

## Section 9 - TERMS & CONDITIONS

1. **APPOINTMENT**
  - 1.1 Elite Business Systems UK Ltd ("the Distributor") hereby appoints the dealer named in this registration form ("the Dealer"), subject to these terms and conditions, to be its non-exclusive dealer for the promotion and sale of mobile telephony or other associated equipment and services supplied by the Distributor ("the Equipment" and "the Services").
  - 1.2 The Distributor reserves the right to appoint other dealers to distribute the Equipment and Services and to supply the Equipment and Services directly to third party customers itself. (In this agreement "Customers") shall include any person or organisation that is not a customer of the Distributor (and who does not receive any commission from the Distributor).
  - 1.3 Subject to any variation under condition 5.3 or 13.4, orders for and purchases of Equipment and Services by the Dealer will be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Dealer purports to apply under any purchase order, confirmation of order, specification or other document).
2. **TERM**
  - 2.1 The Dealer's appointment shall be deemed to have commenced on the date that the Dealer Registration Form is accepted by the Distributor and, subject to Condition 2.2, shall continue until terminated by either party as provided by Condition 10 below.
  - 2.2 Notwithstanding anything in these terms and conditions, the Dealer's appointment shall terminate immediately in the event of the Distributor ceasing to act as a distributor of the Equipment and Services.
3. **DEALER'S OBLIGATIONS**
  - 3.1 The Dealer agrees to the following undertakes:
    - 3.1.1 To use its best endeavours to promote and maximise sales of the Equipment and the Services to customers and to work diligently to obtain orders therefore and to provide such additional services as may from time to time be agreed;
    - 3.1.2 To refer to the Equipment and Services and to the relevant network operator (a "Network Operator") in any publicity or other documents and to use any trade marks and trade names which are the property of the Distributor or any Network Operator only in such manner as the Distributor, (on the written instructions of any Network Operator), shall from time to time instruct and not to use any such trade marks in any way which might prejudice their distinctiveness or validity or the goodwill of the owner of the same in them;
    - 3.1.3 Not to alter, remove, conceal, amend, deface or to otherwise interfere with any trade marks, trade names, markings or name plates on the Equipment without the prior written consent of the Distributor;
    - 3.1.4 To promptly inform the Distributor of any claim or lawsuit which is brought against the Dealer concerning any alleged infringements of or any improper or wrongful use of the intellectual property rights of any Network Operator or the Distributor;
    - 3.1.5 Not to appoint sub-dealers or agents without the Distributor's prior written consent;
    - 3.1.6 To observe and adhere to all reasonable directions and instructions given to it by the Distributor from time to time in relation to the promotion, sale, distribution and exploitation of the Equipment and/or the Services including any separate terms and conditions supplied by the Distributor at any time;
    - 3.1.7 To observe all terms and conditions contained in the Distributor's price books issued to the Dealer from time to time ("The Price Books"). The Distributor may, at its absolute discretion, issue a Price Book by sending or emailing it to the Dealer or by making it available for viewing on its website;
    - 3.1.8 To ensure that relevant and satisfactory proofs are provided to the Distributor as it may request and in the event that valid proofs are not provided to the satisfaction of the Distributor, then the Distributor reserves the right to withhold any payment due to the Dealer for the sale of the Equipment or Services ("Proofs");
    - 3.1.9 To provide an after sales service for customers in relation to the Equipment and Services to the Distributor's reasonable satisfaction;
    - 3.1.10 To maintain on its own account such stock of Equipment as may be reasonably required from time to time;
    - 3.1.11 To return disconnected Equipment as originally supplied to the Distributor after authorisation from the Distributor within the period as set out in the Price Books or otherwise notified to the Dealer from time to time;
    - 3.1.12 To notify the Distributor promptly in writing of any information concerning its customers or the Equipment received by it which may be of use or benefit to the Distributor;
    - 3.1.13 To inform the Distributor immediately by telephone confirmed in writing and obtain its written consent signed by a Director prior to inducing any customer or potential customer to enter into any agreement with a Network Operator by offering money back as part of the agreement between the customer and the dealer, ("cashback");
    - 3.1.14 To obtain the written acknowledgment of the Distributor prior to dealing with it following any change of the Dealer's Director(s) or secretary or Company Name, contact details (including telephone and facsimile numbers and email addresses) delivery address or payment details.
