

# The small print

## Consumer & Business Customer Pay Monthly terms & conditions (January 2009)

These terms and conditions contain two separate agreements, a Services Agreement which covers our supply of airtime and other services, and an Equipment Agreement which covers our supply of phones and other equipment. The general terms and conditions are part of both agreements and, where required for the sake of clarity are referred to as the General Terms. The agreement that applies to you will depend on what you have purchased from us, but if you have purchased an airtime tariff and a handset or other relevant equipment both the Service and Equipment Agreements will apply.

## Services Agreement

- 1.1 The following paragraphs set out the terms and conditions for the supply of Services by us (if you have purchased Equipment please see the separate Equipment terms and conditions below). In addition, the General Terms supplement this Agreement and are incorporated into this Agreement. Words used in this Agreement may be defined in the General Terms. **Please refer to the end of this document for a full explanation of the defined terms used in it.** Services, offers and promotions may be subject to additional terms and conditions advertised on our website [www.o2.co.uk](http://www.o2.co.uk) and/or in our marketing literature. Please check our site regularly as these terms are updated from time to time.
- 1.2 Use of our WAP Services and Web Services are subject to the Web, WAP and i-mode® terms and conditions, available to view on our website [www.o2.co.uk](http://www.o2.co.uk). Please check our website regularly as these terms are updated from time to time.
- 1.3 If you connect to a BlackBerry® from O2 tariff, separate terms and conditions and charging information will apply and can be viewed on our website [www.o2.co.uk](http://www.o2.co.uk).
- 1.4 Use of the Broadband Service is subject to Broadband terms and conditions available to view on our website [www.o2.co.uk/terms](http://www.o2.co.uk/terms). Please check our website regularly as these terms are updated from time to time.

### 2 Provision of and Use of the Service

- 2.1 The Service is not available in all parts of the United Kingdom nor in all other countries and may be restricted to certain areas within those countries where access to the Service is possible. Not all Mobile Phones will be able to receive the Service. We only agree to provide the Service to Mobile Phones of a make and type approved by us.
- 2.2 If you wish to make international calls or use our international roaming service we may ask you to demonstrate a satisfactory billing history or to pay a deposit which may be used to offset the cost of those calls. Unless otherwise stated, if you use your Mobile Phone abroad you will be charged for incoming calls. Roaming calls may also take longer to be billed.
- 2.3 We may, using reasonable skill and care, exercise our discretion to refuse to provide any part of the Service to you (other than the making or receiving of calls). Service is not fault free and it may be impaired by geographic, atmospheric or other conditions or circumstances beyond our control and you will be entitled to the quality of service generally provided by a competent mobile telecommunications service provider exercising reasonable skill and care.
- 2.4 We will do our best to provide Service to you and any Additional Services requested by you (such as roaming) or if you instruct us to change your Service (e.g. to bar calls) by any date we have agreed with you but our ability to do so may be affected by circumstances beyond our control.
- 2.5 We will allocate a number for use of your Mobile Phone on the Network. The number does not belong to you and may only be transferred to another service provider in certain circumstances (including payment of our costs) details of which are available on request from Customer Services.
- 2.6 We or our agents may record or monitor some telephone calls, emails and any other communications between you and us (or our agents) for training and quality control and our lawful business purposes.
- 2.7 We will use reasonable endeavours to maintain Content but it may be incomplete, out of date or inaccurate and is provided on an "as is" basis. It is a condition of us allowing you access to Content that you accept that we will not be liable for any action you take in reliance on Content.
- 2.8 We may vary Content or the technical specification of the Service from time to time.
- 2.9 The Service enables access to Content. You may only use Content in a way that does not infringe the Rights of others ('Approved Use') and you must comply with all other instructions issued by us regarding use of Content. You shall not store, modify, transmit, distribute, broadcast, or publish any part of any Content other than for an Approved Use. The re-selling, copying or incorporation into any other work of part or all of the Content in any form is prohibited save that you may print or download extracts of Content for your personal use only.
- 2.10 You are solely responsible for evaluating the accuracy and completeness of Content and the value and integrity of goods and services offered by third parties over the Service. We will not be a party to or in any way responsible for any transaction concerning third party goods and services except in the case of negligence on our part.
- 2.11 If you use our eCare service via [o2.co.uk](http://o2.co.uk) it is a condition of this Agreement that you provide us with a current email address for billing purposes and that you maintain this address and advise us promptly of any changes to it. It is your responsibility to verify that your mailbox is in proper working order and you must assume the risk of all consequences for errors in sending and receiving email, unless caused by our negligence.
- 2.12 We reserve the right to add to, substitute, or to discontinue any Additional Services at any time. We do not guarantee the continuing availability of any particular Additional Services.
- 2.13 You may ask us to include your Mobile Phone number in a telephone directory and/or a directory enquiry service. However, you should be aware that, if you request this service (for which we may charge a fee), your number will be made accessible to companies that compile information for marketing purposes. If you are worried about this, you can prevent it from happening by registering your mobile phone number with the Telephone Preference Service on [www.tpsonline.org.uk](http://www.tpsonline.org.uk). If you want your mobile phone number to be included in a directory and/or a directory enquiry service, please contact Customer Services.

### 3 Length of Agreement

- 3.1 This Agreement commences, following acceptance of your application by us, on the day on which you receive your SIM Card or, if you do not receive your SIM Card at the time of purchase, for example if you connect to an online tariff, on the day your SIM Card is dispatched.
- 3.2 At the end of any Minimum Period or following commencement of the Agreement if you have selected a SIM Only tariff, this Agreement will continue until it is terminated in accordance with paragraph 8 below.
- 3.3 If you upgrade your Handset with us you agree that a new Minimum Period will apply. This will commence on the date that you upgrade.

