

DELACON PTY LIMITED
TERMS & CONDITIONS

1. Definitions of words used in these Terms and Conditions

In these Terms & Conditions the following words have the following meanings:

“Delacon” means Delacon Pty Limited ABN # 42074596553.

“Due Payment Date” means (unless otherwise agreed by Us in writing) the date the Service is provided to the Customer..

“Fee” means:

- (i) the monthly administration fee Delacon is entitled in payment for the Service, as notified to the Customer from time to time; and
- (ii) the usage fee in respect of the Customer’s use of the Service from time to time (which usage fee is calculated in 60 second units).

“Force Majeure” means any circumstance beyond the control of Delacon whereby Delacon is unable to perform an obligation under its agreement with You either at all or at any time or from time to time including:

- (a) Internet access failure caused by, amongst other things, any third party action that results in denial of service or access;
- (b) any regulation, law, restriction, action or inaction of any governmental agency;
- (c) industrial action or labour disturbance;
- (d) interruption, suspension or cancellation of any telecommunications service provider;
- (e) any act of God or act of nature, requirement or restriction of governmental authorities, inability or delay in the grant of governmental or other approvals, consents, permits, licences or authorities;
- (f) any act or omission of a third party which affects the provision of the Service.

“GST” means:

- (a) the same as in the GST Law

- (b) any other goods and services tax, or any tax applying to transactions taking place pursuant to this contract in a similar way; and
- (c) any additional tax, penalty, tax, fines, interest or other charge under a law for such a tax.

“GST Law” has the meaning as “GST law” in A New Tax System (Goods and Services Tax) Act 1999.

“Intellectual Property” includes any:

- (a) copyright;
- (b) design, patent, trademark, logo, circuit layout owned and or used by Delacon (and whether registered, unregistered or applied for) used in connection with the Service;
- (c) trade, business, company or domain name;
- (d) knowhow, techniques, methods, inventions, processes, confidential information (whether in writing or recorded in any form used established and or developed by Delacon from time to time in connection with the Service);
- (e) manuals or practices used in connection with the Service; and
- (f) any and all other proprietary, licence or personal rights arising from intellectual activity in or used in connection with the Service and all improvements and modifications to any of them

“Service” means a Web interface for creating interactive audio and speech content that can be accessed via telephone. The Service includes the Web Site and the corresponding interactive telephone service known as The Receptionist and any other available services from time to time through the Web Site.

“Trademarks” means “Delacon”, the Delacon logo, and “The Receptionist”.

“We”, “Our” and “Us” means Delacon.

“Web Site” mean the following web site at the URL: www.delacon.com.au.

“You”, “Your” and “Customer” means the user or customer accessing the Web Site for any reason and also a customer who signs up for the Service by clicking the link.

2. Binding Terms and Conditions

Delacon agrees to provide the Service on the Terms and Conditions set out below. You should read the Terms and Conditions below carefully. If you do not accept the Terms and Conditions then do not use the Service. We may revise these Terms and Conditions at any time by updating this posting. You should visit this page periodically to review the Terms and Conditions, because they are binding on you. If you breach any of these Terms or Conditions, your contract with Us to use the Service automatically terminates.

3. Commencement of your contract with Us

Your contract with Delacon starts when you click onto this link and will continue until either Delacon or the Customer terminates the contract.

4. Customer's Acknowledgments

The Customer acknowledges and agrees that it has relied on its own judgment to evaluate the suitability of the Service for the purpose for which it requires the Service.

5. Intellectual Property & Copyright

5.1 Delacon owns the Intellectual Property rights in its software, in its original or modified forms. Nothing in Your contract with Us shall be construed as transferring any Intellectual Property rights of Delacon to You.

5.2 Except as otherwise provided on this page, no part of any content or software on the Service may be copied, downloaded, recorded or stored in a retrieval system for any other purpose, nor may it be redistributed for any purpose, without the express written permission of Delacon.

5.3 The Service is protected by Australian and international copyright laws.

Except for your informational, personal, non-commercial use as authorised above, you may not modify, reproduce or distribute the content, design or layout of the Service, or individual sections of the content, design or layout of the Service or Delacon logos without our express written permission.

6. Modifications to the Service

Delacon reserves the right to modify the Service, and the rules and regulations governing its use, at any time. Modifications will be posted on the Web Site, and users are deemed to be apprised of and bound by any changes to the Service. Delacon may make changes in the products and/or the Service at any time and from time to time.

7. Warranties

7.1 To the full extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Service supplied under this contract are excluded.

7.2 Where any Act of Parliament implies in this contract any term, and that Act of Parliament voids or prohibits provisions under a contract which exclude or modify the operation of such term, the term is deemed to be included in this contract.

