

## **DIRECT SALES AND WEBSITE SALES**

### **TERMS AND CONDITIONS**

shall be subject to correction without any liability on the part of Landmark and will not give rise to any reason under which the Contract may be cancelled by the Customer

#### **1. Definitions**

- 1.a "The Customer" means the person or persons or company who agrees to purchase Goods from Mobiles Direct or any other trading style of Landmark Marketing Services Ltd ("Landmark") via website or from any direct sales operation which is wholly run by the Landmark or which is run by any third party acting as an agent of the Landmark.
- 1.b "Conditions" means the Terms and Conditions set out in this document and/or any special Terms as may have been previously agreed in writing by Landmark in writing and signed by a director of Landmark.
- 1.c "Contract" means any Airtime Contract entered into by the Customer or any other sale of Goods or services by Landmark to the Customer via Landmark's website or direct sales operation which is run by Landmark or which is run by any third party acting as an agent of Landmark
- 1.d "Goods" means the articles which the Customer agrees to purchase from the Landmark.
- 1.e "Price" means Landmark's sale price of the Goods including Value Added Tax at the prevailing rate as at the time that the sale was made, carriage, packing, insurance
- 1.f "Landmark" is a trading style of Landmark marketing services (or its parent, successors, subsidiaries or assigns) whose registered office is situated at 15-16 Cowell Street, Lanelli, Carmarthenshire SA151UU. Landmark Marketing Services Limited are registered under English Law with a company registration of 4722903

#### **Conditions Applicable**

- 2.a These Terms and Conditions shall apply to all Contracts for the sale of Goods between the Customer and Landmark to the exclusion of all other Terms and Conditions which the Customer may purport to apply when purchasing Goods either from Landmark's website or from any other direct sales operation run by or for the benefit of Landmark
- 2.b All orders placed by the Customer for Goods shall be deemed to be an offer by the Customer to purchase Goods pursuant to these Terms and Conditions
- 2.c Any orders placed by the Customer for the purchase of Goods from Landmark will be deemed full acceptance of these Terms and Conditions and of all the provisions contained therein
- 2.d No variations to these Terms and Conditions (including any special Terms and Conditions agreed between all parties hereto) shall be deemed as applicable unless previously agreed in writing by Landmark and signed by a director of Landmark

#### **Price and Payment**

- 3.a The Price for the Goods shall be the price quoted by Landmark subject to any amendments as may be made from time to time. The price shown on the website or by any other direct sales operation run for or on behalf of Landmark
- 3.b In the event of any handsets being offered either "free of charge" or on a subsidised basis then such offer is wholly contingent upon the customer remaining connected to an airtime agreement with the relevant network for a minimum period as agreed at point of sale. Should the Customer either cancel the airtime agreement or seek to downgrade the airtime agreement or should the customer fail to make any payments to the airtime provider as and when they fall due then the Customer agrees that they will become fully liable for the cost of the handset, the cost of the SIM card supplied, the cost of delivery and the cost of any invoices issued to Landmark by the relevant Airtime Provider or fulfillment company in respect of any termination charges.
- 3.b Payment is to be made to Landmark either via the secure website link or to any direct selling operation which is run either by or for Landmark and is to be fully inclusive of VAT at the prevailing rate. Payment is to be made from the Customer as at the point of order and is to be made by any credit or debit card which is acceptable to Landmark. Landmark will refuse to accept any other payment method and no Goods will be dispatched from Landmark to the Customer until such time as Landmark is in receipt of cleared funds for the transaction.
- 3.c Should any form of refund or rebate be agreed by Landmark then Landmark will make the payment directly to the account holder by means of a cheque, anytime after the first 14 day period.
- 3.d In the event of any clawback being made against Landmark by the airtime provider or in the event of any further sums falling due from the Customer for any reason whatsoever then the Customer hereby consents for Landmark to claim these amounts from the same credit or debit card which had details provided by the Customer for the original purchase of the Goods.
- 3.e Landmark agrees that all and any personal information, and or financial information provided by the Customer will be kept safe and secure by Landmark. The Customer agrees for Landmark to share this information and to use it in establishing the creditworthiness of the Customer before granting any airtime Contract. The Customer further agrees that his/her details may be forwarded on to other marketing companies by Landmark. Landmark warrants that they are properly registered under the provisions of the Data Protection Act 1998 and are governed by the provisions contained therein.
- 3.f Any typographical clerical error or other omission in any part of the website or any other literature provided by or on behalf of Landmark

