

SMSGUYS (Pty) Ltd
also known as "SMSGUYS"

Terms of Usage of Services / Programs and SMS Policy

The service(s) that are offered by SMSGUYS (SMSGUYS Pty Ltd) to you (the customer) are governed by the contractual obligations as follows.

1. Scope of Agreement

The customer agrees to the terms and conditions specified in this contract by registering on the SMSGUYS website (<http://www.SMSGUYS.co.za/> and or any other website owned and controlled by SMSGUYS for the Multi- Messaging Service(s). The contract between SMSGUYS (SMSGUYS) and the customer is deemed to be in effect from the date the activation of the username and password required to use the Multi-Messaging Service(s) is registered in the SMSGUYS User Database. This agreement supersedes any and all other agreements explicit or implied between the customer and SMSGUYS (SMSGUYS).

2. Bulk SMS Service

2.1. Security and Authentication

Upon acceptance of these terms and conditions, and once the registration process is successfully completed (receipt of payment for service), the customer's username and password will be activated. This will be notified to client and these identifiers serve as the only means by which SMSGUYS (SMSGUYS) will identify the customer. No further verification or authentication of the identity of the customer will be undertaken by SMSGUYS (SMSGUYS).

Consequently, all activities concluded on the SMSGUYS website, which can be traced to the customer's username and password, are deemed to have been undertaken exclusively by the customer and the customer is therefore legally bound for all transactions resultant from such activities. It is therefore the customer's responsibility to ensure that the username and password are handled with care and not subjected to negligent usage. Furthermore, SMSGUYS strongly advises the customer to change the issued password as soon as possible and to also regularly change the login password to further prevent fraudulent usage.

2.2. Risks

Due to the nature of the service, SMSGUYS (SMSGUYS) cannot be held responsible for risks incurred through the use of the Internet services, as well as all risks associated with data security, privacy, availability and reliability of message processing and transmission. Thus, the customer is fully and exclusively liable for any and all risk resultant from the use of the Bulk SMS service(s).

2.3. Limitation of Liability

THE SERVICES AND ALL INFORMATION, PRODUCTS AND OTHER CONTENT (INCLUDING THIRD PARTY INFORMATION, PRODUCTS AND CONTENT) INCLUDED IN OR ACCESSIBLE FROM THIS WEB SITE, ARE PROVIDED "AS IS" AND ARE SUBJECT TO CHANGE AT ANY TIME WITHOUT NOTICE TO YOU. TO THE FULLEST EXTENT PERMITTED BY LAW, SMSGUYS (SMSGUYS) DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES (EXPRESS, IMPLIED AND STATUTORY, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS) AS TO THE SERVICES AND ALL INFORMATION, PRODUCTS AND OTHER CONTENT (INCLUDING THIRD PARTY INFORMATION, PRODUCTS AND CONTENT) INCLUDED IN OR ACCESSIBLE FROM THIS WEB SITE.

IN NO EVENT SHALL SMSGUYS (SMSGUYS) OR ANY OF ITS AFFILIATES OR CONTENT PROVIDERS BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOSS OF USE, PROFITS, DATA OR OTHER INTANGIBLES, OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, ARISING OUT OF OR RELATED TO THE USE, INABILITY TO USE, UNAUTHORIZED USE, PERFORMANCE OR NON-PERFORMANCE OF THIS WEB SITE OR THE SERVICES, EVEN IF SMSGUYS (SMSGUYS) HAS BEEN ADVISED PREVIOUSLY OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER SUCH DAMAGES ARISE IN CONTRACT, NEGLIGENCE, TORT, UNDER STATUTE, IN EQUITY, AT LAW OR OTHERWISE.

3.0. **Access** to <http://www.smsguys.co.za/> and any other Website owned and controlled by SMSGUYS. SMSGUYS shall endeavor, to the best of its abilities to ensure that services offered to customers through its above websites, shall be available on a 24 hour, 7 days a week policy. Access to the services offered by SMSGUYS is available through the above websites and the customer is responsible for obtaining all devices and services necessary to enable the use of such services.

3.0.1 Member Account , Password and Security.

SMSGUYS Services requires you to open an account. You must complete the registration process by providing us with current, complete and accurate information as prompted by the applicable registration form. You also will choose a password and a user name. You are entirely responsible for maintaining the confidentiality of your password and account. Furthermore, you are entirely responsible for any and all activities that occur under your account. You agree to notify SMSGUYS immediately of any unauthorized use of your account or any other breach of security. SMSGUYS will not be liable for any loss that you may incur as a result of someone else using your password or account, either with or without your knowledge. However, you could be held liable for losses incurred by SMSGUYS or another party due to someone else using your account or password. You may not use anyone else's account at any time, without the permission of the account holder.

