



## Message Stick Trading Terms

These terms apply to all SMS, Fax, Email and Voice Broadcast Services provided by Message Stick Communications Pty Limited (ABN 95 107 127 962) of Level 6, 33 Bligh Street, Sydney, NSW, Australia, 2000.

### Your responsibilities

You must adhere to Message Stick's Privacy Policy, which deals with the protection of personal information. By proceeding to register and use any Message Stick service, you agree that you have read and fully understand your obligations under the Privacy Acts (see Privacy Policy at the bottom of the message.messagestick.com.au home page). It is your responsibility to comply with Message Stick's Privacy Policy.

You agree to provide accurate and complete information about your company and authorised contacts when registering to use any Message Stick service and when applying for a Monthly Account.

You can select any of the distribution lists on-line from Message Stick Media and Message Stick Business Lists Online as well as provide your own lists for the distribution of your Information.

You are responsible for the Information you send. Please ensure that your Information is relevant, and of interest, to your targeted audience. Message Stick does not take responsibility for the content of your documents delivered by the Message Stick network. You warrant that the content of all documents you submit will be accurate and free of any viruses. You agree not to make any defamatory, obscene or illegal statements which infringe any law, regulations or any industry codes of practice. In particular, you warrant that you comply with Message Stick's SPAM Policy, which deals with the transmission of unwanted material (see Spam Policy at the bottom of the message.messagestick.com.au home page).

You authorise Message Stick to distribute your Information to the chosen list(s) of recipients and further permit those recipients to use the Information conveyed to them.

### Message Stick's responsibilities

Message Stick will use all reasonable efforts to ensure that your Information is distributed on time according to your on-line instructions. Message Stick, however, does not take responsibility for any errors in transmission or the selection of distribution lists. Message Stick does not warrant that your recipients have expressed an interest in receiving your Information either from your own lists or any distribution lists provided by Message Stick or its third-party providers.

Message Stick will give you access to all Message Stick distribution lists and your own lists and will provide Message Stick services to you provided that you comply with these Terms of Use. Message Stick is not responsible for any errors in lists created by you or for the accuracy of Message Stick's Media or Business Lists Online. Should you fail to meet the conditions in these Terms of Use, then Message Stick reserves the right to block your access to any of Message Stick's lists, terminate your scheduled broadcasts, terminate your registration, and retain any fees paid by you.

### Limitation of Liability

By becoming a Message Stick Customer you acknowledge that to the fullest extent permitted by law that Message Stick will not be liable in any way for the Information transmitted, or the failure to transmit, or any delay in transmission, or failure to provide a broadcast report, however caused. Message Stick will not be liable for any consequential loss, direct loss, indirect loss, loss of profits of any kind, loss or corruption of data, interruption to business, loss of revenue, or economic loss of any kind, whether in contract, negligence, or any other tort, or under any statute or otherwise.

By becoming a Message Stick Customer you agree to indemnify Message Stick against any loss, liability or expense arising from any loss in connection with the use of any Message Stick service. You also agree that to the fullest extent permitted by the law all expressed and implied terms and conditions other than those set out on the Message Stick website are excluded.

### Invoicing and Payment

Message Stick will invoice you for the services you use. Invoices may be provided in paper format or electronically.

You are responsible for taxes, levies and duties charged or payable in respect of the services, including any goods and services tax applicable to any taxable supplies, subject to receipt of a valid tax invoice.

You must pay all charges (other than any disputed amount withheld in accordance with clauses below) in full within 7 days. Unless otherwise agreed, payment must be by cheque or direct deposit into the specified bank account identified in the invoice. A service charge may apply to any payments made by way of a credit card.

If you, in good faith genuinely dispute any invoiced charges, you may withhold the disputed amount, but only if:

the undisputed amount of the invoice is paid in full; and

notice is given of the dispute, details of the amount disputed, the reason(s) for the dispute and the basis for calculating the disputed amount.

Message Stick will investigate the dispute. You acknowledge and agree that Message Stick's decision on the disputed amount is final. If the disputed amount is found to be payable (in whole or in part), then you must pay that amount within (fourteen) 7 days of receiving notice of Message Stick's decision. Invoiced charges that are not disputed in good faith within six (6) months of the date of an invoice are deemed to be correct.

Message Stick may offset any amounts payable to the Customer (including rebates and any amount payable against any outstanding charges).

### Term of Service

There are no set contractual periods for Message Stick SMS, Fax, Email and Voice Broadcast Services.

### General Conditions

Message Stick reserves the right to terminate all services immediately if any of **Your Responsibilities** have been violated.

If Message Stick intends to stop providing you any service for any reason other than for failure to pay charges or for contravention of any requirements listed under **Your Responsibilities**, then Message Stick will give you 30 days notice of termination of service.

If you do not pay Message Stick in accordance with the payment terms, Message Stick may terminate all services until all arrears are paid.

### Surcharge for Long Faxes

Message Stick will charge you a surcharge for faxes which take an unusually long time to transmit. If a page of fax takes over 2 minutes to transmit, then it will incur a surcharge of 10 cents per minute or fraction thereof. This surcharge will be calculated at the end of the broadcast and will be reflected in the final report for the broadcast and in your invoice.

However, if you test your fax, and we quote you a transmission time of under 2 minutes, then your fax will not incur a surcharge.



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### **Copyright**

Message Stick owns the authorship contained in the website <http://www.messagestick.com.au>. This includes all design, text, and images. You may not copy, reproduce, transmit, display, rent, sublicense, alter, store for subsequent use or otherwise use in whole or in part in any manner this material without the prior written consent of Message Stick. However, you may have a temporary copy in the memory of your computer for personal and commercial purposes for use by a registered user.

### **Disclaimer**

Message Stick Corporation disclaims any warranty, including third party, associated with the services provided, and disclaims any warranty regarding the accuracy, timeliness, fitness for purpose, completeness, or intellectual property infringement of the services.

### **Applicable Law**

The laws of New South Wales govern the Agreement and both parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales. Message Stick reserves the right to make changes to its web site and these Terms of Use at any time. Your continued use and access to this web site after any changes constitutes acceptance of the revisions.

### **Contact Information**

All notices, consents, requests and other communications required to be given under the Agreement must be in writing delivered by mail or facsimile to the Customer's address or facsimile number on the Purchase Order, or to Message Stick at:

Message Stick Communications Pty Limited  
Level 6, 33 Bligh Street  
Sydney NSW 2000  
Facsimile: (02) 8221 7788  
Attention: The Company Secretary