

Diva Telecom Terms and Conditions

Definitions

'Diva Telecom' Refers to Diva Telecom Ltd, registered address: Glendevon House, 4 Hawthorn Park, Coal Road, Leeds, LS14 1PQ. Correspondence address: Glendevon House, 4 Hawthorn Park, Coal Road, Leeds, LS14 1PQ.

'Customer' refers to the company or individual who has requested 'Diva Telecom Inbound Services' from Diva Telecom

'Diva Telecom Inbound Services' refers to the Non-Geographic numbers (03xx, 08xx), International Freephone numbers, Universal International Freephone numbers, European Shared Cost numbers and Geographic numbers. Diva Telecom will provide to the customer for the duration of the contract period. It further refers to outbound calls placed via 08xx delivery of Non-Geographic (08xx), International Freephone numbers, Universal International Freephone numbers, European Shared Cost numbers and Geographic numbers.

'Contract Period' is the length of time from the start to finish of the Diva Telecom Inbound Services Contract where the Customer is committed to using and paying, where applicable, for the 'Diva Telecom Inbound Service'

'PPM' refers to Pence (Sterling) Per Minute (e.g.: 0.01 = 1 pence per minute)

'PPC' refers to Pence (Sterling) Per Call (e.g.: 0.01 = 1 pence per call)

'Monthly Call Statistics' refers to the report supplied by Diva Telecom to the customer that contains the number and duration of calls received by the customer.

'Live Date' refers to the date, after testing, that the Service is suitable for commercial service; this date is usually a maximum of 4 days from the start of the contract for UK Services and up to 30 days for International Services.

'Revenue Share' refers to the PPM or PPC that Diva Telecom typically pays its customers when receive calls through the Diva Telecom Non-Geographic and Premium Rate Services.

1. Novation of Prior Agreements

The parties agree that from the date of this Agreement, any prior agreements relating to the services specified under this Agreement shall be replaced by this Agreement.

2. Contract Terms

This Contract will come into effect on the Commencement Date and shall continue until the expiry of the Initial Term. Following expiry of the Initial Term this Contract will continue unless and until terminated by either party giving no less than 30 days' prior written notice, such notice to expire on or after the expiry of the Initial Term.

3. Payment Terms

3.1 All Charges due under this Contract will be payable by Direct Debit unless otherwise agreed in writing by Diva Telecom. Direct Debit payments are collected on or around 15th of the month following the call period. Where terms other than direct debit are agreed, invoices should be paid in full without any set-off, deduction or withholding of any kind within 30 days of the date of issue. Diva Telecom reserve the right to charge daily interest on any outstanding amounts until payment is received in full at a rate equal to 2% per cent per annum above the base rate of Barclays Bank Plc as current from time to time whether before or after judgment until the date payment is received and/or suspend the Service (either in whole or in part) until all such Charges have been paid in full.

3.2 Invoices will be raised and dated by Diva Telecom, where applicable, for the implementation of the Diva Telecom Inbound Service, unless specifically stated. Upon receiving a completed and signed agreement and Direct Debit mandate, Diva Telecom will confirm to you in writing commencement of your service. The customer will pay Diva Telecom the Diva Telecom Inbound Services set-up fee (if applicable). Diva Telecom reserves the right to cease the supplies of the product and / or services to the Customer at any time if terms and conditions relating to Diva Telecom Inbound Services are not adhered to. On such cessation of supplies, Diva Telecom reserves the right to withdraw any credit facility such that the whole of the Customers account becomes due for payment without prejudice to any other right to remedy of the seller forthwith become due and payable. All prices quoted are exclusive of Value Added Tax. Charges will be calculated by sole reference to the data and records maintained by Diva Telecom.

3.3 If Diva Telecom become liable to pay any fee for any Number pursuant to any regulatory action then you agree to reimburse Diva Telecom such fee in respect of any such Numbers provided that Diva Telecom provides you with as much notice of such fee as is reasonably practicable and Diva Telecom provides you with evidence of such fee upon your reasonable request for such.

