

# Business Customer Terms and Conditions

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The following terms normally apply whenever we do anything for our business customers. Please call us on 0800 438 669 if you have any questions about these terms. Different terms may apply to some services we provide for Business customers, as we explain in this agreement. If you want to use our services for residential or other non-business purposes, other terms apply. Please ask for a copy by calling us on 0800 438 669.

## 1. This Agreement

This agreement applies whenever NOW provides services of any kind or does anything else for NOW business customers or other non-residential customers except where a separate written agreement covers other services we provide. In this agreement, we have used "we" or "us" for NOW providing services for you, "you" for the customer and "service" or "services" to cover all goods and services of any kind we provide and anything else we do.

## 2. Our Commitments to You

We want to make it easy for you to do business with us. We are committed to:

- putting you in touch with the right person to answer your enquiries
- responding to your needs quickly and effectively
- keeping you informed about new services which may benefit your business.

Please tell us if you have any complaint about our service. Our aim is always to resolve any complaints quickly and fairly.

## 3. Our Guarantees to You

Whenever we provide services to you, we guarantee to:

- provide the services with care and skill
- make sure the services do everything we say they will do
- begin providing the services within a reasonable time or within any agreed time limit
- do our best to provide highly reliable services, however, given the nature of telecommunications products and services (including our reliance of systems and services that we do not own or control), we cannot promise or guarantee they will be continuous or fault-free
- be available to fix any fault or disruption which occurs in the services
- whenever our services involve us providing equipment (or other goods) to you, we give you these extra guarantees:
  - the equipment will be safe, durable, free from defects and of good appearance and finish
  - it will be fit for all the purposes for which that type of equipment is normally provided
  - it will do everything we say it will do for a reasonable time after we provide it to you
  - we have the right to provide the equipment to you and if we sell it to you it will be free from any undisclosed security
  - we will not interfere with your possession of the equipment except where both of us agree otherwise
  - it will be as we describe or demonstrate it to you
  - the equipment will be approved for connection to the network at the time we provide it to you.

## 4. Your General Responsibilities

When we provide services for you, it is your responsibility to:

- follow our reasonable directions about the use of our services
- use our services for lawful purposes and without annoying anyone
- make sure all information you give us or to any service provider approved by us is correct and complete
- notify us immediately of any change of your address, or land line, or mobile phone number or any other relevant contact details
- never interfere with the reasonable use of our services by our other customers
- make sure you use the service only for your own internal business use and not sell, rebill or otherwise provide any of our services to anyone else without our written consent
- obtain any authorisation, licence or consent we think is necessary for us to provide the service to you (such as resource management or building consents)
- allow us to test the configuration of your equipment from time to time and comply with any reasonable directions given to you to reconfigure your equipment if we reasonably believe it is necessary to do so
- use our services without gaining unauthorised access to or interfering with anyone else's computer or communications equipment
- comply with all applicable laws, regulations, standards and codes when using our services, including, but not limited to, the Privacy Act 1993, Fair Trading Act 1986, Copyright Act 1994, Defamation Act 1992 and the Crimes Act 1961, and not infringe a third party's rights
- edit, delete or cease any future publication of any material or communication which we reasonably, and in good faith, consider to be unauthorised, misleading, objectionable, restricted, defamatory, illegal, inappropriate or contrary to these Terms, or detrimental to our reputation or to our brand, and if you do not do so to our satisfaction, you agree that we may edit, delete, block or disconnect that material or communication ourselves
- not use the services, or content or anything else provided by us or available on our websites, in any way that implies an endorsement, sponsorship or association by us with any product, service, person or entity.
- make sure anyone else who uses the services we provide to you, or does anything relating to them, also meets your responsibilities under this agreement. You can take steps to prevent unauthorised use of your services (for example, depending on the services, by using passwords, PIN numbers, toll barring options and/or other security measures to control who gains access to and uses your service). You will not be responsible and liable for any unauthorised use of the services if such use is a result of our breach of contract or negligence.

