

Terms and Conditions

Yahoo! Messenger for SMS

These terms (as amended from time to time), Telstra's Our Customer Terms ("OCT") (as amended from time to time) and the Yahoo! Terms (Yahoo's terms and conditions of use of the Yahoo! Instant Messenger) govern Your use of the Yahoo! Messenger for SMS. To the extent of any inconsistency between these terms and the OCT, these terms will prevail. If you are a customer who accesses the Telstra CDMA network through resellers of Telstra's CDMA network, then you may be subject to separate terms and conditions in relation to this service.

1 How do I use Yahoo! Messenger for SMS?

- 1.1 If You are a registered user of Yahoo! Messenger and You are a post-paid or prepaid Telstra Mobile GSM or CDMA customer, You will be able to access Yahoo! Instant Messenger via your Telstra Mobile phone.

2 What is Yahoo! Messenger for SMS?

- 2.1 Yahoo! Messenger for SMS allows users to access and use Yahoo! Instant Messenger and send Personal Messages from your:

- (a) Telstra Mobile phone to another Telstra Mobile phone;
- (b) Telstra Mobile phone to a Yahoo! Messenger-enabled PC; and
- (c) Yahoo! Messenger-enabled PC to a Telstra Mobile phone.

- 2.2 Yahoo! Messenger for SMS allows users to access and use Yahoo! Instant Messenger and receive Personal Messages from:

- (a) a Telstra Mobile phone to another Telstra Mobile phone;
- (b) a Telstra Mobile phone to a Yahoo! Messenger-enabled PC; and
- (c) a Yahoo! Messenger-enabled PC to a Telstra Mobile phone.

3 What I can send using Yahoo! Messenger for SMS?

- 3.1 You will be able to send messages of up to 153 characters of text (including spaces) that comply with the standard GSM alphabet.

4 Does Telstra guarantee access to Yahoo! Messenger and the Telstra Mobile Service?

- 4.1 Telstra does not guarantee that Yahoo! Messenger for SMS will be accessible at all times and fault-free.

- 4.2 If the Telstra Mobile Services You are using to access Yahoo! Messenger for SMS are suspended or disconnected, either temporarily or permanently, You will not be able to access Yahoo! Messenger for SMS during that time.

- 4.3 Access to Yahoo! Messenger for SMS is subject to Telstra's network capacity restrictions. We reserve the right to alter access to Yahoo! Messenger for SMS without notice to You, including the exercise of Telstra's rights under clause 7.

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- 4.4 In addition to Telstra's rights under the OCT, Telstra may suspend or restrict access to Yahoo! Messenger for SMS at any time and for any reason, including, if:
- (a) Telstra reasonably believes that network traffic generated by Yahoo! Messenger for SMS is impairing, interfering with or damaging Telstra's network; or
 - (b) Telstra needs to do maintenance to Telstra's network; or
 - (c) Telstra needs to protect Telstra's interests or Telstra's systems.
- 4.5 Telstra's customer service guarantee for Telstra Mobile Services does not apply to Yahoo! Messenger for SMS.

5 What are the Charges for Yahoo! Messenger for SMS?

5.1 Telstra will charge You the charges in clause 5.2 for use of Yahoo! Messenger for SMS to Your Telstra Mobile GSM or Telstra Mobile CDMA account, nominated by You in Your Yahoo! Messenger for SMS application.

5.2 Telstra will charge You for messages:

- (a) You send using Yahoo! Messenger for SMS at a rate per message per intended recipient as set out in the SFOA as amended from time to time, irrespective of whether the message is successfully delivered to, or received by, the intended recipient. Sent messages will be charged at standard SMS rates applicable under Your Telstra plan and may be included in Your "Included Calls" or "Included SMS" plans if applicable under Your contract.; and
- (b) sent to Your mobile handset from other users of Yahoo! Instant Messenger at 25 cents (GST inclusive) for each Yahoo! Messenger for SMS message irrespective of whether the message is successfully delivered to, or received by You. Such charges will not be included in Your "Included Calls" or "Included SMS" plans. New World loyalty bonuses cannot be used on charges for messages sent to You using Yahoo! Messenger for SMS.

5.3 If the intended recipient of Your message:

- (a) has not turned on their mobile handset;
- (b) has not signed in to Yahoo! Messenger for SMS;
- (c) is not in a mobile service area;
- (d) does not have You in their "Friends" list;
- (e) has a mobile handset which is full of messages or otherwise out of memory; or
- (f) no longer has a Telstra Mobile Service or other mobile service capable of receiving Yahoo! Messenger for SMS messages, then We will still charge You at the time that the message is delivered or after 7 days of attempting to deliver the message, whichever is the earlier.

