

PREPAID SERVICES PTY LTD (ABN 83 094 689 219)

TERMS AND CONDITIONS FOR SUPPLY AND DISTRIBUTION OF OPTUS PREPAID PRODUCTS

1. PLEASE READ THESE TERMS AND COMPLETE YOUR DETAILS WHERE INDICATED BELOW

2. SIGN AT THE BOTTOM OF THE PAGE TO CONFIRM YOUR AGREEMENT TO THE TERMS

3. SCAN AND RETURN THE COMPLETED FORM TO US AT ACCOUNTS@PREPAIDSERVICES.COM.AU

EVEN IF YOU DO NOT SIGN, BY PLACING AN ORDER WITH PREPAID SERVICES PTY LTD FOR OPTUS PREPAID PRODUCTS, YOU WILL STILL BE DEEMED TO HAVE ACCEPTED YOUR APPOINTMENT AS OPTUS' AGENT TO SUPPLY THE PRODUCTS TO CUSTOMERS AT THE LOCATION(S) ON THESE TERMS AND TO HAVE AGREED TO COMPLY WITH ITS TERMS.

Details

Retailer			
ABN			
Address			
	Suburb	State	Postcode
Date			
Notice Details	Name and Title		
	Phone		
	Email Address		
Type of Products	Type of Product	Tick if Applicable	Margin
	Optus Prepaid Mobile Handset Packages+	<input type="checkbox"/>	Sale price x Commission Rate.
	Optus Prepaid Mobile Start Up Kits	<input type="checkbox"/>	
	Optus Prepaid Recharge Vouchers	<input type="checkbox"/>	Refer to rate card for Commission Rate
	Optus Prepaid Mobile Broadband Packages+	<input type="checkbox"/>	+ Margin capped at \$50
	Optus Prepaid Start Up Kits	<input type="checkbox"/>	
	Optus Prepaid \$2 SIMs	<input type="checkbox"/>	Sale Price less 1 cent
Term	The agreement commences on the date it is signed by the Retailer or, if earlier, the date the Retailer is deemed to have accepted these terms by placing an order with PPS for Optus prepaid products. The Agreement continues thereafter unless and until terminated in accordance with clause 11		
Other Location(s)			
Payment Terms	Cash before delivery		

Signed for and on behalf of the Retailer:

Name:
Please print

Signature:

Title:
Please print

Date:

TERMS AND CONDITIONS

1. Introduction and Term

1.1 Appointment of Distributor:

- (a) Optus Mobile Pty Limited (*Optus*) distributes certain Optus branded pre-paid mobile and prepaid mobile broadband products and has appointed its wholly owned subsidiary, PrePaid Services Pty Limited (*PPS*) as its agent to facilitate the sale and promotion of those Optus branded prepaid products, with the ability to appoint further agents to also do so.
- (b) PPS now wishes to appoint the Retailer as its further agent to facilitate the sale and promotion of the Products at the Location(s).

1.2 Acceptance: By placing an order with PPS for Products, the Retailer will be deemed to have accepted its appointment as agent of the Optus Parties to supply the Products to Customers at the Location(s) on these terms, and agrees to comply with the terms of this Agreement. These terms and conditions are directly enforceable against the Retailer by the Optus Parties (for the benefit of the Optus Parties).

1.3 Term of Agreement: This Agreement commences on the earlier of the date it is signed by the Retailer or the date on which the Retailer is deemed to have accepted these terms under clause 1.2 and continues for the term specified in the Details unless it is terminated earlier in accordance with its terms.

1.4 Interpretation: Any term that is not defined below or in a clause of these terms, has the meaning given to it in the Details.

Commission Rate means the rate specified in the Details (or as varied from time to time in accordance with clause 5.5) which is used to calculate the Margin in accordance with clause 5.1

Confidential Information means all information of an Optus Party that is treated by them as being confidential and that is disclosed by an Optus Party (whether in writing or in any other form) to the Retailer (or of which the Retailer first becomes aware) in connection with this Agreement.

Customer means a person who purchases or intends to purchase the Products from the Retailer.

Details mean the variable information for this Agreement set out on the first page of this Agreement.

Information Bulletin means any written communication in any format, including emails, issued by an Optus Party from time to time to the Retailer that sets out information and offers related to the Products.