3.4 Calls to 0800 and 0808 numbers originating from payphones will have a levy added, please refer to our pricing schedules.

4. All Diva Telecom Inbound Services

Diva Telecom will not be liable for printing and advertising costs where you print and advertise an Inbound Services number before contracts have been signed and your number has been built on our platform and tested.

5. Regulation

All UK 0871 number ranges are regulated by PhonePayPlus. Customers must familiarize themselves with the Code of Practice relating to use and promotion of 0871 numbers to consumers. Visit www.phonepayplus.org for information and guidance.

German revenue share numbers should have the following pricing notice clearly shown in all printed media and websites:

- 01803-xx xx xx (allocated number)
9 ct. pro Minute aus dem deutschen Festnetz / max. 42 ct. aus Mobilfunknetzen (*which means: 9 ct./Min. from German landlines, max. 42 ct. from mobile phones*)
- 01805-xx xx xx (allocated number)
14 ct. pro Minute aus dem deutschen Festnetz / max. 42 ct. aus Mobilfunknetzen

6. Revenue Share Services (UK 084x, 087x, ranges and European Shared Cost number ranges)

6.1 Diva Telecom shall be entitled to off-set any amounts due to you against any amounts due to Diva Telecom under this Agreement or any other agreements. Subject to receiving payment from our carriers, Diva Telecom shall provide a call breakdown and request that you submit an invoice to Diva Telecom for payment. Diva Telecom will pay the Total Amount due to you within 10 days of funds clearing from the carrier, subject to a minimum of £25.00.

6.2 The basis for payment by Diva Telecom will be the payment made to Diva Telecom, net of any claw back and AIT, as permitted in the Interconnect Contract between Diva Telecom and the Billing Carriers (usually BT). Our carrier outbound rates apply to off-net delivery of all revenue share services numbers.

6.3 Where an AIT is received from BT, Diva Telecom reserves the right to:

- a) Charge an administration fee of £75.00 per hour for all Call Data Record work and correspondence with BT;
- b) Charge for the outbound call leg of calls delivered to customers DDI which have been subject to an AIT.

7. Use of the NGN Services

7.1 Nobody must use Diva Telecom Inbound services:

- a) To make offensive, indecent, menacing, nuisance or hoax Calls; or
- b) Fraudulently or in connection with a criminal offence.

7.2 The Customer agrees to take all reasonable steps to make sure that this does not happen. Diva Telecom has the right to terminate a customer's Inbound service if it is deemed that the service is being used or manipulated for fraudulent purposes either by the customer or outside callers. We take this kind of misuse very seriously. If we reasonably believe it has happened, we may take immediate action to suspend the service or end the agreement, without telling you first, even if you were not aware of the misuse.

7.3 You will, and will ensure that any Users when using the Service will use reasonable endeavours to avoid causing congestion on the Diva Telecom Carrier Networks and do not misuse the network in any way. Where We notify You of any such congestion or misuse, then You shall immediately take all steps to prevent such congestion or misuse. If You do not promptly take such steps then We shall be entitled to take all reasonable steps to protect Our network including the suspension and/or termination of the Services or any part of the Services

8. VAT

The customer will notify Diva Telecom immediately if their VAT registration is cancelled or it is issued with a new VAT number

9. Minimum Call Volumes

The Customer agrees that call traffic for the Diva Telecom Inbound Service will not drop below 100 minutes per number for a period of more than three consecutive months, in this instance Diva Telecom reserves the right to cease the Customers Inbound Service.

10. Memorable Numbers (03xx and 08xx)

Memorable numbers will attract a one-off charge as agreed between Diva Telecom and the customer. The charge will be subject to VAT.