#### **Airtime Contracts**

- 4.a The Price of any Goods supplied by Landmark will be subsidised by the Airtime Agreement between the Customer and the relevant Airtime Provider and will remain wholly dependent upon the Customer remaining connected to the tariff and the services chosen at the point of sale for a minimum period agreed at point of sale. If the Airtime Contract is cancelled altered or amended, or any failure is made to pay bills on time in any way for any reason whatsoever then Landmark will be charged a clawback by the Airtime provider. Landmark will pass these charges on to the Customer for immediate settlement. Landmark also reserves the right to obtain settlement by way of the provisions of Clause 3.d above.
- 4.b.1 If the Customer wishes to cancel any airtime Contract with any service provider other than the T-Mobile network within fourteen days of the commencement of the airtime agreement then the Goods must be returned to Landmark by way of SPECIAL DELIVERY complete with all packaging documentation manuals instructions SIM cards parts accessories and box in an "as new" condition (the definition of "as new" shall be entirely at Landmark's discretion). Should any parts be missing or damaged then Landmark reserves the right to make a further charge to the Customer which shall be equal to the full retail value of the Goods. The Customer is to be aware that such price will be invariably higher than that which was originally charged by Landmark as there will be no subsidy available from the Airtime Provider to offset the price. The Customer will also be charged for all and any calls made within this period as well as any airtime Contract charges which will be calculated on a pro rata basis from the point of connection until such time as the handset has been returned to Landmark by way of Special delivery
- 4.c Where Landmark is in possession of the Customers credit or debit card details then Landmark reserves the right to reclaim any amounts as may be due from the Customer in accordance with the provisions of Clause 3.d above. If for any reason Landmark is unable to reclaim any amounts as may be due from the Customer from time to time then the Customer warrants to make immediate payment to Landmark.
- 4.d Landmark reserves the right to charge interest on all and any amounts as may be due to Landmark from time to time. Such interest will be charged (both before and after Judgement) at the rate of ten per centum per annum from the date that the payment first became due from the Customer and shall accrue at a daily rate calculated pro rata until the full amount due has been paid to Landmark as cleared funds
- 4.e The Customer warrants and agrees to indemnify Landmark against all and any costs incurred as a result of the Customer's late payment. Such sums will include (but not be limited to) all and any solicitors charges and disbursements incurred by Landmark.

#### **Cancellation**

- 5.b If the Customer wishes to cancel the Contract in whole or in part then Landmark may without prejudice to its rights to treat the cancellation as a breach of this Contract agree to accept such cancellation upon the basis that the Customer will fully reimburse Landmark to the full value of all and any costs incurred by Landmark
- 5.b For the avoidance of doubt the Contract will also be deemed as cancelled in the event of the Customer failing to pay any charges as may be due to the airtime provider from time to time or if the handset is disconnected by the airtime provider for any reason whatsoever.

#### **6. Goods**

- 6.a The quality and description of the Goods shall be as set out by Landmark on the website or in any other literature as supplied by Landmark from any direct sales operation which is run for or on behalf of Landmark.
- 6.b All Goods shown on the website or in any other literature that carries any specifications will be as per the specifications as laid down by the manufacturer.
- 6.c All and any performance figures given in respect of the Goods either on the Landmark website or in any literature are based upon the manufacturers specifications and Landmark cannot be held responsible for any inaccuracies or omissions contained therein.
- 6.d Landmark reserves the right to make any changes to the specifications of the Goods which are required to conform with any applicable safety or other statutory requirements or where the Goods that are to be supplied to Landmarks specifications which do not materially affect the quality or the performance

#### **7. Liabilities**

- 7.a The Goods advertised on the website and offered for sale by Landmark or any direct sales operation run either by or on behalf of Landmark are sold in accordance with the manufacturers description and are subject to and with the benefits of the individual manufacturers warranties and Landmark shall transfer these benefits and rights to the Customer so far as may be possible under law. Save for where the Customer is deemed to be purchasing as a consumer (as defined in the Unfair Contract Terms Act 1977 – section 12) all other warranties or Conditions or Terms relating to