Margin means the amount of margin the Retailer may retain by way of commission which is calculated in accordance with clause 5,

Optus Party means any of Optus Mobile Pty Limited and/or Prepaid Services Pty Limited

Payment Terms mean the payment terms specified in the Details.

Product means the Optus branded pre-paid mobile and prepaid mobile broadband products specified in the Details, further details of which are contained in the Information Bulletin.

Sale Price means the price at which a Retailer must offer the Products for sale as Optus' agent, being the price specified by Optus from time to time in an Information Bulletin.

2. Appointment and Role

2.1 Appointment: PPS appoints the Retailer as Optus' agent, on the terms of this Agreement, for the purpose of selling the Products to Customers for the Sale Price at the Location(s).

2.2 Sub-Agency: The Retailer must not appoint any person as a further sub-agent of Optus or supply the Products to any person for the purposes of re-supply.

2.3 Role: All sales of the products are directly between Optus and the Customer. The Retailer must not enter into any contract with a Customer for the sale of the Products or alter any of the terms and conditions on which Optus supplies the Products to Customers.

3. Ordering and Return of Products

3.1 Placement and fulfilment of orders:

- (a) The Retailer may place an order for Products in accordance with the ordering procedures notified by PPS from time to time.
- (b) PPS will deliver the ordered Products to the Retailer to the address specified in the order, unless otherwise agreed by PPS.
- (c) PPS will use its reasonable endeavours to inform the Retailer if it becomes aware that it is unable to deliver the Products within a reasonable time.
- (d) If PPS has not supplied ordered Products within 30 days after the date of the order, the Retailer (as its sole remedy) may cancel the order for those Products by notice in writing to PPS.

3.2 Precedence: All orders received from the Retailer for Products are governed by this Agreement. PPS is under no obligation to accept orders that are placed by the Retailer. This Agreement will take precedence over any other terms or conditions included in the order, whether express or implied.

3.3 Return of Products: The Retailer may return unsold Products to PPS in accordance with the PPS' Returns Policy, as notified to the Retailer from time to time. A copy of the current PPS Returns Policy is available from PPS' website or on request.

4. Retail Outlet's Obligations

4.1 General obligations: The Retailer must:

- (a) use its best efforts to promote the sale of the Products to Customers at the Location(s);
- (b) use only the point of sale material provided by the Optus Parties from time to time
- (c) supply the Products only for use in connection with the Optus mobile network in Australia;
- (d) perform its obligations under this Agreement in accordance with any directions, operational procedures or Information Bulletins issued by an Optus Party from time to time;
- (e) comply with all applicable laws, regulations, standards and codes,
- (f) ensure that the Products and point of sale material are prominently displayed at the Locations in accordance with directions of the Optus Parties and ensure that the Products are sold to Customers in the same packaging and condition as they are delivered to the Retailer (and are not separated or unbundled components of Products) and have an expiry date more than 2 months away;
- (g) work together with the Optus Parties to prevent fraud in connection with the Products and notify the Optus Parties immediately on becoming aware of any such fraud.

4.2 The Retailer must not:

- (a) represent or pass-off that it is an Optus Party, or is authorised to act on behalf of an Optus Party or perform any activities in relation to the Products except as set out in this Agreement;
- (b) use any trade marks or logos owned by or licensed to an Optus Party without the prior approval of the Optus Party; and
- (c) make any representations or give any warranties in relation to the Products other than those given by Optus from time to time.

5. Price and Payment for the Products

5.1 Margin: The Retailer may retain by way of commission an amount known as the Margin for all Products ordered by Retailer and supplied by PPS to the Retailer for sale by the Retailer to Customers at the Location(s). The Margin is calculated as follows:

For Products (excluding \$2 SIMs): Sale Price x Commission Rate for that Product; and

For \$2 SIMs: Sale Price of those \$2 SIMs less 1 cent;

5.2 Remittance: PPS will invoice the Retailer for the Remittance (which is calculated as Sale Price for all Products supplied by PPS to the Retailer under this agreement less the Margin on those Products). The Retailer must remit the Remittance to PPS in accordance with the Payment Terms:

5.3 Sale Price: The Retailer acknowledges and agrees that the sales of the Products are directly between Optus and the Customer, that each of PPS and the Retailer are acting as Optus' agent and, accordingly,

that Optus is free to set the Sale Price of the Products at any time as it sees fit.

