

ACN Pacific Standard Terms (NZ Toll Services)

(Effective 18 April 2006)

1. Our agreement with you

Set out below are ACN Pacific Pty Ltd's terms for residential and business customers in New Zealand. Some terms will only apply to residential or business customers. These will be indicated as such.

These are the main terms of our agreement with you. Other terms are set out in the Customer Application Form itself.

These terms apply from 18 April 2006 and replace any agreement you already have with us.

You may become bound by these terms in two ways:

- By completing a Customer Application Form you make an offer to acquire services from us on these terms (plus the terms in the CAF itself) which will create a binding agreement between ACN and you upon acceptance by ACN. ACN may accept your offer by providing a service to you or in another way. An agreement created in this way will continue until expressly terminated by a party in accordance with this agreement.
- If you have not completed a CAF, then by using our services and continuing to use our services, such use means you accept these terms. If you do not agree to these terms, an agreement created in this way may be terminated by you discontinuing your use of our services.

2. Definitions

In these terms, **"we"**, **"our"** or **"ACN"** means ACN Pacific Pty Ltd, **"you"** means you, our customer and **"services"** means all the services that we provide to you.

"Customer Application Form" or **"CAF"** means our form of that name completed by you.

"GST" means goods and services tax as defined in the Goods and Services Tax Act 1985.

"Independent Representative" means any person or entity that is contracted to ACN, or any related corporation of ACN, as an independent representative selling our services.

3. Our commitment to you

We will always do our best to make sure that you receive reliable and high-quality services. We cannot however guarantee that our services will always operate free of faults. If you do encounter a problem with our service you should contact ACN Customer Services and we will work to restore the service as soon as possible. If we cannot fix the problem then you may cancel this agreement by telling us.

4. Your commitment to us

In return for providing the services to you, you agree to:

- pay for all the services that we provide to you and charge to your account (even if somebody else uses those services, as such services will be treated as having been used by you) by the due date shown on your bill;
- follow our reasonable instructions about using the services;
- only use the services for the purpose for which they are provided;
- not use the services in any way that is unlawful or could interfere with our network, any other operator's network or with another customer's enjoyment of our services;
- not use the services in a manner which may infringe the privacy rights of any other person; and
- make sure that anyone else who uses the services that we provide to you also abides by the terms of this agreement.

You will indemnify us against all liability, losses and costs that we incur through your failure to do any of the above or your failure to perform any other obligation that you have under this agreement.

5. Our charges and services

You can obtain a free copy of information about our current services and charges by calling ACN Customer Services or by visiting our website www.acn.co.nz. These charges and service descriptions are incorporated into and form part of our agreement with you.

From time to time we may decide to change some of our charges.

From time to time we may amend or discontinue our services and our packages of services. Where we do this we will endeavour to give you advance notice of this. If we discontinue a service or a package of services we will endeavour to move you onto another service or package of services. Where the provision of a service is dependant on a third party to provide services to us, we may not be able to provide that service or we may need to terminate that service if the third party is unable or unwilling to provide the services to us. Where this occurs we will provide as much notice as we are reasonably able and will endeavour to provide alternative services.

Where you do not agree to the changed service or package, or us moving you onto another service or package, then notwithstanding anything else in these terms you may cancel that service or package within 5 working days of receiving our notice.

Notwithstanding the above, we are free to choose the manner in which and the technology by which we provide a service. Where we change the manner or technology by which we provide a service provided the service itself remains materially similar this shall not be a reason for you to terminate the service.

While we will endeavour to make services available to you where we can, not all services will be available to all customers and not all services will be available in all areas.

For the purposes of this agreement the parties agree that clause 8(8) of the Goods and Services Tax Act 1985 (New Zealand) does not apply. This means that we will charge GST on all invoices (business and residential).

6. Paying your bill

We will send you a bill at regular intervals. Some charges may be billed one month or more in advance or arrears.

