

Terms of Service

Special conditions for the use of the WebSMS2u.com Service of XGEN Technologies Sdn Bhd

1. Scope

These trading conditions rule the contractual relationship between XGEN Technologies Sdn Bhd (mentioned as XGEN in the following) and the customer for the usage of the WebSMS2u.com Service by the customer. XGEN provides these services exclusively on the basis of these terms of service.

2. Contractual relationship

- i. The contractual relationship between the customer and XGEN for the use of the WebSMS2u.com service is the result of the customer's application and the acceptance by XGEN of the actual tariffs. As far as nothing different was agreed, application is accepted tacitly by the contribution of the service.
- ii. The contractual relationship can be terminated by either contracting party at any time in writing (by E-Mail, fax or letter) by giving 7 days' prior notice.
- iii. The right for extraordinary termination of the contractual relationship remains unaffected.
- iv. XGEN warrants that it shall perform the services in a professional manner in strict compliance with all applicable laws and in accordance with all applicable permits, licences and consents
- v. XGEN further warrants that the services will be free from viruses and or any other programming routines that are intended to damage, or detrimentally interfere with or surreptitiously intercept of expropriate any system, data or personal information

3. Services of XGEN Technologies Sdn Bhd

- i. The range of the contractual performances results out of the service specification of XGEN.
- ii. Transmitted contents are not subjected to examination by XGEN.
- iii. XGEN reserves itself the right to extend the services and to make improvements to the current technical state of the art.

4. Obligations of the customer

- i. The customer agrees to not use the WebSMS2u.com service to transmit contents which fulfill the following conditions:
 - a) suitability to be interpreted as defaming, deceptive, misleading, insulting, displeasing, pornographic, gambling, racist, glorifying violence, spam, etc.;
 - b) menace or disconcertion to third parties
- ii. The customer is obligated to use the XGEN services properly and lawfully. It is in particular obligated,
 - a) not to abusively use access to XGEN services to commit illegal actions;
 - b) to accommodate recognized principles of data security, especially to keep passwords secret and to immediately arrange modifications, if the assumption exists that unauthorized third parties have attained knowledge of this kind of access information;
 - c) to accommodate recognized loss or damage (failure report) and if possible facilitate and accelerate removal of the disturbance and enable a statement of the loss or damage and their causes to XGEN;
 - d) to immediately report each modification, the name or the designation, under whom it led in the operating documents of XGEN.
 - e) XGEN SMS services offer the possibility of defining any Originator (SenderID). If this feature is made available publicly, the customer is obligated to guarantee by appropriate authentication measures (Email is not sufficient) that this feature is



not abused. If a customer misuses this, the account can be suspended or the Originator (SenderID) will be adjusted to a fixed value by XGEN.

- f) XGEN reserves itself the right to check self defined originators at random base to detect misuse (e.g. advertising for premium rate numbers, misrepresentation of identity).
- iii. The customer agrees to comply with the following requirements of respective telcos when placing Advertisements whether for Information on Demand or Subscription Based services. The following information should be provided:
 - a) Charge applicable per SMS (RM0.30, Free, etc)
 - b) Telco Charges still applicable
 - c) Service powered by WebSMS2u.com
 - d) Content Provider's Name & Contact Details (Hotline Number)
 - e) Proper Instructions for submitting of Incoming Messages: **SMS <UserID> <Message>**

5. Suspension/Termination of the WebSMS2u.com service

- i. XGEN reserves itself the right to lock/suspend the service if the customer uses the service abusively, in particular for those points outlined in item 4 above.
- ii. For the own security of the customer, XGEN will lock the service, if the assumption is justified that the service is abusively used. XGEN will unlock the service once satisfied that the service is not being used abusively.
- iii. No refunds will be provided for any paid unused credits or setup costs due to suspension/termination.

6. Responsibility of XGEN Technologies Sdn Bhd

- i. The responsibility for rough negligence is limited to the damage usually predictable in such cases. Responsibility and compensations are limited to the height of the order value.
- ii. In case of failures of services because of disturbances outside the area of XGEN's responsibility, XGEN will not be liable to reimburse any values.
- iii. XGEN shall indemnify and hold harmless the customer from and against all liabilities, losses, claims and costs, expenses (including reasonable attorney's fees) and damages arising out of, or resulting from any willful misconduct or negligent act or omission of XGEN, any breach of this Agreement by XGEN or any breach of any applicable law or regulation by XGEN applicable to the performance of the services.
- iv. XGEN does not assume liability for the compatibility of the SMS application with data, programs, configurations, etc of the customer. In particular XGEN does not incur any expenses, remuneration, expenditures or uses for the integration of missed integration of the SMS services.

