

**TERMS AND CONDITIONS BETWEEN ICT DISTRIBUTION PTY LTD (“ICT”) AND ITS TELSTRA  
NOMINATED DEALERS AND CUSTOMER AGENTS**

Effective 1 February 2011.

**Section 1 - Terms and Conditions governing Telstra Nominated Dealers**

The terms and conditions set out in this Section 1 apply only to Telstra Nominated Dealers.

The Telstra Nominated Dealer (“**you**”, “**your**”) agrees with and undertakes to ICT Distribution Pty Ltd (“**we**”, “**us**”, “**our**”) as follows:

- (1) You will comply strictly with all of your obligations under your Telstra Nominated Dealership Agreement
- (2) You will comply with our directions in relation to the performance of your obligations under the Telstra Nominated Dealership Agreement, including compliance with any administrative and operations procedures notified by us from time to time.
- (3) For the duration of your appointment as our Telstra Nominated Dealer, you will not become a Telstra Nominated Dealer of any other person.
- (4) If for any reason your appointment as our Telstra Nominated Dealer is terminated or expires, then, for a period of 3 months, you may not conduct business as a Telstra Nominated Dealer of any other person from any premises at which you conducted business as our Telstra Nominated Dealer in the 3 months leading up to the date of termination or expiry of your appointment as our Telstra Nominated Dealer.
- (5) You will provide us with reports and access to your records regarding your activities as our Telstra Nominated Dealer as we may request from time to time.
- (6) You will immediately provide us with copies of any communication you send to or receive from Telstra relating to your role or activities as our Telstra Nominated Dealer or the performance of your obligations under the Telstra Nominated Dealership Agreement.
- (7) You are our independent contractor and you will not represent to any third party that you are our agent, partner or joint venturer.
- (8) You must keep confidential any confidential information (including customer information) that we provide to you, and you must not use such confidential information for any purpose other than expressly authorised by us.
- (9) You will indemnify us for any loss, liability or expense suffered by us and for any claims brought against us as a result of a breach by you of your obligations under the Telstra Nominated Dealership Agreement or these terms and conditions or under any applicable laws, industry guidelines or codes of conduct.
- (10) Remuneration will be calculated in accordance with the schedules and arrangements advised by us from time to time.
- (11) Remuneration will be paid by EFT to a bank account nominated by you. We reserve the right to deduct any amounts owed by you to us. The provisions of clause 22 of the General Terms of the Telstra Nominated Dealership Agreement (regarding GST) are incorporated in these terms and conditions substituting references to Telstra as references to us.
- (12) We reserve the right to set sales targets from time to time and you must use your best endeavours to meet any such sales targets.

- (13) We may without notice to you enter into your premises if you are deemed to be in breach of either ICT or Telstra conditions, directions or guidelines regarding branding to remove any materials that are in breach of such conditions, directions or guidelines.
- (14) You may not conduct telemarketing activity except under written arrangement with us in our absolute discretion. You are prohibited from using people or call centres located outside Australia to conduct (or assist to conduct) telemarketing activities. Without limiting the other provisions of these terms and conditions, evidence found relating to such activity may result in termination of your appointment at absolute our discretion.
- (15) Notwithstanding any provision in the Telstra Nominated Dealership Agreement, we may at any time and for any reason in our absolute discretion by notice in writing terminate with immediate effect your appointment as our Telstra Nominated Dealer.
- (16) Upon termination or expiration of your appointment as our Telstra Nominated Dealer, you must immediately return to us all property of ours and all records containing our confidential information, in addition to complying with the termination requirements set out in the Telstra Nominated Dealership Agreement.
- (17) Without limiting our powers under these terms and conditions, you agree and acknowledge that any power given to Telstra under the Telstra Nominated Dealership Agreement is also given to us.
- (18) Rights given to us under these terms and conditions are in addition to, and do not derogate from or qualify, our rights under the Telstra nominated Dealership Agreement.
- (19) Sales by us to you of hardware, software or equipment are governed by the Sale Terms and Conditions set out in Section 3 below
- (20) We may amend these terms and conditions at any time in our absolute discretion by notice in writing to you or by notice posted on our website.

## **Section 2 - Terms and Conditions governing Customer Agents**

The terms and conditions set out in this Section 2 apply only to Customer Agents (being dealers who are not Telstra Nominated Dealers).

