



PPG Access SMS Service Agreement

Agreement Information

This Service Agreement constitutes the entire agreement and understanding between PPG Australia Pty Ltd ('PPG') (ABN 82 055 500 939), McNaughton Rd Clayton, Victoria, 3168, Australia ('we', 'us', 'our') and the Customer specified on the Application Form ('you', 'your') with respect to the use of Access SMS on-line short message service. They supersede any other written or oral representations, understandings or agreements.

Submission of an executed copy of the attached Application Form to us constitutes your approval of these terms and conditions. If we notify you in writing that we accept your Application Form you will be bound by these terms and conditions.

For any terms with the first letter capitalised please see the definitions preceding bracketed words in bold and listed at the end of this Agreement.

1. The On-line Short Message Service

(a) We will provide you with our on-line short message service ('Service') which enables users of PPG Access Estimate Manager (Estimate Manager) and Microsoft's Outlook email application ('Outlook') to:

- (i) send short text messages from Estimate Manager or Outlook to GSM mobile phone handsets; and
- (ii) receive replies to these short text messages sent from GSM mobile phone handsets to Outlook.

(b) We grant you a non-exclusive and non-transferable licence for the term of this Agreement to install on your PC's and use our software to obtain the Service ('Software') solely for your own internal business purposes on these terms and conditions.

(c) A person will become an authorised user when they have installed our Software on a PC associated with your Internet Domain Name and their e-mail address is registered by PPG.

(d) You may request the de-registration of your authorised users at any time.

(e) We may provide you free of charge with upgrades to the Software from time to time.

(f) You are liable for all fees incurred as a result of use of your Service whether authorised by you or not.

(g) We will use reasonable endeavours to provide you with access to Service on a continuous basis. However, you acknowledge that:

(i) the Service is not error or fault free and that you may experience interruptions and usage difficulties from time to time;

(ii) we are not responsible for the successful carriage and delivery of Service messages, including over third party telecommunications networks;

(iii) we may immediately and without notice to you suspend access to the Service:

(A) during any technical failure, modification or maintenance involving the Service;

(B) if you breach this Agreement and have not remedied the breach within 15 days of us notifying you of the breach and requesting that it be remedied; or

(C) if you do or allow to be done anything, which, in our reasonable opinion may have the effect of jeopardising the operation of our or any third party's business, facilities or the services we supply to our customers.

2. Limitations on Use

You agree:

(a) not to take any action that may, in our reasonable opinion, adversely affect or impair any of our rights, title and interests in and to the Software, and/or any of our Intellectual Property Rights in any manner or form;;

(b) to use the Service for the sending of short text messages which:

(i) comply with all applicable laws and regulations and the requirements of any government or statutory body;

(ii) contains nothing which is likely in the light of generally prevailing standards of decency and propriety to cause offence;

(iii) comply with all reasonable industry and PPG policies, standards and codes; and

(iv) could not in any way be considered as Spam or bulk unsolicited commercial messages, and undertake not to allow any third party to do so.

(d) not to repackage, market, license, distribute, transfer, lend, rent or otherwise commercially exploit the Software or translate or export the Software into any other computer language;

(e) to notify us immediately if you become aware of any unauthorised use by any person of the whole or any part of the Service;

(f) not to merge all or any part of the Software with other computer programs, products or services without our prior written consent;

(g) not to reverse engineer, reverse assemble or reverse compile or directly or indirectly allow a third party to reverse engineer, reverse assemble or reverse compile the Software or otherwise attempt to discover any portion of the source code or trade secrets related to the Software, except as and to the extent that you are legally authorised to do so under any applicable laws;

(h) not to knowingly introduce into our system viruses, worms, trojan horses or other harmful or malicious software;

(i) to indemnify us for any loss, cost or damage we incur as a result of your failure to comply with your obligations in this clause.

3. Connection Equipment and Costs

(a) You will provide at your cost the telephone line, modem, computer, hardware, software and all other equipment required to use the Service other than the Software.

(b) You will pay all costs, fees, charges or other expenses which are or may be incurred by your use of any services of a communications service provider (including timed telephone calls) which allow you to use the Service. You agree to indemnify and keep us indemnified in respect of any such costs, fees, charges or other expenses.

4. Fees and Payment

(a) You will pay to us the Set-up Fee (if any) and the Message Fees as specified in your monthly invoice

(b) PPG will deduct the monthly charges via Direct Debit or Credit Card

(c) We may vary the Charges at any time by 30 days written notice to you.

(d) To the extent permitted by law any prepayment of Charges is not refundable.

(e) If you elect to pay via credit card and your credit card expires or we are for any other reason unable to debit Charges to your credit card, we may immediately and without notice suspend your use of the Service. In such circumstances we will only again permit access to the Service when the problem with the direct debit has been rectified and you pay to us, whether by way of direct debit or otherwise, an administration fee of \$100 in addition to the due payment for the modules and any interest due for late payment.

5. GST

You must pay us on demand any goods and services tax, value added tax or any other like tax ('GST') which is payable as a consequence of any supply made or deemed to be made or other matter or thing done under or in connection with this Agreement by us (together with any fine, penalty or interest payable because of your default). The amount paid by you to us on account of GST must be sufficient to ensure that the economic benefit to us of this Agreement remains the same whether GST applies or not. We will give you a tax invoice.

6. Exclusion of Warranties

We shall use all reasonable efforts to rectify (or provide work-arounds for) any defects in the Services notified by you to us in writing. Except as otherwise expressly stated in these terms and conditions, we make no express or implied warranties to you and expressly exclude all warranties, conditions and terms implied by statute, general law, international convention or custom, including without limitation any and all implied warranties with respect to merchantability, fitness for purpose, title and non-infringement, except for any implied condition or warranty, the exclusion of which would contravene any statute or cause this clause to be void.