5.4 Timing of payment of Remittance: On a monthly basis (or as otherwise agreed between the parties from time to time) PPS will issue the Retailer a statement setting out the Products delivered to the Retailer in the previous month and the Remittance payable (or paid) by the Retailer in accordance with the Payment Terms, determined in accordance with this clause 5;

5.5 Variation of Commission Rate: The Optus Parties may vary the Commission Rate on 30 days written notice to the Retailer.

5.6 Price Protection: If the Retailer is notified of a decrease in the Sale Price, the Retailer may make a price protection claim in accordance with PPS' Price Protection Policy as notified to the Retailer from time to time. Details of how to make a claim and other relevant information is available on request from PPS' website or on request.

5.7 PPS' right to set off: If any amounts are due by the Retailer to PPS under this Agreement or under any other agreement between the Retailer and an Optus Party (*Outstanding Amount*), then the Outstanding Amount may be set off or deducted from any payments owed to the Retailer (if any) under this Agreement.

5.8 Failure to pay: If the Retailer fails to pay any Remittance by the due date or otherwise fails to pay any amounts due to PPS under this agreement (*Unpaid Amount*), PPS may:

- (a) cease to supply any further Products to the Retailer until the Retailer has paid the Unpaid Amounts to PPS in full; and/or
- (b) charge the Retailer interest at the rate of 2.2% per month above the ANZ reference rate on any Unpaid Amount; and/or
- (c) require the Retailer to pay to PPS any costs and expenses incurred by PPS in recovering the Unpaid Amounts.

6. GST

6.1 GST exclusive: Unless the contrary intention appears, all amounts payable by one party to the other for a supply made under or in connection with this Agreement, have been calculated without including an amount for GST. Despite the other provisions of this Agreement, each payment (including the provision of non-monetary consideration) must be made together with an additional amount equal to the GST on the supply or component of the supply (made or to be made) giving rise to or in connection with that payment.

6.2 Recipient created tax invoices:

- (a) PPS will issue a tax invoice for each taxable supply it makes to the Retailer without request. Without limiting any other provision of this Agreement, the Retailer must pay the amount referred to as GST on the tax invoice.
- (b) PPS will issue a recipient created tax invoice (*RCTI*) for each taxable supply (other than an excluded supply) made by the Retailer under this Agreement to PPS, and will issue an adjustment note for any adjustment event. The parties may agree in writing from time to time which taxable supplies are excluded supplies.
- (c) The Retailer must not issue a tax invoice in respect of any supply it makes to PPS, other than for an excluded supply. The Retailer must give PPS a tax invoice for an excluded supply at or before the time the Retailer invoices PPS for that supply.
- (d) Each party must notify the other party if it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by an authority relating to the creation of RCTIs.

6.3 Agency: If one party (*GST Agent*) makes taxable supplies or acquisitions under this Agreement as an agent of the other party (*GST Principal*) to third parties:

- (a) the GST Agent acknowledges that it will be treated, for the purposes of the GST law, as making the supplies to, or acquisitions from, the third parties and the GST Principal will be treated as making corresponding supplies to and acquisitions from the GST Agent;
- (b) the GST Agent will issue a tax invoice and adjustment note (if required) to the third party using the GST Agent's name, ABN and business letterhead and the GST Principal will not issue any tax invoice or adjustment note relating to these supplies;
- (c) if the GST Agent sells through a sub-agent, the GST Agent will procure that the sub-agent issue a tax invoice and adjustment note (if required) using its own name, its ABN and its business letterhead; and

- (d) if the GST Agent or the GST Principal cease to be registered for GST, this clause 6.3 will cease to have effect.

7. Confidentiality

7.1 Restrictions on disclosure: The Retailer must keep Confidential Information confidential and not disclose it to a third party except

- (a) to employees that have a need to know in connection with this Agreement (and only to the extent that each has a need to know); or
- (b) to the extent, and to the persons, required to comply with any legal or regulatory obligations.

7.2 Retailer Obligations: The Retailer must

- (a) only use the Confidential Information to the extent necessary to perform its obligations under this Agreement;
- (b) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
- (c) immediately take all steps to prevent or stop, and comply with any direction issued by the Optus Parties from time to time regarding, a suspected or actual breach; and
- (d) immediately notify the Optus Parties of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information.