### 4 Things we may have to do

- 4.1 Occasionally we may have to:
  - (a) alter the number of your Mobile Phone, or any other name, code or number associated with the Service for reasons beyond our control such as where requested to do so by a governmental or regulatory body or where we reasonably believe that the alteration will enhance your use of the Service. If this is the case we will give you reasonable notice;
  - (b) temporarily suspend the Service (or any part of it) for operational reasons or in an emergency or for reasons of security; or
  - (c) bar certain numbers from the Service on a temporary or permanent basis in order to prevent fraud or in circumstances where we would suffer a direct loss.
- 4.2 From time to time we may have to migrate your Account from one billing platform to another. In these circumstances we will notify you if migration of your Account will affect the Service in any way.

### 5 Charges for Services

- 5.1 Charges for using the Service will be calculated using the details we have recorded. More detailed charging information can be found in the O2 Price List.
- 5.2 Unless you have itemised billing the total amount for all Charges will be included as a single item on your bill.
- 5.3 You must pay your monthly bill by the date stated on the bill. For any overdue payments we may charge interest at 2% above the base lending rate of HSBC Bank Plc. Interest is charged on a per annum basis, calculated daily. We reserve the right to make a charge for our reasonable administration costs which we incur in the case of late payment or non-payment of Charges.
- 5.4 We cannot set usage limits on your account and you will be liable for all Charges incurred by use of the Service under this Agreement whether incurred by you or anyone else using your Mobile Phone (with or without your knowledge). You must pay the Charges to us or as we direct.
- 5.5 We will monitor usage of the Service via your account for the purpose of controlling our credit risk and your exposure to fraudulent usage. If usage on your account gives us cause for concern we will attempt to contact you by text message or by calling your Mobile Phone. If we are unable to contact you we may have to restrict use of the Service on your Mobile Phone and/or we will have the right to bar your Mobile Phone. You will need to contact us before you can use any of the chargeable aspects of the Service. You may be required to make an interim payment before the Service can be reinstated.
- 5.6 You are liable for all Charges arising under this Agreement whether incurred by you or anyone else using your Mobile Phone (with or without your knowledge).
- 5.7 We may require you to pay your charges by direct debit. An additional charge may apply if you pay by another method and you will be advised if this is the case. If you are paying by payment card you authorise the payment card company to disclose to us and, under strict obligations of confidentiality, to our sub-contractors and/or agents, details about your payment card account in so far as is necessary in connection with your agreement with us and to inform us if your payment account is terminated or suspended at any time.
- 5.8 An additional charge may apply if you elect to receive your bills in paper format and you will be advised if this is the case.

- 5.9 Where a Handset is restricted to use on the Network we reserve the right to apply a charge for releasing or unlocking the Handset. Details of the charge are available by calling Customer Services.
- 5.10 Where tariffs include inclusive allowances which apply to certain calls, texts, data or messages up to a monthly limit, unused inclusive allowances cannot be carried forward from one month to the next unless expressly stated by us. In this context "monthly" or "month" means calls recorded by us within your monthly billing period, which may not equate to a calendar month. Generally, calls, data and messaging will be set against applicable inclusive allowances in the order in which they are recorded by us. Certain types of calls, such as roaming calls may take longer to be billed.
- 5.11 Unless otherwise stated, monthly charges incurred for periods of less than a month will be calculated on a pro rata basis.
- 5.12 Call charging rates which vary according to the time of day are billed according to the time of call initiation.
- 5.13 Unless otherwise stated, call prices are quoted by the minute and are charged in one second increments. Each call is charged excluding VAT and then rounded up to the nearest penny. VAT is then added where applicable to the total of all charges on your bill. Minimum call charges apply, see [www.o2.co.uk](http://www.o2.co.uk) for details of this and other charges. Prices are correct at time of going to print but are subject to change.
- 5.14 You may be charged to receive certain premium rated text messaging services and multi media messaging services. We will not notify you of call charges for premium rate services operated by third parties. Details of these charges and any changes will be available on our website (<http://www.o2.co.uk/premiumnumberpricing>). Please check these before calling premium rate numbers.
- 5.15 We may require you to provide us with a deposit as a condition of providing the Service to you or continuing to provide the Service to you. We may hold this deposit until you have paid all sums due to us from you under this Agreement. If you owe us money, we may set off the deposit against any amount due to us. We will refund any deposit we are still holding, on request, on termination of this Agreement or, at our discretion, after three months of continuous on time bill payments. No interest is payable on any deposit held by us.
- 5.16 If you are a Consumer Customer who has selected a tariff with a Minimum Period, you may not move to a tariff which offers a lower rate monthly subscription for the first 9 months of your Minimum Period. After 9 months, you may only move down one tariff, per month, to the next lower priced tariff unless you pay us the difference between the monthly subscription on your original tariff and the lower rate tariff we agree that you may move to. Where you have notified us you wish to move to the next lower tariff, unless we advise otherwise, your new tariff will commence at the start of your next billing cycle.
- 5.17 If you change tariffs for any reason e.g. when upgrading or moving to a promotional offer, any unused allowances will be lost. You may not be able to move back to your old tariff after you have upgraded.

