

## **magicJack™ Reseller Requirements/ Terms and Conditions**

These requirements apply to all versions of the magicJack™ product, however, for the purposes of the listing below, all will be referred to as magicJack™.

If you are selling magicJack™ to anyone outside your organization who is reselling these products, they should be provided these Reseller Requirements/Terms and Conditions and you should make sure they fully understand them and are committed to following them. You will be directly responsible for them and accountable for any issues they generate.

- 1.) Minimum Advertised Price (MAP) Price in the U.S. for the magicJack™ GO is \$59.95 and \$39.95 for the magicJack™ Express. It is \$10.00 more in Canada.
- 2.) Sale of magicJack™ through Amazon.com, eBay, or any e-commerce website requires prior written approval from Proactive. Websites set up for the express or predominant purpose of selling magicJack™ must also be approved in advance by Proactive.
- 3.) The product may not be, directly or indirectly, marketed through any marketing channels other than the Channels specifically listed in your magicJack™ Initial Purchase Order or later approved, in writing, by Proactive Distribution.
- 4.) magicJack™ Resellers may use selected online advertising tools provided by Google, Yahoo, MSN, Bing, Ask or other search engine companies, however, prior approval by Proactive is required.
- 5.) Resellers are required to receive the prior approval of Proactive before using or purchasing, the trademark terms, 'magicJack™' or 'magicJack™ GO' or 'magicJack™ Express' or variations of these words for any online Search Engine Optimization, online key word search or online sponsored link marketing and advertising.
- 6.) magicJack™ may not be used for outbound telemarketing. magicJack L.P. reserves the right to disable any units being improperly utilized. This includes use for telemarketing.
- 7.) Any printed materials, point-of sale, media or advertisements must receive prior, written approval from Proactive. In the case of advertisements, we must also know the publication or media outlet. (Please see your Proactive contact for approved versions of these items.)
- 8.) Sales to retailers with more than 5 stores must be approved, in advance, in writing by Proactive.
- 9.) Resellers may not pre-register magicJack™ using their credit card and/or email address or that of any third party. A magicJack™ unit may only be registered directly by or on behalf of the end-user. This is a security issue as the end user will have full access to all credit card information on the magicJack™. magicJack™, LP reserves the right to deactivate units based on any excessive number of registrations under the same information.
- 10.) Taxes. Buyer shall be responsible for all taxes, duties, tariffs, and import/export fees, if any, arising out of the purchase of the Product by Buyer from Seller and the purchase of the Product by customers or Subagents from Buyer.
- 11.) Buyer agrees not to decompile, disassemble, reverse engineer or otherwise seek to reduce the object code of the software or firmware embedded in the Product to its source code form.
- 12.) This Agreement does not convey to Buyer any property or license interest in magicJack's trade name, trademarks, copyrights, patents or any other intellectual property rights.
- 13.) Buyer may not appoint subagents (each a "Subagent") to act on Buyer's behalf and may not sell the Product directly to Subagents for resale without the express written approval of Seller.
- 14.) Inspection and Claims. Buyer shall have five (5) days from receipt of the Product at Buyer's facility in which to inspect the Product received from Seller. Any and all claims for shortages shall be made in writing by Buyer to Seller, within such period.
- 15.) **Indemnification by Buyer.** Buyer shall indemnify, defend and hold harmless Seller and magicJack from and against any liability, damage, claim, or any litigation cost or expense (including but not limited to reasonable attorneys' fees) to the extent that such claim arises out of (i) Buyer's or Buyer's Subagents use, marketing, promotion or support, if applicable, of the Product; or (ii) any services or software (other than the Product) provided by Buyer or Buyer's Subagents.

16.) **Indemnification by Seller.** Seller shall indemnify, defend and hold harmless Buyer from and against any liability, damage, claim, or any litigation cost or expense (including but not limited to reasonable attorneys' fees) to the extent that such claim arises out of Seller's use, marketing, promotion and support of the Product.

17.) **Seller and magicJack Warranties; Disclaimer.** EXCEPT AS OTHERWISE SET FORTH HEREIN OR UNDER THE STANDARD PRODUCT GUARANTEE, MAGICJACK LP AND SELLER MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND SPECIFICALLY DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT WITH RESPECT TO THE PRODUCT AND ANY OTHER MATERIALS PROVIDED TO BUYER HEREUNDER.

18.) **Limited Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER OR MAGICJACK LP BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY ORDER OR THE PRODUCT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR SHALL SELLER OR MAGICJACK LP BE LIABLE FOR ANY OTHER DAMAGES IN EXCESS OF AMOUNTS ACTUALLY PAID TO SELLER BY BUYER HEREUNDER FOR THE SALE GIVING RISE TO THE DAMAGES.

19.) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to its conflict of laws provisions or your actual state or country of residence. Any claims, legal proceeding or litigation arising in connection with this Agreement will be resolved by binding arbitration. The arbitration shall be administered in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association.

20.) **Local Laws.** Buyer will comply with all laws and regulations applicable in the Territory, including those dealing with the sale and distribution of the Product purchased hereunder.

21.) **Severability.** If any provision in this Agreement is found invalid or unenforceable, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement, which shall remain in full force and effect, and the parties shall negotiate, in good faith, a substitute, valid and enforceable provision that most nearly effects the parties' intent in entering into this Agreement.

22.) **Independent Contractors.** The relationship between the parties to this Agreement is and shall be that of independent contractors.