## 5. Software

Where we provide you with any software:

- we remain the owner or licensee of the software
- you may only use the software for your own internal business use and for the purposes for which we provide it
- you must not change or interfere with the software in any way
- you must not copy any part of the software without our permission.

We may at any time provide upgraded or new versions of the software. As long as an upgraded or new version does not adversely affect any service we provide to you, or your use of our service, you must install the upgrade or new version as soon as you reasonably can and not later than three months after we provide it to you.

## 6. Our Charges

You must pay for the services we provide for you no matter who uses them. However, if you have any unexplained usage and/or charges on your account please contact us as soon as you become aware of them and we will investigate for you. If acting in good faith we consider the usage and/or charges are a result of fraud by another person or by someone outside of

your reasonable control we will provide you with an appropriate resolution, which may include providing you with a credit or a refund.

We have services to help customers control the use of their telecommunication services and to help prevent unauthorised use of your services.

Most charges are payable monthly.

We may change our charges or plans from time to time.

When we decrease charges for any of our services we may make the change immediately and we will tell you about the change as soon as possible after the change has been made. We do this by emailing or writing (for example by bill message) to you.

When we increase the charges for any of our services (including introducing charges for services that are currently free) and you are impacted by the change we will give you one month's notice of these changes. We will notify you of these changes by emailing or writing (for example by bill message) to you.

If you are on a minimum term contract we will not change the monthly plan charge or any early termination fee during the term of your minimum term contract, without either your consent or giving you the option to terminate your contract without incurring an early termination fee. Notwithstanding the aforementioned we may change the monthly plan charge if the change arises from, relates to or is the result of a regulated charge outside our control, for example where the charge is a tax or levy imposed by law or there is a charge for a regulated input required to provide you service, and the terms of your minimum term contract will remain in effect.

We may also change you to a new plan if we consider that you will be better off. We will give you one month's notice of any change in plan. We will notify you by emailing or writing to you.

We may assign any amounts you owe. Charges usually begin from the time you are connected to the network. We may at any time, if we consider it reasonable and necessary to do so, require you to:

- satisfy us that you will be able to pay our charges
- give us a fair bond, guarantee or other security

You must also pay for 0900 calls charged to you, or made from your phone. We will charge you for those calls on behalf of the 0900 service providers. Your agreement to pay for these calls also applies for the benefit of the 0900 service providers and may be enforced by them.

## 7. Billing

We will send you bills for our charges. If you choose to receive a paper bill you may be charged a paper bill fee, the current paper bill fee is set out on our website. The bills will also include any charges for directory assistance, directory listing services and 0900 calls charged to you or made from your phone. Each bill will tell you the due date for payment. You must pay the bill by that date. Please ask us about the different ways you can pay.

Our bills are based on records. Please let us know before the due date for payment if you think there is a mistake in your bill. We will investigate the matter straight away. While we are doing this, you do not need to pay the queried part of the bill by the due date for payment. However, if you have already paid your bill you may still query your bill within three months of the due date if you think there is a mistake. You must not set-off or deduct any amount in any other circumstances.

Normally, we will be able to find out if there is a mistake in our records and get back to you within seven days. If there is a mistake we will adjust your next bill or, if appropriate provide a refund.

If there is no mistake, and if the due date for payment has already passed, you must pay the amount outstanding straight away or as otherwise agreed with us. If you do not pay a bill by the due date for payment:

- we may either charge you a late payment charge (which reflects the costs to us of recovering money owed to us) or interest on the unpaid amount from that date until you pay it; the current late payment charge and interest rate are set out on our website

- you may be required to pay any reasonable costs that are incurred by anyone (including agents) in recovering the money you owe or in exercising any other rights, including commissions and legal costs on a solicitor and client basis
- provided we have followed our standard debt collection process and you still have not paid your outstanding balance we may withhold, suspend or restrict any service we provide for you. We will always do our best to contact you before doing this and will give you at least five business days' notice if we are going to disconnect your services for non-payment.