    - 3.1.15 To comply with all codes of practice or conduct issued by those Network Operators with whose services or products the Dealer deals;
    - 3.1.16 To comply with the requirements of all legislation in force from time to time relating to documentation or information provided to the Dealer by any customer (including, without limitation, the requirements of the Data Protection Act 1998), and to ensure that appropriate consent is obtained by the Dealer from all customers for the onward transmission of such documentation or information to the Distributor and/or the relevant Network Operator(s).
    - 3.1.17 At all times to reasonably assist the Distributors or customers compliance with any terms and conditions agreed between a Network Operator and the Distributor and between a Network Operator and/or the Dealer's customer of which the Dealer is aware.
    - 3.1.18 To notify the Distributor of any error in any written documentation or email sent to it including, without prejudice to the generality of the foregoing, any error in a statement of account or letter or statement requiring commission to be reimbursed or repaid (a "cashback request") within 21 days falling which, in the absence of any manifest error, such document shall be presumed accurate.
  - 3.2 The Dealer agrees to comply with the Federation of Communication Services ("FCS") Mobile Communications Crime Prevention Scheme as set out or referred to in this Dealer Registration Form and which may be amended from time to time (copies upon request).
  - 3.3 The Dealer shall defend, indemnify and hold harmless the Distributor from and against any and all damages and liability including legal fees, costs and disbursements which it may suffer as a result of third party claims arising from the Dealer's alleged or actual failure to conduct itself in accordance with any of its warranties, representations or obligations under these terms and conditions or from purported or actual acts or omissions committed by or attributable to the Dealer.
4. **DISTRIBUTOR'S OBLIGATIONS**
  - 4.1 The Distributor agrees to:
    - 4.1.1 Use reasonable endeavours to fulfil the Dealer's orders for Equipment and Services provided that such orders fall within the Dealer's credit limit;
    - 4.1.2 Keep the Dealer informed of any enhancement or modifications to the Equipment and Services or associated technical information; and
    - 4.1.3 Provide the Dealer with sales and marketing information, catalogues and brochures as the Distributor may consider appropriate in order to assist the Dealer with the sale of the Equipment and the Services at such cost as may be agreed between the parties.
  5. **RIGHTS OF THE DISTRIBUTOR**
    - 5.1 The Distributor may modify the Equipment and/or Services without incurring any liability to the Dealer in the event of there being a change in the specifications for the Equipment and/or Services supplied to the Distributor by any Network Operator.
    - 5.2 The Distributor may refuse to accept any order placed or request to reclaim equipment by the Dealer provided that the Distributor shall promptly notify the Dealer of its decision not to accept such order or request.
    - 5.3 The Distributor may at any time by notice in one of its Price Books or bulletins and with immediate effect vary and/or add and/or delete any of the terms of this agreement. The power contained in this clause shall not be exercised by the Distributor capriciously, arbitrarily or for an improper purpose.
    - 5.4 In the event that the Equipment and Services supplied to the Dealer by the Distributor are not connected to any network operated by a Network Operator within thirty days of despatch to the Dealer by the Distributor, the Distributor reserves the right to reclaim such unconnected Equipment and Services.
    - 5.5 In the event that the Distributor reclaims equipment pursuant to Condition 5.4 or authorises the Dealer to return unsold and unconnected equipment in any other circumstances, the Distributor shall credit the Dealer with the price of the returned equipment prevailing at the date that the Distributor receives the returned equipment sealed and in a saleable condition.
    - 5.6 In the event that the Distributor receives or reclaims equipment pursuant to Condition 3.1.11 and 5.4, it may return any not received in fair condition or incomplete and in such circumstances, or if the Dealer is in breach of any part of this agreement, it will not be credited with the price of any equipment returned and will be liable to pay any additional charges or expenses thereby incurred by the Distributor.