Please contact ACN Customer Services if you have any questions about your bill. If we agree that we have made a mistake then we will correct the bill. If we find that there is no mistake and the due date for payment has already passed, you agree to pay your bill straight away. If you have not contacted us before the due date shown on your bill then you agree to pay the full amount.

If your account is overdue, we may:

- suspend any of the services that you have asked us to provide;
- charge you any temporary disconnection charge; and
- continue to charge you any recurring monthly charge applicable for those services during the period of suspension.

If we have to spend money on collecting overdue amounts from you then you will reimburse us for those costs.

Where the services are phone line services and your account is overdue we may also add a toll bar to your phone so that you will not be able to make certain toll calls and we may charge you for placing that toll bar on your phone.

Part payment of your bill will not amount to a full and final settlement unless we have agreed to this in writing.

Sometimes charges will not show on your bill until some time after the month in which they were incurred. You will still be liable for such charges.

7. Changing service provider

You acknowledge that where you are changing service provider:

- if we are your new service provider we will only provide those services agreed with you, and if there are some services we cannot provide, you will need to ensure these will continue to be provided to you by your previous service provider;
- there may be consequences (such as changes in price or availability of service) with your previous service provider for services still provided by it;
- you remain subject to the terms and conditions of use of your previous service provider for services provided by it and you will remain liable for all charges that you owe to it, including unbilled charges and termination charges; and
- we may charge you on behalf of your previous service provider for any services provided by it that it has not previously invoiced you for.

8. Credit arrangements

We may decide to use information that you give us in order to check your creditworthiness at any time. You agree that we may pass on your information to credit reporting organisations so that they can run credit checks on our behalf. We may also let those organisations know if you have not paid your bill. You agree that at any time those organisations may pass on to us information about you that they hold. We will use that information to make decisions about providing or continuing to provide you with services. You also agree that those organisations may keep any information about you that we have passed on to them and use it for the purposes of their businesses, which may include supplying it to other entities that use their services.

You may have to pay us a deposit before you can use, or continue to use, our services. We will tell you when this is required.

9. Changing addresses

If you move house then you will need to stop the services that we are providing to you at your old address. It is important that you contact us before you move house - otherwise you will still be responsible for paying for the services that we provide to your old address.

If your local phone service is disconnected (whether due to changing address or otherwise) then you will not be able to access your ACN Toll service and you will need to contact ACN Customer Service to reactivate your ACN Toll service once you have a working local phone service (at your new address or otherwise). Your agreement with us will remain on foot notwithstanding the disconnection of your local phone service.

10. Ending your agreement with us

A minimum term may apply for some or all of our services. We will tell you when this applies. Unless a minimum term applies to a service, you may ask us to stop a particular service or cancel this whole agreement at any time and for any reason by giving us 5 working days notice. Where you cancel a service and do not expressly ask for this agreement to be cancelled it will remain on foot and will apply to any future services you may request from us.

If a minimum term applies to a service you may stop that service at the end of the minimum term or at any time after the minimum term, in the same way as you are entitled to stop any other service. (Any cancellation by you before the end of a minimum term will not be effective until the end of the minimum term.) You can do this by contacting ACN Customer Services.

We may stop or suspend a particular service or cancel this whole agreement at any time without telling you if:

- you do not pay for any of our services by the due date shown on your bill;
- you give us incorrect information;
- you have not given us a prepayment we have asked for; or
- you have not complied with these terms and conditions.

We may stop or suspend a particular service or cancel this whole agreement at any time and for any other reason so long as we have tried to tell you in advance.

We may stop providing you with service without telling you if you do not use the service for at least 6 months.

If either of us cancels this agreement for any reason you will:

- be liable for any applicable disconnection and early termination fees, unless you are terminating because we have changed a service;
- still have to pay for all services that we provide to you up until the effective date of cancellation;
- pay any recurring charges until the effective date of cancellation or the end of your current billing period (whichever is later), unless you are terminating because we have changed a service; and
- be liable for any subsequent reconnection fees.

If you seek to cancel a service then we may also choose to stop the service immediately but still charge you for it until the end of your current billing period or until the effective date of cancellation (whichever is later).

