



Terms and Conditions for Purchases from Mobilicity Online Store

102004

E-Store Terms and Conditions 102004

This agreement is proprietary to Data & Audio-Visual Enterprises Wireless Inc. "Mobilicity" and the logo are trademarks of Data & Audio-Visual Enterprises Wireless Inc. Distribution, copy or any other use of this agreement and/or the trademarks without the written consent of Data & Audio-Visual Enterprises Wireless Inc. is strictly prohibited.

AGREEMENT

- (1) **Please read these Terms and Conditions carefully.** They set out the agreement between you and Mobicity for using and making purchases on our E-Store. In this Agreement, when we say “we”, “us” or “Mobicity”, it means Data & Audio-Visual Enterprises Wireless Inc. operating as Mobicity, and when we say “you”, it means you, our customer or the individual using or making the purchase on our E-Store.
- (2) **You accept and acknowledge receipt of this agreement by performing any of the following: (a) clicking “I Accept” or (b) using or making a purchase on our E-Store (collectively “Your Acceptance”).**
- (3) **By Your Acceptance, you represent to us that you live in Canada (outside of the Province of Quebec) and are 18 years of age or over (19 years of age or over in British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut and Yukon Territory) and hold a valid credit or debit card in your name.**
- (4) **By Your Acceptance, you further acknowledge that you have reviewed and agree to abide to the terms and conditions stated in the Services Terms of Use including all terms related to Device(s).**
- (5) You agree and acknowledge that the products sold on our E-Store (“Products”) are for use with the services provided by Mobicity only. Products must not be resold, transferred or otherwise distributed for commercial purposes.
- (6) You should read this Agreement together with any other existing and future written agreements that you have with us and any terms, conditions or disclaimers provided on our web site, including the Web Terms and Conditions, the Services Terms and Conditions and the Privacy Policy. For example, our Services Terms and Conditions will include terms that govern your use of our Services or Devices. If there is a conflict between a term in this Agreement and any other written agreement with us, the term of the other agreement will apply to the extent necessary to resolve the conflict.

PLACING AN ORDER

- (1) You place orders by following the instructions set out on the E-Store. You must include all mandatory information with your order.
- (2) You undertake that any information you provide to us is fully complete and accurate. Without limiting the foregoing, you undertake that (a) you are legally and fully entitled to use any credit or debit card for the purpose of making the purchase and (b) sufficient funds are available to cover the total costs of your purchases including any applicable shipping charges or taxes. You agree to provide Mobicity, upon our request, formal documentary identification from you or verification of your right to use any credit or debit card to make a purchase on the E-Store.



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- (3) Mobicity reserves the right to modify the credit or debit cards types that are acceptable on the E-Store.
- (4) You may not use more than one card per order.

ACCEPTANCE OF YOUR ORDERS

- (1) We will try to ensure that all information (including prices and specifications) displayed on our websites are correct and up to date but do not and cannot guarantee that they are. We may update the information displayed from time to time without notifying you. For greater certainty, you are required to ensure and you represent to us that prior to placing an order, you have checked all relevant information about the Products you have selected. We cannot confirm the price of a Product until your order is accepted. All products and services advertised are subject to availability.
- (2) Information (including prices, model number, brand, pictures, specifications and promotions) displayed on the E-Store does not constitute an offer to contract or enter into an agreement and constitutes an invitation to treat only. For greater clarity, all orders submitted by you are an offer by you to contract with Mobicity and are subject to acceptance by Mobicity.
- (3) The only time that we shall be deemed to have accepted your order / offer is when we ship you the relevant Product(s). This happens either when either (a) we physically ship you the Product(s) or (b) notify you that we are shipping or have shipped you the Product. For greater clarity, we shall not be deemed to have accepted your offer / order even if we confirmed availability of the Product(s) or if we acknowledged receipt of your order.
- (4) Mobicity may refuse your order for any reason at our sole discretion. Some of these reasons may include: (a) if the bank or credit card company refuses to authorize the debit or credit payment, (b) if the Product(s) you ordered are out of stock, (c) if we suspect or have reason to suspect that the information you provided may be incomplete or inaccurate, (d) if your order included an error on the information we display our website (including mispricing), or (e) if your order was made pursuant to an expired promotion.
- (5) We may but are not obligated to limit the monetary value of orders made by (a) each customer, (b) each credits or debit cards, (c) each single order or transaction, (d) each day or (e) any other ways in our sole discretion including any combinations of the foregoing.
- (6) We may limit the number of Product(s) purchased (a) by each customer, (b) using each credit cards or debit cards, (c) by each single order or transaction, (d) by each day, or (e) any other ways in our sole discretion including any combinations of the foregoing.