## 6 Your Responsibilities

- 6.1 You must use your Mobile Phone, SIM Card and the Service in the way described in any User Guides, or other instructions issued by us.
- 6.2 You agree:
- to provide us with such information as we reasonably request in connection with this Agreement and that all factual information you provide to us is correct;
  - to take adequate precautions to prevent damage to your SIM Card or unauthorised use or theft of the SIM Card; and
  - that the SIM Card shall at all times remain our property; and;
  - to inform Customer Services as soon as possible by telephone (or if you have eCare at [mycare@o2mail.co.uk](mailto:mycare@o2mail.co.uk)) if the SIM Card or your Mobile Phone is lost, stolen, damaged or destroyed or likely to be used in an unauthorised manner and to co-operate with us in our reasonable security and other checks.
- 6.3 You must not use or permit any other person to use, and if you are a Business Customer ensure that your employees do not use, the Service:
- fraudulently, in connection with a criminal offence, in breach of any law or statutory duty;
  - to make a call or send a message or to take pictures or video or send, upload, download, use or re-use any material, which is offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance (including to our staff) or a hoax in breach of any Rights or privacy or otherwise unlawful;
  - to cause annoyance, inconvenience or needless anxiety, as set out in the Communications Act 2003;
  - to generate Artificially Inflated Traffic; or
  - to persistently send automated unsolicited communications.
- 6.4 You must not, and if you are a Business Customer ensure that your employees do not, establish, install or use a GSM Gateway without our prior written consent, which may be withheld at our absolute discretion.
- 6.5 You must tell us immediately by advising The Data Controller at Telefónica O2 UK Limited 260 Bath Road Slough SL1 4DX or, if you have eCare, at [mycare@o2mail.co.uk](mailto:mycare@o2mail.co.uk), if anyone makes or threatens to make any claim or issues legal proceedings against you relating to your use of the Service or the Content and you will, at our request, immediately stop the act or acts complained of. If we ask you to, you must confirm the details of the claim(s) in writing.
- 6.6 You agree that you are procuring the SIM Cards and the Service solely for your own use and that you will not re-sell or otherwise act as any form of distributor in respect of the SIM Card or the Services.

## 7 Our Rights to Bar or Disconnect Your SIM Card

- 7.1 We can at our discretion and without notice bar your SIM Card from making calls (other than to the emergency services) and disconnect it from the Network:
- if any of the circumstances in paragraphs 6.3, 6.4, 6.6 or 8.1 apply to you;
  - in the event of loss or theft or if we have reasonable cause to suspect fraudulent use of a payment card or your SIM Card;
  - if you are persistently abusive, make threats, repeatedly cause a nuisance or annoyance or otherwise act illegally towards our staff or property, or that of our agents; or
  - If you do anything or permit anyone else to do anything which we reasonably think adversely impacts the Service to other O2 customers or may adversely affect the Network.
- 7.2 You must pay an unbaring charge and, if applicable, a re-connection charge if the Service is temporarily barred and/or your SIM Card is disconnected from the Network for the reasons stated in paragraph 7.1. As a condition of unbaring or reconnecting your Service we may require you to authorise a direct debit authority for the payment of Charges.
- 7.3 If we bar your Service because you break this Agreement, the Agreement will still continue. You must pay all Charges until the Agreement is ended by notice under paragraph 8.2.

## 8 Ending the Agreement

- 8.1 In addition to anything else we can do, we can end the Agreement at any time if:
- you fail to pay Charges when they are due, including any deposit we have asked for or break this Agreement in any other material way and you do not correct the situation within 7 days of our request;
  - we have reasonable cause to believe that the Service is being used in a way forbidden by paragraphs 6.3, 6.4 or 6.6, even if you do not know that the Service is being used in such a way;
  - we have reasonable cause to believe that you are or have been in infringement of our Rights; or
  - you are the subject of a bankruptcy order, or become insolvent, or make any arrangement with or for the benefit of creditors or if being a company you go into either voluntary or compulsory liquidation or a receiver is appointed over your assets.
- 8.2 This Agreement may be ended by either you giving at least 30 days' notice in accordance with paragraph 7 of the General Terms. You must pay all Charges incurred during the Agreement.
- 8.3 **If this Agreement is ended during any Minimum Period, you must pay us the monthly subscription charges up to the end of that Minimum Period.** This does not apply if you end the Agreement for the reasons in paragraph 8.4.
- 8.4 You may end this Agreement by giving us written notice if:
- we break this Agreement in any material way and we do not correct the situation within 7 days of receipt of your written request;
  - we go into liquidation or a Receiver is appointed over our assets; or
  - you are a Consumer Customer and we increase charges by more than 10% for calls, messages or data that form part of your inclusive allowance or your Line Rental Charges or change this Agreement to your significant disadvantage in accordance with paragraph 9.2 of the General Terms, provided you give us a minimum of 30 days' written notice (and provided you notify us within one month of our telling you about the changes). This does not apply where:
    - the increase or change relates solely to Additional Services in which case you may cancel, or stop using, that Additional Service;
    - the increase does not exceed the Retail Price Index ("RPI") figure in any twelve month period; or
    - the increase or change is as a result of a requirement by a government or competent regulatory body. For the avoidance of doubt this shall include any increase in VAT or the imposition of a similar or new tax on the Service or us.

## 9 Service Terms for Business Customers

- 9.1 **If you are a Business Customer paragraph 9 applies to you, but it does not apply to Consumer Customers.** In the event of any inconsistency between the provisions of this paragraph 9 and the remaining terms and conditions of this Agreement, paragraph 9 shall take precedence for Business Customers.
- 9.2 We agree, subject to acceptance by us of an Order, to supply you with the Services requested in your Order subject to the terms and conditions of this Agreement, and payment of the Charges. Any alternative terms appearing on or referred to in any other communication, (whether oral, in writing or by electronic means) by you for the purpose of placing Orders shall be ineffective.
- 9.3 You agree to pay the Charges in full without any deduction or set off to us within 30 days from the date of invoice for such Charges.
- 9.4 Certain elements of the Service are dependent on you having suitable infrastructure available and/or using an appropriate device. If you are unable to provide suitable infrastructure, or fail to use an appropriate device, then:
- some of the Services may not function correctly ("the Affected Services"); and
  - we reserve the right not to provide you with the Affected Services and shall have no liability for your inability to receive the Affected Services.

