



## **OzTalk Communications General Terms and Conditions**

OzTalk Communications will supply you with telecommunications services ("Services") on the terms and conditions set out below. Words not defined in these terms and conditions have the same meaning as in the Telecommunications Act 1997.

### **1. OUR CONTRACT WITH YOU**

**1.1** As a customer of OzTalk Communications these terms and conditions form the basis of our contract with you.

**1.2** Our contract with you also includes your application or order form which you complete and provide to us. We may accept and rely on a facsimile copy of the application or order form as if it was an original. You will be bound by a facsimile copy of the application or order form as if it was an original.

**1.3** Our contract with you also includes our currently applicable price list. The price list may change from time to time, but we will notify you of any changes when they happen. Copies of the price list are available from us, upon request.

**1.4** A copy of the full General Terms & Conditions relating to the services provided to you by OzTalk Communications is available at <http://www.oztalk.com.au> "Our Customer Terms".

### **2. SERVICE DESCRIPTION**

**2.1** Services will be supplied to you through the carriers or networks ("**Carriers**") that we nominate in writing from time to time. You agree that we –

- (a) may change Carriers without reference to you and at any time; and
- (b) have your express authorisation to notify any relevant Carrier in respect of and to effect any such change.

**2.2** We do not warrant that we will be able to supply Services and we are not liable for any failure to provide all or part of any of the Services, but, to the extent and to the standard that Carriers provide Services to us, those Services will be provided by us to you. When your connection is disrupted, we will do our best to reinstate our Services to you as soon as we can.

**2.3** When using the Services, you agree to –

- (a) comply with all statutes, regulations, by-laws or licence conditions of any government body; and
- (b) not breach any person's rights or otherwise cause us or a Carrier loss, liability or expense.



**2.4** Our obligations to provide the Services ceases when we transfer your account to another supplier and the other supplier takes over full billing of those services.

### **3. CHARGES AND PAYMENT**

**3.1** You agree during the term of this agreement:

- (a) to be charged for the Services we provide to you, regardless of whether it is you who uses them, at our current prices;
- (b) if our charges are exclusive of any taxes, that we can pass on to you the full amount of any taxes payable on the charges; and
- (c) to pay accounts for all of those charges (including taxes) by the date specified in the account (“Due Date”).

**3.2** If you dispute in good faith an amount in the account, you must notify us in writing within seven days setting out reasons for the dispute and the amount in dispute. Notwithstanding any dispute as to any amount of any charge, you must pay the whole amount of each account by the Due Date.

**3.3** If you do not pay your account by the Due Date, then we may charge a late payment fee of \$15.00 onto your invoice and suspend all or part of your Services pending payment of outstanding amounts on the account. Nothing in this clause affects our rights to terminate this agreement under clause 8.

**3.4** If you do not pay the account by the Due Date, we also reserve the right (at our discretion) to adjust the prices you pay for the Services.

**3.5** If you direct us to transfer any of the Services to another supplier, you will pay to us on receipt of an account under our normal payment terms -

- (a) all of our accounts up until the time we stop providing the Services; and
- (b) all other proper charges that we become aware of after the date of transfer that relate to the Services we provided to you.

### **4. AMENDMENTS TO TERMS AND CONDITIONS**

Without limiting clause 3.1, we may vary, alter, replace or revoke any of these terms and conditions effective upon the expiry of 14 days written notice from us. We may interpret your ongoing use of the Services after that date as constituting your acceptance of the variation, alteration, replacement or revocation.

### **5. CREDIT CHECK**

**5.1** Prior to our accepting your application, you have provided to us all information relevant to our assessment of your credit rating. You have consented to the following:

- (a) our obtaining from a credit reporting agency a credit report containing personal information about you;



- (b) our giving to and seeking from any credit provider named in a credit report or in your application, information in relation to your credit rating including without limitation any information about your credit worthiness, credit history or credit capacity that credit providers are allowed to give or receive from other credit providers under the Privacy Act 1988;
- (c) our making independent enquiries of third parties concerning your financial standing and for this purpose you have authorised and permitted such third parties to supply such information regardless of any confidentiality or privilege which applies to the information sought; and
- (d) our providing any information we obtain about you to the relevant Carrier.

## 6. TRANSFER OF SERVICES

**6.1** When you transfer any services (“**Transferred Services**”) from a Carrier, a telecommunications service provider or equipment supplier who supplies telecommunications services or equipment to you at the time of signing this agreement (“**Current Supplier**”) to us, you authorise us to sign on your behalf and in your name any forms required by the Current Supplier to transfer the Transferred Services as we direct.

**6.2** You agree to immediately pay to the Current Supplier any amounts owing for the Transferred Services up to the date of the transfer.

## 7. LIMIT ON LIABILITY

**7.1** We do not exclude or limit –

- (a) the application of any provision of any statute (including the Trade Practices Act 1974, the Privacy Act 1988 or the Telecommunications Act 1997) where to do so would contravene that statute or cause any part of this clause 7 to be void; or
- (b) direct losses and damages which arise only as a result of our gross negligence (which means where we commit an act or allow an omission to occur in reckless disregard of the consequences of the act or omission).

**7.2** Except where clause 7.1 applies, we exclude all statutory liability, tortious liability (including but not limited to liability in negligence), conditions and warranties implied by custom, the general law or statute, liability for all direct, economic, consequential or indirect losses, expenses, damages and costs incurred by you, arising out of or relating to the Services, any failure to supply or delay in supplying the Services or out of or relating to this agreement.

