

5c SMS

Terms of Service
Last Updated 1st October 2018



1. 5c SMS ("Us" or "We") provides the 5c SMS website and various related services (collectively, the "Service") to you, the User, subject to your compliance with all the terms, conditions, and notices contained or referenced herein (the "Terms of Service"), as well as any other written agreement between us and you.
2. In addition, when using this Service, Users shall be subject to any posted rules applicable to such services or materials that may contain terms and conditions in addition to those in these Terms of Service. All such guidelines or rules are hereby incorporated by reference into these Terms of Service.
3. These Terms of Service are effective as of the above date. We expressly reserve the right to change these Terms of Service from time to time without notice to you. You acknowledge and agree that it is your responsibility to review this Service and these Terms of Service from time to time and to familiarise yourself with any modifications.
4. Your continued use of this Service after such modifications will constitute acknowledgement of the modified Terms of Service and agreement to abide and be bound by the modified Terms of Service.
5. We reserve the sole right to either modify or discontinue the Service, including any of the Service's features, at any time with or without notice to you. We will not be liable to you or any third party should we exercise such right. Any new features that augment or enhance the then-current services on this Service shall also be subject to these Terms of Service.
6. We reserve the right to refuse to offer Services to anyone, in whole or part for any, or no reason.

Conduct & Acceptable Use Policy

7. Your use of the Service is subject to all applicable laws and regulations, and you are solely responsible for the substance of your communications through the Service.
8. Your use of the Service is subject to all applicable laws and regulations, and you are solely responsible for the substance of your communications through the Service.
9. You must not use our services, or allow anyone else to use our services, for illegal or improper uses, including uses that are not reasonably incidental to your use of our services or sanctioned by us. For example:
 - a. for fraudulent, criminal or other illegal activity, including in a way that constitutes an infringement or the commission of an offence against any law, standard or code;
 - b. sending unsolicited bulk or commercial messages, as defined by the [SPAM Act 2003](#), or other unauthorised messages;
 - c. adding, removing or modifying identifying mobile number information in an effort to deceive or mislead;
 - d. in a way that is defamatory or in any way breaches another person's rights, including copyright or other intellectual property rights;

- e. to misuse another party's confidential information;
 - f. to store, publish or send any material that is illegal, defamatory, pornographic, obscene, depicts acts of violence, sexual acts or which may incite or perpetuate hatred against any person or group or have the likely effect of causing offence or harm;
 - g. in any way which breaches any security or other safeguards or in any other way which harms or interferes with our services, a network or the networks or systems of others, including in any way which results in a virus, worm, trojan horse or similar program affecting us, another provider or anyone else;
 - h. to send or receive instructions which, if implemented, might cause damage or injury to any person or property;
 - i. to falsify or delete any author attributions, legal or other proper notices or proprietary designation or labels of the origin or source of software or other content contained in a file that you upload;
 - j. in any way which menaces or harasses any person or causes damage or injury to any person or property;
 - k. to create, use, copy, download or provide any directory of our services, users or any other user or usage information to a person or organisation;
 - l. in any way which enables you to make use of our services without charge, when a charge is normally payable; or
 - m. to continue to exploit our services in a manner contrary to our offers after receiving notice from us.
10. All users fully indemnify us for any and all actions arising from misuse of this service.
11. We generally do not pre-screen, monitor, or edit the content of the communications on our Service. However, we and our agents have the right at their sole discretion to prevent and suspend any communications that, in our judgment, does not comply with these Terms of Service, or is otherwise harmful, objectionable, or inaccurate. We are not responsible for any failure or delay in preventing or removing such content. You hereby consent to and waive any claim against us arising out of such actions taken by us.

Termination

12. You agree that we may, in our sole discretion, terminate or suspend your access to all or part of the Service with or without notice and for any reason, including, without limitation, breach of these Terms of Service. Any suspected fraudulent, abusive or illegal activity may be grounds for terminating your relationship and may be referred to appropriate law enforcement authorities.

13. Accounts or services which are inactive for a period of 90 or more days may be disabled or deactivated with or without notice to you.
14. In addition to the clauses set out in our Conduct & Acceptable Use Policy, we may also disable access to an account, and terminate our services to you without notice in the following circumstances:
 - a. you have not paid fees due in a reasonable time;
 - b. you have breached an important term of your agreement or a number of less important terms which together amounts to a serious breach and you have failed to rectify the breach after being given 7 days' notice of our intention to terminate your agreement (whether or not we have Suspended your services as permitted by these Terms);
 - c. we have reasonable grounds to suspect fraud or other illegal conduct in relation to the services or your account by you or someone using your account;
 - d. you die or become bankrupt, insolvent or subject to a winding-up order or similar insolvency event and we reasonably believe we are unlikely to receive payments for amounts you owe to us;
 - e. we have reasonable grounds to believe that your communications with our staff or agents have been menacing, threatening, amount to harassment or have otherwise been of an unacceptable nature;
 - f. we receive a serious complaint against you which we have reasonable grounds to believe to be genuine and which we reasonably believe gives rise to a threat or risk to the security of our services;
 - g. we have other reasonable grounds for believing a threat or risk exists to the security of our service and we reasonably believe that terminating your agreement will minimise this threat or risk; or
 - h. we can no longer provide services for any reason beyond our control or any reason that we cannot reasonably resolve.
15. Upon termination or suspension, regardless of the reasons therefore, your right to use the services available on this Service immediately ceases, and you acknowledge and agree that we may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or this Service. We shall not be liable to you or any third party for any claims or damages arising out of any termination or suspension or any other actions taken by us in connection with such termination or suspension. To the extent permitted by these terms and by law, terminated accounts receive no refunds for unused services or credits.

