) you do not pay our charges or meet every responsibility you have to us;
- (b) for any reason, we are unable to deliver eTXT or otherwise perform our obligations set out in these terms; or
- (c) we receive any complaint from any person regarding unsolicited messages sent by you using eTXT.

5.2 From time to time this website, certain servers or the whole or part of our telecommunications network may be closed down for routine repairs or maintenance. If this happens you may be unable to use eTXT.

6. Material

6.1 eTXT will allow you to access material that originates from you or third parties. We may monitor material made available by you or any third party and remove any material that we consider to be inappropriate or in breach of any law or third party right. We take no responsibility for any material accessible using eTXT that does not originate directly from us.

6.2 We are not responsible for:

- (a) ensuring that the information you access or make available through using eTXT will be private or secure or free from viruses or other harmful things;
- (b) any transactions you enter into through use of eTXT or any dealings between you and any advertisers or other third parties using eTXT or your participation in any promotions;
- (c) any inaccuracies in any material you obtain from eTXT or any loss or damage arising from your use of such material;
- (d) any delay or failure in the receipt of information you select for transmission to any equipment; or

(e) the deletion or failure to store any data transmitted by you.

7. Fixing Faults

We are responsible for fixing faults in eTXT except where such faults occur because you use eTXT incorrectly or because of an event beyond our reasonable control. We are not responsible for fixing any faults in your mobile device, your PC, your IT network or in any part of the Internet beyond our telecommunications network.

8. Access, Passwords and Security

8.1 We may, in our sole discretion, allow you to designate more than one person to use your eTXT account and, if we do so, you may provide and assign access numbers and passwords for each eTXT user.

8.2 You are responsible for the confidentiality and use of your access number(s), password(s), and account number.

8.3 You agree and acknowledge that eTXT messages may be transmitted unencrypted and that access by unauthorised third parties is possible. We are not responsible in any way for any such unauthorised access.

8.4 If you choose to disable IP authentication, you accept any risk that disabling the IP authentication creates and you acknowledge that we are not responsible in any way for any such risk.

9. Personal information

We may share with any of our third party service providers any information we hold about you for the purpose of providing eTXT.

10. Charges for using eTXT

10.1 You will be charged for your use of eTXT at the applicable rates from time to time. If you are on a postpaid Telecom mobile plan, charges will be billed to your Telecom mobile account, or to the Telecom account that your Telecom mobile charges are currently billed to. If you are a prepaid Telecom customer, charges will be deducted from your prepaid account balance.

10.2 We cannot guarantee the delivery of any messages you send using eTXT, and you may be charged for any messages sent regardless of whether they are delivered.

11. Liability

11.1 You may have rights under the Consumer Guarantees Act 1993 ("**Act**"). Unless you use, or hold yourself out as using, eTXT for the purposes of a business, nothing in these terms will limit or exclude your rights under the Act.

11.2 If you do use, or hold yourself out as using, eTXT for the purposes of a business, the Act will not apply to your use of eTXT and, without limiting paragraph 11.1, we exclude any liability of any kind (including loss of profits or

revenue, loss of use, lost business or missed opportunities, wasted expenditure or savings you might have had) arising from:

- (a) the supply of, or failure, interruption or delay in the supply of, eTXT;
- (b) the fitness of eTXT for any particular purpose;
- (c) the incorrect, inaccurate or delayed transmission of any information or data; or
- (d) your use of eTXT.

11.3 We will not be liable for any loss of data or information resulting from delays, non-deliveries, missed deliveries or service interruptions caused by events beyond our control, or by your errors or omissions.

11.4 We exclude any representation or warranty that eTXT will be uninterrupted or error-free, that defects will be corrected, or that eTXT (or the server that makes it available) is free of viruses or other harmful components.

11.5 All other conditions or warranties which may be implied into these terms are expressly excluded to the extent permitted by law. We will not in any circumstances be liable for direct, indirect, special, punitive, economic or consequential loss, to the extent permitted by law, arising out of or in any way connected with the use or performance of eTXT.

11.6 Our total liability to you (if any) arising out of or in connection with the supply of eTXT under these terms is limited in respect of any one or more events to \$100.