	the fitness for purpose, merchantability or condition of the Goods whether implied by statute or by common law are excluded.		missing then the full value of the Goods will immediately be reclaimed from the credit/debit card details previously supplied by the Customer
7.b	Landmark shall be under no responsibility whatsoever to the Customer for any losses (including but not limited to losses of profit) and/or expenses suffered by the Customer arising out of a breach of this Contract by Landmark.	11.c	No Goods whatsoever will be accepted for return by Landmark unless the Customer has first obtained a Returns Authorisation Number from Landmarks returns department. Unless the Returns Authorisation number is clearly marked upon the packaging the Goods will not be accepted for return by Landmark and will be immediately returned to the Customer at the Customers full expense.
7.c	Landmark shall not be liable to the Customer by reason of any representation or implied warranty, condition or other term or any duty at common law or otherwise under the express Terms of the Contract for any consequential loss or damage (whether or not for profits or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of Landmark or otherwise) which arise out of or in connection with the supply of Goods or their use or subsequent resale by the Customer except as expressly provided in these Conditions	11.d	Any Goods returned to Landmark will be subject to an inspection by Landmark. If any damage is found that Landmark considers to be the fault of the Customer either through willful neglect, purposeful or accidental damage, improper usage or carelessness on the part of the Customer then the Goods will be returned to the Customer at the Customers full expense and no credit or refund will be issued by Landmark. Any definitions contained in this clause are defined at Landmarks sole discretion
7.d	In the event of any breach of this Contract by Landmark then the remedies of the Customer shall be limited to damages. Under no circumstances whatsoever shall the liabilities of Landmark exceed the price of the Goods	11.e	All Goods are only to be accepted for return if the return is carried out in strict accordance with Landmark's own Returns Authorisation Procedure. A full copy of this procedure is available from Landmarks principal trading address at 15/16 Cowell Street, Llanelli Carmarthenshire
7.e	Landmark accepts no liability whatsoever arising from the neglect or nuisance of the Goods including (but not limited to) interference caused by the vehicle in which the Goods may be installed or from other radio services or machinery		
<b>8.</b>	<b>Delivery of Goods</b>	<b>12</b>	<b>Proper Law of Contract</b>
8.a	Delivery of the Goods shall be made to the address specified by the Customer at the time of ordering the Goods. The Customer shall make all arrangements necessary to take Delivery of or to collect the Goods as and whenever they are tendered for Delivery	12.a	The Contract shall be governed and construed with the laws of England and Wales and the Customer and Landmark hereby submit to the exclusive jurisdiction of the English Courts for the settlement of all and any disputes which may arise out of or in connection with this Contract.
8.b	Landmark will not be bound to make any Delivery of any Goods until such time as full payment is made by the Customer by way of cleared funds	<b>13</b>	<b>Force Majeure</b>
8.c	If the Customer fails to take Delivery of the Goods or fails to give Landmark adequate Delivery instructions at the time stated for the Delivery (otherwise than by reason or cause beyond the Customers reasonable control or by reason of Landmarks fault) then without prejudice to any right or remedy to Landmark, Landmark may store the Goods until the actual Delivery can be effected and Landmark may charge to the Customer for all reasonable costs (including but not limited to charges in respect of Insurance) of storage.	13.a	Landmark reserves the right to defer the date of Delivery or to cancel the Contract or reduce the volume of Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances which are beyond its reasonable control including (but without limitation to) acts of God, governmental actions, war or national emergency, acts of terrorism, riot, civil commotion, fire, explosion, flood, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce(s)) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials
8.d	Landmark shall not be liable or held liable whatsoever for any delay in the Delivery of the Goods howsoever caused.	<b>14</b>	<b>General</b>
<b>9.</b>	<b>Acceptance of Goods</b>	14.a	Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing and may be given either personally, by first class letter post, e-mail or facsimile transmission addressed to that other party at the office of Landmark Marketing Services Ltd at 15/16 Cowell Street, Llanelli, Carmarthanshire, SA15 1UU or to the customer at the address to which the handset was delivered or to any other address supplied in respect of the customer. Where given by first class letter post such notice will be deemed to have been served 48 hours after posting and proof that the envelope contained the notice was properly addressed and sent prepaid shall be sufficient evidence of service. Notice delivered by hand, by e-mail or facsimile transmission shall be deemed to be served immediately.
9.a	The Customer shall be deemed to have accepted the Goods at the point of Delivery and the carriers Delivery note has been signed as accepted	14.b	If any provision of these Conditions or any part thereof is found by any competent court or authority to be illegal, invalid or otherwise enforceable then the offending words shall be deemed severable and the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected by it.
9.b	After acceptance the Customer shall not be entitled to reject any Goods which are not in accordance with the Contract	14.c	The legal construction of these Conditions shall not be affected by their headings which are for convenience and ease of reference only.
9.c	The Goods shall be at the Customers risk as from the point of Delivery	14.d	The Customer shall not be entitled to assign or otherwise transfer the Contract or any of its rights or obligations thereunder without Landmarks prior written consent. Landmark reserves the right to withhold such consent at its absolute discretion. Landmark shall be fully entitled to assign the Contract at all times.
<b>10.</b>	<b>Remedies of the Customer</b>	14.e	No waiver by Landmark of any breach of the Contract by the Customer shall be considered a waiver of any subsequent breach of the same or any other provision. Any waiver shall be in writing and shall be signed by the party withholding its rights.
10.a	When the Customer rejects the Goods then the Customer shall have no further rights whatever in respect of the supply to the Customer of such Goods or any failure by Landmark to supply Goods which conform to the Contract of sale as per the provisions contained herein.	14.f	Any person or persons who are not party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any Terms of these Terms.
10.b	Where the Customer accepts or is deemed to have accepted any Goods then Landmark shall have no further liability in respect of those Goods		
10.c	Landmark shall not be liable to the Customer for late Delivery or short Delivery of any Goods		
<b>11</b>	<b>Price Refunds and Returns</b>		
11.a	Unless Landmark specifically agrees in writing and signed by a director of Landmark prior to any Goods being returned then Landmark shall be under no obligation to take back any of the Goods or to refund any amounts paid save for any instance or instances where such an instance happens it is covered by Sections 12; 13 and 14 of the Sale of Goods Act 1979 (as amended)		
11.b	Any Goods returned by the Customer to Landmark either for credit, refund or exchange must be returned by Special delivery and must be complete with all original packaging, parts, manuals, instructions and SIM cards and must be in a condition deemed worthy for resale. Should Landmark subsequently find that there are any items		