Intellectual Property

16. All custom graphics, icons, logos, and service names used on the Service are registered trademarks, service marks, and/or artwork held under copyright of 5c SMS or its Affiliates. All other marks are the property of their respective owners. Nothing in these Terms of Service grants you any right to use any trademark, service mark, logo, and/or the name or trade names of 5c SMS or its Affiliates.

Data Protection Policy

17. All data shall be:
 - a. processed lawfully, fairly and in a transparent manner;
 - b. collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes;
 - c. adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
 - d. accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
 - e. kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes subject to implementation of the appropriate technical and organisational measures; and
 - f. processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.”
18. Individuals have the right to access their data and any such requests made to us shall be dealt with in a timely manner.
19. Lawful purposes:
 - a. All data processed by us must be done on one of the following lawful bases: consent, contract, legal obligation, vital interests, public task or legitimate interests
 - b. Where consent is relied upon as a lawful basis for processing data, evidence of opt-in consent shall be kept with the personal data.

- c. Where communications are sent to individuals based on their consent, the option for the individual to revoke their consent should be clearly available and systems should be in place to ensure such revocation is reflected accurately in our systems.
20. Data retention and minimisation:
- a. We shall ensure that personal data are adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.
 - b. We will retain data as follows, unless an alternate agreement has been entered into:
 - i. Outbound and Inbound SMS Message Body and Metadata: 1 year from when the message is sent or received
 - ii. Contact Data (Names, Numbers and Custom Fields): Upon deletion by the customer, or the account is closed.
 - iii. Campaign Data: 30 days from the date of the campaign
 - iv. System and Message Debug and Error Logs: 3 months from when the event occurred
 - v. Security Logs: 6 years
21. Data Security:
- a. We shall ensure that data is stored securely using modern software that is kept up-to-date.
 - b. Access to data shall be limited to personnel who need access and appropriate security should be in place to avoid unauthorised sharing of information.
 - c. When personal data is deleted this should be done safely such that the data is irrecoverable.
 - d. Appropriate back-up and disaster recovery solutions shall be in place.
22. In the event of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, data, we shall promptly assess the risk and if appropriate report this breach to affected users and any required regulatory authorities.

Payment For Services

23. Unless a Term Agreement is in place, pricing for message credits may change at any time. Post paid customers will be notified in writing at least 14 days prior to any pricing change.
24. Where our services are paid for in arrears, we will issue a valid Tax Invoice within 7 days of the close of every calendar month. Unless agreed to separately, all payments are due within 14 calendar days of the invoice date. Any disputed amounts must be reported within 5 business days of the invoice date. Late payments forfeit any discounts which are noted on your invoice.
25. If we take legal or other collection action against you for non-payment of charges for our service, we will require you to pay our reasonable costs and expenses (including legal costs) of taking that action plus interest. Interest will be calculated at a rate of 10% pa calculated on the daily balance of the unpaid amount from the due date until the date of payment in full.

26. If our services are used by you or any other person, with or without your permission, to acquire goods and services from third parties, you are responsible for paying those third parties directly.
27. Any Prepaid credits on your Account are non-refundable, non-transferable and not redeemable for cash unless you terminate your agreement because we are in serious breach of it, in which case we will refund on request from you a pro-rata portion of any Charges you may have paid in advance).
28. New purchases may not appear on your Account immediately after payment. Charges for our services used on your Account, whether used by you or another person with or without your permission will be deducted from your balance.
29. The SMS system allows a maximum message size of 160 characters (or 70 characters if you include any Unicode characters and send via a Unicode supported service). If a user sends a longer message, the system splits it to two or more separate SMS's that may be reassembled on delivery so that they appear to be a single message (or, on some handsets, may be delivered as a series of separate SMS). When a longer message is split in this way, the components are no more than 153 characters long (or 67 characters long if you include any Unicode characters and end via a Unicode supported service), because a number of characters are used to facilitate re-joining on delivery. As a result, a longer message will result in more than one SMS being transmitted, and charges apply accordingly.

Service Level Agreement

30. You understand and agree that temporary interruptions of the services available through this Service may occur as normal events. You further understand and agree that we have no control over third party networks you may access in the course of the use of this Service, and therefore, delays and disruption of other network transmissions are completely beyond our control.
31. You understand and agree that the services available on this Service are provided "AS IS" and that we assume no responsibility for the timeliness, deletion, mis-delivery or failure to store any user communications or personalisation settings. Beyond what is defined in these terms, we cannot be held liable for any losses or damages caused by message non-delivery, unavailability of service or other service failure.
32. We guarantee the platform will be available and responsive 99.99% of each calendar month. This includes Website, API and message processing. Messages will be processed in the order they are submitted by each customer and may be rate limited.
33. We cannot guarantee the delivery of every message. We will investigate the cause of any failed delivery however and will re-credit an account should the fault lie within our system. To the extent

permitted by law, we will not re-credit messages which were not delivered by a failure of the recipient's network - or any network beyond our control.

