

Terms and Conditions of Service

Effective date: March 1, 2016

The Swift software product provides website operators and other individuals with a variety of tools and resources to enable them to collect visitor mobile numbers and to create, launch and manage online SMS campaigns (the "Services").

The Services provided by Swift ("Swift", "we" or "us") are subject to these Terms and Conditions of Service (the "Terms"). These Terms are subject to change without prior written notice at any time in Swift's sole discretion. It is your responsibility to review these Terms from time to time for such changes.

Your use of any Swift website, system or services signifies your implicit agreement, acceptance and consent to be bound by these Terms and Conditions of Service.

Please read these Terms carefully before proceeding with any use of our Services. If you do not accept the Terms, please exit this website and immediately cease using Swift's Services.

1. Services and Support

- 1.1. By posting updated versions of the Terms on the Swift website, or otherwise providing notice to you, Swift may modify the Terms outlined, and may discontinue or revise any or all other aspects of the Services at its sole discretion. All such changes shall become effective upon posting of the revised Terms on the Swift website. Swift will post last updated dates on its Terms, and it is your responsibility to review the Terms from time to time if they have changed. Your continued use of the Services will constitute your acceptance of the variation to the Terms. If you elect to discontinue using the Services due to any changes to the Terms made under this section 1.1, you will be entitled to a refund for any unused, prepaid amounts for the Services.
- 1.2. The Services are available only to persons who can form legally binding contracts under applicable law. Without limiting the foregoing, the Services are not available to individuals under the age of 18. If you do not qualify, your use of the Services is expressly prohibited.
- 1.3. The Services enable clients to collect, upload, store and access their customer contact data, and set up and initiate SMS campaigns to their customers.
- 1.4. Both the number of SMS messages sent and the number of characters of data transferred are metered by Swift. Swift accounts do not require a minimum number of SMS messages to be sent.
- 1.5. Swift will charge NZD\$0.10 per SMS in New Zealand and AUD\$0.08 per SMS in Australia. A SMS message is defined as one message not exceeding 160 characters, including spaces. The SMS message length may exceed 160 characters, however this may result in the message being split and sent as multiple SMS messages. Swift will charge for each individual SMS message sent.
- 1.6. Where an individual customer receiving an SMS message clicks the link in the SMS message and fills out the form, you the client will pay an additional \$2.00 (NZ or AUD) excluding GST for that conversion.
- 1.7. All monies paid to Swift for the Services are non-refundable. Swift will invoice clients calendar-monthly in arrears, unless other payment arrangements have been made between you and an authorised Swift representative.
- 1.8. All SMS delivery prices and conversion rates will be agreed with you at the time of setting up your account. You are responsible for reviewing your Pricing Schedule from time to time and for remaining aware of the fees charged by Swift for the Services.
- 1.9. As part of the registration process, you will identify an email address, username and password for your Swift account. You are responsible for maintaining the security of your account, username, passwords, and files and for all uses of your account and of the Services in your name. Swift reserves the right to refuse registration of, or cancel accounts it deems inappropriate.

- 1.10. You are solely responsible for checking the content of the SMS message sent to customers, the form layout, and the content of the form.
- 1.11. It is understood that Swift makes no guarantee that SMS messages will be rendered properly on all recipients' mobile phones, due to the wide variety of mobile phones available. Swift makes every reasonable attempt to make sure that all SMS messages sent through our servers follow global SMS standards.
- 1.12. Swift guarantees that all messages submitted to us will be submitted to the recipient's carrier. We will provide a refund for any messages not submitted to a recipient's carrier.

