



Product Terms

Bulk Internet Messaging

1. INTERPRETATION

- 1.1 Unless the context clearly indicates the contrary, any term defined in the General Terms when used herein, shall bear the same meaning as defined in the General Terms.
- 1.2 To the extent that there is any contradiction between the General Terms and these Product Terms the following order of precedence shall apply: (i) these Product Terms; and (ii) the General Terms.
- 1.3 By using or subscribing to the Bulk Internet Messaging Customer agrees that he/she/it has read, understand and are bound by:
 - 1.3.1 the General Terms and Conditions and Use Policies under “**General Terms**” and other notices under “**Notices**” on our Legal Website; and
 - 1.3.2 the Product Terms set out herein;
(collectively the “**MWEB Business Terms**”).
- 1.4 Customer’s use of Bulk Internet Messaging indicates Customer’s acceptance without modification of the MWEB Business Terms, which will constitute a legal agreement between Customer and MWEB Business.
- 1.5 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto:
 - 1.5.1 “**Account**” means each account applied for by Customer as set out in the Application Form;
 - 1.5.2 “**Application Form**” means the application form completed and signed by Customer for the initiation of Bulk Internet Messaging, as same may be amended from time to time in terms of the Agreement;
 - 1.5.3 “**Bulk Internet Messaging**” means the Services contemplated in these Product Terms MWEB Business renders to Customer in accordance with Customer’s selections as indicated in the Application Form under such heading or description;
 - 1.5.4 “**General Terms**” means the terms and conditions set out in the general terms and conditions for MWEB Business’ customers, which is available at <http://www.mwebbusiness.co.za/Legal/GeneralTerms.aspx> under the heading “General Terms”; and
 - 1.5.5 “**Software Products**” means any computer software, telecommunications networks, programmes and interfaces, including associated media, printed materials, and online or electronic documentation, to which Customer is given access relating to, or in connection with, Bulk Internet Messaging.

2. DURATION



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- 2.1 Bulk Internet Messaging shall commence with effect from the date of activation of the Bulk Internet Messaging by MWEB Business and endure for an initial period selected by Customer in the Application Form (hereinafter referred to as the **"Initial Period"**). Notwithstanding the aforesaid, the provisions of this clause 2.1 are subject to Customer's termination rights detailed in clauses 7.5, 7.6 and 7.11 of the General Terms where clauses 7.5, 7.6 and 7.11 of the General Terms are applicable to Customer.
- 2.2 Either Party may terminate Bulk Internet Messaging at the end of the Initial Period in accordance with the General Terms. Any notice of termination given by Customer during the Initial Period shall only become effective upon the expiry of the Initial Period.
- 2.3 If neither Party has given notice as contemplated in clause 2.2 above, Bulk Internet Messaging shall endure indefinitely thereafter on the same terms and conditions, provided that either Party shall be entitled to terminate Bulk Internet Messaging in accordance with the General Terms.
- 2.4 In the event of a termination, Customer's use of Bulk Internet Messaging shall be deemed terminated. However, in the event that Customer logs on to Bulk Internet Messaging following a termination, the terms and conditions of the Agreement will apply to Customer and Customer shall be liable to pay the full usage costs to MWEB Business however, this shall in no way constitute a revival of the Agreement between the Parties and MWEB Business shall furthermore be entitled to terminate Bulk Internet Messaging without notice to Customer.
- 2.5 To the extent that Bulk Internet Messaging provided to Customer is suspended by MWEB Business in terms of the provisions of clauses 9 and 12 of the General Terms or for any other reason whatsoever, Customer acknowledges that it will forfeit its access to and/or use of Bulk Internet Messaging, but Customer shall still be liable to pay the Service Fees during such suspension.

3. SERVICE FEES

- 3.1 Customer shall pay MWEB Business the Services Fees specified in the Application Form in accordance with the provisions set out in the General Terms.

4. UNDERTAKINGS AND ACKNOWLEDGEMENTS

- 4.1 MWEB Business undertakes to use its reasonable endeavours to provide Customer with Bulk Internet Messaging on a 24 (twenty four) hour per day basis on each and every day for the continued duration of Bulk Internet Messaging.



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- 4.2 Although MWEB Business uses reasonable care and diligence to ensure that Bulk Internet Messaging is available, accurate, complete, correct, error-free, secure, up-to-date and/or reliable MWEB Business does not warrant, represent or in any way guarantee, either expressly or by implication that Bulk Internet Messaging is available, accurate, complete, correct, error-free, secure, up-to-date and/or reliable. MWEB Business furthermore does not warrant, represent or in any way guarantee, either expressly or by implication the merchantability or fitness for a particular purpose. Customer therefore agrees that Bulk Internet Messaging is rendered "as is" and "as available" and is used at the Customers' own discretion and risk.
- 4.3 Customer acknowledges that the following circumstances and events may impact upon its use of Bulk Internet Messaging and further that these circumstances and/or events are beyond MWEB Business control:
- (i) use of Bulk Internet Messaging by other customers;
 - (ii) limitations upon national and/or international bandwidth capacity;
 - (iii) telecommunication service operator failures, which includes telecommunication links and line failures;
 - (iv) mobile telecommunication service operator failures;
 - (v) mobile network failures;
 - (vi) operating systems;
 - (vii) access technology failures;
 - (viii) quality of service of telecommunication links or lines;
 - (ix) any action, omission and/or failure by Customer and/or his/her/its systems, software, network and/or equipment which has an impact on Bulk Internet Messaging; and
 - (x) any other action, omission and/or failure not within MWEB Business' control which has an impact on Bulk Internet Messaging.