3.1. Nature of Services

3.1.1. Message Delivery

The customer acknowledges and accepts that the provision of the SMS delivery service is enabled through SMSGUYS's relationships with telecommunications network operators (Roaming Partners) and is therefore only able to act under the conditions imposed through such agreements. The delivery of SMS messages is therefore subject to the availability and performance of such operator's technical systems and cannot be guaranteed. Specifically, SMS messages submitted through the SMSGUYS website will be transferred to the recipient's mobile terminal within times ranging from a few seconds to a few minutes depending on the conditions prevalent at the time of submission. Also, message delivery performance is subject to the recipient's mobile terminal being switched on and located within an area that is acceptably covered by the recipient's service provider. Furthermore, certain mobile operators prevent their subscribers from receiving SMS messages, for whatever reasons, and in such cases message delivery is patently not possible.

3.2. Submission of Large Message Volumes

When the customer requests a large number of messages to be transmitted the quality of service may be degraded due to capacity and technical constraints imposed by mobile network operators. In such instances, delays may be encountered and SMSGUYS cannot be held liable for consequences resulting from such service degradation. However, upon sufficient advance notice (at least two business days) by the customer to SMSGUYS of large volume transmission, SMSGUYS shall endeavor to, but nor guarantee, that such delivery shall be made possible without disruptions.

3.2.1. Message Validity

SMS messages submitted to the SMSGUYS website for transmission shall have an assigned lifetime of 24hours during which time delivery attempts, at regular intervals, shall be made. Should the lifetime of the message expire prior to successful delivery, all unsent messages shall be discarded without notice to the customer.

3.3. Privacy of Message Content

The handling of messages submitted through the SMSGUYS network website is subject to South African privacy laws. SMSGUYS is therefore obliged to maintain SMS message logs of all transmissions and to further make such SMS transmission reports available to government and legal authorities upon explicit request.

The customer accepts that SMS messages are transmitted in an unencrypted format and as such SMSGUYS cannot guarantee against eavesdropping of the communications channel at any stage or point in the link(s) by third parties.

3.4. Changes to Service Offerings and Content

SMSGUYS (SMSGUYS) reserves the right to modify, enhance, discontinue and further develop its service offerings and contents on its websites (<http://www.SMSGUYS.co.za/> and <http://www.smsguys.co.za/>) and or any other websites owned and controlled by SMSGUYS), at any time without prior notice.

SMSGUYS also reserves the right to contact any of our users , of any of our websites , informing them of any updates , features and other benefits. Occasionally there could be some form of marketing. By registering on SMSGUYS's Systems , Users agree to receive such communication. Users can at any point simply "OPT OUT" from receiving such communication.

4. Customer's Responsibilities and Liability

4.1. Malicious Disruptions and Damages

Should the customer be implicated of malicious disruptions or damages to the SMSGUYS websites (<http://www.SMSGUYS.co.za/> and <http://www.smsguys.co.za/>) and or any other websites owned and controlled by SMSGUYS the customer becomes liable for all direct and incidental consequences and associated costs resultant from such malicious activity.

4.2. SMS Content

The customer accepts full responsibility for the content of SMS messages transmitted by SMSGUYS on his behalf and agrees to abide by the laws and intent applicable to such content. Failure to do so will result in suspension, without recourse to service fees paid to SMSGUYS, and furthermore, shall be liable for all direct and consequential damages and costs resultant from such reckless engagements. The customer must reasonably ensure that the content of SMS messages does not cause disturbance or harassment to the recipient or third parties and will further ensure that SMS messages containing violent, offensive, discriminatory, illegal or pornographic content are not submitted for transmission by SMSGUYS to its subscribers or its Roaming Partners.

SMSGUYS is bound to ensure the delivery of a valued service and will not tolerate spamming of SMS messages by the customer. Therefore the customer is not permitted to send messages to recipients who have made it explicitly clear that they do not wish to receive SMS messages of a particular or any kind. The customer will not send any message to any SMSGUYS subscribers and its International Roaming subscribers any marketing information that it did not request.

SMSGUYS, its partners, agents, shareholders, employees, officers, suppliers and subsidiaries will be fully indemnified by the customer for claims resultant from any party as a result of the content of the customers, or its customers, SMS message submissions made to SMSGUYS for subsequent transmission.

4.3. Identification of the Originator

Under no circumstances will SMSGUYS deliver any SMS message unless and until the identification of the authorised originator, or its authorised representative, is explicitly known and understood.

4.4. Termination of Service

At any time during the tenure of this agreement, the customer acknowledges that SMSGUYS (SMSGUYS) and or www.smsguys.co.za reserves the right to terminate a customer's username and/ or password, discard and remove any content, without limitation, "IMMEDIATELY AND WITHOUT NOTICE" , if SMSGUYS (SMSGUYS) and or www.smsguys.co.za believes , or it comes to their attention , that the customer's account is found to be used for any illegal activity whatsoever , contravened any law or acted against the letter or spirit of this agreement. SMSGUYS and or www.smsguys.co.za , also reserves the right to terminate the account of any customer , if that customer is determined by way of any of their actions to be an undesirable and or an unwanted customer. SMSGUYS may also, at its sole discretion, at any time cease to provide the service, or any part thereof and to make modifications and changes to the service and the content of the website from where it is accessed and offered.

