

# ACN Pacific Standard Terms (NZ Toll, Fixed Line and DSL Internet Services)

(Effective 2 April 2011)

## 1. Our agreement with you

Set out below are ACN Pacific Pty Ltd's terms for residential and business customers in New Zealand. These are the main terms of our agreement with you. Other terms are set out in the Customer Application Form and/or in additional terms that may apply to specific services that we may provide to you from time to time.

These terms apply from 2 April 2011 and replace any agreement you already have with us for toll, fixed line and/or DSL internet services.

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 and any terms that apply to specific services you require), which will create a binding agreement between ACN and you upon acceptance by ACN. ACN may accept your offer by confirming approval of your CAF and/or by commencing provision of a service to you. An agreement created in this way will continue until expressly terminated by a party in accordance with this agreement.
- If ACN commences provision of any service on acceptance of a CAF completed by someone other than you, then by using our services and continuing to use our services, such use means you accept 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.

"**ACN Customer Services**" means the ACN sales and support staff, contactable in the manner described in clause 24.

"**Customer Application Form**" or "**CAF**" means our form of that name to be completed by persons who want to use our services.

"**GST**" means goods and services tax as defined in the Goods and Services Tax Act 1985 at the rate prevailing from time to time.

"**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.

"**Network**" means the network used to provide the services, whether owned by us or by a third party.

"**New Zealand Services Tariff**" means the ACN document setting out the tariff and other fees payable for services, as amended by ACN from time to time.

"**Working Day**" means a day on which registered New Zealand banks are open for normal banking business, excluding Saturdays, Sundays and national New Zealand public holidays.

## 3. Our commitment to you

We will always do our best to make sure that you receive reliable and high-quality services. However, we cannot guarantee that our services will always operate free of faults or that all services will be available in all locations. 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 you are responsible for all services we provide to you, no matter who uses them) 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 the 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.
- Not use the services for any malicious, illegal or fraudulent activity or any activity that may create a material threat to the Network or other users of the Network.
- Not interfere with, or allow anyone not authorised by us to interfere with, any equipment that we may make available to you.
- Return any faulty equipment we may make available to you for repair. If the fault is a manufacturing fault then we will provide you with a credit for your reasonable shipping costs.
- Not interfere with, or allow anyone not authorised by us or the Network owner to interfere with, the Network.
- Permit us, our agents or subcontractors or the Network owner, its agents or subcontractors, access to your property to work on the Network or anything connected to it. We will try to contact you before doing this (but this may not always be possible in an emergency situation). The people who are authorised to work on the Network will carry proof of identification.
- Where we have specified standards or required approvals for equipment that is to be connected to the Network or to anything connected to the Network, you may not connect any equipment to the Network, or anything connected to the Network, that does not meet those specified standards or have the required approvals.
- Comply with any reasonable instructions given by us, and provide all information and assistance reasonably required by us to comply with any request or direction of a government agency, emergency services organisation or other competent authority for reasons of health, safety or the quality of services or the general maintenance and operations of the Network and the facilities used to provide the services.
- 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 agree to pay for the services provided to you in accordance with the charges prevailing from time to time as set out in our New Zealand Services Tariff. You can obtain a free copy of information about our current services and charges, including our New Zealand Services Tariff by calling ACN Customer Services or by visiting our website [www.acnpacific.co.nz](http://www.acnpacific.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. If we do this, we will give you at least 10 Working Days' advance notice of this in writing (including by means of bill insert, text message or email).

As a reseller of telecommunications services there are some call types or other services which may be obtained by you using your telephone service for which it is difficult for ACN to know pricing in advance. These services include calls to 0900 numbers. Where you use such services where the price is not set in ACN's NZ Tariff, ACN will charge you the amount it is charged by its supplier plus a markup of 10% to cover costs (administrative, financial etc.).