5. TERMS AND CONDITIONS SPECIFIC TO BULK INTERNET MESSAGING

- 5.1 Bulk Internet Messaging provides Customer with a bulk mail and SMS message management system and offering such Customer with the ability to send out personalized communication and to manage their recipient's lists, mail batches, SMS messages and delivery reports. Bulk Internet Messaging further provides Customer with two ways of connecting and sending out communications to customers: (i) via an on-line interface where Customer can manage and send messages from anywhere in the world; and (ii) via a direct coding interface allowing the Customer to schedule and send e-mails and SMS messages to its internal and external Customer base.
- 5.2 MWEB Business shall provide Customer with Bulk Internet Messaging selected by Customer on the Application Form. The Customer acknowledges that any e-mail traffic and/or SMS in excess of the limit specified in Bulk Internet Messaging selected by Customer will be subject to additional payment by Customer as set out in the Application Form, or addendum thereto.
- 5.3 MWEB Business hereby grants Customer a limited, non-perpetual, non-exclusive, non-transferable right to use the Software Products for the duration of the Bulk Internet Messaging Services and for internal purposes only.



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- 5.4 Customer acknowledges that all title and intellectual property rights in the Software Products is owned by and shall remain vested in MWEB Business and/or its licensors. Accordingly, Customer may not reverse engineer, decompile, or disassemble the Software Products nor may Customer directly or indirectly transfer, distribute, re-distribute, copy, sell, re-sell, lease, rent, lend, license, sub-license Bulk Internet Messaging in whole or in part in any way whatsoever to any third party without MWEB Business' prior written consent.
- 5.5 Customer acknowledges further that it may not make any copies of the Software Products nor make copies of any printed materials which may accompany the Software Products.
- 5.6 Upon termination of Bulk Internet Messaging for any reason whatsoever, Customer shall immediately cease any use of the Software Products.
- 5.7 MWEB Business will use reasonable endeavours to deliver all mail and SMS messages as scheduled by Customer. Notwithstanding the foregoing, MWEB Business assumes no responsibility for the failure of any mail and/or SMS message delivery or loss of any mail and/or SMS message, and shall not refund Customer for any undeliverable mail or SMS messages.
- 5.8 MWEB Business shall not be responsible for archiving any mail and/or SMS messages sent through Bulk Internet Messaging. Notwithstanding the foregoing, MWEB Business will use reasonable endeavours to keep a record of all mail and SMS message batch reports sent through Bulk Internet Messaging for a period of 6 (six) months calculated from the date the batch was sent.
- 5.9 MWEB Business will use reasonable endeavours to provide the best possible practices with regard to backup of Customer's data residing on MWEB Business servers. MWEB Business will, however, accept no liability for the loss or corruption of Customer's data. Customer is advised to maintain and keep current copies of its mailing lists and all related information.
- 5.10 Customer hereby undertakes to abide by generally accepted Internet etiquette regarding the sending of mass mail.
- 5.11 Customer furthermore undertakes that it shall:
- 5.11.1 in all mail sent, utilise Bulk Internet Messaging's unsubscribe notifications and functions and/or an appropriate alternative unsubscribe notifications and mechanisms;
 - 5.11.2 adhere to all recipients requests to be unsubscribed from Customer's mailing lists and that it shall not send any future mails to such recipients;
 - 5.11.3 not send SMS messages to recipients who have advised Customer that they do not wish to receive SMS messages of any particular or any kind; and
 - 5.11.4 not remove any message headers or footers inserted by Bulk Internet Messaging.



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- 5.12 Customer agrees that, if MWEB Business in its sole discretion, is of the opinion that Customer's use of Bulk Internet Messaging is offensive, unlawful, or harmful in any way or used contrary to the MWEB Business Terms, MWEB Business may, without derogating from any of its other rights in terms of the General Terms or the law, immediately suspend and/or terminate Customer's access to Bulk Internet Messaging without notice. MWEB Business shall use reasonable endeavours to notify Customer of any action taken in terms of this clause 5.12, but does not warrant that notice shall be given to Customer prior to such action being taken.
- 5.13 Customer agrees that nothing that MWEB Business does in the performance of its obligations in terms of the Agreement shall be construed as an assumption of responsibility or liability by MWEB Business for any mail and SMS message sent on behalf of Customer and/or the content of such mail and SMS message, whether or not MWEB Business had knowledge of such content. Customer hereby indemnifies MWEB Business and holds it harmless against any liability and any claim of whatever nature made by any person for any loss or damage suffered or arising directly or indirectly from the transmission of such mail and SMS message and/or the content of such mail and SMS message.
- 5.14 Subject to the provisions of MWEB Business' Privacy Policy and clause 15 of the General Terms, MWEB Business undertakes to protect the confidentiality of Customer's information and will treat such information, mail addresses and SMS message numbers comprising Customer's mailing list as strictly confidential and proprietary to Customer. MWEB Business further undertakes that it will not use such information and/or mail addresses and SMS message numbers for its own benefit or disclose and/or sell such mail addresses and SMS message numbers and/or information to any third party.
- 5.15 MWEB Business reserves the right to include in each mail and/or SMS message sent by Customer, a notice indicating that such mail and/or SMS message was sent by Bulk Internet Messaging.
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