DELIVERY

- (1) You may only specify one "Delivery Address" per order. In some incidents, we may limit your Delivery Address to either the billing address on the credit card or the address on your account with Mobicity.

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- (2) We will attempt to deliver your order within three (3) business days. However, delays may occur, including where the items you have ordered are out of stock. We are not liable to you for any delay in making deliveries. Unless otherwise agreed, all orders will only be fulfilled within Canada and no Products will be supplied or delivered overseas or to PO boxes.
- (3) You should note that Products will be delivered to the Delivery Address, based upon the signature of any occupant of that address at the time of delivery. We are not responsible for ensuring personal delivery to you.
- (4) Delivery of Products will be subject to the terms and conditions as set out by the courier or delivery company from time to time.

PRICES AND PAYMENTS

- (1) Prices for Products are quoted in Canadian dollars. All prices are exclusive of all applicable taxes, duties, governmental or regulatory fees, surcharges, levies or delivery charges. We reserve the right to change our prices for Products or price plans for Services at any time from time to time, including correcting price errors.
- (2) You may pay by credit or debit card. We will accept payment for Products according to any instructions given by you, or appearing to us to have been given by you. All credit and debit card purchases are subject to validation and credit checks.

GENERAL PROVISIONS

- (1) In this Agreement (i) (y) the words “including” and “includes” mean “including (or includes) without limitation” and (z) the phrase “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”, and (ii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”.
- (2) All references in this Agreement to dollars or to “\$” are expressed in Canadian currency unless otherwise specifically indicated.
- (3) Whenever payments are to be made or an action is to be taken on a day which is not a business day, such payment shall be made or such action shall be taken on or not later than the next succeeding business day.
- (4) We shall not be responsible for delays or failures of deliveries or for losses or damages resulting from force majeure, including without limitation, industrial disputes, riots, mobs, fires, floods, wars, embargo, shortages of labour, power, fuel, means of transportation or general lack of necessities (whether relating to the Company or its suppliers or subcontractors) or resulting from regulations or order of any government or governmental agency or any other circumstance beyond our control.

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- (5) This Agreement shall be binding on and shall enure to the benefit of the parties and their respective successors and permitted assigns. Mobicity shall have the right, at Mobicity's discretion, to assign this Agreement.
- (6) If any provision of this Agreement is determined to be illegal, invalid or unenforceable, by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect, and such invalid or unenforceable provision shall be construed by limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable law.
- (7) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar); nor shall such waiver be binding unless executed in writing by the party to be bound by the waiver. No failure on the part of either party to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.
- (8) Time is of the essence of this Agreement.
- (9) The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. There are no representations, warranties, conditions or other agreements, express or implied, statutory or otherwise, oral or written, between the parties in connection with the subject matter of this Agreement, except as specifically set forth herein.
- (10) Except where prohibited by the laws of your jurisdiction, this site will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the principles of conflicts of law but the reference to such laws shall not, by conflict of law rules or otherwise, require the application of the law of any jurisdiction other than the Province of Ontario, and shall be construed and treated in all respects as an Ontario contract. The parties agree that each party irrevocably attorns and submits to the exclusive jurisdiction of the Courts of the Province of Ontario in respect of all matters arising under and in relation to this Agreement, and waives objection to the venue of any proceeding in such court or that such court provides an inconvenient forum.
- (11) The parties waive the application of any laws or rule of construction providing that ambiguities in the Agreement or any other document shall be construed against the party drafting the Agreement or such other document.