The Customer Agent (“**you**”, “**your**”) agrees with and undertakes to ICT Distribution Pty Ltd (“**we**”, “**us**”, “**our**”) as follows:

- (1) You agree to transact with us as an agent for your customers who seek to enter into Telstra mobile contracts, and in no other capacity.
- (2) You agree to buy handsets from us for the purpose of retail sale to your customers and in accordance with the Sale Terms and Conditions set out in Section 3 below.
- (3) Where you have a customer who wishes to enter into a Telstra mobile contract (“**the Customer**”):
  - (a) we agree to receive from you the Customer’s personal details and then to endeavour to procure a Telstra mobile contract between the Customer and Telstra;
  - (b) where Telstra pays or subsidises the cost of the Customer’s handset, we will reimburse you the cost of the handset less any amount payable by the customer to you in respect of the handset;
  - (c) we will pay you a commission calculated in accordance with the schedules and arrangements advised by us from time to time. You must disclose in writing to your customers that you will receive a commission from us;

- (d) amounts owing to you in respect of handsets and commission will be reconciled at the end of each month and paid by EFT to your nominated bank account. We may deduct any amounts you owe us.
- (4) You are not our or Telstra's partner, agent or representative, and you must not, in your signage, promotional material or otherwise, represent to anyone or cause anyone to believe that you are our or Telstra's partner, agent or representative.
- (5) We will, in our discretion, provide you with promotional material which you may provide to your Customers.
- (6) You must not reproduce or display any Telstra logos or trade marks in your materials or signage.
- (7) You must keep confidential any confidential information that we provide to you, and you must not use such confidential information for any purpose other than expressly authorised by us.
- (8) You will indemnify us for any loss, liability or expense suffered by us and for any claims brought against us as a result of a breach by you of your obligations as set out in these terms and conditions.
- (9) This agreement may be terminated in writing with immediate effect by you or us for any reason.
- (10) We may amend these terms and conditions at any time in our absolute discretion by notice in writing to you or by notice posted on our website.

### **Section 3 – Supply Terms and Conditions (applicable to both Telstra Nominated Dealers and Customer Agents)**

The terms and conditions set out in this Section 3 apply to both Telstra Nominated Dealers and Customer Agents.

Where we supply hardware, software or equipment to you, we do so in accordance with the following terms and conditions ("**Supply Terms and Conditions**"):

#### **Interpretation**

In these conditions unless the contrary intention appears:

**"Additional Charges"** - includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Dealer to ICT arising out of the sale of the Goods or provision of the Services.

**"Dealer"** - means the person to or for whom the Goods or Services are to be supplied by ICT.

**"Goods"** - means the goods sold to the Dealer by ICT.

**"ICT"** - means ICT Distribution Pty Limited, ABN 87 108 802 580.

**"Ordering System"** – means ICT's online (web) ordering system or, if accepted by ICT, any other method of transmitting a completed purchase order by the Dealer to ICT.

**"Purchase Price"** - means the list price, as published on the current ICT pricelist or online ordering system, for the goods as charged by ICT at the date of delivery or such other price as may be agreed by ICT and the Dealer prior to delivery of the Goods.

**"Services"** - means the services provided to the Dealer or at the direction of the Dealer by ICT.

1. **ICT Credit Accounts** - Where the Dealer needs credit terms ICT recommends MoneyTech of which ICT is an authorised distributor. Payment to ICT can also be made by credit card.
2. **Order for Goods** - The Dealer will be deemed to have accepted these Terms and Conditions by sending a purchase order to ICT. ICT's acceptance of the Dealer's purchase order is conditional upon the Dealer's acceptance of the Terms and Conditions, without modification unless previously agreed by both parties in writing. In the event that the Dealer's purchase order is

deemed to be an offer, ICT's acknowledgement or performance of the purchase order is conditional upon Dealer's acceptance of the Terms and Conditions, and the Dealer's acceptance of delivery without objection constitutes acceptance of the Terms and Conditions. The Dealer will order Goods and Services by utilizing ICT's Ordering System. ICT may accept or reject the purchase order for any reasonable commercial reason and where the purchase order deviates from either the terms of quotation or the Terms and Conditions contained herein ICT will not be bound by any terms or condition set forth on the Dealer's purchase order.