  6. **PRICE, CHARGES AND PAYMENT**
    - 6.1 Unless otherwise agreed, the price for the Equipment and Services shall be the trade price set out in the Price Books from time to time for the particular Equipment and Services. The Distributor reserves the right to vary the price and the Price Books at any time upon notice to the Dealer, such notice to be provided in any way authorised by clause 3.1.7.
    - 6.2 The prices set out in the Price Books are exclusive of VAT, carriage and insurance charges which the Dealer shall, unless otherwise agreed in writing, be additionally liable to pay.
    - 6.3 In the event that a Dealer wishes to use the Distributor's fulfilment service, the Distributor shall be entitled to deduct its standard charge for such service from any monies owed to the Dealer and for the avoidance of any doubt the Distributor will not be liable to the Dealer for any loss consequentially upon failure to deliver or any fault in delivery including any failure by a courier to obtain the customer's signature.
    - 6.4 In the event that, in any one calendar month, disconnections by customers of the Dealer from Services supplied by the Distributor exceed the relevant percentages set out in the Price Books of the total connections by customers of the Dealer for Services supplied by the Distributor, the Dealer shall pay to the Distributor the corresponding proportion of the surcharge stipulated in such Price Books.
    - 6.5 All Equipment and Services are supplied on a cash with order basis, except where credit terms have been specified by the Distributor in writing. Time for payment shall be of the essence.
    - 6.6 The Distributor may set-off against any sums owed by it to the Dealer any liability of or obligation owed by the Dealer to the Distributor, whether such liability or obligation arises under this agreement or otherwise.
    - 6.7 Only in the event of the Dealer an agent of the Dealer or a customer of the Dealer returning any Equipment to the Distributor and the Distributor receiving a refund in relation to that equipment from a Network Operator, shall the Distributor, at its absolute discretion, refund the whole or part of any such refund to the Dealer.
    - 6.8 The Dealer shall make all payments due under these terms and conditions without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Dealer has a valid court order requiring an amount equal to such deduction to be paid by the Distributor to the Dealer.
  7. **COMMISSION**
    - 7.1 The Dealer shall be entitled to such bonuses and such percentages of the commission on sales of the Equipment and Services as set out in the Price Books from time to time in relation to the particular Equipment and Services as the Distributor shall from time to time stipulate. (In this agreement "commission" and "bonus(es)" shall mean any monies received by the Distributor from a Network Operator payable to the Dealer consequent upon a customer entering into an agreement with the Network Operator excluding that portion or percentage of such monies received which it has been agreed the Distributor will retain in accordance with this agreement.)
    - 7.2 Unless otherwise agreed, commission on sales of the Equipment and Services shall be payable by the Distributor weekly, two weeks in arrears. Any queries regarding commission and bonuses received must be sent to the Distributor in writing within the Network Operator's timescales as stipulated in the price books and bulletins failing which commission and/or bonuses may not be paid.
    - 7.3 If any customer of the Dealer shall agree to a specific Service provided by a Network Operator which entitles the Dealer to receive commission or a bonus, such commission or bonus (or a part thereof at the discretion of the Distributor) shall be (at the Distributor's option) repaid in full by the Dealer to the Distributor on demand, or deducted from other monies due to the Dealer from the Distributor in the event that:
      - 7.3.1 Such Service is subsequently disconnected after the Service was connected, and/or the Distributor has to repay such commission to a Network Operator as a result of: (i) the customer cancelling or varying the Service; or (ii) non-payment by the customer of a deposit or other sum due under the Service; or (iii) failure by the customer or Dealer to supply satisfactory Proofs to the Distributor; or (iv) failure by the Dealer to promptly and fully honour any cashback arrangement; or (v) any other reason set out in respect of the relevant Service in the Price Books; or
      - 7.3.2 Such Service is varied in circumstances where, had the customer initially ordered the varied Service, a lesser amount of commission or bonus would have been payable to the Dealer; or
      - 7.3.3 Such Service is deemed to be suspect or fraudulent by the Network Operator or the Distributor; or
      - 7.3.4 Any commission or any other related or associated payments which the Network Operator has paid to the Distributor in relation to such Service or becomes, for any reason, repayable by the Distributor to the Network Operator.