2. Support availability

- 2.1. Swift will provide business hours support of 8.00 am to 5.00 pm Monday through Friday, excluding public holidays, for any technical support. Support will be available through Webtools Limited at support@webtools.co.nz <mailto:support@webtools.co.nz> or +64- 21-348-358.
- 2.2. Webtools will assist any Swift customer to set up their SMS campaign and, at Swift's absolute discretion, the customer may or may not be charged for this time, depending on the size of the campaign.
- 2.3. Should you experience any problems with our Services, you must report the failure directly to us as soon as possible. Swift will perform an initial investigation as soon as reasonably possible and respond to you with our findings. We will advise whether or not we can identify a failure resulting from the Swift platform, and if the failure is found to be within the Swift platform, we will advise of the severity of the failure and the time estimated to rectify it. If we determine that a failure has occurred because of the network operator failing to send or receive SMS messages, we will work with the relevant network operator to correct any problems encountered by their platform.

3. Restrictions and Responsibilities

- 3.1. You the client are not granted a licence to any software under these Terms (except to the extent required for you to use the Services). Except to the extent that applicable laws prevent Swift from doing so, you will not, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Services or any software, documentation, or data related to the Services ("Software"); remove any proprietary notices or labels from the Services or any Software; reproduce or copy the Software or the Services or any part thereof; modify, translate, or create derivative works based on the Services or any Software; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Software. The Services shall be used for your internal business purposes only and you shall not use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party.
- 3.2. You acknowledge and agree that the Services, the Software, the Swift company names and logos and all related product and service names, design marks and slogans, and all other material comprising the Software or the Services, are the property of Swift or its affiliates or suppliers (collectively, the "Marks"). Unless stated otherwise, all Marks are protected as the copyright, trademarks and/ or other intellectual properties are owned by Swift or by other parties that have licensed their material to Swift. You are not authorized to use any of the Marks in any advertising, publicity or any other commercial manner without the prior written consent of Swift. Your use of the Services confers no title or ownership in the Services, the Software or the Marks and is not a sale of any rights in the Services, the Software or the Marks. All ownership rights remain in Swift or its third party suppliers, as the case may be.
- 3.3. You represent, covenant, and warrant that you will use the Services only in compliance with these Terms and all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation). You agree that you will not access or otherwise use third party contact lists in connection with preparing or distributing unsolicited messaging to any third party. You hereby agree to indemnify and hold harmless Swift against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise arising from or relating to your use of the

Services. You acknowledge that you are responsible for the content of any and all SMS messages sent using the Services. Although Swift has no obligation to monitor the content provided by you or your use of the Services, Swift may do so and may remove any such content or prohibit any use of the Services it believes may be (or is alleged to be) in violation of the foregoing.

- 3.4. The Services may only be used for lawful purposes. Transmission or solicitation of any material that violates laws of New Zealand or Australia or other laws that may apply in your local area is prohibited. This may include material that is obscene, threatening, harassing, defamatory, or in any way a violation of intellectual property laws or a third party's intellectual property rights.
- 3.5. In using the varied features of the Services, you may provide information (such as name, contact information, or other registration information) to Swift. Swift may use this information and any technical information about your use of the Services to tailor its presentations to you, facilitate your movement through the Services, or to communicate separately with you.
- 3.6. Swift will not use any of your subscriber lists or any other customer information for any other purposes than those related to the Services. Your customer information will not be shared with any other parties. In addition, Swift will not use your customer information for the purpose of sending unsolicited commercial communications.
- 3.7. You must not use the Services to distribute illegal contests, pyramid schemes, chain letters, multi-level marketing campaigns, or any other prohibited material.
- 3.8. You must not use the Services to send SMS campaigns that link to or display nudity, obscene content, illegal software, viruses, or to distribute any other content that we deem inappropriate.
- 3.9. You must not use the Services for the sending of unsolicited SMS messages (sometimes called "spam").
- 3.10. All rights not expressly granted are reserved.
- 3.11. The Services may contain materials produced by third parties or links to other websites. Such materials and websites are provided by third parties and are not under Swift's direct control and Swift accepts no responsibility or liability in respect of any such third party materials or for the operation or content of other websites (whether or not linked to the Services). You acknowledge that Swift is entitled to require you to remove any link from another website to the Services which you install without obtaining Swift's prior written consent.