- 9.5 Any Minimum Period applies in respect of each SIM Card connected to your chosen business tariff. During the Minimum Period, unless otherwise agreed in writing by us you may not change tariffs from the tariff that you originally connected to under this Agreement.
- 9.6 You agree that the Services may be dependent upon End-User Licensed Software. Those licence terms shall exclusively comprise your sole rights and remedies in respect of such End-User Licensed Software. If you do not accept the licence terms relating to any End-User Licensed Software, we shall have no liability whatsoever for any failure to provide the Services to you.
- 9.7 A Disconnection Notice may be given by you in respect of a SIM Card at any time. We will disconnect the relevant SIM Card(s) from the Service within 30 days from receipt of a Disconnection Notice. If you give a Disconnection Notice to take effect prior to the expiry of any Minimum Period, you will pay to us the standard O2 Price List Line Rental Charges (as stated in the O2 Price List at the date of disconnection which are applicable to the tariff to which the SIM Card was connected prior to disconnection) for the period from the date of disconnection of the SIM Card to the end of the Minimum Period in respect of that SIM Card.
- 9.8 If we increase the Charges to your material disadvantage or we substantially vary these terms to your material disadvantage (other than where such increases in Charges are due to a change in prices, tariffs, terms or otherwise made or requested by third party manufacturers or suppliers, or a regulatory body) and provided you notify us within one month of our telling you about the changes, you may terminate this Agreement provided you give us a minimum of 30 days' written notice.

## 10 General

- 10.1 You must tell us promptly in writing, or email us if you have eCare, if you change your name and address or there are any changes to your bank account or payment card arrangements which may affect your payment of the Charges.
- 10.2 If you buy a SIM Only Tariff from us, your current mobile phone may be latched to another network and you may need to obtain an unlatching code from your current network operator and/or service provider. The unlatching code is not the same as your PIN code. Failure to enter the correct unlatching code may result in your mobile phone becoming permanently blocked. We accept no responsibility for mobile phones blocked in this way or for any costs incurred in the provision of an unlatching code.

## 11 Important – Consumer Customers your right to change your mind

- 11.1 Unless otherwise stated, if you are a Consumer Customer and purchased your Service directly from us (rather than one of our distributors), in addition to any other rights you have, you may cancel this Agreement up to 14 days after the date on which you receive your SIM Card (the "Change Your Mind Period") as long as you give us notice within this 14 day period either by returning to any O2 retail store or by calling Customer Services. You must also return any Handset that was supplied to you on the basis that you agreed to enter into this Agreement, undamaged, with proof of purchase, in the original packaging and complete with all the original parts, within the Change Your Mind Period either to any O2 retail store, or via our returns procedure if you did not purchase in an O2 retail store (call Customer Services for details of our returns procedure). You may use your SIM Card in your Mobile Phone to connect to the Network during this period, but you will be required to pay for the cost of any usage you make such as calls, texts or data, including roaming or other usage that may take longer to be billed.
- 11.2 If you cancel this Service Agreement, any Equipment Agreement that we entered into with you at the same time for the supply of a Handset which was agreed on the basis of you entering into this Agreement, will also be cancelled. We will bear the cost of returning the Handset with all original parts and the original packaging as long as you follow our returns procedure (call Customer Services for more details). If you do not return the Handset, we may charge you the costs that we incur in collecting it, which may be substantial. You must make the Handset available for collection on our request. If you paid any money for the Handset, we will refund that money to you when we receive the Handset back from you (other than our costs if we have to recover the handset from you).
- 11.3 This paragraph 11 does not apply to Business Customers.
- 11.4 Nothing in paragraph 11 affects your statutory rights.