    - 7.5 The Dealer is in breach of any part of this agreement.
    - 7.4 The Distributor shall be entitled at any time to request copies of the Proofs taken by the Dealer from its customers for audit before paying the commission due to the Dealer in respect of sales to those customers. If the Distributor is not satisfied that such Proofs are correct, the Distributor shall be entitled to retain any commission payable to the dealer for a period of 24 months from the date on which the service was connected or commission paid in order to deduct from such commission any sums that may become repayable to the Distributor pursuant to condition 7.3.
  - 7.5 In the event that any sums repaid to the Distributor pursuant to condition 7.3 are re-credited to the Distributor by the Network Operator, the Distributor may, at its absolute discretion, repay such sums to the Dealer.
  - 7.6 A certificate signed by a Director of the Distributor as to the amount of commission to be paid, repaid or deducted pursuant to this condition 7.3 shall be conclusive unless manifestly incorrect.
8. **DELIVERY AND RISK**
  - 8.1 Delivery shall occur when the Distributor or its carrier arrives at the Dealer's delivery address notified on the order acknowledgment and the Distributor has notified the Dealer of such arrival and the Dealer has accepted the delivery.
  - 8.2 Risk of damage to or loss of the Equipment shall pass to the Dealer on delivery.
  - 8.3 Notwithstanding that the Equipment may have been delivered to the Dealer and that risk in the Equipment has passed to the Dealer, ownership of the Equipment being sold to the Dealer by the Distributor shall not pass to the Dealer until the Distributor has received in cash or cleared funds payment in full of the price for the Equipment and all other sums which are or which become due to the Distributor from the Dealer on any account.
  - 8.4 Until such time as ownership of the Equipment passes to the Dealer, the Dealer shall hold the Equipment as the Distributor's fiduciary agent and bailee, and shall keep the Equipment separate from that of the Dealer and third parties and properly stored, protected and insured and identified as the Distributor's property. Until that time the Dealer shall be entitled to resell or use the Equipment in the ordinary course of its business, but shall account to the Distributor for the proceeds of sale or otherwise of the Equipment, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Dealer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
  - 8.5 Until such time as the property in the Equipment passes to the Dealer (and provided the Equipment is still in existence and has not been resold) the Distributor shall be entitled at any time to require the Dealer to deliver up the Equipment to the Distributor and, if the Dealer fails to do so forthwith, to enter upon any premises of the Dealer or any third party where the Equipment is situated and repossess the Equipment at the Dealer's cost.
  - 8.6 The Distributor may at any time immediately revoke the Dealer's power of sale by written notice if the Dealer is in default for longer than seven days in the payment of any sum whatsoever due to the Distributor or if any bill of exchange, cheque or other negotiable instrument drawn or accepted by the Dealer in favour of the Distributor is dishonoured on presentation for payment or if the Distributor has reasonable grounds for doubting the Dealer's solvency. Furthermore, the Dealer's power of sale shall automatically cease if a receiver is appointed over any of the assets or the undertaking of the Dealer's business or a winding up petition or order is presented or made against the Dealer or the Dealer goes into voluntary liquidation or calls a meeting or makes any arrangement or composition with creditors or commits an act of bankruptcy. Should the Distributor revoke the Dealer's power of sale, the Dealer will place the Equipment at the disposal of the Distributor who shall be entitled on reasonable prior notice to enter the Dealer's premises for the purpose of collecting the Equipment or for it. The Distributor will bear the cost of the Distributor removing any such Equipment from the Dealer's premises.
  - 8.7 Time of delivery shall not be of the essence and any delivery date is an estimate only.