4. Privacy

- 4.1. Swift collects information that personally identifies you ("personal information") in some circumstances through the course of providing our Services. The types of personal information we collect includes, but is not limited to, name, contact details, identification information, organisation, title, information submitted in forms, payment details and enquiry/complaint details. Swift also collects personal information about your interactions and transactions with us, including any through monitoring and recording any contact we have with you by telephone, email or online for purposes including security, dispute resolution and training. We collect personal information directly from you as well as from third parties including public sources, our related companies, information service providers and the parties with whom we exchange information as described here.
- 4.2. We store and manage information on behalf of our clients so they can manage their SMS communications. This includes, but is not limited to, information about our customers' subscribers such as mobile numbers, SMS received, links accessed and other details entered by customers into our systems, which are subject to our Terms but are not otherwise limited or controlled by us. It is possible that in this respect Swift could handle sensitive information such as information about professional association membership, political beliefs, health and religion. We do not use this information for our own purposes.
- 4.3. We collect, use and disclose your personal information to provide, administer, improve and personalise our products and services, maintain and update our records, manage our relationship with you and our customers and deal with your enquiries and concerns. We may also collect, use and disclose your personal information in connection with suspected fraud, misconduct and unlawful activity.
- 4.4. If you are our client, your personal information is used to create your personal access to SMS communication product, and to contact you in the course of using this product. Financial information that is collected is used to verify, identity and to bill either you or your company for

products and services, as applicable. Demographic and profile data collected by Swift may be used to tailor this web site or any requested email & SMS communications, and to display information that is more relevant to you. Swift also compiles demographic and product use information, but in the aggregate only, and may make that aggregate information publicly available. Under no circumstances will Swift make any personal information about an individual user available publicly in this manner.

- 4.5. Your email address and mobile number is used to only send you information that you have requested. As part of your use of our SMS communication software, Swift allows you to elect to receive, or not receive, certain information from Swift. Swift adheres strictly to permission-based email & SMS policy. Except as mentioned above, Swift will not send you unsolicited email or SMS information, commercial offers or advertisements. Swift will not sell, rent, or loan our contact lists or our customer's contact lists (including customer data) to any outside firms not involved in the provision of Swift services, nor will Swift use customer contact lists for our own marketing purposes.
- 4.6. Swift will not use or disclose your personal information without your consent, except where required or authorized by law; to implement the terms of any agreement we have with you; to assist the lawful investigation of a law enforcement authority; to protect the rights, property or personal safety of another Swift customer, any member of the public, or Swift; where the assets and operations of the business are transferred to another party as a going concern; or as other described by these Terms.
- 4.7. Swift may exchange your personal information with our related bodies corporate, your representatives and with our service providers that assist us with archival, auditing, accounting, customer contact, legal, business consulting, banking, payment, delivery, data processing, data analysis, information broking, research, investigation, website or technology services.
- 4.8. Swift employs a range of measures to protect the privacy and confidentiality of personal information in contact lists, message content and reports. Swift may scan the content of your messaging to ensure it complies with our Terms — to protect against defamatory, inaccurate, abusive, obscene, profane, or threatening material that is racially or ethnically offensive.
- 4.9. Swift will send all new users a series of welcoming emails and SMS messages to verify their new account and confirm their password and username, plus offer up information on how to get the best out of the product. Established users will occasionally receive information on products, services, special deals, and a newsletter. Out of respect for the privacy of our users we present the option to not receive these types of communications. Customers can unsubscribe via the unsubscribe mechanism at the bottom of each email or SMS.
- 4.10. On rare occasions it is necessary to send out a strictly service related announcement. For instance, if our service is temporarily suspended for maintenance we might send users an email. Generally, users may not opt-out of these communications, though they can deactivate their account. However, these communications are not promotional in nature.
- 4.11. We may use your IP address to help diagnose problems with our server, and to administer our website. We do not link your IP address which accesses our website to any personal information. We use tracking information to determine which areas our site users visit based on traffic to those areas. Swift does not track what individual users read or do, but rather how often each page is visited.
- 4.12. Swift uses cookies to make your use of our website and services as convenient as possible. Cookies are useful to estimate our number of visitors and to determine overall traffic patterns through our website. If you do not wish to receive any cookies you may set your browser to refuse cookies. This may mean you will not be able to take full advantage of Swift's services. In providing SMS messaging services for our customers, we may link cookies and IP addresses with records of SMS messages received and links accessed to help our customers monitor the effectiveness of their messaging and manage their relationships with recipients. In some cases third parties may use cookies and other technologies such as web beacons and JavaScript on our website in connection with online services like website analytics and surveys. The services we may use from time to time include Google Analytics, Yahoo, Adobe and Microsoft. You can find more details in the privacy policies for those services, including information on how to opt-out of certain conduct.
- 4.13. Our website may contains links to other sites. We are not responsible for the privacy practices or policies of those sites