## Equipment Agreement

- 1 The following paragraphs set out the terms and conditions for the supply of Equipment directly by us (rather than by one of our distributors). In addition the General Terms supplement the terms and conditions of this Agreement and are incorporated into this Agreement. Words used in this Agreement may be defined in those General Terms. **Please refer to the end of this document for a full explanation of the defined terms used in it.** Services, offers and promotions may be subject to additional terms and conditions advertised on our website [www.o2.co.uk](http://www.o2.co.uk) and/or in our marketing literature. Please check our site regularly as these terms are updated from time to time.
- 2 **Supply of Equipment to Consumer Customers**
  - 2.1 **If you are a Consumer Customer paragraph 2 applies to you, but it does not apply to Business Customers.**
  - 2.2 Unless we have specifically agreed to sell you Equipment on an equipment only basis, we are supplying Equipment to you because you have agreed to enter into a contract for the supply of the Services for a Minimum Period and at a tariff applicable to that Minimum Period. In consideration for you agreeing to purchase the Services, we shall normally supply the Equipment to you for no charge (subject to paragraph 2.3). Note that if you cancel your Services Agreement under paragraph 11 this Agreement will also be cancelled.
  - 2.3 We may provide that for certain Equipment supplied, an additional payment is due. If this is the case, the cost of the Equipment will be detailed in the applicable tariff in the O2 Price List or in any marketing materials. Payment will also be required for any Equipment purchased on an Equipment only basis or any additional Equipment purchased and the cost will be detailed in the O2 Price List or in any marketing materials. The cost will be payable at the time of purchase or added to your first bill (as instructed by us).
  - 2.4 The Equipment that we deliver to you or which is collected by you, becomes your responsibility once it is collected or received by you at which time ownership will pass to you, subject to paragraph 2.5.
  - 2.5 If you bought your Equipment or SIM Card directly from us and it is defective, not in accordance with any description given to you by us, not reasonably fit for purpose or it develops a fault you will be able to return it for repair and, if appropriate, replacement or refund. Please contact Customer Services for details. You should call us as soon as possible if any of the circumstances above apply to you to ensure that you are able to exercise any rights you have. Alternatively, if you experience any difficulties with your Equipment within your warranty period, you can contact the manufacturer for replacement or repair under the manufacturer's warranty service detailed in the User Guide(s). This does not affect your statutory rights.
- 3 **Supply of Equipment to Business Customers**
  - 3.1 **If you are a Business Customer paragraph 3 applies to you, but it does not apply to Consumer Customers.**
  - 3.2 We agree, subject to acceptance by us of an Order, to supply you with the Equipment requested in your Order subject to the terms and conditions of this Agreement. Any alternative terms appearing on or referred to in any other communication, (whether oral, in writing or by electronic means) by you for the purpose of placing Orders are ineffective.
  - 3.3 Unless we have specifically agreed to supply you Equipment on an equipment only basis, we are supplying Equipment to you because you have agreed to enter into a contract for the supply of the Services by us on the basis set out in the Order. In consideration for you agreeing to purchase the Service, we shall normally supply the Equipment to you for no charge (subject to paragraph 3.4) except that if there is a specified charge, you must pay that.
  - 3.4 We may provide that for certain Equipment supplied, an additional payment is due. If this is the case, the cost of the Equipment will be set out in the O2 Price List or any relevant marketing materials. The price of any additional Equipment supplied will be set out in the O2 Price List or applicable marketing materials. You must pay the cost of any Equipment and any additional Equipment at the time of purchase.
  - 3.5 Equipment.
    - (a) Unless otherwise stated, we warrant the Equipment will conform in all material respects to the manufacturer's specification for 12 months (but in the case of software 90 days) from the date on which each item of Equipment is dispatched to you (the "Warranty Period").
    - (b) If, within the Warranty Period, the Equipment proves defective under normal use, we shall, at our option, either: repair the faulty Equipment; or, replace the faulty Equipment with the same or an equivalent item of Equipment which may be a new or refurbished item ("Warranty"). If the Equipment is provided to replace Equipment which has failed during its Warranty Period, the replacement Equipment will be provided with its own Warranty Period which shall last for the greater of: i) 3 months from the date on which the replacement Equipment is dispatched to you; or ii) the outstanding period of the original Warranty Period.
    - (c) The Warranty does not apply if you or anyone else (with or without your knowledge) damages the Equipment, or uses it for a purpose or in a context, other than in accordance with O2's or the manufacturer's instructions and advice.
    - (d) Your acceptance of the Equipment shall take place when you take delivery or possession of the Equipment. Risk in the Equipment passes to you upon delivery at which time title to the Equipment will also pass to you, subject to paragraph 3.5(e) below.
    - (e) Any SIM Card delivered to you shall at all times remain our property.
    - (f) We reserve the right to add to, substitute, or discontinue any item of Equipment at any time and cannot guarantee the continuing availability of any particular item of Equipment.
  - 3.6 Delivery of the Equipment or the End-User Licensed Software to you may be subject to export control law and regulations. We do not represent that any necessary approvals and licences have been obtained or will be granted. You agree to comply with any applicable export or re-export laws, regulations, prohibitions or embargoes of any country, including obtaining written authority from any relevant licensing authority where necessary.

#### 4 Important – Consumer Customers your right to change your mind

- 4.1 If you are a Consumer Customer and purchased your Equipment directly from us (rather than one of our distributors) in addition to any other rights you may have, up to 14 days after the date on which you receive your Equipment (“the Change Your Mind Period”), you may return your Equipment to us once for a replacement or you may cancel this Agreement as long as you give us notice within the Change Your Mind Period either by returning the Equipment to any O2 retail store or by calling Customer Services if you did not purchase in an O2 retail store. You must return your Equipment undamaged, with proof of purchase, in the original packaging and complete with all original parts within the Change Your Mind Period either to any O2 retail store or via our returns procedure if you did not purchase in a retail store (Call Customer Services for details of our returns procedure).
- 4.2 We will bear the cost of returning the Equipment with original parts and the original packaging, as long as you follow our Returns procedure (call Customer Services for more details), otherwise you must bear the cost of returning the Equipment to us. If you do not return the Equipment we may charge you the costs that we incur in collecting it which may be substantial. You must make the Equipment available for collection at our request.
- 4.3 Once you have notified us of the cancellation, then any sums paid by you for your Equipment will be reimbursed within 30 days (other than our costs if we have to recover the goods from you).
- 4.4 Cancellation of the purchase of the Handset or other Equipment may mean that you are still liable to us under your Service Agreement for the duration of any Minimum Period.
- 4.5 This paragraph 4 does not apply to Business Customers.
- 4.6 Nothing in paragraph 4 affects your statutory rights.

#### General Terms and Conditions

- 1 These terms and conditions supplement the terms and conditions of any Services Agreement or Equipment Agreement that you have entered into.

#### 2 Marketing and Offers

- 2.1 The details on our websites or in our advertisements or contained in our marketing material are not offers that you can accept. Your order for the Services and/or any Equipment may be subject to you passing any status, identity and credit checks required by us and acceptance by us of your application for the Services pursuant to paragraph 3.1 of the Services Agreement.