6 Are there any warranties that apply to my use of Yahoo! Messenger for SMS via my Telstra Mobile?

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- 6.1 Certain legislation (such as the Trade Practices Act 1974) may imply into these terms certain conditions and warranties ("Implied Terms"). If any Implied Terms are capable of exclusion, they are excluded.
- 6.2 If any Implied Terms are not capable of exclusion but are capable of limitation, then Telstra limits its liability for breach of those Implied Terms where it is fair and reasonable to do so, to re-supplying access to Yahoo! Messenger for SMS.
- 6.3 Subject to clauses 6.1 and 6.2, Telstra expressly excludes all liability to You for any breach of any express term, Implied Term, any other implied term or any negligence on the part of any of Telstra's employees, contractors or agents.
- 6.4 The provisions of Telstra's SFOA containing warranties and representations in relation to fault repair, restoration of Telstra's GSM or CDMA services do not apply to Yahoo! Messenger for SMS.

7 Can Telstra use my Personal Information?

- 7.1 You agree that Telstra may use and disclose personal information about You for providing services to You and for the improvement of customer service, including by means of research, marketing (direct or otherwise), product development and planning, except where such use or disclosure is not permitted by the Privacy Act 1988.
- 7.2 You acknowledge that the Telstra Mobile GSM or Telstra Mobile CDMA number You are using to access Yahoo! Messenger for SMS may appear in any messages You send.
- 7.3 You acknowledge that the Telstra Mobile GSM or Telstra Mobile CDMA number You are using to access Yahoo! Messenger for SMS will be disclosed by You to Yahoo! when You use Yahoo! Messenger for SMS.

8 How can Telstra cancel Yahoo! Messenger for SMS?

- 8.1 If Telstra cancels Your Telstra Mobile Service then Your Yahoo! Messenger for SMS registration is also cancelled. In these circumstances You will be unable to send or have messages sent to Your mobile handset using Yahoo! Messenger for SMS. Telstra cannot cancel Your registration with Yahoo! Instant Messenger.
- 8.2 Telstra may cease providing access to Yahoo! Messenger for SMS, or cancel Your access to Yahoo! Messenger for SMS for any reason without notice to You. Telstra will not be liable for any loss or damage You may suffer resulting from Telstra ceasing to provide access to Yahoo! Messenger for SMS or cancellation of access to Your Yahoo! Messenger for SMS.
- 8.3 Without limiting clause 8.2, Telstra may terminate Your access to Yahoo! Messenger for SMS via Your Telstra Mobile phone if:
- (a) You fail to pay Your Telstra bills and Telstra suspends, either permanently or temporarily, Your Telstra Mobile Service; or
 - (b) You breach these terms; or
 - (c) You no longer have a Telstra Mobile GSM or Telstra Mobile CDMA service.

If Telstra:

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- (a) cancels Your access to Yahoo! Messenger for SMS; or
- (b) ceases providing access to Yahoo! Messenger for SMS for any reason,

You will still be liable for all Telstra Mobile and Yahoo! Messenger for SMS services which have been used. No refunds will be made by Us to You.

9 How can Telstra vary these Terms?

- 9.1 Telstra may vary these Terms at any time.

10 What is Telstra's liability for the service?

- 10.1 You send Yahoo! Messenger for SMS messages at Your own risk. Without limiting any other terms, Telstra will not be liable to You if You suffer loss or damage as a result of:
 - (a) or in connection with Your use of Yahoo! Messenger for SMS;
 - (b) a message not being secure;
 - (c) the content of Yahoo! Messenger for SMS messages You send or access;
 - (d) a failure to deliver a Yahoo! Messenger for SMS message in a timely manner; nor
 - (e) any failure of Yahoo! Messenger for SMS to be continuous or fault-free.

11 What else do I need to know?

- 11.1 You may not transfer Your rights or obligations under these terms without Telstra's prior written consent.
- 11.2 Any failure or delay in exercising a right under these terms does not constitute a waiver of that right unless the right is expressly waived in writing signed by the waiving party.
- 11.3 These terms are governed by the law of the State of Victoria, Australia.

12 Interpretation

In these terms:

CDMA means Code Division Multiple Access which is an alternative digital technology to GSM for cellular phones.

GSM means Global System for Mobiles which is a digital technology for cellular phones.

Personal Message means, in relation to a Yahoo! Messenger for SMS message, a message sent using Yahoo! Instant Messenger that does not have as its primary purpose, a commercial purpose.

SFOA means the applicable sections of Our Standard Forms of Agreement, as amended from time to time.

Telstra refers to Telstra Corporation Limited.

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Telstra Mobile Service means mobile phone services supplied by Telstra using its Telstra Mobile network.

You and **Your** refers to the person who wishes to access Yahoo! Instant Messenger via Yahoo! Messenger for SMS

YOUR ACCEPTANCE

By accessing the Yahoo! Messenger for SMS service, You acknowledge that You will abide by these terms and conditions.