- 4.14. You will adopt and maintain a policy that complies with all applicable privacy laws and our Terms relating to privacy. You acknowledge that all personal information that you provide to us has been collected with the relevant individual's consent, and that you have informed the individual of the purpose for which that information was collected, and that you may provide this information to us for the purposes of use in relation to the Services. You acknowledge that we may store the personal information that you provide to us on servers that are stored in an Australian data centre and are hosted by Rackspace in Australia or Net24 in New Zealand, and you warrant that you have obtained the consent of the relevant individuals to the storage and transmission of their personal information in this manner.

5. Termination

- 5.1. You may terminate this agreement by contacting us or by sending written notice to Swift, [swift@webtools.co.nz]. Correspondence must include your first name, last name, and your Swift username. No refunds will be issued if you terminate this agreement unless your account is in credit and you terminating in accordance with clause 1.1.
- 5.2. Swift may terminate this agreement or the Services at any time with or without cause, and with or without notice. Swift shall have no liability to you or any third party because of such termination.
- 5.3. Swift may delete any of your archived data within 30 days after the date of termination. Any statutory retention requirements with respect to your business correspondence remain your responsibility. All sections of this agreement which by their nature should survive termination will survive termination, including, without limitation, ownership, warranties, disclaimers and limitations of liability.
- 5.4. To ensure our customer and account data is kept current and up to date, if you do not log in to your account or use the Services, for more than 14 months, your account will become inactive. Inactive accounts have 30 days to become active or the account and its data, including subscriber signups, will be permanently removed from swift's database, and any remaining pre-paid credit balance will be surrendered.

6. Warranties, Disclaimer and Remedies

- 6.1. Use of the Services and any reliance by you upon the Services, including any action taken by you because of such use or reliance, is at your sole risk. To the maximum extent permitted by law, Swift does not warrant that the Services will be uninterrupted, accurate or error free; nor does it make any warranty as to the results that may be obtained from use of the Services.
- 6.2. The Services are provided "as is" and to the extent permitted by law Swift disclaims all warranties, express or implied, including (but not limited to) implied warranties of merchantability, fitness for a particular purpose and non-infringement.
- 6.3. Your sole and exclusive remedy for any failure or nonperformance of the Services shall be for Swift to use commercially reasonable efforts to adjust or repair the Services, or where such adjustment or repair is not feasible, for Swift to either (at its discretion) perform the Services again or provide you with a refund for the amount you actually paid to Swift for the relevant Services.