From time to time we may amend or discontinue our services and our packages of services, or we may need to terminate a service which is dependent on a third party providing a service to us and the third party is unable or unwilling to continue to provide those services to us. Where this occurs 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 or provide alternative services. Where you do not agree to the changed service or package, being moved onto another service or package or being provided with alternative services, then you may cancel that particular service or package by telling us within 10 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 does not apply. This means that we will charge, and you are required to pay, GST on all invoices issued by us for goods and services provided to you (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 you wish to dispute any portion of a bill you do not need to pay the disputed portion while we investigate whether there has been an error with your bill. However, you must still pay the undisputed portion of your bill. If we agree that there is an error with your bill then we will correct the bill and issue a credit or, if you are no longer a customer of ACN, a refund. If we find that there is no error and the due date for payment of the bill has already passed, you agree to pay any outstanding amount straight away.

If your account is overdue, we may, on at least 7 Working Days' notice:

- suspend any of the services that you have asked us to provide;
- charge you a temporary disconnection charge and/or a reconnection charge; and
- continue to charge you any recurring monthly charges 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.

If your account is overdue we may suspend all or some of the services we provide to you. For example, if the services are phone line services, we may 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. As another example, if the services are DSL internet services, we may block your internet access or reduce the available speed and we may charge you for putting this in place. 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. If we discover that we have undercharged you for any services we may charge you for the shortfall but we will give you a reasonable period in which to pay the amount owed.

## **7. Changing service provider**

You acknowledge that where you are changing service provider and 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 or another 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.

If you obtain any telephone or internet services from any other supplier as well as us, you are responsible for your relationship with that other supplier. For example, if there are changes to your personal details or your address, you need to let both us and your other service provider know.

## **8. Credit arrangements**

We may 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. Except where 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, or at any time after, the minimum term in the same way as you are entitled to stop any other service. You can do this by contacting ACN Customer Services. If you cancel a service that has a minimum term before the end of that minimum term, you will be liable to pay the early termination fee associated with that service.

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;
- you do not use the service for at least 6 months; 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.

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

- be liable for any applicable disconnection and early termination fees. However, if you terminate a particular service because we have discontinued or changed that service and you do not wish to continue with an alternative or changed service that we are able to provide to you, you will not be liable for any disconnection or early termination fees for that 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.

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

You agree that clauses 4, 10, 11, 13, 14, 15 and 16 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 name, occupation, home address, email 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 persons authorised by you or from our own records. You must 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 (which may be by mail, email or other electronic communications), unless you have told us that you do not want to receive this information.

You acknowledge and agree that we may:

- pass on your telephone number(s) to other network operators to enable you to make or receive calls; and
- 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. Further information on your privacy is set out in the ACN Privacy Policy. You can obtain a free copy of our Privacy Policy by calling ACN Customer Services or by visiting our website [www.acnpacific.co.nz](http://www.acnpacific.co.nz).

## **12. Your account**

If we allocate you a username, 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 the confidentiality and security of that username, password or security code and for all use of that username, password or security code and any other means of identifying you in connection with your use of the services and your account with us. We may allocate a new username, password or security code to you from time to time but will notify you of this in advance.

You agree that we may rely on your username, password, security code or other agreed means of identifying you as evidence of your identity and authority.

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**

If you are using the services for personal, domestic or household use, nothing in these terms limits your rights under the Consumer Guarantees Act 1993. However, you acknowledge and agree that if you are acquiring, or hold yourself out as acquiring, the services for the purposes of a business, 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;
- the Network owner, other service providers who use the Network and network operators who allow us to use their networks, and each of 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 email address or (where we have agreed this with you) to the latest postal address that you have given us. It is important you tell us straight away about any change to your email or postal address. You can do this by contacting ACN Customer Services.

