

# EXHIBIT 1

1/19/2010

Nexus One Phone - Terms of Sale

# Nexus One Phone - Terms of Sale

## Terms of Sale for Nexus Device *Effective: November 17, 2009* [Print](#)

The following Terms of Sale ("Terms") govern the relationship between you and Google, and once concluded, form a legally binding contract in relation to your purchase of a Nexus wireless handheld device and any associated accessories whether packaged with the handheld device or sold separately (together referred to as the "Device"). "Google" means Google Inc., a Delaware corporation whose principal place of business is at 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States.

To place an order for the Device, you must first agree to these Terms by checking the box indicating your acceptance of these Terms. By checking the box, you agree that these Terms apply to your order, so please read these Terms carefully. Your order represents an offer to purchase the Device from Google, which is accepted by Google upon shipment of the Device, as explained below.

You understand that the manufacturer of the Device is HTC Corporation, whose principal place of business is at 23 Xinghua Road, Taoyuan 330, Taiwan, R.O.C. ("HTC").

### Account Creation; Number of Devices Purchased

To place an order for the Device on this site, you must register for a free Google Checkout account if you do not already have one. You agree to abide by the applicable [Google Checkout Terms of Service](#).

You agree that you may place a maximum of five (5) orders for Nexus handheld devices. If you order more than one Nexus handheld device, your order comprises a series of offers for each device individually.

### Ordering Devices

By placing an order for a Device, you are making an offer to purchase the Device from Google. After you place an order for a Device, you will receive an email confirming receipt of the order and containing order details. Any email confirmation from Google acknowledging receipt of your order is simply an acknowledgement that your order has been received by Google and does not indicate acceptance of your order. Please note that Google reserves the right to reject your offer to purchase the Device.

Google's shipment of the Device will constitute Google's acceptance of your offer to purchase the Device. Any delivery dates provided by Google or a delivery agent in an email confirming shipment are estimates only and are not guaranteed.

You agree that Google will authorize the credit card, debit card or other payment method specified by you in the amount of your order at the time the order is placed. You authorize Google to charge the credit card, debit card or other payment method specified by you in the amount of your order at the time the order is shipped. All prices on the website are displayed in United States dollars. If you are making a purchase with a credit card issued in another currency, you agree that the amount charged to your credit card is subject to change due to currency fluctuations between the time you place your order and the time your credit card is charged. Google will have no

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liability for any claim arising from such currency fluctuations or any additional fees charged by your credit card issuer.

## Product Information

You understand that the Device will only work on GSM networks and that 3G network availability may depend on your mobile carrier. Please contact your mobile carrier to confirm that it offers a GSM network and that the Device's technical specifications are compatible with 3G coverage in your area.

Google tries to ensure that all Device product information and prices appearing on the website are correct at the time you place your order, however, Google is not responsible for any errors. If an error has been discovered in the price of the Device you have ordered, we will inform you as soon as reasonably possible, and you will be given the option of re-confirming your order at the correct price or cancelling your order.

## Sales Tax; Shipping and Handling

If the Device is shipped to you in the United States, you may be charged sales tax depending on the address to which the Device is delivered. There is an additional charge for shipping and handling, unless indicated at the time of ordering that you have qualified for free shipping.

If the Device is shipped to you outside the United States, you may be subject to taxes, customs duties and fees levied by the destination country ("Import Charges"). You agree to be the importer of record in the destination country and that you are responsible for all Import Charges. By placing your order, you authorize Google and/or the Device manufacturer to designate a courier to clear the Device through Customs and pay the Import Charges on your behalf. You agree that the courier will charge you separately for the payment of these Import Charges. You agree that any Customs Declarations will be made in your name and on your behalf by the designated courier. A list of estimated Import Charges that may apply can be found at:

<http://www.google.com/support/android/bin/answer.py?answer=166585>. Please be advised that these are estimated, not exact, fees that are subject to change from time to time, and that your actual Import Charges will be determined and charged to you separately by the courier.

**EXPORT RESTRICTIONS. THE DEVICE MAY BE SUBJECT TO UNITED STATES EXPORT LAWS AND REGULATIONS. YOU MUST COMPLY WITH ALL DOMESTIC AND INTERNATIONAL IMPORT AND EXPORT LAWS AND REGULATIONS THAT APPLY TO YOUR USE OF THE DEVICE. THESE LAWS INCLUDE RESTRICTIONS ON DESTINATIONS, USERS AND END USE.**

## Maintaining Carrier Service

If you choose to enroll in a carrier's wireless service plan, you must agree to the carrier's terms and conditions, which will be presented during the enrollment process.