#### 3 Limitation of Liability

- 3.1 We have no liability other than the duty to exercise the reasonable skill and care of a competent mobile telecommunications service provider and retailer. If you are a Consumer Customer we do not accept liability for indirect or consequential loss, such as loss of profits, business, costs, expenses (unless such losses were reasonably foreseeable to both of us when this contract was entered into) or any other form of economic loss.
- 3.2 You agree we have no responsibility for the deletion, loss or corruption of any Content transmitted or maintained by the Network, unless this is caused by our negligence.
- 3.3 Nothing in this Agreement shall exclude or restrict the liability of either party for:
  - (a) death or personal injury resulting from that party's negligence; or
  - (b) fraud or fraudulent misrepresentation.
- 3.4 If we are found liable to you our liability will not exceed: (i) where you are a Consumer Customer £3,000; or (ii) where you are a Business Customer the greater of £50,000 or your annual Charges up to a maximum of £1million; except in either case under paragraph 3.3.
- 3.5 Nothing in this Agreement shall exclude or restrict the liability of either party in respect of any liability which cannot be excluded or restricted by law.
- 3.6 Each provision of this paragraph 3 operates separately. If any part is found by a Court to be unreasonable or inapplicable the other parts will continue to apply.

#### 4 Insurance

- 4.1 If the SIM Card or your Handset is lost, stolen, damaged or destroyed you will be responsible for any Charges incurred until you have informed us. If you have purchased the O2 Insure Gold, Silver, Premier, Standard or any other applicable O2 Insure mobile insurance after 14 January 2005 and you make a claim under the policy for theft of the Handset which is approved by the insurer or an agent of the insurer, (“the Insurer”) we will reimburse you against the cost of unauthorised calls made on the Handset up to the following limits: Gold policy - up to £2000; Silver policy - up to £1000; Premier policy - up to £3,000; Standard policy - up to £1,000; other applicable O2 Insure policy - up to the amount we notify you in connection with that product. In each case these figures include any taxes and network or service provider charges. In return:
  - (a) you agree to provide the Insurer with an itemised account from your network or service provider clearly showing the unauthorised calls made and their value within 2 months of your discovery of the theft of the Handset;
  - (b) you agree to notify the Insurer of the theft of the Handset as required by the terms of the Gold, Silver, Premier, Standard or any other applicable O2 Insure policy (as the case may be) in force at the time of the theft and you agree to notify us of the theft of the Handset when you notify the Insurer under the Gold, Silver or other applicable O2 Insure policy; and
  - (c) you agree that the same exclusions set out in the Gold, Silver, Premier, Standard or any other applicable O2 Insure policy (as the case may be) in force at the time of the theft apply, and where they do we will not reimburse you for the cost of the unauthorised calls.

#### 5 Matters beyond our reasonable control

- 5.1 Except for the obligations under paragraphs 5, 6, 7 and 8 of the Services Agreement and paragraphs 2.2, 2.3, 3.3 and 3.4 of the Equipment Agreement, if either of us cannot do what we have promised because of something beyond our reasonable control such as lightning, flood, exceptionally severe weather, fire, explosion, epidemics, war, civil disorder, industrial disputes, acts of terrorism, acts or omissions of persons for whom we are not responsible (including other telecommunication providers), or acts of local or central Government or other competent authorities, we will not be liable for this.

#### 6 Assignment

- 6.1 You cannot transfer the Service to anyone else unless we agree in writing.
- 6.2 We shall be entitled to assign or transfer our rights and obligations under this Agreement or any part of it on the same terms to any third party.

#### 7 Notice

- 7.1 If you are a Consumer Customer you must call Customer Services if you wish to give notice to terminate your Agreement. If you are a Business Customer notice to terminate your Agreement must be in writing and delivered by hand or sent pre-paid post to us at: Telefónica O2 UK, PO Box 202, Houghton Regis, LU5 5WA. The notification must include the mobile number and account holder signature. You are required to give us 30 days' notice as set out in paragraph 8.2 of the Services Agreement.
- 7.2 Any other notice under this Agreement must be in writing and delivered by hand or sent by pre-paid post, to us at the address given on your bill, or to you at the address stated in your application as your address or any other UK address you supply to us for this purpose.
- 7.3 If you use the eCare service via o2.co.uk references in this Agreement to “in writing” include email and notices to us must be delivered to mycare@o2mail.co.uk or to you at the address stated in your application form as your email address or any other email address you supply to us for this purpose.

#### 8 General

- 8.1 If you break this Agreement, and we choose to overlook it, we can still end it if you break this Agreement again and vice versa.
- 8.2 If you do not want your number displayed on receiving handsets call Key 141 before the number you wish to call. Otherwise you agree that our Network may allow the display of your Mobile Phone number on receiving handsets. Please note your number will be disclosed in relation to calls you make to emergency services.
- 8.3 If you have a complaint about our Service you may contact us by telephone by calling the Customer Services number on your bill. If you are still unhappy you can write for an impartial review to: Complaint Review Service, PO Box 116, Leeds, LS11 5DS. Please include your Mobile Phone number in any correspondence. If you are a Consumer Customer and we do not resolve your complaint you may contact the Telecommunications Ombudsman. You can find their details at [www.otelo.org.uk](http://www.otelo.org.uk). However Otelo will only deal with your complaint if it remains unresolved after 12 weeks or a deadlock situation has been reached.
- 8.4 If you report your Mobile Phone to us as lost or stolen we have the right to prevent it from being used on the Network. We may also exchange the Mobile Phone identity with other network operators who may choose to prevent the Mobile Phone from being used on their networks.

