



Product Terms

MTALK PBX

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 MTALK PBX 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 the Legal Website; and
 - 1.3.2 the Product Terms set out herein;(collectively the “**MWEB Business Terms**”).
- 1.4 Customer’s use of MTALK PBX indicates Customer’s acceptance without modification of the MWEB Business Terms, which will constitute a legal agreement between Customer and MWEB Business.
- 1.5 For the sake of compatibility with the Agreement and more specifically the General Terms and where applicable, any reference made to:
 - 1.5.1 payment of any amount in terms of these Product Terms, shall be deemed to be payment of Service Fees, as defined in the General Terms; and
 - 1.5.2 the sale of Equipment shall be deemed to be Services rendered by MWEB Business.
- 1.6 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto:
 - 1.6.1 “**Application Form**” means the application form completed and signed by Customer for the initiation of the MTALK PBX agreement;
 - 1.6.2 “**Control Unit**” means the central PBX unit, including trunks and licenses;
 - 1.6.3 “**Equipment**” means any router, gateway, server, security device, telecommunications equipment and/or any other equipment selected by Customer in the Application Form to be the subject of the MTALK PBX and shall include any relevant software, hardware, cables, connectors, programmes, interfaces, associated media, printed materials, and/or on-line or electronic documentation accompanying it;
 - 1.6.4 “**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;



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- 1.6.5 **“Faulty Equipment”** means Equipment which does not operate, in all material aspects, to the specifications described in the respective products’ technical documentation. Equipment will not be considered as faulty if there is any damage sustained post installation to the Equipment, or if Customer or any unauthorised person opens, alters or amends the Equipment in any way or attempts to fix it in any way; and
- 1.6.6 **“MTALK PBX”** means the sale of Equipment to Customer by MWEB Business in accordance with Customer’s selections as indicated by Customer in the Application Form under such heading or description;
- 1.6.7 **“Service”** means the services provided by MWEB Business to Customer as set out below;
- 1.6.8 **“Supplier”** means the company supplying the Equipment to MWEB Business, including the manufacturer of the Equipment or a selling agent of such manufacturer.

2. SALE OF EQUIPMENT AND SERVICE

- 2.1 MWEB Business sells the Equipment and provides the Service to Customer at the price set forth in the Application Form and/or any addendum thereto. Any Equipment sold or Service provided by MWEB Business to Customer shall be deemed to be on the terms and conditions set out in: (i) these Product Terms; (ii) the General Terms and (iii) the Use Policies.
- 2.2 Ownership in the Equipment supplied shall pass to Customer upon payment of the full purchase price inclusive of VAT (and all applicable taxes, rates or governmental levies, if any) and any other charges levied by MWEB Business in terms of the Agreement. Risk in the Equipment shall pass to Customer upon delivery of the Equipment at Customer’s premises or collection of the Equipment at MWEB Business’s offices by Customer or his/her/its employee, representative or carrier agent, whichever is applicable.
- 2.3 Customer shall upon submission of the duly signed Application Form and/or any addendum thereto not be entitled to withdraw and/or cancel the order without MWEB Business’s prior written approval. Notwithstanding the aforesaid, the provisions of this clause 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.

3. PAYMENT

- 3.1 Customer shall pay to MWEB Business in advance the full amount set out in the Application Form and/or any addendum thereto, which amount is reflected to be exclusive of value added tax (“VAT”) on such form plus VAT within 7 (seven) days of submission of the signed Application Form and/or any addendum thereto, without deduction or set-off of any amount of whatsoever nature or for whatsoever reason. Such amount shall be deposited into MWEB Business’s account set out in the Application Form and/or any addendum thereto, unless specifically otherwise advised in writing by MWEB Business from time to time.



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- 3.2 All applicable taxes, rates or governmental levies, if any, and VAT shall be for the account of Customer.
- 3.3 Customer acknowledges: (i) that the price for Equipment is affected by the Rand and Dollar exchange and as such MWEB Business will be entitled to adjust the price for Equipment at any time should there be a change in the Rand and Dollar exchange; and (ii) agrees to allow MWEB Business to debit his/her/its account with the applicable price for Equipment for that month and/or to invoice him/her/it with the applicable price for Equipment.
- 3.4 Customer further acknowledge that the price for Equipment may be changed by the Supplier at any time and as such MWEB Business will be entitled to adjust the price for Equipment at any time should the Supplier increase the price for Equipment.

4. DELIVERY AND COLLECTION OF EQUIPMENT

4.1 Collection

Unless otherwise agreed by the Parties in writing, Customer will collect the Equipment at MWEB Business offices situated at MWEB Business House, Greenacres Office Park, Cnr Barry Hertzog/Rustenburg and Victory Roads, Victory Park, within 7 (seven) days of payment or such other period as the Parties may agree in writing, on business days and during business hours. Upon collection of any Equipment, MWEB Business' representative and Customer, (including his/her/its employees, representative or carrier agent) will inspect the Equipment in order to determine if such Equipment is free from damages, (including but not limited to damages to the packaging material, labels, writing directly on the packaging, re-taping and/or shrink-wrapping). A signed collection note shall constitute prima facie proof that the Equipment has been collected and received by Customer in good condition, whether signed by Customer, his/her/its employee, representative or carrier agent.