## 8. Refund of Rental Charges for Disrupted Service

Sometimes our services can be disrupted. If this happens, we will restore them as soon as we reasonably can. Where any rental service is completely disrupted and we do not restore it within one business day after you tell us of the disruption, you may ask for a refund of our rental charges for that service for each day of the disruption. A refund is not available where:

- the disruption or any delay in restoring the service is caused by you or anyone you are responsible for
- the delay in restoring the service is caused by events beyond our reasonable control
- we suspend, restrict or stop providing the service if you do not pay our charges or meet any responsibilities to you have to us. To get your refund, you must ask for it within six months after we restore the service. We will then refund our rental charges for the affected service by adjusting your next bill.

## 9. Your Right to give up any Service

You may give up any service simply by telling us. If you exercise your right to terminate a service that is subject to a minimum term, and you are ending that service prior to the minimum term, then an early termination fee may apply.

Subject to any minimum term or notice period (where, as noted an early termination fee may apply), charges will stop 30 days after we receive your notice to terminate a service, unless we agree that charges will stop earlier. You can choose to continue to receive the benefit of a service during the 30 days' notice period.

## 10. Our Right to Suspend or Restrict any Service

If you do not pay our charges or meet any responsibilities you have to us, we may suspend or restrict any service at any time. We will always do our best to contact you before doing this (and as noted above, will give you at least five business days' notice if we are going to disconnect your services for non-payment). In most cases, if you have not met a responsibility you have to us (for example, where you did not pay your bill by the due date) normal charges continue to apply during the suspension or restriction of any service. However, if following a suspension or restriction of any service we permanently disconnect that service, you will only be responsible for the charges incurred up to the date of the suspension or restriction.

Where we suspend or terminate a service for non-payment, we may require you to pay a reconnection charge before you can use it again. The current reconnection charge is set-out on our website at [. Your account will also need to be paid in full or you will have to negotiate a repayment plan with us. The reconnection will be subject to our standard credit approval.](#)

Where we permanently disconnect your services you will remain liable for all charges incurred up to the date of a withholding, suspension or restriction of your services. Where such disconnection is before the end of a minimum term contract an early termination fee will also apply.

We may also suspend, restrict or terminate any service in other circumstances if we think it reasonable or necessary (by way of example only, to protect our network from attacks, for maintenance or repairs, or interruptions to the availability of the network). We will always do our best to contact you before doing this, but may not be able to do so in all circumstances. Please call us on 0800 438 669 to request removal of a suspension or restriction.

## 11. Our Right to Stop Providing any Service

We may stop providing any of our services to you. We may do this at any time if you do not pay our charges or meet your other responsibilities under any agreement you have with us. Otherwise:

- where we have agreed to provide a service for a minimum period, we will continue providing it until the end of that period except if the circumstances set out below apply
- we will always tell you at least one month before we stop providing the service.

We may end the availability of any service to you and any other NOW customers at any time if the relevant service is no longer viable, we or a service provider are unable to provide it, we or a service provider are withdrawing it from general availability, or we or a service provider are replacing it with a new service.

We may alter our services from time to time. If we alter our services in a way that reduces the service offering currently received by you and the change is within our control we will provide you one month's notice, of such alterations. However, if the change is outside of our control, and it is possible, we will provide you notice of the change beforehand. If the change is outside of our control and we are unable to provide you notice of the change beforehand we will provide you notice as soon as possible after the change has been made. When determining whether a change in the service offering has a negative impact on you we will act in good faith. We will tell you about any such alterations by emailing or writing to you. If you are in a minimum term contract we will not reduce the service offering currently received by you without either your consent or giving you the option to terminate your contract without incurring an early termination fee.

## 12. The Network

The network consists of communication facilities owned by us and other parties with whom we work (for example Chorus), and which we use to provide our services for you and our other customers. Acquiring our services does not give you any rights in any part of the NOW Network.