  - 8.8 The quantity of any consignment of Equipment as recorded by the Distributor upon despatch from the Distributor's place of business shall be conclusive evidence of the quantity received by the Dealer on delivery unless the Dealer can provide conclusive evidence proving the contrary.
  - 8.9 The Distributor shall not be liable in any non-delivery of Equipment (even if caused by the Distributor's negligence) unless written notice is given to the Distributor within 2 days of the date when the Equipment would in the ordinary course of events have been received.
  - 8.10 Any liability of the Distributor for non-delivery of Equipment shall be limited to, at the Distributor's discretion, replacing the Equipment within a reasonable time, issuing a credit note for the price against any invoice raised for such Equipment or a refund of the purchase price paid.
9. **RELATIONSHIP BETWEEN THE DISTRIBUTOR AND THE DEALER**
  - 9.1 The Dealer agrees that it is an independent contractor fully responsible for its acts and defaults (including those of its employees or agents) and the Dealer agrees to indemnify the Distributor against any loss suffered or liabilities or expenses incurred as a result of such acts or defaults. The Dealer agrees that in all correspondence and other dealings relating directly or indirectly to the Equipment and Services it shall clearly indicate that it is acting as a Dealer and it shall not hold itself out as being part of a Network Operator nor the representative, agent, partner or party to a joint venture with the Distributor. The Dealer has no authority or power to bind or contract or negotiate in the name of or to incur any debt or other obligation on behalf of or create any liability against the Distributor or any Network Operator in any way for or on its own behalf. The Dealer shall transact all business pursuant to these terms and conditions on its own behalf and for its own account.
  - 9.3 If the Dealer comprises more than one person all agreements with the Dealer shall be joint and several and words importing the singular shall also include the plural.
10. **TERMINATION**
  - 10.1 The Distributor shall be entitled to immediately suspend the Dealer's appointment where it is required to do so by the Network Operator and/or terminate the Dealer's appointment as dealer on written notice to the Dealer at any time for any reason.
  - 10.2 The Dealer may terminate this Agreement forthwith by notice in writing to the other in the event an order is made or a resolution is passed for the winding-up of the other party or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or such an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) or a receiver or administrator or a receiver is appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver to which entitle the Court to make a winding-up or bankruptcy order or the other party takes or suffers or appears likely to take or suffer any similar action in consequence of debt.
  - 10.3 Upon termination of the Dealer's appointment (howsoever caused or arising):
    - 10.3.1 If the Dealer commences insolvency proceedings in accordance with its terms; and
    - 10.3.2 The Dealer shall have no claim against the Distributor for compensation for loss of distribution rights, loss of goodwill or any loss incurred in connection with such termination; and
    - 10.3.3 Save as expressly provided in these terms and conditions and save for any rights or obligations which may have accrued prior to termination, neither party shall have any further obligation to the other under these terms and conditions; and
    - 10.3.4 The Dealer shall cease as at the effective date of termination and the Dealer shall not thereafter use all or any of the trade marks or trade names in any manner whatsoever without the consent of the owners of such trade marks or trade names; and
    - 10.3.5 The Distributor shall be entitled to retain all commission due to the Dealer at the date of termination of this agreement for a period of 24 months from the date of termination of this agreement unless the Distributor has confirmed to the Distributor (which confirmation the Distributor will request from time to time) that no cashbacks of commission or bonuses are due, whichever shall be the earlier date, and the Distributor may deduct from such commission any sums that may become repayable to it pursuant to this agreement (and in particular condition 7.3 hereof).
11. **CONFIDENTIALITY**
  - 11.1 Each party agrees and undertakes that during the term of the Dealer's appointment and thereafter (howsoever termination may be caused or arise) it will keep confidential and will not without the prior written consent of the other party use or disclose to any third party any information of a confidential nature (including trade secrets and information of commercial value) belonging to the other party which may become known to it in connection with the appointment ("Confidential Information") provided always that such obligation of confidentiality shall not apply to any part of the Confidential Information which:
    - 11.1.1 is at the date of the Dealer's appointment or subsequently (otherwise than by reason of default by the disclosing party) becomes public knowledge; or
    - 11.1.2 the disclosing party can show was at the time of disclosure already known to it; or
    - 11.1.3 the disclosing party can show subsequently came into its knowledge by means of disclosure by a third party free of any obligation of confidentiality.