3. **Warranties** - Certain laws imply terms, conditions and warranties ("Prescribed Terms") into contracts for the supply of goods and prohibit the exclusion, restriction or modification of such terms, conditions and warranties. The liability of ICT in respect of a breach of Prescribed Terms or any warranty made under these terms and conditions is limited, to the extent permissible by law and at the option of ICT, to the; replacement of the Goods; payment of the cost of replacing the Goods; or Refund of the Purchase Price paid by the Dealer or issue of a credit adjustment. Claims by you for short or incorrect delivery must be made within 3 working days after delivery, and claims in relation to defective Goods must be made within 14 days after you become aware of the defect, otherwise you are deemed to have accepted delivery. Unless the terms and warranties are included in these standard terms and conditions, all prior discussions, quotations, warranties and Prescribed Terms, to the extent permitted by law, are excluded. Under no circumstance will ICT's liability to Dealer exceed the Purchase Price paid for the Goods or Services that are the basis for the claim.
4. **Delivery** - The times quoted for delivery are estimates only and ICT accepts no liability for failure or delay in delivery of Goods or Services. The Dealer is not relieved of any obligation to accept or pay for Goods or Services by reason of any delay in delivery. Delivery of Goods is free-on-board point of shipment unless otherwise advised by ICT. Insurance, transportation costs and all other shipment-related expenses are the Dealers responsibility. Risk in Goods passes to you from shipment. Title in Goods passes to you from shipment or upon receipt by ICT of payment in full, whichever occurs last. All Additional Charges are payable by the Dealer in addition to the Purchase Price of the Goods. Partial shipments may be made in ICT's sole discretion.
5. **Price and Payment** - Payment is due strictly before shipment. Payment may be made by way of an arrangement with MoneyTech or credit card. The Purchase Price's are GST-exclusive (unless otherwise specified) and GST must be paid in addition. The Dealer must pay the Purchase Price and the Additional Charges to ICT. If the Dealer is in default, ICT may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights. Interest is charged at the rate of 1.5% per month or part of a month from the expiry of any ICT agreed terms that period until the date payment is received by ICT.
6. **Retention of Title** - Ownership, title and property of the Goods remain with ICT until payment in full for the Goods has been made. Until the date of payment: the Dealer has the right to sell the Goods in the ordinary course of business; until the Goods have been sold by the Dealer in the ordinary course of the Dealer's business, the Dealer holds the Goods as bailee for ICT; the Goods held by Dealer are always at the risk of the Dealer. The Dealer is deemed to be in default immediately upon the happening of any of the following events: if payment to ICT for the Goods is not made promptly before the due date for payment; if the Dealer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Dealer payable to ICT is dishonored; In the event of a default by the Dealer, then without prejudice to any other rights which ICT may have at law or under this contract: ICT or its agents may without notice to the Dealer enter the Dealer's premises or any premises under the control of the Dealer for the purposes of recovering the Goods. ICT may recover and resell the Goods; if the Goods cannot be distinguished from similar Goods which the Dealer has or claims to have paid for in full, ICT may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of ICT and the Dealer may be ascertained. ICT must promptly return to the Dealer any goods the property of the Dealer and ICT is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Dealer's business howsoever arising from the seizure of the Goods. In the event that the Dealer uses the Goods in some manufacturing or construction

process of its own or some third party, then the Dealer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for ICT . Such part will be an amount equal in dollar terms to the amount owing by the Dealer to the ICT at the time of the receipt of such proceeds. The Dealer will pay ICT such funds held in trust upon the demand of ICT.

7. **Goods and Services Tax** - Goods and Services Tax (GST) will be shown separately in the tax invoice for the sale of the Goods. The amount of GST payable in respect of the supply of the Goods is payable by the Dealer. The Dealer must indemnify ICT in respect of GST paid and payable by ICT for the supply of the Goods to the Dealer.
8. **Returns** - Returns may be approved by ICT in its sole discretion upon following our supplier returns guidelines or prior request by you, in which event a credit or product replacement will be given upon return of the Goods in new and unused condition with all relevant packaging and accompanying documentation. Dealer may return Goods purchased from ICT and receive a credit of the Purchase Price, subject to the following: the Goods for return have been approved or issued a RA number by ICT; and the Goods are returned to ICT within 7 days of the invoice date; and the list price of the Goods has not changed; and the Goods are new and unused; and the Goods are in their original package which has not been damaged or altered; and ICT determines in its sole judgment that Dealer is in good standing. Any Goods returned will be subject to a restocking charge of 15%. Defective Goods may be returned to ICT subject to: Defective Goods for return have been issued a RA number; Defective Goods will be returned to Manufacturer as per their standard warranty and returned when repaired; Dealer accepts any charges levied by the Manufacturer to ICT and freight costs associated with the return of Defective Goods
9. **Credits** - Refunds will be issued, upon request by Dealer, only in the event of an overpayment. Where a credit adjustment is available under a then applicable policy of ICT, such adjustments may be applied against existing Dealer account balances with ICT.
10. **Confidentiality** - You must keep confidential any confidential information (including Dealer information) that we provide to you, and you must not use confidential information for any purpose other than expressly authorised by us. I remind you that the Proposed Agreement, and the substance of our negotiations in relation to the agreement, is confidential and should not be disclosed to any third party without our consent.
11. **Termination** - If you are in default under these ICT Agreements, become insolvent or cease to be ICT's Dealer, ICT may suspend or cancel further deliveries in its sole discretion. Upon termination or expiration of your appointment as an ICT Dealer, you must immediately return to us all property of ours and all records containing our confidential information.
12. **Export Restrictions** - Dealer will obtain all licenses, permits and approvals required by any government and will comply with all applicable laws, rules, policies and procedures of the Australian Government. Dealer will indemnify and hold harmless ICT for any violation or alleged violation by Dealer of such laws, rules, policies and procedures.
13. **General** - These terms and conditions are to be construed in accordance with the laws from time to time in the State of Victoria and the Commonwealth of Australia. These standard trading conditions contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties. Any conditions found to be void, unenforceable or illegal may, to that extent are severed from the Agreement. No waiver of any of these terms and conditions or failure to exercise a right or remedy by ICT will be considered to imply or constitute a further waiver by ICT of the same or any other term, condition, right or remedy.
14. **Indemnity** - You will indemnify us for any loss, liability or expense suffered by us and for any claims brought against us as a result of a breach by you of your obligations under the Supply Terms and Conditions or under any applicable laws, industry guidelines or codes of conduct.

15. **Amendment** - We may amend these terms and conditions at any time in our absolute discretion by notice in writing to you or by notice posted on our website.