7. Limitation of Liability

- 7.1. To the maximum extent permitted by law, under no circumstances shall Swift or any of its underlying service providers, business partners, information providers, account providers, licensors, employees, distributors or agents (collectively referred to for purposes of this section as "Swift") be liable to you or any other person for any loss or damage (including but not limited to direct, indirect, exemplary, special, incidental, cover, reliance or consequential damages, loss of profits or revenue, business interruption, loss of data, or failure to realise anticipated savings or benefits or business opportunities), or for any claim by any other party.
- 7.2. Swift's exclusion of liability applies whether the claim is in contract, tort (including without limitation, negligence) or equity and even if Swift has been notified of the possibility of such loss or damage.
- 7.3. You agree that Swift's liability to you at law will be reduced by the extent, if any, to which you contributed to the loss.

7.4. In the event that, notwithstanding the foregoing, Swift is found liable to you for damages from any cause whatsoever, and regardless of the form of the action (whether in contract, tort (including negligence), product liability or otherwise), to the fullest extent permitted by law the liability of Swift to you will be limited to:

- a) In the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; and
- b) In the case of services, the supplying of the services again or the payment of the cost of having the services supplied again or refund of fees actually paid for the services.

8. Export of Services of Technical Data

You may not remove or export from New Zealand or Australia or allow the export or re-export of the Services, or any direct product thereof, including technical data, in violation of any restrictions, laws, or regulations of Australia and New Zealand and all other applicable countries.

9. Miscellaneous

- 9.1. If any provision of these Terms is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these Terms will otherwise remain in full force and effect and enforceable.
- 9.2. Swift and you agree that this agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of the agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under these Terms or existing at law or equity shall be considered a waiver of such right or remedy.
- 9.3. No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind Swift in any respect whatsoever.
- 9.4. In any action or proceeding to enforce rights under these Terms, the prevailing party will be entitled to recover its costs and attorneys' fees.
- 9.5. These Terms shall be governed by the laws of New Zealand and/or Australia.

10. System Requirements

It is understood that in order to use the Services, a modern browser such as Internet Explorer 9+, Firefox 3+, Safari 3+ or Google Chrome 9+ is required. Additionally, a stable connection to the Internet is required. The Services may work in a limited manner on other web browsers (such as earlier versions of the previously mentioned browsers), but the Services were not designed for use on web browsers other than those recommended above.

11. Compliance rules for sending SMS Messages

- 11.1. Spam is defined as any SMS you send to someone who hasn't given you their direct implied permission to contact them on the topic of the message.
- 11.2. All Swift clients must follow the rules of the Australian Spam Act 2003 (Cth), the New Zealand Unsolicited Electronic Messages Act 2007 (and equivalent anti-spam legislation in all applicable countries) and the Terms when sending SMS Messages through the Services. We require the following of all SMS messages sent through the Services:
 - a) Any commercial SMS Messages must contain an opt-out mechanism that allows subscribers to remove themselves from your list. Each such mechanism must remain operational for a period of thirty days after the date on which you send the message, and must be in form and substance satisfactory to Swift. You acknowledge and agree that you will not remove, disable or attempt to remove or disable the mechanism.
 - b) All SMS Messages must contain the identity of the sender or the entity on whose behalf the SMS Message was sent, and a method of contact such as that entity's web address or phone number.