7. Limitation of Liability

(a) To the extent permitted by law, where the goods or services we supply under these terms and conditions are subject to warranties or terms implied by statute, general law, international convention

or custom that cannot be excluded, restricted or modified our liability for breach of any such condition or warranty will be limited at our option to:

(i) in the case of goods, to the supply of the goods again or payment of the cost of supplying the goods again; and

(ii) in the case of services, the supply of the services again or payment of the cost of supplying the services again.

(b) To the extent permitted by law, our liability to you for any loss or damage, whether arising in contract, negligence or otherwise shall not exceed the total amount we actually received from you with respect to the Service. We will not be liable in any event (whether in contract, tort or otherwise) for any consequential, indirect, incidental, special, punitive or exemplary damages, including without limitation any loss of profits or loss or corruption of data or loss of anticipated savings, loss of goodwill or economic loss, even if we have been advised of the possibility of such loss or damage.

(c) Each party's liability in contract, tort, negligence, under statute or otherwise must be reduced by the extent, if any, to which the other party contributed to the loss.

8. Intellectual Property

You acknowledge that the Software is a commercially valuable, proprietary product, the design and development of which reflects the effort of skilled development experts and the investment of considerable time and expense, and is subject to copyright and other Intellectual Property Rights. We are the owner, or authorised licensee, of all rights, title and interests in and to the Software and, except as otherwise specifically granted under these terms and conditions, you obtain no right, title or interest in or to the Software. Except as expressly permitted by law you will not decompile or reverse engineer the Software. All source code of the Software is our valuable secret.

9. Confidentiality

(a) Neither party will disclose to any third party without the prior written consent of the other party any Confidential Information received from the other party. This restriction does not apply to information which is or becomes generally available to the public (other than as a result of a breach of an obligation under this clause), is independently developed by the recipient or is required by law to be disclosed.

(b) Each party will only use the Confidential Information of the other party for the sole purpose of performing its obligations under this Agreement.

(c) This clause does not prevent us from disclosing the existence of this Agreement to third parties for the purposes of marketing to customers and potential customers.

10. Term and Termination

(a) This Agreement will commence on the date of this Application and will continue unless terminated by You or Us in writing

(b) Either party may terminate these terms and conditions after the Initial Term without cause by giving 30 days notice in writing to the other party.

(c) We may terminate these terms and conditions at any time with immediate effect if you breach any of these terms and conditions and fail to remedy that breach within 21 days after receiving notice of the breach requiring you to do so.

(d) You may terminate these terms and conditions:

(i) at any time with immediate effect if we breach any of these terms and conditions and fail to remedy that breach within 21 days after receiving notice of the breach requiring us to do so; or

(ii) with effect from the date of any increase in Charges notified by us by giving notice to us within 14 days after receiving notice of the increase in Charges.

(e) These terms and conditions will terminate automatically if either party becomes the subject of an Insolvency Event.

11. Consequences of Termination or Expiration

(a) Upon the termination of these terms and conditions for any reason, all rights granted to you under these terms and conditions cease and you must:

(i) immediately discontinue all use of the Software and the Service; and

(ii) immediately pay to us any outstanding Charges.

(b) The provisions of clauses 7, 8 and 9 survive termination or expiration of this Agreement.

12. Force Majeure

Other than in relation to any payment obligations under these terms and conditions no party will be in breach of its obligations under these terms and conditions to the extent that the failure or delay occurs because of a Force Majeure Event and the affected party will be granted a reasonable extension of time to complete its performance of any obligations affected by that Force Majeure Event.

13. General Provisions

(a) This Agreement may only be varied by agreement of both parties in writing.

(b) All notices to be given by a party to the other party must be in writing and shall be sent by facsimile or electronic mail to their respective addresses on the Application Form or as varied by written notice. This is in addition to any other mode of service permitted by law.

(c) Any provision of these terms and conditions will be read down to the extent necessary to prevent that provision or these terms and conditions being invalid, voidable or unenforceable in the circumstances.

(d) You may not assign or attempt to assign any of your rights or obligations under these terms and conditions without our prior written consent which shall not be unreasonably withheld.

(e) These terms and conditions are governed by the laws of Queensland and each party irrevocably submits to the exclusive jurisdiction of the Courts of that State.

14. Definitions

'Confidential Information'

in relation to a party, means all information relating to that party including, without limitation, that party's, systems, processes, data, customers, personnel, assets, products, services and affairs, which is disclosed, communicated or delivered to the other party or which comes to the other party's knowledge, or into its possession, before, on or after the date of these terms and conditions.

'Force Majeure Event'

means an event or circumstance that, despite its reasonable effort and without its fault or negligence, a party is unable to control and includes, without limitation, any act of God, war and other hostilities, fire, flood, strikes, lock-outs, delays in transport, breakdowns in machinery, or restrictions or prohibitions or any other acts by any government or semi-government authority.

'Insolvency Event'

includes, without limitation, an arrangement, compromise, winding up, dissolution, official management, appointment of administrator, liquidator, provisional liquidator or controller, assignment for the benefit of a creditor, scheme of arrangement with creditors, insolvency, bankruptcy or if it applies, a merger, amalgamation, reconstruction or change in the constitution of an entity for the purpose or having the effect of altering a party's rights with its creditors, or anything having a substantially similar effect to any of the events specified under the law of any jurisdiction.

'Intellectual Property Rights'

means all rights, whether registrable, registered or unregistered under the laws of any jurisdiction throughout the world, including, but not limited to any copyrights, patents, designs, trade marks, service marks, trade names, business names, get up, trade secrets and any applications for, or rights to obtain or acquire, any such intellectual property rights.

10 November 2008