It is also understood that ,In the event of termination of service (Products : RemoteSMS or www.smsguys.co.za) either by the Customer on his own account , or by SMSGUYS for any reason , Then all outstanding SMS Credits on the Customers account will be forfeited. There will be NO refund of SMS Credits in the event of termination of service by the Customer. The customer also fully understands, accepts, and further indemnifies SMSGUYS fully against any claims by the customer or any third party as a result of such termination of service, or part thereof.

5. Billing

5.1. SMS Billing Methodology

SMS messages will be transmitted for delivery on behalf of the customer. Should there be a disputed transaction, SMSGUYS shall endeavour to make the necessary investigations to the best of its abilities and attempt to rectify the discrepancy, but should such investigations prove to be inconclusive, the transaction logs, as maintained by SMSGUYS shall be deemed to be true and accurate for accounting purposes.

Information describing SMSGUYS's tariff schedule is listed on the website and is deemed to be accurate as at the last publish date indicated. However, SMSGUYS reserves the right to modify its tariff schedule at any time without notice to the customer.

The eventual delivery of SMS messages is largely dependent on the effective functioning of the recipient's mobile operator's systems and infrastructure. Consequently, SMSGUYS cannot guarantee the delivery of messages that may be affected by possible network outages and errors on the part of the International mobile operators and furthermore, SMSGUYS does not refund the customer for undeliverable messages.

The customer will pay for each individual message sent via this interface. The customer will be charged according to the contract he/she has with SMSGUYS. Please note that these rates may be changed by SMSGUYS without prior notice to the customer. SMS Credits have a lifespan of 2 Months from date of purchase. All unused SMS Credits will expire after 2 Months from date of purchase.

6. Complaints

All complaints relating to the services provided to the customer must be directed to SMSGUYS, VIA EMAIL within 7 business days of the event causing the objection at the following Address.
info@SMSGUYS.co.za

7. Applicable Law

The laws of the Republic of South Africa govern this contract. The customer fully acknowledges that any disputes resulting in legal intervention shall be concluded within the jurisdiction of the Republic of South Africa and that the applicable laws of the Republic of South Africa shall prevail.

8. Interpretation and Nullification of Clauses

Should any clause of this agreement be unenforceable or invalid, all the remaining and associated clauses shall be deemed to be null and void.

The customer accepts to agree to all aspects of this agreement and shall comply with all laws, regulations and restrictions that apply to him.

An authorised officer of SMSGUYS shall only modify the terms and conditions of this agreement in writing, and any delay in the enforcement of any term of this agreement shall not be deemed to be a waiver of such right(s).

9. Notice Specific to Software available on the SMSGUYS Web Sites

Any software that is made available to download from the Services ("Software") is the copyrighted work of SMSGUYS and/or its suppliers. Use of the Software is governed by the terms of the end user license agreement, if any, which accompanies or is included with the Software ("License Agreement"). An end user will be unable to install any Software that is accompanied by or includes a License Agreement, unless he or she first agrees to the License Agreement terms. The Software is made available for download solely for use by end users according to the License Agreement. Any reproduction or redistribution of the Software not in accordance with the License Agreement is expressly prohibited by law, and may result in severe civil and criminal penalties. Violators will be prosecuted to the maximum extent possible.

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10. Other Terms & Conditions

By registering as a SMSGUYS user, and in turn on the www.smsguys.co.za website, you agree to ALL the terms and conditions. SMSGUYS shall protect client information using the same standard of care that it applies to safeguard its own confidential information and that the information shall be stored in such a way as to prevent any unauthorised disclosure thereof. SMSGUYS will not disclose or use any information submitted by clients to the website for any purpose other than that for which the client is using the service for. SMSGUYS will never copy, sell, pass on to a third party or allow any of their other customers

access to a client's database without the client's consent thereto. It is noted that our Clients confidential information and specifically their clients databases belong solely to the Client. SMSGUYS and or www.smsguys.co.za do not own these databases and will safeguard them to prevent any unauthorised disclosure thereof. SMSGUYS users must comply with all applicable laws, regulations and network operator requirements. Any complaint from a network operator would be regarded in a very serious light and the responsible SMSGUYS user could be suspended without a refund of its credits. SMSGUYS users are therefore advised to include their own contact details in their messages to ensure that complaints are directed at them and not at the network operator. SMSGUYS may remove numbers from its database should complaints be received.

To protect the integrity of the system, SMSGUYS users may not send unlawful, obscene, abusive, harassing, threatening or obscene messages. Spamming (unsolicited marketing) is not allowed. Messages sent are stored and can be audited at any time. Users indemnify SMSGUYS against any losses suffered in the event that they don't comply to the above.

SMSGUYS will do its best to ensure successful delivery of all messages. Successful delivery depends on additional parties such as ISP's, telcos and network operators, hence SMSGUYS cannot guarantee delivery.

One SMSGUYS credit allows you to send one SMS message, provided that networks do not introduce reciprocal charges. In the event that a network(s) introduce reciprocal charges, SMSGUYS retains the right to increase the number of credits needed per message, for that specific network(s). The cost of a credit consists of the message cost (network operator), database, customer care and handling cost. The SMSGUYS service is provided as is. Users should verify which networks are covered. Changes may occur as to which networks are covered.

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