### **17. Changing these terms**

We may change these terms, the additional terms that apply to specific services, the New Zealand Services Tariff, ACN's Privacy Policy, ACN's Acceptable Use Policy or any other ACN terms that apply between ACN and you. We will give you at least 10 Working Days' advance notice of any change either in writing (including by bill insert, text message or email) or by displaying the change on our website [www.acnpacific.co.nz](http://www.acnpacific.co.nz). Your continued use of the services indicates acceptance of any changes. 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.acnpacific.co.nz](http://www.acnpacific.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. Wiring Maintenance Insurance

Wiring within your home or other premises may experience wear and tear and, from time to time, it may need to be repaired. Typically wiring repair requires a technician (such as an electrician) to visit your home or other premises. ACN offers insurance for wiring maintenance for a small monthly fee. If you purchase wiring maintenance insurance from ACN and your internal wiring or sockets need to be repaired, we will arrange for the repairs and cover the cost of parts and labour for those repairs. ACN's wiring maintenance insurance is an optional service. If you do not have wiring maintenance insurance you may be liable for the cost of parts and labour for repairs on your home or premises wiring. Please note that RJ45 sockets are not included in ACN's wiring maintenance insurance. Wiring maintenance insurance fees are charged monthly in advance in accordance with the New Zealand Services Tariff. More information about our wiring maintenance insurance can be obtained from ACN's Customer Services or from our website [www.acnpacific.co.nz](http://www.acnpacific.co.nz).

## 20. Use of Fixed Line services

In using our fixed line telephone services, you agree that you must comply with the terms set out in paragraphs 20(a) to 20(c) below.

- (a) Providing the services to you does not give you any rights in our systems or the Network.
- (b) ACN will endeavour to arrange connection, disconnection and fault resolution services within the following timeframes (but as these services are provided by service providers to ACN, ACN does not guarantee these timeframes):

Service	Timeframe
PSTN Disconnection	Next Business Day
Service Relocation	2 Business Days
PSTN Fault Residential Line Access	24 hours
PSTN Line Access Reassignment	3 Business Days
PSTN Non-Coded Access Reassignment	5 Business Days
New PSTN Line (Access Line Not Intact)	On Application
New ISDN BRA	5 Business Days
New ISDN PRA	21 Business Days
ISDN Fault	8 hours during service hours

- (c) If you wish to transfer an existing number from another service provider to ACN, or require an alternative telephone number, ACN may, where possible, provide these services through an Independent Representative.

## 21. Use of DSL Internet Services

We will commence providing you with DSL internet services within a reasonable time after you order them from us but as these services are provided by service providers to ACN, ACN does not guarantee any installation timeframe. To use the DSL internet services a compatible DSL modem or router is required. Modems can be obtained from ACN for an additional charge.

In using our DSL internet services, you agree that you must comply with the terms set out in paragraphs 21(a) to 21(n) below.

- (a) You agree that you may use the DSL internet services only for lawful purposes, and you must not use, or permit any use of, them for any purpose or to post, upload or transmit any information or materials:
- which is illegal;

- which interferes with other users or which is defamatory, abusive, menacing, threatening or harassing;
- which is unsolicited and is offensive, obscene or indecent in nature or unsolicited electronic mail for the purpose of advertising or promoting any goods or services;
- which infringes a third party's rights or is otherwise contrary to law or any applicable code of conduct;
- to gain, or attempt to gain, unauthorised access to, or to interfere with, our or anyone else's computer, server, system, mobile phone or other electronic or communications device, or other communications equipment or network; or
- knowingly or negligently, or attempt to transmit, any virus or other disabling feature or any other similar software or programs that may damage the operation of our (or another person's) systems, data or other property.

You also agree to comply with any ACN Acceptable Use Policy in force from time to time. You can obtain a copy of the ACN Acceptable Use Policy by calling ACN Customer Services or by visiting our website [www.acnpacific.co.nz](http://www.acnpacific.co.nz).

