

 <p>P.O.Box 60434-00200, City Square, Nairobi, Kenya</p>	  <p>Bytronics Computers Ltd Your SMART business partner</p>	 <p>Fixed. 25420 2727520,2719213 Mobile. 725517852, 7337569 60 Wireless. 254202046915</p>
<p align="center">Email. bws@bytronics.co.ke, Web. www.bytronics.co.ke</p>		

M-Seller Terms and Conditions of Use

1. Welcome

M-seller is a service that allows subscribers to sell goods through their mobile phones and receive payment through mobile money transfer services, cash and cheque.

The following terms and conditions govern the access, use, the content and services of M-Seller subscription service.

2. Acceptance of Terms

2.1 You will be deemed to have accepted these terms by completing the subscription form.

2.2 The terms can be accessed from the service web portal.

3. Your use of the M-Seller

3.1 Registration for and use of M-seller

(a) In order to access or continue to use M-seller Services, you will be required to provide information about yourself or organisation (such as identification or contact details).

(b) You shall use M-seller only for purposes that are permitted by

- (i) These terms & conditions
- (ii) Any applicable Kenyan law or regulation.

(c) You shall not to access (or attempt to access) any of the Services through any automated means (including use of scripts or web crawlers) and shall ensure that you comply with the instructions set out in any part of these terms

(d) You shall not engage in any activity that interferes with or disrupts the Services offered by **M-seller** (or the servers and networks, which are connected to the Service).

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(e) You shall not reproduce, duplicate, copy, sell, trade or resell the M-seller Service for any purpose.

(f) You shall be solely responsible for (and that Bytronics Computer Limited has no responsibility to you or to any third party for) any breach of your obligations under these terms and for the consequences (including any loss or damage which Bytronics Computer Limited may suffer) of any such breach.

3.2 Service Access Authorization and Subscriber data confidentiality

(a) The online sales service has a comprehensive security and it is your responsibility to ensure that security credentials assigned to you including a subscriber number and administrative security rights and privileges are not bleached by users under your responsibility and that Bytronics Computers Ltd is not responsible for any bleach of data privacy and confidentiality resulting from abuse of administrative security rights and privileges by your users.

(b) You shall disclose to Bytronics Computer Limited online sales service Administrative security rights for maintenance and support purposes only.

4. Prohibited use of M-Seller

4.1 You, and any persons you allow to use M-Seller through your access to the Service, shall not allowed to:

(a) Copy, disclose, modify, reformat, display, distribute, licence, transmit, sell, perform, publish, transfer, link to, reverse engineer or decompile (except to the extent expressly permitted by applicable law) or otherwise make available the Service or any part thereof except as set out in these terms;

(c) Replicate the service.

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- (d) Use the Service for storing, reproducing, transmitting, communicating or receiving any Offending Material. For the purpose of these terms Offending Material means any content transmitted using the Service that is:
- (i) In breach of any law, regulation or code of practice invoked by Bytronics Computers Limited, industry regulator or any other competent authority or any policy adopted by Bytronics Computers Limited with regard to the acceptable use of the Service, or
 - (ii) Abusive, indecent, defamatory, obscene, pornographic, offensive or menacing (or that has the effect (as may be contemplated by a reasonable person) of causing the recipient to feel so harassed, abused or offended; or
 - (iii) Designed to cause annoyance, inconvenience or needless anxiety to any person; or
 - (iv) In breach of confidence, intellectual property rights, privacy or any right of a third party.
- (e) Hack into, make excessive traffic demands, probe or port scan other computers, deliver viruses, mail bombs, chain letters or pyramid schemes or otherwise engage in any other behaviour intended to inhibit other users from using and enjoying the Service;
- (f) Collect and process others' personal data except in accordance with applicable data protection law;
- (g) Advertise or offer to sell goods or services on the pretext that the same are endorsed, offered for sale or originate from Bytronics Computers Limited;
- (h) Infringe any other person's intellectual property rights;
- (i) Use the Service to harvest or collect information about users of the Service or to post or otherwise distribute unauthorized or unsolicited correspondence.

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(j) Use the Service or the Content in any way that we in our sole and absolute discretion consider objectionable, inappropriate, likely to injure our brand and reputation or otherwise unacceptable;

(k) Use the Service content coached, phrased or written in such a manner as to give an impression that the correspondence is from Bytronics Computers Limited.