## 13. Safeguarding the Network

For your own safety, and so that our services to you and our other customers are not disrupted, it is important that you help safeguard the network. It is your responsibility to:

- let us or any of our agents or subcontractors have reasonable, safe access to your premises and get any consents we may need to work on the network or anything connected to it; the people we send will carry proof of identity. If you do not grant access to your property this may impact on services you or others receive from us, including our ability to provide you with the relevant service
- follow our reasonable directions when connecting anything to the network and make sure it is installed to our specifications
- make sure nothing is connected or left connected to the network unless it has a Telepermit on it; this helps make sure no damage occurs to the network
- never interfere with the network; only people we authorise may work on it
- make sure nothing on property or premises under your control interferes with or damages the network
- follow our reasonable directions about using any equipment you rent from us and never interfere with it
- pay our charges for repairing or replacing any part of the network and any equipment you rent from us which is lost or damaged by you or anyone you are responsible for; there is no charge where damage occurs through normal wear and tear or is the result of our breach of contract or negligence
- arrange for us to have reasonable, safe access to the premises to remove any equipment you rent from us as soon as we stop providing services or you give up the service relating to that equipment
- make sure everyone you are responsible for also meets your responsibilities under this agreement.

## 14. Numbers, Electronic Addresses and Other Codes

Depending on the services you acquire from us, we will arrange for appropriate telephone numbers, electronic numbers, electronic addresses and other codes to be allocated to you. Unless we have agreed otherwise with anybody else, all

addresses, numbers and other codes allocated to you remain the property of NOW and you must not transfer or sell your address, number or code to anyone else.

You are responsible for keeping confidential your NOW account number and any personal identification code or password used by or allocated to you. We may assume that any request or instruction we receive is authorised by you if it is accompanied by suitable verification (for example, your NOW account number, personal identification code or password).

We may change any number we have allocated and allocate you a new number. We will always give you as much notice as we reasonably can before making any change.

If you are an individual you may prefer to restrict access to your name, address and telephone numbers allocated to you. Please call us on 0800 438 669 if you want to know about ways you can do this.

## 15. Fixing Faults

### **Fixing Faults in the Network**

We will take all steps that we reasonably can to arrange for all faults on the network to be repaired. There is no charge for this except where you or anyone you are responsible for cause the fault. We will begin fixing the fault as soon as we reasonably can, we will advise you of our current service levels when a fault is reported.

### **Fixing Faults in Sockets and Wiring**

Our wiring maintenance charge covers the cost of fixing most faults in sockets and wiring which connect equipment you have to the network. The faults covered are those which occur through normal wear and tear or a defect in design, materials or manufacture.

If you own the sockets and wiring and do not want this service, please tell us. You will then be responsible for fixing these faults. Please ask us if you want us to show you where the sockets and wiring end and the network begins.

### **Fixing Other Faults**

We will fix any fault in sockets, wiring or equipment covered by a separate rental or maintenance agreement you have with us under the terms of that agreement. We will also fix any fault in equipment you rent from us which is not covered by a separate rental agreement. Our rental charge covers the cost of fixing faults which occur through normal wear and tear or a defect in design, materials or manufacture and which we fix during our normal business hours.

### **Where Other Charges Apply**

Other charges apply where we investigate or fix anything not covered above. If you need our help, please call us and we will tell you how we may be able to help and what our charges will be.

### **Continuous Service**

Please report any fault by calling 0800 438 669. Our support hours are available on our website.

## 16. Liability

If you are acquiring the services for the purposes of a business as defined in the Consumer Guarantees Act 1993 you acknowledge that the provisions of that Act do not apply to the services that that we provide to you under this agreement.