**7.3** Including, but not limited to, liability for gross negligence and except to the extent of clause 7.1(a), we are not responsible or liable for any indirect consequential or economic damages, including, without limitation, loss of income or profit or loss of actual potential business opportunities.

**7.4** We are not liable to you for any delay in the connection or failure in the operation of the Services.



**7.5** You acknowledge that any liability of any Carrier to you in relation to the Services is governed by the terms and conditions on which that Carrier from time to time supplies that service to its own retail customers.

## **8. TERM OF AGREEMENT**

**8.1** This agreement will commence on the date your services are connected with Oztalk Communications.

**8.2** You may cancel this agreement at any time on three month's written notice to us.

**8.3** We reserve the right to charge to you an administration fee, termination fee or any other charges incurred by Oztalk Communications in providing this service to you if you terminate this agreement prior to the full contract term. The details on how the cancellation/early termination charges are calculated are provided on the relevant service application forms.

**8.4** We may immediately terminate this agreement by written notice at any time if, without our prior written consent: you breach any term or condition of this agreement; a receiver or receiver and manager is appointed over any of your property or assets; a liquidator or provisional liquidator is appointed to you; you become bankrupt; you enter into any arrangements with your creditors; you assign or otherwise deal with your rights under this agreement; you cease to carry on business; or there is a material change in your direct or indirect ownership or control.

**8.5** We may also immediately terminate this agreement at any time by written notice if the Carriers cease to provide necessary services to us.

**8.6** If we terminate this agreement in accordance with this clause and a Carrier arranges to supply you services other than through us, you acknowledge that –

- (a) the Carrier may not be able to make those arrangements immediately; and
- (b) once the Carrier has made arrangements, the services acquired by you from the Carrier will be acquired on the Carrier's then current tariffs and terms and conditions and the Carrier will bill you accordingly.

## **9. INFORMATION**

**9.1** Without limiting clause 5.1, you agree to provide us with any information we request in connection with our providing the Services to you under this agreement.

**9.2** You authorise and consent to the following:

- (a) our conducting a physical audit of the Services and any equipment supplied in respect of the Services should we consider it necessary;
- (b) our exchanging with Carriers all information about you and the Services provided to you in our possession or control including, but not limited to, your name, billing address, street address, relevant



telephone numbers, any information obtained by us for the purpose of your application and this agreement;

(c) the Carrier exchanging with us any information in the Carrier's possession or under its control in relation to the Services including, without limitation, all your records and, in particular, exchange line details, account information, call charge records and call event records; and

(d) ours and the Carrier's use of the information referred to in paragraphs (b) and (c) of this clause.

## **10. CONFIDENTIALITY**

You will keep confidential all information supplied by us or the Carriers and we will keep confidential all information supplied by you, except as provided by clauses 5 and 9.

## **11. ASSIGNMENT**

Your rights under this agreement are personal. You must not assign or attempt to assign any right or obligation under this agreement without our written consent. We may assign all or any of our rights and obligations under this agreement at any time by notifying you in writing.

## **12. WARRANTY OF AUTHORITY**

Any persons signing this agreement on your behalf warrant that they have full power and authority to bind you in respect of this agreement.

## **13. OUR EQUIPMENT**

**13.1** Risk in any equipment provided by us or any third party to you for purchase or hire ("**Equipment**") passes to you upon delivery. You will accept any Equipment on the basis of these Terms and Conditions and any additional terms and conditions notified at the time of delivery.

**13.2** Title to any Equipment provided for purchase does not pass to you until all amounts owing to us under this agreement and the cost of such Equipment have been paid in full. Until title passes to you, the Equipment will be held by you as bailee for us.

**13.3** If Equipment is installed at premises occupied by you, you must not interfere with the Equipment or its installation.

**13.4** You irrevocably grant to us, our agents and servants, leave and licence without the necessity of giving any notice to enter at any time on and into premises occupied by you using reasonable force if necessary to inspect, search for and re-take possession of any Equipment in respect to which payment is overdue. You shall indemnify us and hold us harmless against any loss or damage suffered by any person or company arising from such possession.

**13.5** On the termination of this agreement for any reason, you will immediately return all Equipment owned by us or make it available for our collection.

## **14. OTHER EQUIPMENT**



**14.1** Where you have PABX or other network equipment, you must ensure that it is programmed as we specify.

**14.2** Where you have equipment on premises you occupy which is used by another supplier to provide you with services, we will disconnect that equipment when you transfer the services to us and we connect our Equipment (if any). You must immediately notify that supplier that you have transferred your services to us and arrange for them to remove their equipment from the premises.

## **15. MISCELLANEOUS**

**15.1** Any notice, demand, consent or other communication required to be given to either party must be delivered personally or sent by prepaid mail or by facsimile to the address of the other as last notified.

**15.2** This agreement shall be governed by and construed in accordance with the law of Victoria and the parties hereby submit to the non-exclusive jurisdiction of the courts of that State.

**15.3** This agreement contains yours and our entire understanding to the exclusion of any and all prior or collateral agreement or understanding relating to the Services, whether oral or written.

**15.4** If any part of this agreement is found to be invalid or of no force or effect, this agreement shall be construed as though such part had not been inserted and the remainder of this agreement shall retain its full force and effect.

General Terms and Conditions  
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Oztalk Communications