7.3 Effect of Expiration or Termination: On expiration or termination of this Agreement, the Retailer must:

- (a) continue to keep confidential the Confidential Information in accordance with this clause; and
- (b) immediately on request return or destroy (at the option of the Optus Parties) all the Confidential Information in the Retailer's possession or control.

8. Privacy

8.1 Definition: Personal Information has the meaning in the Privacy Act 1988 (Cth), and in this clause, refers to Personal Information collected by the Retailer and/or its personnel or disclosed to the Retailer and/or its personnel under the terms of this Agreement

8.2 Compliance with privacy legislation: In addition to complying with its obligations of confidentiality under clause 7, when performing its obligations under this Agreement, the Retailer must ensure that when it or its personnel collects, uses, discloses, transfers, stores or otherwise handles Personal Information which relates to a Customer or any other person, it will comply with all applicable laws, rules and regulations including, without limitation:

- (a) the Privacy Act 1988 (Cth) including the Australian Privacy Principles, regardless of whether the Retailer is a small business operator for the purposes of that Act, or would otherwise be exempted from complying with that Act; and
- (b) Part 13 of the Telecommunications Act 1997 (Cth).

8.3 Privacy notification: At the time the Retailer and/or its personnel collects Personal Information from a person on behalf of an Optus Party, the Retailer and/or its personnel must direct that person to Optus' privacy policy (available on www.optus.com.au) and to the relevant explanation of why an Optus Party collects Personal Information, to whom an Optus Party may disclose Personal Information, the consequences if Personal Information is not provided and that access to the Personal Information which an Optus Party holds about them may be available through that Optus Party.

8.4 Use and disclosure: Without limiting clause 8.2, the Retailer and/or its personnel must

- (a) not use the Personal Information except in accordance with, and for purposes authorised under, this Agreement;
- (b) not disclose Personal Information to any person other than the Optus Parties without the written authority of the Optus Parties or as required by law;
- (c) take all reasonable steps to protect any Personal Information from misuse, interference and loss and from unauthorised access, modification or disclosure;
- (d) comply with any reasonable requests or directions of an Optus Party concerning their current privacy policy or concerning security, use and disclosure of Personal Information, or the rights of individuals to access and correct such Personal Information;

- (e) notify the Optus Parties as soon as reasonably practicable after the Retailer becomes aware that it may be required by law to disclose any Personal Information (eg, if an access request is received under the Privacy Act 1988 (Cth)) and immediately after the Retailer becomes aware of a breach of this clause; and
- (f) on the termination of this Agreement for any reason, destroy or otherwise deal with any Personal Information provided to the Retailer and/or its personnel under this Agreement in accordance with the reasonable directions of the Optus Parties.

8.5 Personal Information as Confidential Information: the Retailer acknowledges that Personal Information may also be Confidential Information and that the Retailer must only use or disclose such Personal Information in accordance with clause 7 of this Agreement.

8.6 Survival: Clause 8 survives the termination of this Agreement.

9. Record Keeping and Inspection

9.1 Complete records: The Retailer must maintain complete and accurate records of and all supporting documentation relating to this Agreement and the sale of the Products at the Locations and provide any information reasonably requested by the Optus Parties in connection with the promotion, distribution and sale of the Products at the Location(s).

9.2 Access: The Retailer agrees to allow the Optus Parties (and their authorised representatives) to enter its business premises and each Location during business hours without notice and at other times after giving 48 hours' notice for the sole purpose of ensuring that the Retailer has complied, is complying and will be able to continue to comply with its obligations under this Agreement. Where an Optus Party is not satisfied that the Retailer is compliant, the Retailer must, within 7 days from receiving notification of the dissatisfaction, ensure that the relevant Location(s) becomes compliant.

10. Liability

10.1 Title and risk: Title in the Products remains with the relevant Optus Party until such time as the Product is sold by the Retailer to the Customer when title shall pass directly from that Optus Party to the Customer. Risk in the Products passes to the Retailer on the delivery of the Products to the Retailer.