### **Your liability to us:**

- you accept your liability to us for breach of contract or negligence, and
- you are not liable for any loss to the extent that it is caused by us (for example, through our breach of contract or negligence).
- If you are ever liable to us your liability is limited to:
  - \$50,000 for any event or series of related events; and
  - A total of \$100,000 in respect of all events in any 12 month period

provided we notify you of our claim within 12 months after we reasonably become aware of the occurrence of the relevant event or series of events that gave rise to our claim. These limitations do not apply to your obligation to pay any charges, for any loss or damage caused by fraud, gross negligence, wilful breach or wilful damage.

We may become aware that we have suffered loss before you do. If we suffer any loss as a result of this agreement, we agree to take reasonable steps to avoid or minimise our loss and that you are not liable for any loss that results from our failure to take reasonable steps to do so.

#### **Our liability to you:**

- we accept our liability to you for breach of contract or negligence, and
- we are not liable for any loss to the extent that it is caused by you (for example, through your breach of contract or negligence).

We are not liable to you for any indirect or consequential loss, or for any loss of profits, revenue, goodwill, business or anticipated business or anticipated profits or savings.

You may become aware that you have suffered loss before we do. If you suffer any loss as a result of this agreement, you agree to take reasonable steps to avoid or minimise your loss and that we are not liable for any loss that results from your failure to take reasonable steps to do so.

We aim to provide quality services to you at all times, and exercise reasonable skill and care in performing our obligations to you. However, if we are prevented from performing any obligation in this agreement by reason of any act of God, act of State, riot, insurrection, civil commotion, strike, sanctions, boycott, embargo or any other circumstance beyond our reasonable control, we will try to advise you of the existence of the circumstances and its expected duration, and the obligations that are impacted by the circumstances. Our performance of this agreement and provision of services to you will, to the extent that it is made impossible or impracticable by such circumstances (despite us taking reasonable steps to provide the services) be suspended until such circumstances cease to exist. We are not liable to you for any failure or delay in performing any obligation set out in this agreement in the circumstances contemplated by this clause. You will not be required to pay any charges for any services to the extent that such services are not provided by us due to the circumstances contemplated by this clause.

No other network operator and/or third party supplier (including their officers, employees, contractors and agents) will be liable to you for loss or damage of any kind arising from your use of the services. This clause creates a right and benefit that NOW, network operators and/or suppliers can enforce as a defence to any claim.

## **17. Limitation of Our Liability**

If we or any of the other parties listed in clause 16 are ever liable to you for any reason, the maximum combined amount we and all the other parties listed in clause 16 (together) will have to pay you and anyone else who uses the services we provide for you (together), will be:

- \$50,000 for any event or for any series of related events; and
- a total of \$100,000 in respect of all events in any 12 month period,

provided that you notify us of your claim within 12 months after you reasonably became aware of the occurrence of the relevant event or series of events that gave rise to your claim.

## **18. Our Rights to Recover Expenses from You**

Where you do not meet your responsibilities to us, you must pay any reasonable expenses we incur in collecting any money you owe us or in exercising any of our other legal rights.

We recommend you talk to your insurer about arranging suitable cover for risks of loss or liability arising from this agreement.

## **19. Using Information About You**

During any relationship you have with NOW you agree that we may collect information about you. The information may be obtained from you and others or generated within the network when you or anyone else use our services. You may decide whether to provide any information we seek from you. However, if you do not provide it, we may not be able to provide services to you.

You may ask to see information we hold about you, as long as we can readily retrieve it, and ask for any details that are wrong to be corrected. We and, to the extent appropriate, any service providers approved by us, may hold the information and share it to the extent appropriate with employees, contractors and agents and with credit reference and debt collection agencies. This enables us and any service provider approved by us to:

- provide services to you and others
- help prevent and investigate instances of fraud
- send you bills and recover and report on money you owe
- keep you informed of services available to you from us and other people
- exercise any lawful right any of us has (which includes registration and maintenance of financing statements under the Personal Property Securities Act 1999).

Credit reporters may include credit checks, your repayment history and any defaults in payment to NOW in their databases and share this information with others who wish to conduct credit checks on you.