4.2 Delivery and Installation (If requested on the application form)

- 4.2.1 Should the Agreement include delivery of the Equipment, MWEB Business or its agents will deliver the Equipment to Customer's premises at Customer's cost. A signed delivery note by Customer (including his/her/its employee, representative, carrier, agent or nominee) shall constitute prima facie proof that the Equipment was delivered to and received by Customer in good condition.



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- 4.2.2 Should the Agreement include installation and/or set-up and/or configuration of the Equipment MWEB Business and/or its agents shall attend to it during business hours and the relevant Service Fees shall be applicable. Customer shall prior to the installation date, ensure that his/her/its network meet the set-up and configuration requirements for installation purposes. MWEB Business is only responsible for the installation, set-up and configuration of the Equipment that will reside on the Customer's network. In the event that Customer's network is not compatible to the Equipment, MWEB Business will cease the installation of the Equipment until such time that Customer confirms in writing that his/her/its network is compatible to the Equipment and Customer shall not be entitled to terminate the Agreement and/or MTALK PBX.
- 4.2.3 Customer acknowledges that MWEB Business is not authorized by these Product Terms and/or Agreement to attend to Customer's network, related work and should Customer require MWEB Business to assist him/her/it to ensure that the network is compatible to the Equipment, MWEB Business will only perform this work once Customer has submitted a written order for such services.
- 4.2.4 Customer shall allow MWEB Business or its agents, all reasonable access to its premises for the purposes of the installation and/or set-up and/or configuration of the Equipment. A signed confirmation by Customer (including his/her/its employee, representative, carrier, agent or nominee) that installation and/or set-up and/or configuration, whichever is/are applicable, of the Equipment was done shall constitute prima facie proof of that it was done according to specification and agreement. MWEB Business will not be liable for any incorrect configuration or call routing.
- 4.2.5 MWEB Business shall use its reasonable endeavours to comply with the agreed delivery and/or installation and/or set-up and/or configuration date/s, whichever is/are applicable, but Customer shall not be entitled to cancel this MTALK PBX or refuse to accept delivery, installation, set-up and or configuration because of MWEB Business' failure to do so on such date/s. The provisions of this clause 4.2.3 are subject to Customer's termination rights detailed in clauses 7.11 of the General Terms where clause 7.11 of the General Terms is applicable to Customer.
- 4.2.6 Customer shall, without limiting the generality of the General Terms, not be able to hold MWEB Business or its agents liable under any circumstances, for any loss, damage, costs, expense or injury, including without limitation direct, indirect, incidental, special, punitive or consequential loss, loss of profit loss of anticipated savings, loss of goodwill, loss of revenue, loss of customers or clients caused or arising in any manner whatsoever from the delivery and/or installation and/or set-up and/or configuration of the Equipment or failure to do so on the agreed date/s.

5. VENDOR'S/ MANUFACTURER'S WARRANTIES



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- 5.1 Without derogating from the provisions of clause 10 of the General Terms, the Customer agrees, that the Equipment is sold on the condition that the vendor's/ manufacturer's / supplier's limited warranties apply. MWEB Business does not warrant workmanship, performance, suitability or compatibility of the Equipment. The Customer must familiarize him/ her/it with the scope and cover of such limited warranty, which includes provisions relating to the damages caused by a failure to adhere to the vendor's/ manufacture's/ supplier's instructions and/or use by an unqualified person.
- 5.2 All guarantees or warranties will be null and void should any Equipment be tampered with or should the seals on the Equipment be broken or should the Equipment be operated outside the manufacturer's specifications.
- 5.3 All guarantee and/or warranty claims must be supported by the original tax invoice and the goods must be in their original packaging and must be accompanied by all accessories and manuals must be intact. All items must be returned in "as new" condition.
- 5.4 Customer shall be responsible to deliver and collect the defective Equipment to and from the vendor's/ manufacturer's/ supplier's offices at Customer's own expense and risk, (including risk while the Equipment is in possession of the vendor/ manufacturer during repairs).

6. SUPPORT SERVICES

- 6.1 Subject to clause 6.2 below and except if specifically agreed in terms of the Agreement, nothing set out in this MTALK PBX places any obligation on MWEB Business with regard to the maintenance and support of the Equipment and any such services shall only be rendered by MWEB Business to Customer if indicated in the Application Form and by the payment of the relevant Service Fees.
- 6.2 Should Customer purchases a MTALK PBX solution from MWEB Business including a Control Unit, MWEB Business will provide support and maintenance for the first year as follows:

6.2.1 **Telephonic and remote services:**

MWEB Business will provide Customer with:

6.2.1.1 unlimited telephonic support on a 24 hour, seven day a week basis;

6.2.1.2 four (4) hour turnaround time on remote support requirement from the time that the call is logged with MWEB Business. Remote support constitutes configuration changes that can be done via a remote connection.

6.2.2 **On site Equipment maintenance:**

6.2.2.1 MWEB Business will provide Customer with 18 hours of onsite Equipment maintenance and PBX configuration changes, which shall include travel time.