If you do not wish to keep the wireless plan, it is your responsibility to contact the carrier to cancel your wireless plan account. You should contact the carrier directly regarding any activation fees, monthly usage costs, taxes, and/or early termination fees that may be owed.

You agree to pay Google an equipment subsidy recovery fee (the "Equipment Recovery Fee") equal to the difference between the full price of the Nexus handheld device without service plan and the price you paid for the [google.com/.../en\\_US-terms\\_of\\_sale.ht..](http://google.com/.../en_US-terms_of_sale.ht..)

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Nexus handheld device if you cancel your wireless plan prior to 120 days of continuous wireless service. For example, if the full price of the Nexus handheld device without service plan was \$529 USD and the price you paid for the Nexus handheld device was \$179 USD with a service plan, the Equipment Recovery Fee you pay will be \$350 USD in the event you cancel within the first 120 days of carrier service. The Equipment Recovery Fee is equal to the line item in your confirmation email setting forth the discount on the full priced Nexus handheld device related to your carrier service plan activation. You authorize Google to charge the Equipment Recovery Fee directly to your credit card, or other payment method used to purchase the Nexus handheld device, upon cancellation of your wireless plan. You will not be charged the Equipment Recovery Fee if you return your Nexus handheld device to Google within the 14 day Return Policy period as set forth below.

You agree that the Equipment Recovery Fee is not a penalty but is for liquidated damages Google will incur as a result of such cancellation. These damages may include, but are not limited to, loss of compensation and administrative costs associated with such cancellation or changing of wireless service provider(s), market changes, and changes in ownership. **Please note that the Equipment Recovery Fee is imposed by Google and not your chosen carrier and is in addition to any early termination fees that may be charged by your chosen carrier in connection with termination of your wireless plan prior to fulfillment of your chosen carrier's service agreement term.**

### **Return/Refund Policy; Right of Cancellation**

If you are not satisfied with your Device for any reason, you have up to fourteen (14) days from the date the Device is delivered to you to cancel these Terms with Google (Please note that residents of California, USA have up to thirty (30) days from the date the Device is delivered to cancel these Terms). In order to cancel these Terms and return your Device, please follow the detailed instructions on our Return Page at <http://www.google.com/support/android/bin/answer.py?answer=167258> or call the HTC customer care center at the number listed in the Service & Repair section of the HTC website (<http://www.htc.com>). An HTC customer care agent will provide you with an RMA (Returned Merchandise Authorization) ticket number and provide instructions for returning the Device. If you cancel these Terms, Google will refund the full amount of your initial payment, minus the initial shipping charge and any applicable fees set forth in these Terms. You agree to return the Device in its original packaging and in like-new condition with all of the original included accessories. You agree to pay all costs of return shipping as specified by the Return instructions.

You may not cancel this contract and return a Device that has been engraved with a personal message of any sort. Due to costs associated with processing the return and refurbishing the returned Device, you will be charged a one-time fee of \$45 USD (which will be deducted from your refund) if you decide to cancel this contract and return your Nexus device within the 14 day period. A refurbishing fee of \$15 USD will apply to the return of separately-purchased accessories. Additional deductions to your refund may be made for damage to the Device or missing components. You authorize Google to deduct these amounts from your refund in the event you cancel the contract and return your Device within the 14 day period. Please note that you will not be charged any refurbishing fees for the return of Device in its original condition and in unopened packaging within the 14 day period.

Due to costs associated with processing a return and refurbishing the returned Device, you will be charged a one-time restocking/refurbishing fee of \$45 USD (which will be deducted from your refund) if you decide to cancel these Terms and return your Device within the return period. Additional deductions to your refund may be made for damage to the Device or missing components. You authorize Google to deduct these amounts from

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your refund in the event you cancel these Terms and return your Device within the fourteen day period. Please note that you will not be charged the restocking/refurbishing fee if you return the Device in its original condition and in unopened packaging within the fourteen day period.

You may not cancel these Terms and return a Device that has been engraved with a personal message of any sort regardless of where you reside.

Devices that were not successfully delivered to you will be returned to Google and Google will issue a refund to the credit card or other payment method originally charged for the order. The amount of the refund will be the original purchase amount, minus shipping charges and any refurbishing fees associated with engraving. Specifically, returned delivery of Devices that have been engraved with a personal message will result in a \$45 USD engraving fee.

Please be advised that returning the Device does not cancel your wireless plan, so you must contact any wireless carrier (and any other applicable service provider(s)) directly to cancel service(s). Your service provider may charge you for usage and other fees that Google does not control.