7.3 All content on the Service, including without limitation the Web Site and The Receptionist, is provided to you on an “as is” “as available” basis without warranty or any kind express or implied. Delacon makes no warranty as to the accuracy, completeness, currency, or reliability of any content available through the Service. You are responsible for verifying any information before relying on it. Use of the Service and

the content available on the Service is at Your sole risk.

- 7.4.1 Delacon makes no representations or warranties that use of the Service will be continuous, uninterrupted or error-free.
- 7.4.2 Delacon will endeavour to keep the Service operating but will not be liable if the Service is suspended, interrupted or errs.
- 7.5 You are responsible for taking all necessary precautions to ensure that any content you may obtain from the Web Site is free of viruses.

8. Limitation of liability

- 8.1 To the extent permitted by law, Delacon's liability for breach of any condition or warranty implied by law which cannot lawfully be excluded whether in contract, negligence (or any other tort) under any statute or otherwise is limited to the resupply of the Service.
- 8.2 To the extent permitted by law, Delacon is not liable to the Customer in any manner, arising directly or indirectly in connection with access to or use of the Service or from failure or interruption in telecommunication connections to the Service or viruses for and in respect of any consequential loss, indirect loss, loss of profits of any kind, loss or corruption of data, interruption to business, loss of revenue and economic loss of any kind, whether in contract, negligence or any other tort under any statute or otherwise.
- 8.3 To the extent permitted by law, Delacon is not liable for costs, losses or damage arising from any inaccuracies contained in any information included in the Web Site

9. Links

From time to time, Delacon may post links that will allow you to leave the Web Site. The linked sites are not under the control of Delacon, and the content available on the sites linked to the Service do not necessarily reflect the opinion of Delacon. Delacon is providing these links as a convenience to you, and access to any other sites linked to the Service is at your own risk. Delacon assumes no responsibility for the content of such linked sites. The inclusion of any link does not imply a recommendation or endorsement by Delacon of the linked site.

10. Customer to give accurate information

In consideration of your use of the Service, you agree to: (1) provide true, accurate, current and complete information about yourself, including, but not limited to, your email address, first and last name, and billing information, as prompted by the Service's subscription forms (such information being the "Registration Data"), and (2) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide information that is untrue, inaccurate, not current or incomplete, or if Delacon has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Delacon has the right to suspend or terminate your use of the Service and any future use of the Service (or any portion of the Service). Delacon staff members also have the right to request further information about any client data from its customers. Should a customer not wish to give out this information for any reason their service will be terminated.

11. Security

You are responsible for maintaining the confidentiality of your registration number and password and for all uses of your registration number or password and any and all related charges whether or not authorised by you.

12. Delacon's telephone numbers

All telephone numbers used on the Web Site and provided by Delacon in connection with the use of the Service are registered to Delacon and are provided for Your use while you are a Customer of the Service. The Customer acknowledges that it has no right, title or interest in any telephone numbers allocated to it by Delacon as part of the Service. Although Delacon makes every attempt to ensure continued availability of telephone numbers, Delacon reserves the right to alter or replace any number as a result of compliance with any relevant legislation and in such case will notify the Customer of any numbering change that will affect the Service supplied to the Customer.

13. Customer's breach of these Terms and Conditions

13.1 Delacon may without liability terminate its contract with You with immediate effect if the Customer:-

- (i) breaches these Terms and Conditions;
- (ii) has failed to make a payment by the Due Payment Date.

13.2 Termination of Your contract is without prejudice to Our rights which have accrued prior to the date of termination.

14. Suspension of Service

Delacon may without liability and with immediate effect suspend the Service under

the relevant Contract:

- (a) to perform necessary maintenance or other service work in connection the Service; or
- (b) to perform emergency maintenance work provided that the need for carrying out such work does not arise as a result of the acts or omissions of the Customer;
- (c) your account with us is not in credit or in sufficient credit to meet liability for payment of Fees under your Agreement with Us.

15. Payment of Fees

15.1 Fees are payable monthly in arrears by the Customer in respect of the Customer's use of the Service in the immediately preceding month. Such Fee will be calculated at the rate as notified by Delacon to the Customer from time to time. Delacon reserves the right to vary its rates and charges in providing the Service. Any increase in the rate at which Fees are calculated will come into effect 30 days after Delacon has notified the Customer of such increase. The Customer may within the 30 day period aforesaid terminate its contract with Us otherwise We will be entitled to charge the revised Fees.

15.2 The Customer is required to make payment by one of the following two methods, either:

- (i) by establishing and maintaining a Customer Credit Account with Delacon in an amount as Delacon shall notify the Customer from time to time. The Customer shall maintain the Customer Credit Account in credit in an amount which at no time shall be less than the amount which Delacon shall from time to time advise the Customer having regard to the Customer's usage of the Service; or
- (ii) by authorising Delacon to deduct from the Customers nominated credit card the Fees payable from time to time by the Customer in accordance with these Terms and Conditions.