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6.2.2.2 On site Equipment maintenance includes replacement or repair of Faulty Equipment, and collection and post-replacement installation.

6.2.2.3 On site support is only conducted during business hours.

6.2.2.4 After hours on site support and on site support after the 18 hours referred to in 6.2.2.1 is up, will be charged for as per the terms and conditions for Professional Services

6.2.2.5 MWEB Business will use its best endeavours to have an engineer on site, the Business Day following the day on which the call was logged with MWEB Business.

6.2.2.6 MWEB Business will replace Faulty Equipment on site, where possible.

6.2.2.7 If the Faulty Equipment is diagnosed and identified telephonically, an engineer will bring replacement Equipment on callout, subject to availability of stock.

6.2.2.8 If MWEB Business is not able to identify the Equipment fault telephonically, an on site visit will be made to diagnose the problem. Should the engineer find that Equipment is faulty, MWEB will replace such Faulty Equipment within 24 hours from identifying the fault, subject to the availability of stock.

6.3 After the first year of service as provided for in clause 6.2 above, MWEB Business will not offer any further support, unless the Customer purchases a further MTALK PBX Support Contract from MWEB Business. If a MTALK PBX Support Contract has been purchased by Customer, the terms and conditions contained herein and specifically in clause 6.2 above will continue to apply for the duration of said contract and Customer agrees to be bound by such terms.

6.4 Customer shall, without limiting the generality of the General Terms, not be able to hold MWEB Business liable under any circumstances, for any loss, damage, costs, expense or injury, including without limitation direct, indirect, incidental, special, punitive or consequential loss, loss of profit, loss of anticipated savings, loss of goodwill, loss of revenue, loss of customers or clients caused or arising in any manner whatsoever (directly or indirectly) from: (i) the termination of the Service by any third party telecommunications network and/or MWEB Business for any reason whatsoever; (ii) suspension and/or discontinuation of the line; and/or (iii) Customer's breach of any third party telecommunications network's terms and conditions applicable and/or breach of any of the provisions of the Agreement. Customer furthermore hereby unconditionally and irrevocably indemnifies MWEB Business and agrees to hold MWEB Business harmless from and against any costs, losses, harm, liabilities, expenses, damages, fines or injury of whatever nature, directly and/or indirectly suffered or incurred by MWEB Business or for any such claims instituted against MWEB Business by a third party, arising out of or relating to a breach of any of the provisions of the Agreement.



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6.5 Customer acknowledges that the following circumstances and events may impact upon its use of the Equipment and/or Service and further that these circumstances and/or events are beyond MWEB Business control: (a) use of line rental service by other customers; (b) limitations upon national and/or international bandwidth capacity; (c) telecommunication service operator failures, which includes telecommunication links and line failures; (d) operating systems; (e) access technology failures; (f) atmospheric conditions including without limitation bad weather conditions and/or other causes of interference; (g) quality of service of telecommunication links or lines; (h) any action, omission and/or failure by Customer and/or his/her/its systems, software, network and/or equipment which has an impact on the Equipment and/or Service; (i) any system downtime; (j) any other action, omission and/or failure not within MWEB Business' control which has an impact on the Equipment or the Service.

7. LICENSING AND INTELLECTUAL PROPERTY RIGHTS

- 7.1 Where applicable, MWEB Business grants to Customer a non-transferable, personal, non-exclusive sub-license to use any software provided with the Equipment and shall use such software solely on and in conjunction with the Equipment on the terms and conditions as provided by the vendor/manufacturer/supplier of the Equipment or MWEB Business, whichever is applicable. Customer shall not copy, translate, modify, adapt, decompile, disassemble or reverse engineer the software or convert the whole or any part of the software from object code into source code.
- 7.2 MWEB Business will not be responsible for the licensing of any software unless such software forms part of the Equipment or is specified in the Application Form.
- 7.3 All rights, title and interest in and to all intellectual property relating to any Equipment owned by the any Party/ vendor/ manufacturer/ and/or supplier shall at all times remain the sole property of such persons.
- 7.4 Customer warrants that the use of the Equipment shall not infringe any intellectual property rights of any third party.
- 7.5 Customer agrees that any software, as contemplated above, will be installed and used by Customer at his sole risk and responsibility. MWEB Business shall not be liable for any defects in such software and Customer furthermore expressly disclaims any direct, indirect, incidental, special, punitive or consequential losses or damages which arise or may arise out of the use of such software.

8. TELEPHONY SERVICES

- 8.1 Voicemail services rely on the physical storage of voicemail on devices at the Customer's premises. MWEB Business will not be responsible for the quality of voicemail messages as this is dependant on various conditions outside of our control. MWEB Business will also not be liable for any missing voicemail messages.
- 8.2 Telephone services based on PSTN and third party telecommunications infrastructure are subject to outages and degradation of said infrastructure. MWEB Business assumes no responsibility for the functioning of these services.



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- 8.3 MWEB Business will not be responsible for any unexpected call charges. The responsibility of managing and monitoring phone usage and costs lie with the Customer.
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