- c) Any commercial SMS Messages must state the reason the recipient is receiving the message. For example, "You are receiving this message from ABC Company because you signed up for our SMS list at www.abc.com."
 - d) All SMS Messages must be compliant with any disclosure requirements that apply to the sender (e.g., some countries' laws require that business letters, including SMS, contain further identification details as to the form of the organization, the place of incorporation, the names of executives etc.)
- 11.3. If at any time your campaign is flagged as spam by a recipient, Swift reserves the right to cancel your account without notice.
- 11.4. To send SMS messages to anyone using Swift, you must have clearly or implicitly obtained their permission. This could be done through:
- a) An SMS subscribe form on your website
 - b) An opt-in checkbox on a form. This checkbox must not be checked by default, the person completing the form must willingly select the checkbox to indicate they want to hear from you.
 - c) If someone completes an offline form like a survey or enters a competition, you can only contact them if it was explained to them that you would be contacting them by SMS AND they ticked a box indicating they would like you to contact them.
 - d) Customers who have purchased from you within the last 2 years
 - e) If someone gives you their business card and you have explicitly asked for permission to add them to your list, you can contact them. If they dropped their business card in a fishbowl at a trade show, there must be a sign indicating they will be contacted by SMS about that specific topic.
- 11.5. By using Swift Services, you agree not to import or send to any mobile number which:
- a) You do not have explicit, provable permission to contact in relation to the topic of the SMS you're sending.
 - b) You bought, loaned, rented or in any way acquired from a third party, no matter what they claim about quality or permission. You need to obtain permission yourself.
 - c) You haven't contacted via SMS in the last 2 years.
 - d) You scraped or copied from the Internet.
- 11.6. Swift has numerous layers of approval and monitoring to ensure you comply with these Terms.

12. SMS and Permission Practices

- 12.1. You agree to import, access or otherwise use only permission-based lists. Purchased lists may not be used.
- 12.2. You are responsible for monitoring, correcting, processing unsubscribe requests within 5 days, and updating the mobile numbers to which messages are sent through your Swift account.
- 12.3. SMS Messages that you send through the Services may generate abuse complaints from recipients. You are responsible for ensuring that your SMS campaigns do not generate a number of abuse complaints in excess of industry norms. Swift, in its sole discretion, shall determine whether your level of abuse complaints is within industry norms, and its determination shall be final, binding and conclusive for all purposes under these Terms.
- 12.4. Swift, at its own discretion, may immediately disable your access to the Services without refund if Swift believes in its sole discretion that you have violated any of the SMS and permission practices listed above.

13. Use of the Services

You the client will not violate or attempt to violate the security of our website or the Services. You will not hack into the website, Swift's computer systems or the computer systems of other users of the Services. Hacking means unauthorised access, malicious damage and/or interference and includes, without limitation, mail bombing, propagating viruses, worms or other types of malicious programs, deliberate attempts to overload a computer system, broadcast attacks or any other method designed to damage or interfere with the operation of a computer system or website.

14. Website and Services availability

- 14.1. From time to time down-time, either scheduled or unscheduled, may occur. Swift will work within reason to ensure this amount of down-time is limited. Swift will not be held liable for the consequences of any down-time.
- 14.2. In order for us to provide you with the best services possible there will be, from time to time, scheduled short periods of unavailability to allow us to conduct essential maintenance on our systems, servers and platforms. When such a scheduled maintenance is required, we will ensure we provide you with at least 48 hours notice. We promise to conduct any maintenance required in a manner that will minimise any potentially adverse impact upon our ability to provide Services. Where we expect any maintenance may have an adverse effect on our ability to provide you with our services, we will use all reasonable measures to perform the maintenance between the hours of 10.00 pm and 6.00 am local regional time.
- 14.3. In the event that we are required to undertake unscheduled maintenance, Swift will provide you with as much notice as we are reasonably able to provide, detailing:
 - a) the expected duration of the unscheduled maintenance
 - b) the likelihood of any adverse effect such unscheduled maintenance may have on our services.Unscheduled maintenance is defined as any essential maintenance that Swift undertakes on our own platform, for which we cannot provide you with at least 48 hours' notice.
- 14.4. Swift cannot guarantee that any file or program available for download and/or execution from or via the Services is free from viruses or other conditions which could damage or interfere with data, hardware or software with which it might be used. You assume all risk of use of all programs and files associated with the Services, and you release Swift entirely of all responsibility for any consequences of its use.

15. Force Majeure

Swift will not be liable by reason of the failure in the performance of obligations under these Terms and Conditions by reason of strikes, riots, fire, explosions, act of God, war, governmental action, or any other cause which is beyond Swift's reasonable control.

If you have any questions or queries about our Terms and Conditions of Service, please contact us.