This covers in particular – however not exclusive – also the expenditure of time of the customer and/or it's assigned ones.

7. Responsibility of the customer

- i. The customer is responsible for all consequence and disadvantages for XGEN and third parties, which are the result of the abusive or illegal use of the WebSMS2u.com service (in particular with offence against item no. 4.) or the result of that the customer does not follow his other responsibilities and has to represent this.
- ii. The customer keeps XGEN free from any third party claims, which are demanded because of the culpable violation of the rights of third parties by the customer or because of the customer's behavior contrary to the terms of the agreement or by the customer breaking the law.



- iii. The customer shall indemnify and hold harmless XGEN from and against all liabilities, losses, claims and costs, expenses (including reasonable attorney's fees) and damages arising out of, or resulting from any willful misconduct or negligent act or omission by the customer, any breach of this Agreement by the customer or any breach of any applicable law or regulation by the customer applicable for the usage of the services.

8. Terms of payment

- i. The payment of the WebSMS2u.com service takes place in advance, as far as not agreed differently
- ii. Price adjustments: If XGEN has additional costs because of price adjustments of external partners, XGEN has the right to adjust its price structure.

9. Privacy

- i. Personal data, that is raised in the context of the use of the SMS service, is raised and protected according to all relevant laws and the terms of this agreement. Employees of XGEN, who handle personal data, shall comply with these terms at all times.
- ii. As far as XGEN uses the help of third parties to provide its services, XGEN, in the context of the relevant privacy regulations, may transmit the inventory data as necessary for the assurance of the operation and the interests worth to protect of the customer are not impaired. XGEN shall be responsible for ensure that such third party complies with all relevant laws and the privacy provisions of this agreement.

10. Rights of use

- i. All copyrights and rights to use, which are located in the property of XGEN, remain reserved to XGEN.
- ii. Copying and modifying, circulation and publication or other use of all service contents by the customer or by third parties, if it has to be represented by the customer, is forbidden, if it was not explicitly approved by XGEN in written form.
- iii. The customer commits itself further to spread only such contents for which the customer has the appropriate rights of use.

11. Final provisions

If one or more regulations of these terms of service should be ineffective, then this does not involve the inefficacy of the entire contract. The ineffective regulation is replaced by the relevant legal regulation to give effect to the parties' original intention.

PRIVACY POLICY

This policy addresses our practices with respect to our WebSMS2u.com service, but does not address the practices of any website we link to (including the merchants and content providers we link to). This policy is incorporated into, and subject to the terms stated in our Terms of Service Agreement.

1. How We Use Information collected

We use information which you provide us to keep track of the WebSMS2u.com services you have signed up to receive. We may also use personally identifiable information about you to improve our marketing and promotional efforts, to statistically analyse site usage, to improve our content and product offerings and to customise our site's content and layout. We do this in an attempt to improve our site and better tailor it to meet our users' needs. We use your email address to contact you regarding administrative notices or latest news from time to time. We use information in the file we maintain about you, and other information we obtain from your current and past activities on the site, to resolve disputes, troubleshoot problems and enforce our Terms and Conditions.

2. Protection of Database Information

Any information sent through WebSMS2u.com for text messaging and or storage purposes will remain the property of the account holder. WebSMS2u.com will at no time collect or redistribute this information without your consent, except where legally required by law to do so. This is with particular reference to any database, numbers and/or recipient details that you may deliver to us, or store on our databases.

3. Disclosure of Your Information

We do not sell or rent any personally identifiable information about you to any third party. We also do not sell or rent data and numbers stored in your account to any third party. However in the even of court orders, information requests from government agencies and regulators and other legal and regulatory processes that may require the disclosure of your personally-identifiable information, we may be compelled to release requested information to the respective parties.

4. Reviewing/Changing Your Information

If at any time you would like to change any information in your account, Login from the home page. Here you can change or update your information. You must click preferences to maintain new changes.

5. Limits on Our Abilities

Although your privacy is very important to us, due to the existing legal and technical environment, we cannot ensure that your personally identifiable information will not be disclosed to third parties in ways not described in this policy. Additionally, we can (and you authorize us to) disclose any information about you to private entities, law enforcement or other government officials as we, in our sole discretion, believe necessary or appropriate to address or resolve inquiries or problems. This will not be done for commercial purposes or gain from WebSMS2u.com as such.