In some circumstances, terminating one service may result in us terminating some or all other services being provided to you.

You agree that clauses 10, 11, 14 and 15 will survive cancellation of this agreement.

11. Collecting and using information about you

You agree that we can collect information about you (such as your home address and phone number and evidence that you will be able to pay for our services) and the ways in which you are using the services. We will ask you for this information or we will obtain it from our records. You agree to ensure that all information you give to us is correct and complete.

You agree that we can use this information and can pass it on to our employees, contractors, agents, ACN Independent Representatives and suppliers for a range of lawful purposes connected with our business operations, including:

- Providing you with services;
- Sending you bills;
- Checking your creditworthiness;
- Looking at ways in which we can improve our services and develop new services; and
- (unless you have told us that you do not want to receive this information) keeping you informed about new services and changes to existing services.

You also agree that we can use information that we have collected about you to keep you informed about services offered by our carefully selected business partners, unless you have told us that you do not want to receive this information.

You agree that we may pass on your telephone number(s) to other network operators to enable you to make or receive calls.

You agree that we may monitor and/or record calls made between you and ACN Customer Services for the purpose of maintaining and improving the quality of our service.

You may ask to see information that we have about you and you may ask us to correct any errors. You can do this by contacting ACN Customer Services.

12. Your account

If we allocate you a password or a security code to use in connection with the services or to access your account information, then you will be solely responsible for maintaining security around that password or security code.

You may nominate a representative (who must be over 18 years) to have access to your account information and to make changes to your account, such as cancelling or adding on services. If you do this, you will still be responsible for paying for all the services that we provide to you.

13. Consumer guarantees (residential customers only)

You can exercise your rights under the Consumer Guarantees Act 1993 at any time unless you use, or have indicated you will use, our services for business purposes.

13A. No consumer guarantees (business customers only)

You acknowledge that you are acquiring the services for the purposes of a business and the Consumer Guarantees Act 1993 does not apply.

14. Our liability to you

To the extent allowable by law:

- our liability for any claim, damages, loss or expense that you incur as a result of anything we have done or not done is limited to \$500 for any event or series of related events and \$2,000 for all events occurring in any 12 month period of your agreement with us; and
- we will not be liable for any loss of profits or any consequential, indirect or special damage, loss or injury of any kind suffered by you or any other person.

Apart from the warranties expressly given to you in this agreement, all other warranties, express or implied, are excluded (to the extent permitted by law).

15. Liability of third parties to you

The following people will not have any liability to you:

- our employees, contractors, Independent Representatives and representatives;
- other network operators who use our network and allow us to use their networks, and their employees, contractors and representatives; and
- any person who provides any service which is part of our services, and their employees, contractors and representatives.

16. Sending bills and notices to you

We will send your bills and any other notices to the latest postal address or (where we have agreed this with you) to the latest email address that you have given us. It is important you tell us straight away about any change to your postal or email address. You can do this by contacting ACN Customer Services.

17. Changing these terms

We may change these terms. We will give you at least 14 days' notice of any change, either in writing, including electronically, or by notices in major city newspapers. You can always contact ACN Customer Services to request a copy of the current terms of your agreement with us or view a copy of those terms at www.acn.co.nz.

18. Transferring this agreement

We can transfer some or all of our rights and obligations under this agreement. If we do this we will try to tell you in advance. You agree not to transfer any of your rights and responsibilities under this agreement to anyone else, without our express written consent.

19. Miscellaneous

This agreement is governed by the laws of New Zealand. ACN and you agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.

20. How to contact us

You may like to contact us to:

- ask for information about anything in these terms;
- report a fault;
- ask for a copy of our current charges;
- query any item shown on your account; and/or
- tell us about a change of address.

Phone toll free: 0508 226 000 Fax toll free: 0508 226 001
Post: ACN Pacific Pty Ltd, P O Box 90694, Auckland MSC, Auckland
Internet: www.acn.co.nz