**Special Note for Residents of the European Union:** Google's return policy is in accordance with your right to cancel a contract formed at a distance under the EU Distance Selling Directive. In order to exercise your right to cancel these Terms, please follow the procedures at <http://www.google.com/support/android/bin/answer.py?answer=167258> describing the fourteen day Return Policy. Residents of the EU will not be charged the \$45 USD restocking/refurbishing fee when cancelling these Terms within the fourteen-day period and will be refunded the shipping fees paid for initial delivery of the Device. With the exception of the restocking/refurbishing fee and the refund of initial shipping charges, all other terms related to this Return Policy apply to your cancellation of these Terms. Nothing within these Terms affects your rights under law.

## Privacy

You agree to the collection and use of your personal information provided hereunder in accordance with the Google Phone Webstore Privacy Policy provided at [http://www.google.com/phone/static/en\\_US-privacy\\_policy.html](http://www.google.com/phone/static/en_US-privacy_policy.html).

## Warranties; Disclaimer of Warranties

You agree that Google is not the manufacturer, but the seller, of the Device. You acknowledge that HTC is the manufacturer of the Device and provides the Limited Warranty for repairs and service of the Device. Please refer to <http://www.google.com/support/android/bin/answer.py?answer=166519> or the warranty card in the Device package for details on the HTC Limited Warranty terms and how to make a claim under the HTC Limited Warranty. If you are a purchaser of the Device in the EU, you are entitled to a two-year warranty for parts, labor, and service. If you are a purchaser of the Device outside of the EU, you are entitled to a one-year warranty for parts, labor, and service. These warranties are in addition to and do not affect your legal rights as a consumer.

OTHER THAN THE ABOVE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GOOGLE EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING ANY DEVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-

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**INFRINGEMENT.****Limitation of Liability**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GOOGLE AND ITS SUBSIDIARIES AND AFFILIATES (COLLECTIVELY, "GOOGLE PARTIES") SHALL NOT BE LIABLE TO YOU UNDER ANY THEORY OF LIABILITY (WHETHER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES THAT MAY BE INCURRED BY YOU IN CONNECTION WITH THE DEVICE OR THESE TERMS, INCLUDING ANY LOSS OF DATA, WHETHER OR NOT A GOOGLE PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING. YOU EXPRESSLY UNDERSTAND AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE GOOGLE PARTIES' TOTAL LIABILITY IN CONNECTION WITH THE DEVICE OR THESE TERMS WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY YOU TO GOOGLE UNDER THESE TERMS.

Despite the limitations above, Google does not in any way limit its liability to you for death or personal injury caused by Google's negligence.

**General Legal Terms**

**Governing Law; Jurisdiction.** These Terms and your relationship with Google under these Terms shall be governed by the laws of the State of California without regard to its conflict of laws provisions. You and Google agree to submit to the exclusive jurisdiction of the courts located within the county of Santa Clara, California to resolve any legal matter arising from these Terms. Notwithstanding this, you agree that Google shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction. Certain laws of the jurisdiction in which you reside may confer rights and remedies and imply terms into these Terms that cannot be excluded. Those rights, remedies, and implied terms are not excluded by these Terms. To the extent that the relevant laws permit Google to limit their operation, Google's liability under those laws will be limited at its option, to the cost of replacing the goods, acquiring the equivalent goods or having the goods repaired.

**Changes to the Terms.** The Terms in effect at the time you place an order for the Device will apply to such order. Google reserves the right to make changes to these Terms from time to time, and any such changes will apply to future orders. Notwithstanding the foregoing, you agree that Google may change these Terms applicable to an order to the extent such change is required by law or government authority.

**No Assignment.** You may not assign the benefit of these Terms or otherwise subcontract or transfer any of your rights or obligations hereunder, without the prior written approval of Google. Google may assign the benefit or otherwise sub-contract or transfer its rights and obligations hereunder, to any third party without notice to your consent.

**Events Beyond Google's Reasonable Control.** Google will not be responsible for any delay or failure to comply with these Terms if the delay or failure arises from any cause which is beyond Google's reasonable control, including but not limited to, strikes, labor disputes, regulations or orders of governmental authorities, civil disorder, disasters, acts of war, acts of God, fires, flood or other emergency conditions.

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**No Waiver.** You agree that if Google does not exercise or enforce any legal right or remedy which is contained in the Terms (or which Google has the benefit of under any applicable law), this will not be taken to be a waiver of Google's rights and that those rights or remedies will still be available to Google.

**Severability.** If any court of law, having the jurisdiction to decide on this matter, rules that any provision of the Terms is invalid, then that provision will be removed from the Terms without affecting the rest of the Terms. The remaining provisions of the Terms will continue to be valid and enforceable.

**Entire Agreement.** These Terms constitute the entire legal agreement between you and Google and govern your purchase of the Device and completely replaces any prior agreements between you and Google in relation to your purchase of the Device.

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