4.2 You are responsible for any misuse of the Services even if it is by another person using your access to the Service.

4.3 We reserve the right to block, remove, edit or refuse to post any material that you attempt to transmit through the Service that we deem to be in contravention of these terms and to take such other action, as we in our sole and absolute discretion consider necessary to prevent or remedy any breach of these terms. If you become aware of any content or material circulated using the Service and that is in breach of these terms then we encourage you to promptly inform us by contacting our customer care service. We are not responsible or liable for any failure to remove, block or delay in removing, any such infringing content or material or third party material from the Service or for any good faith but wrongful removal of third party material.

5. Use of your information

Bytronics Computers Limited may hold and use information provided by you for a number of purposes, which may include:

- (a) Carrying out any activity in connection with a legal, governmental or regulatory requirement on Bytronics Computers Limited in connection with legal proceedings or in respect of crime or fraud prevention, detection or prosecution.
- (b) Monitoring or recording of your communications for Bytronics Computers Limited's business purposes such as quality control and training, prevention of unauthorised use of

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Bytronics Computer Limited's telecommunication system and ensuring effective systems operation in order to **prevent or detect crime**.

6. Cost of using the M-seller

6.1 Equipment

You will need to obtain all equipment (devices) necessary to access the M-seller. If your equipment does not support the relevant technology allowing you to access the Internet then you will not be able to use this Service. M-seller uses Windows Mobile phones, PDAs (personal data assistant) and mobile thermal printers for printing Kenya Revenue Authority (KRA) fiscal compliant receipt provided the subscriber KRA approved Electronic Tax Register is integrated. Bytronics Computers Ltd provides also optional hosting of sales data in your own server(s) at a cost. However, the service shall still be accessed from Bytronics Computers Ltd servers.

6.2 Cost and Charges

Bytronics Computers Limited will currently not charge you to sign up/register for the **TRIAL** Services,

However, **Bytronics Computer Limited shall charge for access on all the services that M-seller incorporates once the trial period is over, subject to a clear notice when accessing Services that are charged.**

Furthermore, you will be liable for the cost of accessing the Internet at such rates as may be prescribed by your service providers from time to time.

7. Service delivery

7.1 Although Bytronics Computers Limited will take all reasonable steps to ensure that the Services are available to you at all times, it **cannot guarantee a continuous** fault free service. The quality and availability of Services may be affected by factors including

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(but not limited to) acts of God, planned maintenance or rectification work, or your equipment may interfere adversely with the quality and provision of the Services. We therefore do not warrant and shall not be liable for any delay or failure to send, receive or process messages, or any other communications or the quality of the materials received.

7.2 You accept and recognise that the internet is not a secure environment and as such communications may be intercepted or accessed by those other than the intended recipient, manipulated, distorted, adapted, modified, stored or forwarded by others to you which may give unauthorised persons access to information stored on your PC or mobile device or may cause damage to your PC or mobile device. Bytronics Computers Limited accepts no liability for any loss or damage resulting from the receipt of any communications from any third parties. You will be required to take reasonable precautions while accessing the Internet that may include installation of virus, spamming, and hacking and spying prevention software among other necessary measures.

7.3 Bytronics Computers Limited may establish limits concerning the use of the Services for example, the maximum capacity allocated to you for storage and/or transmission of Content on/through the Network which you access via the M-seller subscription

8. M-seller Intellectual Property Rights

All copyright, trade marks, patents and other intellectual property rights in any material or content (including without limitation software, data, applications, information, text, photographs, graphics, logos, symbols, artwork and other material or moving images with the exceptional of your sales information and data) contained in or accessible via the Services ("**Content**") is either owned by us [Bytronics Computers Limited] or has been licensed to us by the rights owner(s) for use as part of the Services. You are only allowed to use the Service [M-seller] as set out in these terms. If you wish to use the Content for any other purpose then you will be required to obtain the prior written permission of the owner of the rights in that material. **All rights are expressly reserved.**

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Having noted the above you shall not be entitled in respect of any Content (wholly or partly):

- 8.1 to pass it on to third parties or to allow third parties to access it unless and to the extent expressly permitted; or
- 8.2 to change, edit, modify, reformat or adapt it in any other way.

9. Liability

We shall not be liable for any loss of use, profits or data or any indirect, special or consequential damages or losses, whether such losses or damages arise in contract, negligence or tort, including without limitation to the foregoing any losses in relation to:

- Your use of, reliance upon or inability to use our Service and/or Content;
- The deletion with or without notice or cause of any of your data or information stored on M-seller;
- Any loss of your data or material resulting from third party network delays, non-deliveries, missed deliveries, service interruptions or a failure, suspension or withdrawal of all or part of the Service at any time;
- the removal from the Service of any material sent or posted by you on or via the Service and/or the blocking or suspension of your access to the Service or any part of it in accordance with these terms.