  - 11.2 **THE DEALER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 12**
12. **WARRANTY AND LIABILITY**
  - 12.1 The Distributor will endeavour to transfer to the Dealer the benefit of any warranty or guarantee given to the Distributor by the Network Operator supplying such Equipment.
  - 12.2 In the event that the Equipment does not conform with its specifications, the Dealer shall follow the Network Operator's instructions for obtaining replacement equipment.
  - 12.3 The following provisions set out the entire financial liability of the Distributor (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Dealer in respect of:
    - 12.3.1 any breach of these terms and conditions; and
    - 12.3.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Dealer's appointment under these terms and conditions.
  - 12.4 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from these terms and conditions.
  - 12.5 Nothing in these terms and conditions excludes or limits the liability of the Distributor for death or personal injury caused by the Distributor's negligence or fraudulent misrepresentation.
  - 12.6 Subject to Clause 12.5, the Distributor shall not be liable to the Dealer for:
    - 12.6.1 any indirect or consequential, special or punitive loss, damage, costs or expenses;
    - 12.6.2 loss of profit;
    - 12.6.3 loss of business;
    - 12.6.4 loss of revenue; or
    - 12.6.5 depletion of goodwill.
  - 12.7 Subject to Clauses 12.5 and 12.6, the Distributor's aggregate liability to the Dealer under any one claim or under the total of all claims arising from any one act or default of the Distributor howsoever such claims shall arise whether by negligence, breach of contract or otherwise, shall not exceed the greater of the insurance cover amount available and actually paid by the Distributor's insurer to satisfy, settle or compromise such claims or the price paid by the Dealer for the Equipment the subject of the claim.
13. **GENERAL**
  - 13.1 If any provision of these terms and conditions shall be found by any Court or administrative body of competent jurisdiction to be invalid, unlawful or unenforceable, in whole or in part, but would be valid, lawful or enforceable if such whole or part provision were deleted, the remaining provisions in these terms and conditions shall continue to apply as if such whole or part provision had been deleted.
  - 13.2 This agreement concluded by the Dealer's acceptance of these terms and conditions constitutes the entire arrangement and understanding between the parties and supersedes and extinguishes all prior agreements, negotiations and discussions relating to the subject matter of this agreement. Each party acknowledges that in entering into and performing the agreement it does not do so on the basis of, and does not rely on any statement or representation (unless made fraudulently) or warranty or understanding other than as expressly contained in the agreement at the date it is entered into.
  - 13.3 Any waiver by either party of a breach or default of any of the provisions of these terms and conditions by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions and, save as expressly stated in these terms and conditions, neither shall any delay or omission on the part of either party to exercise or avail itself of any remedy, right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.
  - 13.4 Save as set out above (and in particular in clause 5.3), any variation to these terms and conditions and any representations about the Equipment and Services shall have no effect unless expressly agreed in writing and signed by a Director or authorised representative of the Distributor.
  - 13.5 A person who is not a party to the agreement concluded by the Dealer's acceptance of these terms and conditions shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This shall not apply to any person, firm or organisation who is a party to the agreement under the terms of this agreement.
  - 13.6 The Dealer shall not be entitled to assign, sub-contract, transfer, charge, make over or otherwise dispose of any right, obligation or interest in or arising out of its appointment as dealer or out of the agreement concluded by the Dealer's acceptance of these terms and conditions or any part of them without the prior written consent of the Distributor.
  - 13.7 The Distributor may assign the agreement concluded by the Dealer's acceptance of these terms and conditions or any part of it to any other person, firm or organisation.
  - 13.8 These terms and conditions and any agreement concluded by the Dealer's acceptance of these terms and conditions shall be governed by and construed in accordance with the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts.