

Third Party Product Terms – SMS

1. General Description

- 1.1 These Third Party Product Terms detail the provision by KCS to Customer of the SMS Product service, which enables the Customer to send SMS text messages via an integration with MA Software. Third Party Products are provided by third party suppliers, and the provisions in these Third Party Product Terms reflect or flow down the terms and basis on which such Products are provided to KCS.
- 1.2 Capitalised terms used in these Third Party Product Terms but not defined in these terms are defined in KCS's Terms and Conditions – Section A.

2. Provision of the SMS Product

- 2.1 The SMS Product allows Customer to send SMS messages to end customers through an interface with a third party supplier's application protocol interface (API), which will then route messages out through telecommunications operators.
- 2.2 KCS may make changes to these Third Party Product Terms:
 - 2.2.1 at any time following an update in the terms and/or requirements of any supplier and/or telecommunications operator;
 - 2.2.2 at any time following a change in law or regulation relating to the use or provision of the SMS Product; or
 - 2.2.3 on not less than 30 days' prior noticeand the latest version of these Third Party Product Terms shall apply.
- 2.3 The latest version of these Third Party Product Terms is available at <https://www.kerridgecs.co.za/page/site/documentation>
- 2.4 Customer acknowledges that the SMS Product is provided as is and without warranty of any kind, whether express, implied, statutory or otherwise and KCS disclaims all implied warranties including any implied merchantability, fitness for a particular purpose or non-infringement to the fullest extent permitted by law. KCS also disclaims all warranties related to telecommunications providers and operators, and Customer acknowledges that telecommunications providers networks are inherently insecure and KCS (and any supplier) will have no liability for any changes to, interception of, or loss of Customer data while in transit via the internet or a telecommunications providers network.

3. Customer Obligations

- 3.1 Customer shall:
 - 3.1.1 comply with all applicable laws and regulations, including without limitation such laws and regulations applying to marketing and telecommunications services; and
 - 3.1.2 comply with the terms of use of any third party supplier, any network operator, and the rules or guidance of any regulatory body to the extent that such provisions relate to the SMS Product;
 - 3.1.3 promptly action any requests from message recipients to change their communication preferences;
 - 3.1.4 ensure that SMS messages sent using this Third Party Product contain no viruses, nothing libellous, defamatory, racist, offensive, discriminatory or indecent or which infringes or contravenes any statutory or common law rights or applicable laws or any intellectual property rights of any third party;
 - 3.1.5 be solely responsible for all use of the SMS Product under Customer's account;
 - 3.1.6 not make available to, or allow the use of the SMS Product, by any third parties, and to use commercially reasonable efforts to prevent unauthorised access to or use of the SMS Product and to notify KCS immediately upon any such unauthorised access or use; and
 - 3.1.7 provide reasonable co-operation with requests for information from law enforcement, regulators, KCS, suppliers or telecommunications operatorsand indemnify KCS in full against any and all losses suffered by KCS as a result of any breach of this clause 3.1.

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- 3.2 Customer grants KCS a non-transferable royalty free worldwide licence for the duration of Customer’s use of the SMS Third Party Product to use, alter, reproduce, distribute and transfer the content of SMS messages and all related intellectual property rights for the purpose of providing the SMS Third Party Product.

4. Charges and Payment

- 4.1 KCS shall invoice Customer monthly in arrears for the Charges calculated by reference to each SMS text initiated by the Customer or any of its personnel at the rates set out in the relevant Quotation.
- 4.2 The Charges, including without limitation the cost per SMS text, may be varied at any time on notice from KCS to Customer. Without limitation, KCS reserves the right to vary Charges to reflect any increases in costs from suppliers or telecommunications operators.
- 4.3 The Charges will be calculated by reference to electronic information relating to the actual number of SMS messages sent and provided by the supplier and/or telecommunications operators (“SMS Records”). Customer accepts that the electronic records of supplier and/or telecommunications operators shall be conclusive.
- 4.4 Customer is responsible for all Charges attributed to them by the SMS Records.
- 4.5 In addition to the Charges detailed at 4.3, Customer is responsible for all interest, taxes (excluding taxes based on the net income, property or employees of telecommunications operators, suppliers and/or KCS), telecommunication operator fees, charges and/or surcharges, communications surcharges (for example, pass-through carrier fees), costs, fines and/or penalties incurred by telecommunications operators, supplier and/or KCS in relation to Customer’s use of the SMS Product.
- 4.6 Customer is responsible for checking all invoices and Charges in relation to your use of the SMS Product; any disputes solely relating to Charges for the SMS Product must be raised within 7 days of invoice from KCS, and with sufficient information to allow KCS to raise any related dispute with Supplier. Nothing in this clause 4.6 shall entitle Customer to withhold payment of any invoices. Customer must act reasonably and in good faith in relation to any SMS Product disputes or Charge queries.

5. Suspension and Termination

- 5.1 KCS may suspend and or terminate the SMS Product or Customer’s use or access to the SMS Product:
- 5.1.1 Immediately without notice on instruction or at the request of a supplier or telecommunications operator;
- 5.1.2 Immediately without notice in the event of a suspected breach of or where required by any acceptable use policy, applicable laws or regulations or the requirements of a supplier or telecommunications operator;
- 5.1.3 immediately without notice if there is an unusual or material spike or increase in Customer’s use of the SMS Product, or such traffic or use may be fraudulent or materially and negatively impacting the security, integrity or availability or operating capability of the SMS Product or its supplier or a supplying telecommunications operator.
- 5.1.4 immediately without notice in the event of a material breach of these Third Party Product Terms by Customer.