10. Indemnity by You

You irrevocably agree to indemnify us (Bytronics Computers Limited Limited), and any of our third party providers (“together indemnified persons”) fully against and to hold the indemnified persons harmless on demand from all losses, costs, proceedings, damages, expenses (including reasonable legal costs and expenses) or liabilities howsoever incurred by the indemnified persons as a result of any claim by a third party resulting from your use

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of the Service (or use of the Service by anyone who accesses the Service via your password) in breach or non-observance of these terms. We shall notify you of any claim that we or any of the other indemnified persons receives and you hereby agree to provide us and/or any of the indemnified persons with full authority to defend or settle such claims and shall provide us and/or any of the indemnified persons with all reasonable assistance necessary to defend such claims, at your sole expense.

11. General

- 11.1 Bytronics Computers Limited reserves the right to vary the terms and conditions of this Agreement at any time.
- 11.2 The Laws of Kenya shall govern the construction, validity and performance of these terms and conditions in all respects.
- 11.3 If any provision of these terms and conditions are declared by any judicial or other competent authority to be void, void able, illegal or otherwise unenforceable, such a term shall be amended or at the discretion of Bytronics Computers Limited it may be severed from these terms and conditions and the remaining provisions of these terms and conditions shall remain in full force and effect.
- 11.4 Except where this terms and conditions provides otherwise, the rights and remedies contained in it are cumulative and not exclusive to rights or remedies provided by law. The failure by Bytronics Computers Limited to enforce at any time or for any period any one or more of the terms and conditions shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions.
- 11.5 No delay or failure by Bytronics Computers Limited shall constitute a breach or give rise to any claim for damages or loss of anticipated profits if such delay or failure is caused by **force majeure**.

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- 11.6 **Force majeure** shall mean an occurrence which is beyond and without fault or negligence of Bytronics Computers Limited and which Bytronics Computer Limited is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to, acts of God or of the public enemy, appropriation of confiscation of facilities, terrorists activity or other catastrophe, strike or any other concerted acts of employees or other similar occurrences.
- 11.7 You shall not assign these terms and conditions to a third party. Any unauthorized assignment or attempt to assign will automatically terminate this Service. Bytronics Computers Limited may assign these terms and conditions in whole or part to any third party at its discretion.
- 11.8 You acknowledge and agree that in entering into this Agreement you do not rely on, shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to these terms and conditions or not) other than as expressly set out in these terms and conditions as a warranty. Nothing in this clause shall, however, operate to limit or exclude liability for fraud.

12. Suspensions and Termination of the Service

- 12.1 We may suspend, vary or terminate your use of the Service for any period during which:
- a. Bytronics Computers Limited is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;
 - b. Bytronics Computers Limited reasonably suspects or believes that you are in breach of these terms and conditions;
 - c. Such a suspension or variation is necessary as a consequences of technical problems or for reasons of safety;
 - d. In order to update or upgrade the contents or functionality of the Service from time to time;

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- e. Upon any detection of abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Service;
- f. Where you remain inactive for any period of time chosen by us in our reasonable discretion or where we believe, in our sole and absolute discretion;
- g. Bytronics Computers Limited suspends the provision of the Services for its commercial reasons or for any other reason as it may determine in its absolute discretion.

12.2 If we suspend your access to the Service to investigate or prevent a potential breach of these, terms shall continue to apply during such period of suspension and you shall remain liable for any charges payable by you during such period.

12.3 If your access to the Services is terminated for any reason then we may proceed to delete all information, emails and data that you have stored on the Service. We therefore recommend that you save copies of all information that you wish to keep on another storage device apart from the Service.

12.4 If we terminate your access to the Service for material breach of these terms (including non-payment of any sums due by you-where applicable) then you shall remain liable for any such sums and for any other sums which you have contracted to pay prior to such termination, whether or not such charges relate to Services to be provided before or after such termination date.

12.5 In the event that we decide to permanently withdraw the Services then we shall communicate this decision using such means as we shall deem appropriate including through the use of E-mail, text messages or telephone or fax based on the information you provide in the Contract form. However please remain aware that depending on the nature of the reason for the suspension, change or termination of the services it may not always be possible to give advance notice. Consequently Bytronics Computers Limited shall not be liable to you for any ensuing loss or damages occasioned to you from such a suspension, change or

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termination. Termination shall however not affect the accrued rights and liabilities of either you or us.

- 12.6 You may terminate your use of the Services at any time by sending a message to the email address m-seller@bytronics.co.ke from your account or following such other instructions as may be communicated.
- 12.7 Termination of the Service will not affect your obligation to pay for Services used by you or any third party goods or services previously purchased using the Services.

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