11. Additional Information

Our carriers may need to temporarily suspend the service for operational reasons (e.g. for repairs, planned maintenance or upgrades), but before they do we will give you as much notice as we can. We promise to restore the service as soon as possible after any suspension. They may have to alter code or Inbound services access numbers or technical specification associated with the service for operational reasons, and where we need to tell you about this we will give you as much notice as we can. The technical specification will only be changed where this will not materially affect the performance of the service. We may give you instructions about health and safety issues when using the service or on your use of the service to ensure the quality of the service we provide to you and other customers and you agree to observe them.

12. Provision of Service

12.1 We will use reasonable endeavours to provide the Service in accordance with the Service Standards and will use reasonable skill and care in the provision of the Service. However, You acknowledge that the Service cannot be provided fault free and We do not warrant error free or uninterrupted use of the Service.

12.2 We will use reasonable endeavours to provide the Service for use by You from the Proposed Start Date unless otherwise specifically agreed by the parties in writing or unless We are unable to do so as the result of a failure by You to fulfill Your obligations under this Contract or by any delay caused by a nominated third party (including, without limitation, other Network Operators).

12.3 We do not guarantee the continuous availability of any particular Service and You acknowledge that We may be dependent upon third parties (including, without limitation, other Network Operators) when providing the Service. Notwithstanding any other provisions of this Contract, We will not be liable to You in contract, tort (including negligence) or otherwise for the actions of any third party (including, without limitation, acts or omissions of the other Network Operators) that affect or otherwise impact upon the provision of the Service.

12.4 You acknowledge that We may bar access to certain types of number ranges if You are in breach of this Contract (or if We reasonably suspect You are in breach of this Contract) or for commercial or regulatory reasons.

12.5 We cannot guarantee that We can provide Services to specific numbers where such number(s) have been transferred to the Diva Telecom Carrier Network from another Network Operator or where there are national code or number changes and We shall not be liable for any loss or damage You may incur due to Your inability to receive any incoming telephone calls to any such number.

13. Faults

Although we attempt to provide you with the best possible service, we cannot guarantee that the service will never be faulty. However, we will correct all reported faults as soon as we reasonably can.

14. Personal Information

You agree and authorise Diva Telecom and its affiliates to use your personal information in accordance with the Data Protection Act 1998, and to disclose your personal information to its agents, related companies, credit reporting agencies, credit providers, carriers, carriage service providers and any relevant regulatory authorities for the following purposes:

- a) Considering or applying Diva Telecom credit policy to your application and maintaining credit records about you. This information may be used debt tracing and fraud prevention;
- b) Management of your account, including billing and collection of overdue payments;
- c) Research and marketing to you;
- d) Provision, operation and administration of the Service.

Diva Telecom reserves the right to contact you either by writing or by electronic means in regards to management of your account, including billing, provisioning and operation of the Service.

15. Security

15.1 If we issue you with a username and password for accessing Diva Telecom's telecommunications administration website. These are essential for your secure use of the Diva Telecom Inbound service so you must ensure that they are kept confidential, secure and are used in accordance with all relevant instructions.

15.2 To ensure that the service remains secure, you must not change or attempt to change a username. If we think there is likely to be a breach of security or misuse of the service we may: change your password and then we will notify you that

we have done this; and/or suspend username and password access to the Diva Telecom Interface. If you think that any username or password has become known by someone not authorised to use it, or if any password is being or is likely to be used in an unauthorised way, you need to inform us immediately.

15.3 If any of the information you give to us when you sign up for the Diva Telecom Inbound service changes, including any changes to your payment details, you must inform us immediately.

16. Suspension of Accounts

In this instance Diva Telecom will provide the Customer with 48 hours written notice by fax, post or electronic means before the commencement of the account suspension.

17. Cancellation of Accounts

If the Customer wishes to terminate the Diva Telecom Inbound Service with Diva Telecom, 30 days notice must be given in writing. Diva Telecom will confirm the termination date of the Inbound Service to the Customer by email, fax or post.

In this instance all outstanding accounts must be settled by the Customer with Diva Telecom. A cancellation fee of £50 plus VAT may be administered along with all in contract rentals if the account is terminated within the 12 month contractual period.

18. Transferring the Contract

The Customer cannot transfer or try to transfer this contract, or any part of it, to anyone else without the prior approval of a Diva Telecom representative.

19. Changing the Contract

a) We may change this contract and our terms and conditions, including our charges or revenue payments, at any time.

b) We will give you at least 28 days notice of any changes before they take effect. If the changes made are unacceptable to the customer then the customer has the right to terminate the agreement.

20. Indemnification

20.1 Customer agrees that it shall defend, indemnify, save and hold Diva Telecom harmless from any and all demands, liabilities, losses, costs and claims, including reasonable solicitor's fees asserted against Diva Telecom, its agents, its Customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by Customer, its agents, employees or assigns.

20.2 Customer agrees to defend, indemnify and hold harmless Diva Telecom against liabilities arising out of

Any injury to person or property caused by any products sold or otherwise distributed in connection with Diva Telecom Inbound services;

a) Any material supplied by Customer infringing or allegedly infringing on the proprietary rights of a third party; Copyright infringement; and

b) Diva Telecom will not be responsible for any damages your business may suffer.

20.3 Diva Telecom makes no warranties of any kind, expressed or implied for services we provide except to the extent of our service level agreement. Diva Telecom disclaims any warranty or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by Diva Telecom and its employees. Diva Telecom reserves the right to revise its policies at any time. Diva Telecom shall not be liable for any damages caused by our service or any equipment supplied by us or our suppliers in conjunction with our service.

21. Billing Disputes

21.1 Charges and revenue payments will be shown on a monthly statement. You must notify Diva Telecom Customer Care in writing if you disagree with any item(s) included on a statement within 30 days of the date of the statement. After the expiry of that period, the statement will be conclusively treated as having been accepted by you. For the purposes of this condition, your notification of disagreement must be sent by Recorded Delivery post to the Diva Telecom Customer Services address: Diva Telecom Ltd, Glendevon House, 4 Hawthorn Park, Coal Road, Leeds, LS14 1PQ.

21.2 Any refund of any charges wrongly debited to you shall be made by Diva Telecom, if it accepts the error, within 30 days of receipt by it of your notification as described in the previous paragraph.

22. Complaints

Should you have a complaint about our services, please contact our Customer Services Department on 0330 333 0330.

23. Matters beyond our reasonable control

If we cannot do what we have promised in this contract because of something beyond our reasonable control (including, without limitation, industrial disputes involving our employees), we will not be liable for this.

a) If this continues for more than 14 days, you can terminate this contract immediately by giving us written notice.

b) If the events continue for more than 28 days, we can terminate this contract immediately by giving you written notice.

24. Waiver

Neither of us shall be considered to have waived any right under this contract because of failure or delay in exercising that right.

25. Intellectual Property Rights

25.1 Where software is supplied to enable the Customer to use the Services Diva Telecom grants the Customer a non-exclusive, non-transferable licence to use the software for that purpose only.

25.2 The Customer shall not copy, modify, reverse engineer, decompile or otherwise endeavour to obtain the source code of the software except to the extent permitted by law.

25.3 All intellectual property rights in the software shall remain the property of Diva Telecom or its licensors.

25.4 The Customer shall sign any agreement required by the owner of the intellectual property rights in the software to protect such rights.

26. Confidentiality

26.1 The parties will keep in confidence any information of a confidential nature obtained under this Agreement (whether written or oral), including but not limited to the prices payable by the Customer for the Services, and will not disclose such confidential information to any person (other than their employees who need to know the information for the purpose of this Agreement and who are under a duty of confidentiality equivalent to this Clause 26) without the prior written consent of the other party.

26.2 This Clause 26 will not apply to:

a) any information which has been published other than through a breach of this Agreement;

b) information lawfully in the possession of the recipient before the disclosure under this Agreement took place;

c) information obtained through a third party who is free to disclose it; and

d) information which a party is required by law to disclose.

27. Third Party Rights

A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.