10.2 Personal Property Securities Act 2009 (Cth) (PPS Act): The Retailer acknowledges and agrees that by virtue of 10.1 above, the Optus Parties may have a security interest in the Products for the purposes of the PPS Act and that the Optus Parties may do anything reasonably necessary to protect that interest, including registering that security interest on the personal property securities register established under the PPS Act in order to perfect the security interest and comply with the requirements of the PPS Act.

10.3 Indemnity: The Retailer indemnifies each Optus Party against any liability, losses, damages, expenses and costs (on a solicitor own client basis) suffered or incurred by an Optus Party as a result of

- (a) a breach of this Agreement by the Retailer;
- (b) any act, omission or misrepresentation of the Retailer relating to the sale or promotion of the Products; and
- (c) any fraudulent use of the Products by any employees, sub-agents or contractors of the Retailer.

10.4 Non-Excludable Terms: This Agreement does not exclude or modify any condition or warranty implied into this Agreement or any guarantee conferred by or any liability of the Optus Parties under any law (including under the Competition and Consumer Act 2010 (Cth), including the Australian Consumer Law (CCA)) if to do so would contravene that law or make any part of this clause void or unenforceable.

10.5 Exclusion and limitation of liability: Subject to 10.4 above, each of the Optus Parties

- (a) other than as expressly set out in this Agreement, exclude all implied terms, conditions, warranties and guarantees to the fullest extent permitted by law;

- (b) where the goods or services supplied under this Agreement are of a kind not ordinarily acquired for personal, domestic or household use or consumption, but have a price less than \$40,000, limits its liability for breach of any condition, warranty or guarantee that cannot be excluded under the CCA, to (at the option of the Optus Party): (i) for goods, to repairing or replacing those goods or (ii) for services, to resupplying the services (or in either case, paying the cost of repair, replacement or resupply, as relevant); and
- (c) excludes any liability to the Retailer for any (i) loss of opportunity, lost revenue or lost profits; or (ii) special or consequential loss.

11. Termination

11.1 Termination at any time: This Agreement may be terminated by an Optus Party or by the Retailer at any time upon giving 30 days' prior written notice to the other party.

11.2 Termination for cause: An Optus Party may terminate this Agreement immediately by notice in writing to the Retailer if:

- (a) PPS is no longer appointed as an agent of Optus; or
- (b) the Retailer breaches any of its obligations under this Agreement which cannot be remedied or, if capable of being remedied, the Retailer has failed to remedy that breach within 14 days of written notice from an Optus Party requiring it to do so; or
- (c) the Retailer becomes insolvent or has an administrator, liquidator or manager appointed; or
- (d) the Retailer does not pay its debts as and when they become due.

11.3 Consequences: On termination or expiration of this Agreement:

- (a) any accrued rights or remedies of either party will not be affected;
- (b) the Retailer's appointment as Optus' agent will immediately terminate;
- (c) the Retailer must immediately (i) stop selling Products to customers at the Location(s); (ii) cease all use of any of the trademarks or logos of the Optus Parties; and (iii) pay all amounts owed to the Optus Parties under this Agreement;
- (d) the Retailer must promptly return to an Optus Party (or, on request, destroy) all signage, displays, fittings, point of sale material and procedures provided by the Optus Parties;
- (e) the Retailer must promptly return to an Optus Party any Products held by the Retailer (or allow an Optus Party access to premises where the Products are held to collect) and PPS will refund to the Retailer any amounts that have been paid by the Retailer to PPS in respect of Products so returned that are in a saleable condition; and
- (e) any clause that expressly or by implication continues, will continue after termination.

12. General

12.1 Applicable Law: This agreement is governed by the laws of New South Wales.

12.2 Relationship: The Retailer acknowledges that nothing in this Agreement constitutes a relationship of employer and employee, joint venture or partnership between an Optus Party and the Retailer.

12.3 Severability: Part or all of any clause of this Agreement that is illegal or unenforceable will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

12.4 Assignment: The Retailer must not assign or attempt to assign any of its rights or transfer its obligations under this Agreement without the prior written consent of the Optus Parties.

12.5 Waiver: The failure of either party at any time to insist on performance of any provision of this Agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of this Agreement.

12.6 Entire Agreement: This Agreement (including the Details) constitutes the entire agreement between the parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matter.

12.7 Variation: This Agreement may only be altered in writing executed by the parties.