- (b) We may, without liability, suspend or terminate your access to the DSL internet service if we suspect that you have, or have allowed someone else to, use the DSL internet service in breach of this clause 21 or in a manner than presents an unacceptable risk to our systems or the Network.
- (c) You agree that you must edit, delete or stop publication of any material or communication which we consider to be unauthorised, misleading, objectionable, restricted, defamatory, illegal, inappropriate or in breach of these standard terms, or detrimental to our reputation or our brand. If you do not comply with our directions, we may edit, delete or block that material or communication ourselves and charge you for any costs we incur in doing this.
- (d) You agree that all content, software, personal identifiers (including addresses) and anything else we make available to you in connection with our services (**ACN Materials**) are protected by copyright, trade marks and other intellectual property rights and laws. You agree that you must not:
- remove any trademarks, copyright notices, or proprietary labels that may be attached to, or part of, any ACN Materials;
  - modify, copy, translate, create derivative works based on any part of the ACN Materials; or
  - license, assign, otherwise transfer, make available or grant any interest in any part of the ACN Materials to any other person.
- (e) By placing any content or material you provide or make available through the services on our systems (**Your Materials**), you grant to us a perpetual, royalty-free, non-exclusive, irrevocable, unrestricted, worldwide licence in respect of Your Materials to:
- use, copy, sublicense, redistribute, adapt, transmit, publish, delete, edit and/or broadcast, publicly perform or display, and
  - sublicense to any third parties the unrestricted right to exercise any of the rights granted,
- in each case to enable us and our suppliers to provide the services.
- (f) The DSL internet services may include other services such as the provision of email accounts. You agree that you will only use and access these other services in accordance with these standard terms and any separate terms that we may notify you apply to those services. You may only upload, post, email, or otherwise transmit or access messages and material that are permitted in accordance with these standard terms and any applicable separate terms applying to the particular service. You will be responsible for the cost of any necessary verification, maintenance, repair, correction and/or removal of any messages and

material that you upload, post, email, or otherwise transmit or access in breach of these standard terms or relevant separate terms.

- (g) We are not under any obligation to monitor messages and material that you upload, post, email, or otherwise transmit or access but we do reserve the right to:
- review such messages and materials;
  - disclose any information as we deem necessary to comply with any applicable law, regulation, legal process, governmental request or code;
  - edit, block or remove any message or materials at our discretion; and
  - terminate your use of and access to any or all of the services described in paragraph (f) at any time, without notice, for any reason whatsoever.
- (h) We do not monitor, edit or control any messages, information or other content that you may access through use of the services. You agree that ACN is not responsible for any such messages, information or other content.
- (i) You acknowledge that we do not guarantee the availability, connection speed or latency of the DSL internet service and we cannot guarantee that the DSL internet service will always operate free of faults, be free from viruses or harmful code or be secure and private.
- (j) You acknowledge that we may prioritise some traffic (such as web browsing and email) and throttle some traffic (such as peer-to-peer traffic).
- (k) You acknowledge that once you reach the data cap associated with your applicable plan, we may throttle your bandwidth to dial-up speeds or charge you additional usage fees in accordance with the additional terms of the particular DSL internet service you subscribe for.
- (l) You are responsible for providing all hardware, software and other equipment and services required to use the DSL internet services and you are responsible for keeping your systems secure and free from viruses or harmful code, unauthorised access or spam.
- (m) We may intercept communications for the purposes of the Department of Internal Affairs' Digital Child Exploitation Filtering System and in continuing to use the DSL internet services you acknowledge and consent to this.
- (n) We may test the configuration of your equipment from time to time and give you directions to reconfigure your equipment if we reasonably consider that it is necessary to do so.

## **22. Events Beyond Our Control**

We will not be liable to you for any act, omission or failure by us under this agreement if that act, omission or failure was caused directly from an event or circumstances beyond our reasonable control, including, by way of example only, any act of God, act of State, strike or lock-out or other industrial disturbance, act of public enemy, war or threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, boycott, embargo, shortage of suitable labour or materials or equipment or energy, governmental or regional or local authority restraint, legislation or by law. We will use reasonable endeavours to advise you of the existence of such an event or circumstance and the expected effect or duration.

## **23. 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.

## **24. 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, PO Box 90694, Victoria Street West, Auckland 1142

**Internet:** [www.acnpacific.co.nz](http://www.acnpacific.co.nz)