

# Standard Terms and Conditions



## Definitions

In this Agreement:

"Agreement" shall mean the contract between MyRuby and the Client for the provision of Services.

"Client" shall mean the person, firm or company who purchases Services from MyRuby.

"Monthly Tariff" shall mean the monthly fee which is payable by the Client to MyRuby as advised by MyRuby to the Client, and in accordance with MyRuby's current price list.

"MyRuby" shall mean MyRuby Limited incorporated and registered in England and Wales with company number 05460811 whose registered office is at 2 The Centre, The Crescent, Colchester Business Park, Colchester, Essex CO4 9QQ.

"Recruitment Fee" shall mean an amount equal to £5,000.

"Services" shall mean any services provided by MyRuby to the Client.

"Payment On Account" shall mean the amount requested by MyRuby, from the Client after the completion of any Free Trial Period and prior to the commencement of paid service. The amount requested will remain on the Client's account as a pre-payment, refundable against the Client's final invoice.

"Free Trial", shall mean a 1 week provision of the MyRuby Service, at no cost to the Client but subject to a fair usage limit of 100 calls and a, refundable, £1 credit card payment to verify the Client's identity.

A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1. This Agreement shall be for an initial period of one free trial week and thereafter three months and, after that, it shall continue in force until it is terminated by either the Client or MyRuby giving one month's notice to the other, such notice to begin:
  - (a) on or after the date of expiry of the initial three month period; and
  - (b) on the last day of a month;unless the Agreement is terminated in accordance with clause 22.
2. MyRuby will provide the Services to the Client subject to this Agreement. Any changes or additions to this Agreement must be agreed in writing by an authorised representative of MyRuby.
3. The Services shall be provided in accordance with MyRuby's current brochure or other published literature relating to the Services from time to time, subject to this Agreement. MyRuby may correct any typographical or other errors or omissions in any brochure, promotional literature, quotation or other document relating to the provision of the Services without any liability to the Client.
4. MyRuby may at any time without notifying the Client make any changes to the Services which are necessary to comply with any applicable statutory requirements, or which do not materially affect the nature or quality of the Services.
5. The Payment On Account is payable by credit card, prior to the commencement of the service. The Monthly Tariff is due and payable monthly by direct debit. The Client will be notified via e-mail of the exact amount and the date on which funds will be debited from the Client's nominated account. If this Agreement commences part way through a month then the first direct debit payment shall include the proportion of the Monthly Tariff payable for the part of the month, calculated on a pro-rata basis,
6. 14 days before the Monthly Tariff is due for payment, an invoice will be delivered to the Client in respect of charges for the previous month. These charges are due and payable by direct debit.
7. All invoices delivered to the Client will be treated as agreed unless the Client notifies MyRuby of any discrepancies within 7 days of the date of the invoice.
8. All charges quoted to the Client for the provision of the Services shall be exclusive of VAT, for which the Client shall be additionally liable at the prevailing rate.
9. Without prejudice to any other right or remedy that it may have, MyRuby shall be entitled to charge the Client interest at the rate of 3% per month on accounts in excess of 30 days overdue. In addition MyRuby reserves the right to charge a £25 administration fee on any payments which are not honored by the Client's bank.
10. If the Client fails to make payment by the due date then, without prejudice to any other right or remedy that it may have, MyRuby shall be entitled to suspend all or part of the provision of Services to the Client.
11. Charges relating to call diversion facilities are payable by the Client directly to their telephone services provider.
12. MyRuby reserves the right to amend the cost of the provision of Services at any time by giving the client one month's notice.
13. The Client shall be responsible (at its own cost) for ensuring that:
  - (a) the divert facility is set up properly by their network provider;
  - (b) all hardware and software used to receive messages is set up properly by its network provider.
14. The Client shall provide MyRuby with all the information and support reasonably required by MyRuby to provide the Services.
15. MyRuby will treat all information received from the Client and all calls and messages for the Client as strictly confidential unless otherwise required by law. The Client acknowledges and agrees that personal data will be processed by and on behalf of MyRuby in connection with the provision of the Services and MyRuby confirms that it will comply with the provisions of the Data Protection Act 1998.
16. The Client accepts and acknowledges that malfunctioning or defective equipment may cause interruption of the Services, that atmospheric conditions under special circumstances may cause interference to the provision of the Services and that calls and data may be routed over national and international public telecommunication systems and other networks beyond the control of MyRuby.
17. MyRuby reserves the right to suspend all or part of the provision of Services to the Client and to recover damages or to pursue any other remedy available to it in respect of any breach by the Client of this Agreement.
18. If the Client, at any time from the date of this Agreement to the expiry of six months after the termination of this Agreement, seeks to solicit or entice away from MyRuby or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of MyRuby in the provision of the Services, then the 'recruitment fee' will become payable. The Client unequivocally agrees to pay the 'recruitment fee' within 7 days of the invoice being issued.
19. Except in respect of death or personal injury caused by MyRuby's negligence, MyRuby shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this Agreement or any indirect, special or consequential loss or damage (whether for loss of profits or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of MyRuby, its employees, agents or otherwise) which arise out of or in connection with the supply of Services or their use by the Client, and the entire liability of MyRuby under or in connection with this Agreement shall not exceed one month's Monthly Tariff. MyRuby shall not in any event accept any liability for any equipment or services which are provided by third parties including but not limited to telecom services providers, facsimile machines, internet services providers and mobile telephone network providers.
20. MyRuby shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Client which are incomplete, incorrect, inaccurate or illegible, or arising from their late arrival or non-arrival or any other fault of the Client.,
21. The Client agrees not to use the Services for any unlawful immoral or improper purpose and acknowledges that such use constitutes grounds for immediate termination of the Services by MyRuby.
22. MyRuby shall be entitled forthwith to terminate this Agreement if:-
  - (a) the Client commits any continuing or material breach of any of the provisions of this Agreement and, in the case of such a breach which is capable of remedy, fails to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
  - (b) an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Client;
  - (c) an order is made or a resolution is passed for the winding-up of the Client; or
  - (d) the Client makes any voluntary arrangement with its creditors or becomes subject to an administration order;
  - (e) an order is made or a petition is presented for the bankruptcy of the Client;
  - (f) the Client is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (g) the Client ceases, or threatens to cease, to carry on business; or
  - (h) any event analogous to those described in clauses 22(b) to (g) occurs in relation to the Client in any jurisdiction in which the Client is incorporated or resident or carries on business.
23. MyRuby shall not be liable to the Client or deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of MyRuby's obligations in relation to the Services, if the failure or delay was due to any cause beyond MyRuby's reasonable control including without limitation any acts of God, war, riot, civil commotion, malicious damage, explosion, flood, tempest, fire or accident, or acts, restrictions, regulations, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, strikes, lock-outs or other industrial actions or trade disputes, difficulties in obtaining raw materials, labour, fuel, parts or machinery, failures or interruptions in the supply of power including failures or interruptions suffered by network providers, breakdown in machinery or equipment or default of suppliers or sub-contractors.
24. MyRuby may assign this Agreement and its rights and obligations under this Agreement provided that it gives one month's notice to the Client.
25. Any notice required or permitted to be given by either party to the other under this Agreement shall be in writing sent by post, email or facsimile addressed to that other party at its registered office or usual place of business.
26. No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either party of any breach of this Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
27. If any provision of this Agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected.
28. This Agreement shall be governed by the laws of England and the Client agrees to submit to the exclusive jurisdiction of the English Courts.