15.3 Delacon is taken to have received a payment from the Customer:

- a) in the case of a Customer Credit Account, by debiting the Customer Credit Account the Fee payable by the Customer from time to time;
- b) in a case of a credit card payment, when Delacon has received into its nominated bank account payment from the credit card provider;

- c) where it is made by electronic transfer (where Delacon has agreed to accept payment by electronic transfer), on the date of deposit shown in Delacon's bank account statement; and
- d) where it is made by cheque, (where Delacon has agreed to accept payment by cheque) on the date Delacon receives the cheque or, if the cheque is dishonoured, on the date cleared funds are received by Delacon as well as all dishonour fees and charges.

15.4 If payment of any invoice to the Customer is overdue Delacon reserves the right to either suspend and or disconnect the Customer account if the account is a Customer Credit Account (ie Pay As You Go) or charge interest at the rate of 1.25% per month on any sum that remains outstanding. The interest will be charged for so long as such amount remains overdue and the Customer account will also be disconnected once payment is overdue.

15.5 The Subscriber will be responsible for payment of the recordings to be used as part of the Delacon Services.

16. GST

16.1 Fees payable to Delacon are GST inclusive.

16.2 Delacon must issue a tax invoice (or an adjustment note to the Customer for any supply for which Delacon may recover GST from the Customer pursuant to this contract and must include in the tax invoice (or adjustment note) the particulars required by the GST Law for the Customer to obtain an input tax credit for that GST.

16.3 Delacon must refund to the Customer any overpayment by the Customer for GST, but Delacon need not refund to the Customer a amount for GST paid to the Commission of Taxation unless Delaco

has received a refund or credit of that amount.

17. Customer's Use of Service

The Customer will not use and must use all reasonable endeavours to ensure that others within its control do not use the Service:

- (a) for any purpose that is defamatory, offensive, abusive, obscene, menacing, threatening, harassing, or illegal;
- (b) for any (other) unlawful purpose;
- (c) to do any act that may damage the network or systems or cause the quality of the Service to be impaired;
- (d) to engage in any activities in such a manner that is reasonably likely to expose Delacon to liability;
- (e) in a manner that does not comply with the terms of any legislation or licence applicable to the Customer.

18. Customer's Indemnities

18.1 The Customer indemnifies Delacon against:

- (a) all loss directly or indirectly arising from or relating to any damage to or loss of any equipment, network or other tangible property of Delacon or any third party to the extent that such loss is caused by a negligent act or omission by the Customer or any person under its control;
- (b) all loss arising directly or indirectly from or in connection with a claim by a third party against Delacon to the extent that the claim relates to any negligent act or omission of the Customer or any of person under its control in relation to this contract.

18.2 The Customer's indemnities under this contract are:

- (a) continuing, separate and independent obligations of the Customer; and

- (b) absolute and unconditional and unaffected by anything that might have the effect of prejudicing, releasing, discharging or affecting in any other way the liability of the Customer.

19. Force Majeure

Delacon will not be liable or deemed to be in default of any of its obligations under its Contract with the Customer for any default, failure or delay resulting directly or indirectly from a Force Majeure event.

20. Termination

This agreement can be terminated by Delacon or the Client at anytime by giving 48 hours notice (via email or fax) in writing.

If the agreement is terminated by the client, then the client agrees that it will pay any outstanding monies owing to Delacon within 14 days of the date that the termination notice was given.

21. General

21.1 Assignment: The Customer may not assign any of its rights or obligations under this contract without the prior written consent of Delacon.

21.2 Severability: If a provision of this contract or a right or remedy of any part under this contract is invalid or unenforceable it will:

- (a) be read down or severed to the extent of the invalidity or unenforceability; and
- (b) not affect the validity or enforceability of that or the remaining provisions of this contract.

21.3 Entire agreement: This contract constitutes the entire agreement between You and Us about its subject matter and any prev

agreements, understandings, negotiations and representations on that subject matter cease to have any effect.

21. Jurisdiction: This contract is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts in that state and the courts of appeal therefrom.

22. Marketing and Sales Activities:

Press Releases. Both parties may issue press releases announcing the relationship contemplated by this Agreement as well as other press releases as may be mutually agreed to from time to time. Each party shall have the opportunity to review and approve each press release prior to its issuance, provided approval is not unreasonably withheld or delayed.

Use of Name. Both parties may use the other party's name and logo in press releases, product brochures and similar marketing materials, financial reports and prospectuses indicating that such party is a customer or supplier, as applicable, of such party upon prior approval of each such use of its name and/or logo by the other party. Such approval shall not be unreasonably withheld or delayed.

22. Binding Agreement

By submitting to these Terms and Conditions (by clicking the "Submit" box below and indicating the period of Service required). the Customer agrees to be bound by the Terms and Conditions (as varied and notified to you from time to time) and which forms part of the agreement between Us and the Customer governing the use of the Service.