You can let us know at any time that you do not want to receive sales and marketing information by calling us on 0800 438 669. We may:

- share to the extent appropriate your name, address and the telephone numbers allocated to you with any person (except other network operators) using services provided by any of us or any service provider approved by us for providing directory assistance and directory listing services; this information may also be used or accessed by us or any such service provider in or from any directories and other publicly available accessible publications and database
- share with other network operators any information needed to enable you to make and receive calls through their networks; this does not include your name and address
- share with any 0900 service provider or its agent to whom an 0900 call is made, your name, address and any information about that call; this applies only where the call is charged to you and you do not pay for the call by the due date for payment
- share aggregated information which does not identify any individual with partners, advertisers and others. We monitor and record telephone calls between customers and our personnel for training and quality purposes.

## 20. Confidential Information

You must keep confidential any information you receive from us which you would expect to be confidential or commercially sensitive. Any pricing or network or equipment design information must be treated as confidential. You may only disclose confidential or commercially sensitive information if you are required to by law, or applicable stock exchange rules.

## 21. Intellectual Property Rights

We or others may have intellectual property rights in the services and in any equipment, including software, we provide to you. These rights include, for example, all copyright, trade mark and design rights relating to the services or equipment. All those rights are retained when we provide services or equipment to you.

Any intellectual property rights arising from any improvement or change to any service devised or made by anyone belongs to us.

## 22. NOW Agents or Service Providers

We may have any agent or service provider approved by us perform and have the benefit of our side of any agreement you have with us.

## 23. Assignment

You may assign and have someone else perform your side of any agreement you have with us as long as you first get our written approval. We may assign and have someone else perform our side of any agreement you have with us. We will tell you if we do this.

## 24. More Than One Customer

Every person named as a customer in any agreement with us must meet all the customer's responsibilities under that agreement.

## 25. Sending Bills and Notices

We will send bills and other notices to the last physical or electronic address you have given us. We can assume any bill or notice we send by post has been delivered three days after we post it and, if sent electronically has been received by you on the date it was sent. Please tell us if you change your address.

You also agree that all agreements, notices, disclosures and other communications that we provide you electronically satisfy any legal requirement that such communication be in writing.

## 26. Other Terms

Other terms apply to some of our services. Where we provide those services, we will tell you about the other terms.

## 27. Responsibilities Under Other Agreements

We must meet all our responsibilities to you under every agreement we have with you. You must meet all your responsibilities under every agreement you have with us.

## 28. Each Term Separately Binding

Each term of every agreement you have with us is separately binding. If for any reason we, you or any of the people listed in clause 16 cannot rely on any term, all other terms remain binding.

## 29. Rights and Responsibilities That Continue

The ending of any agreement you have with us does not affect any rights and responsibilities which are intended to continue or come into force afterwards.

## 30. Changing This Agreement

We may change these terms. We may do this by changing or removing existing terms or by adding new ones.

We must always tell you about any changes at least one month before they come into effect. We will never change this requirement.

We will tell you about any changes to these terms by writing to you. The notice will set out the actual changes or explain their general nature. Please ask us at any time for a free copy of our current terms. If you do not agree to the changes you may exercise your right to terminate this agreement.

Any other changes to the terms of any agreement you have with us must be in writing and signed by us.

### 31. No Waiver

Except if we have waived a right under these terms and notified you in writing, no delay or failure to exercise a right under these terms prevents us exercising that or any other right on that or any other occasion.

### 32. Invalidity

If any provision of these terms is unlawful and unenforceable, it will be severed from these terms to the extent it is unlawful and unenforceable. The rest of these terms will remain in force.

### 33. New Zealand Law Applies

All our services are provided under New Zealand law. You may take action against us only in a New Zealand court.

We have standard product specifications for each service we provide. Some services also have specific service targets and additional terms such as disclaimers or exclusions of liability. These product specifications and terms form part of our agreement and describe our obligations to you, including situations where our obligations are limited or do not apply.