#### 9 Changes to the Agreement

- 9.1 We may change this Agreement and the Charges at any time. Changes will be posted on our website [www.o2.co.uk](http://www.o2.co.uk). Please check this regularly for updates.
- 9.2 If we increase the Charges for the elements of the Service you are using or change the terms and conditions of this Agreement to your significant disadvantage (in our reasonable opinion) we will give you 30 days' notice in writing before the changes take place. We will notify you as detailed in paragraph 7 above or we may notify you by text (SMS) to your Mobile Phone number and/or by email where you have supplied your email address to us for this purpose.

#### 10 Third Party Rights

- 10.1 Third parties cannot benefit from this Agreement under The Contracts (Rights of Third Parties) Act 1999.

## 11 Law

11.1 This Agreement is governed by English law and is subject to the exclusive jurisdiction of the English courts to which both parties submit.

## 12 Business General Terms and Conditions

- 12.1 **If you are a business customer paragraph 12 applies to you, but it does not apply to consumer customers.** In the event of any inconsistency between the provisions of this paragraph 12 and the remaining terms and conditions of this Agreement paragraph 12 shall take precedence for Business Customers.
- 12.2 Nothing in this Agreement shall create, or be deemed to create, a partnership between the parties.
- 12.3 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 12.4 This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements whether written or oral relating to the subject matter of this Agreement.
- 12.5 Each party acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this paragraph shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.
- 12.6 If any of the provisions of this Agreement (including any element of the Charges) is or becomes invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In any such circumstances the parties shall negotiate in good faith in order to agree the terms of a mutual satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision which is found to be invalid, illegal or unenforceable.
- 12.7 The parties will each keep confidential any proprietary information and/or any information obtained from the other in connection with this Agreement (which is reasonably identified by either party as commercially confidential or which is obviously confidential in nature) and neither will divulge the same to any third party except such of its employees contractors and agents as may need to know the same for the purposes of the implementation of this Agreement and who agree to be bound by the provisions of this paragraph without the consent in writing of the other.
- 12.8 The obligations set out in paragraph 12.7 shall not apply to any material or information which is in the public domain (other than as a result of a breach of this Agreement); or, already known to the receiving party; or, lawfully received from a third party and/or ordered to be disclosed by any court or other tribunal or regulatory authority of competent jurisdiction.
- 12.9 Neither party shall be liable to the other in respect of any matter arising out of or in connection with this Agreement in contract or tort or otherwise for any loss (whether direct or indirect) of profit, business, revenue, anticipated savings, goodwill or any loss or corruption of data, or any indirect or consequential loss or damage whatsoever.

## 13 Use and Disclosure of Information

- 13.1 You agree that we may search the files of credit reference agencies which will keep a record of that search. We may also carry out identity and anti-fraud checks with fraud prevention agencies. We and other organisations may access and use from other countries the information recorded by fraud prevention agencies. If you give us false or inaccurate information and we identify or suspect fraud, we will record this. Details of how you conduct your account may also be disclosed to those agencies, law enforcement agencies and other telecommunications companies. The information may be used by us and other parties in assessing applications for and making decisions about credit, credit related services or other facilities and insurance (including motor, household credit, life and other insurances and claims) from you and members of your household and for debt tracing, debt recovery, credit management and crime, fraud and money laundering detection and prevention. Information may be used by us and other parties for checking your identity, checking details of job applicants and employees, statistical analysis about credit, insurance, fraud and to manage your account and insurance policies. We may also perform subsequent searches for the purpose of risk assessment, debt collection and fraud prevention with one or more credit reference agencies and/or fraud prevention agencies whilst you retain a financial obligation to us.
- 13.2 Information held about you by credit reference agencies may be linked to records relating to your financial associate(s). For the purposes of this application you declare that you and your financial associate(s) are financially independent and you request that your application be assessed without reference to any "associated" records, although you recognise that this may adversely affect the outcome of your application. You believe that there is no information relating to your financial associates that is likely to affect our willingness to offer the Service to you. You authorise us to check the validity of this declaration with credit reference agencies and if we discover any associated records, which would affect the accuracy of this declaration we may decide not to proceed with the application on this basis. For the purpose of this paragraph a "financial associate" is someone with whom you have a financial link, for example, a spouse, partner or family member.
- 13.3 You authorise us to use and disclose, in the UK and abroad, information about you, your use of the Service including, but not limited to, phone numbers and/or email addresses of calls, texts and other communications ("Communications") made and received by you and the date, duration, time and cost of such Communications, how you conduct your account and the location of your Mobile Phone for the purposes of operating your account and providing you with the Service, for credit control purposes, fraud and crime detection and prevention and the investigation and prevention of civil offences or as required for reasons of national security or under law to our associated companies, partners or agents, any telecommunications company, debt collection agency or credit reference agency and fraud prevention agency or governmental agency and other users of these agencies who may use this information for the same purpose as us. You can obtain further details from our public registration held by the Information Commissioner. If you wish to have details of the credit reference or the fraud prevention agencies from whom we obtain and with whom we record information about you or receive a copy (we will charge a fee) of the information we hold about you, please contact us by writing to the Data Controller at Telefónica O2 UK Limited, 260 Bath Road, Slough, SL1 4DX or, if you have eCare, at mycare@o2mail.co.uk, stating your full name, address, account number and Mobile Phone number.
- 13.4 You also agree to the information described in paragraph 13.3 being used, analysed and assessed by us and the other parties identified in paragraph 13.3 and selected third parties for marketing purposes including amongst other things to identify and offer you by phone, post, the Network, your Mobile Phone, email, text (SMS), media messaging, automated dialling equipment or other means, any further products, services and offers which we think might interest you. If you do not wish your details to be used for marketing purposes, please write to us c/o The Data Controller, Telefónica O2 UK Limited 260 Bath Road, Slough, SL1 4DX or, if you have eCare, at mycare@o2mail.co.uk stating your full name, address, account number and Mobile Phone number. For details on how we treat your information please refer to our Privacy Policy at [www.o2.co.uk](http://www.o2.co.uk).
- 13.5 Some Services or services provided by third parties may require the disclosure of information about the location of your Mobile Phone. If you do not wish this to be disclosed please contact 1300 from your Mobile Phone. Please note we may pass information about the location of your Mobile Phone to emergency services.
- 13.6 Where you choose to take an insurance policy through us, we will exchange information about you and your account in relation to that policy with the underwriters of the policy and with the administrators of the policy (the "Insurance Providers"). Your personal data will be collected and processed by us, our agents and the Insurance Providers to the extent necessary for providing you with the policy described (such as when making a decision about your eligibility for cover, assessing claims, and carrying out fraud prevention measures). We and the Insurance Providers may also pass information to law enforcement authorities, regulators and the Financial Services or the Telecommunications Ombudsman.