34. Messages which are scheduled to be sent at a certain date or time are not guaranteed to be sent or delivered at the date and time specified. Scheduled messages may be sent or delivered before or after the customer specified date. Messages may be re-credited to an account on the occasion that a scheduled message is sent more than 2 hours before or after the specified time due to a fault in our system.
35. Only customers enrolled in a support plan which includes guaranteed uptime and root cause analysis (RCAs) are entitled to a service credit and documented root cause report for any outage which affects service uptime or message delivery if we cannot meet the guarantees of these terms, up to a maximum of one credit per month. The credit must be claimed within 30 days of the incident. Where one credit is the value of one month's support plan fees. RCA report will be provided within 14 days of the request.

Support Terms

36. All support plan terms may change (including eligibility criteria or fees) from time to time. Customers who purchase support plans may cancel at any time. All support plans are paid for a period of 30 days. Any unused time is not refundable. We reserve the right to refuse to offer a support plan for any, or no reason.
37. Where applicable, a support Service Level Agreement means that 5c SMS will respond to a customer's support ticket or phone call within the defined time frame. It does not mean an issue will be resolved within the defined timeframe. Where we do not respond within the defined time frame the customer will be eligible for one 'support service credit' (credit) per support ticket, up to a maximum of one credit per month. The credit must be claimed within 30 days of the ticket being opened. Where one credit is the value of one month's support plan fees.
38. "Business Hours" are defined as 9am to 5pm, Australian Eastern Standard Time, Monday to Friday. Excluding Public Holidays observed in the state of Queensland, Australia.

Virtual Dedicated Mobile Numbers

39. Virtual Mobile Numbers (VMNs) can be purchased at the rate indicated on the Account Dashboard. By purchasing a VMN you are agreeing to allow us to charge you credit card (as supplied) the agreed rate every 30 days. VMN numbers may be cancelled at any time. Refunds or credits will not be given towards unused VMNs or VMNs used for only part of a given month. Due to circumstances beyond our control your VMN may need to be changed at any time without

notice, if this occurs we will notify you. We will not be held liable for any losses or damages caused by the loss or change to a VMN.

Software, Custom & Legacy Integrations

40. Software integration services, custom integrations or legacy protocol support (such as depreciated API versions, email or SMPP) may raise additional costs or requirements. These will be shared and agreed to by both parties in writing or on the website before activation of the service. The costs agreed to may include a one time fee, monthly fee, purchase of a supporting service (such as Virtual Mobile Number or Support Plan) or a minimum monthly volume commitment.

Liability

41. Our liability is limited as follows:

- a. all other terms, conditions and warranties relating to our services are excluded;
- b. we have no liability to you for any loss of income, business or profits, for any loss or corruption of data, failure to deliver any message, or for any consequential loss sustained and arising out of or in connection with your agreement, your use of the our services, whether arising under contract, tort (including negligence) or otherwise;
- c. we are not liable for any loss or damage that was not reasonably foreseeable when you entered into the agreement;
- d. we are not liable for any loss or damage to the extent that it was caused by you, or to the extent that you have failed to take reasonable steps to minimise or prevent the loss; and
- e. we are not liable for any delay or failure to perform our obligations under your agreement, or to provide our services, if such delay or failure is due to a Force Majeure Event.

42. You agree to indemnify us, our employees and officers against all loss, damage, liability and expenses incurred by us or them as a result of or in relation to any claim made or legal proceedings including (without limitation) claims for breach of copyright, breach of confidence, defamation, theft, conversion, and/or obscenity brought against us or them caused by use of the our services by you or any other person you allow to use our services on your account. You will not have any liability to us for any loss or damage caused by us, including any breach of a guarantee set out in Australian Consumer Law. The terms of this paragraph shall apply even after your agreement comes to an end.

Governing Law

43. These Terms of Service and any dispute or claim arising out of, or related to them, shall be governed by and construed in accordance with the laws of Queensland Australia without giving effect to any choice or conflict of law provision or rule. Each of us agrees only to bring legal actions about your agreement in the courts of the State of Queensland.
44. If you, or we, delay, or do not take action, to enforce our respective rights under our agreement, this does not stop you or us from taking action later. If any of the terms in your agreement are not valid or legally enforceable, the other terms will not be affected.
45. We may assign or transfer our rights and obligations under your agreement to a party who agrees to continue complying with our obligations under your agreement. We will give you reasonable notice of any assignment.
46. Force Majeure Event means: an event or circumstance beyond our reasonable control, including but not limited to, any act of God, civil disorder, war, revolution or any other unlawful act against public order or authority, national or local emergency, fire, flood, earthquake, cyclone, explosion, loss of power, strike, industrial action, or the act or omission of any Government Agency.