## 14 Explanation of certain words

14.1 In the Services Agreement and the Equipment Agreement including these General Terms:

- "Additional Services"** means optional services which you may choose to take from us, including but not limited to, Bolt On packages, roaming and international services, premium rate services, directory enquiry services, Content and third party services and if you are a Business Customer services such as installation and field services details of which appear in the O2 Price List;
- "Agreement"** means either the Services Agreement or the Equipment Agreement as applicable, incorporating your application details which you have provided to us, the General Terms and the O2 Price List;
- "Artificially Inflated Traffic"** means any situation where the flow of calls to any particular revenue share service is, as a result of any activity on or on behalf of the party operating that revenue share service, disproportionate to the flow of calls which would be expected from good faith commercial practice and usage of the network;
- "Broadband Service"** means the broadband service from us;
- "Business Customer"** means a customer who connects to the Service for business use;
- "Charges"** means all the charges associated with the Service described in the O2 Price List;
- "Consumer Customer"** means a customer who connects to the Service for their own personal private use and not for business use;
- "Content"** means textual, visual or other information, software, photos, video, graphics, music, sound and other material appearing on or available through the Service including all information supplied by content providers from time to time;
- "Disconnection Notice"** means a notice to disconnect one or more SIM Cards from the Services given pursuant to paragraph 9.7 of the Services Agreement terms and conditions;
- "End-User Licensed Software"** means any software, the licence terms for which are governed by a separate agreement with the licensor of such software typically by means of a "click-wrap" or "shrink-wrap" licence agreement;
- "Equipment"** means any equipment supplied to you under this agreement by us, including but not limited to, for the avoidance of doubt any Handset, laptop computer or netbook;
- "GSM Gateway"** means a device (not designed or adapted to be capable of being used whilst in motion) for wireless telegraphy designed or adapted to be connected by wireless telegraphy to the O2 wireless telecommunications network or the wireless telecommunications system of another network operator and used solely for the purpose of sending and receiving messages conveyed by means of the O2 wireless telecommunications;
- "Handset"** means the Mobile Phone supplied to you by us under any Equipment Agreement;
- "Line Rental Charges"** means the monthly subscription charge for your tariff per SIM Card;
- "Minimum Period"** means, in relation to all tariffs except SIM Only tariffs, the minimum period for the Service selected by you in your application and on which the price of your tariff is based, from the day on which the Service is first provided or from the day on which you take an upgrade and which may be either 12, 18 or 24 months if you are a Consumer Customer or 12, 24 or 36 months if you are a Business Customer;
- "Mobile Phone"** means a cellular telephone or other device which incorporates a SIM Card used by you to receive the Services;
- "Network"** means the mobile telecommunication system run by us;
- "O2 Price List"** means a list of current Charges, and Mobile Phone and Equipment Prices containing explanations, notes, descriptions of, and conditions for use of the Service which we publish and update from time to time at [www.o2.co.uk](http://www.o2.co.uk);
- "Order"** means, for Business Customers only, a request by you for Equipment and/or Service;
- "Rights"** means copyright, trademark and other relevant proprietary and intellectual property rights relating to Content;
- "Service(s)"** means any or all (as the case may be) of the following services: airtime service enabling you to make or receive calls and to send and receive data by means of the Network, the ability to send and receive email via the Internet, the ability to access information from the Internet and any Additional Services we agree to provide to you;
- "SIM Card"** means the card which you need to use the Service;
- "SIM Only Tariff"** means a tariff which does not have a Minimum Period but which may be terminated at any time in accordance with the provisions of paragraph 8.2 of the Services Agreement, and in relation to which a Handset will not be supplied when you agree to purchase the Service;
- "Termination Notice"** means written notice to terminate this Agreement;
- "User Guides"** means any guides or documentation supplied with your Handset either by us or by the manufacturer of your Handset which explains to you how the Service works and how to use your Handset;
- "WAP Services"** means services provided via Wireless Application Protocol (a secure specification that allows users to access Content via handheld devices such as a Mobile Phone);
- "Web Services"** means services provided from our Website [www.o2.co.uk](http://www.o2.co.uk) and any additional websites linked from our Website;
- "We", "us", "our" or "O2"** means Telefónica O2 UK Limited of 260 Bath Road, Slough SL1 4DX. Registered in England and Wales under Company number 1743099 and VAT number GB 778 6037 85; and
- "You"** means the customer with whom we make this Agreement and includes a person who we reasonably believe is acting with your authority.

### [o2.co.uk](http://o2.co.uk)

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