



# Terms and conditions that will apply to any provision of services

## 1. General

- 1.1 Throughout any Agreement, "Exetel" shall mean Exetel Pty Limited of Level 4, 275 Alfred Street, North Sydney, New South Wales, 2060. (ACN 350 979 865 46)
- 1.2 Once an application has been processed and accepted by Exetel, Exetel will supply and the Customer agrees to acquire the services ("Services") specified in the Schedules, on these terms and conditions. To the extent of any inconsistency between these terms and conditions, and the services Schedules, these terms and conditions will prevail. By accepting the supply of Services, the Customer accepts these terms and conditions.
- 1.3 The Customer acknowledges that the terms and conditions of this Agreement, including any fees, rates and charges, may be varied from time to time by notification and without notification if the variation arises because of a change in law or the regulatory environment.
- 1.4 The Customer agrees to provide relevant details and sign any necessary forms or other documents relevant to a Service it has selected, including any necessary to effect a transfer of service to Exetel and the Customer authorises Exetel to complete any necessary forms on its behalf.
- 1.5 Exetel shall use reasonable endeavours to provide the Services, but it shall not be liable if it is prevented, hindered or delayed from providing the Services for any reason whatsoever.
- 1.6 While Exetel will endeavour to provide Services of a reasonable quality, Exetel does not warrant the quality of the Services nor does Exetel support the transmission of data via ISDN or any IP platform line. Exetel does not provide a maintenance service.
- 1.7 Provision of the Services is conditional on the Customer having a telephone number(s) capable of being pre-selected at their local exchange to the Exetel service.
- 1.8 The customer understands that telephone lines connected to the Optus network cannot be used for telephone services provided by Exetel.
- 1.9 The Customer agrees that it will not resell or re-supply any of the services unless it has prior written approval from an authorised Exetel representative.

## 2. Charges and Billing

- 2.1 The Customer must pay to Exetel the charges for the Services plus any applicable GST. The charges for the Services are:
  - (a) the fees, rates and charges that are set out in the relevant service Schedule and as otherwise notified to the Customer from time to time; or
  - (b) if no charges are set out in the relevant service Schedule, Exetel's standard corporate fees, rates and charges applicable at the time of supply of the relevant Services.
- 2.2 Exetel may impose a credit limit on the Customer's account and/or require payment of a security deposit or interim payment, at its sole discretion at any time. Exetel may at any time apply the Customer's security deposit to meet any cost, loss or liability incurred as a result of failure by the Customer to comply with these terms or to pay any amount payable by the Customer to Exetel or its related bodies corporate. The Customer agrees that, where security is required, it will provide security to Exetel within the requested time and if it fails to do so the Services may be immediately suspended and/or disconnected. If a Service is disconnected, a reconnection fee may apply.
- 2.3 Bills for Services will be issued monthly electronically; no paper bill will be provided by Exetel. While Exetel will use its reasonable endeavours to bill the Customer for its use of the Services within six months of such use the Customer acknowledges that Exetel's bill for Services may be dependent on the receipt of billing information from other parties and that any delay in issuing a bill to the Customer will not affect the validity of the charges contained in the bill.
- 2.4 The Customer must pay any bill (including any applicable GST) by its due date without any deductions or set-off. The Customer agrees that if it fails to pay its bill by the due date then the Services may be immediately suspended and/or disconnected. Exetel may charge the Customer interest on any late payments at a rate of 3% per annum above the base lending rate.
- 2.5 The Customer agrees that Exetel's records are prima facie evidence of the Customer's use of the Services and the charges payable. The Customer agrees that any supply of Services to any person making telephone calls from the numbers nominated by the Customer is deemed to be authorised by the Customer to make those calls, and the Customer will pay all charges accordingly.
- 2.6 The Customer may elect to have its bills paid by way of a direct debit from an account held by the Customer at an approved financial institution or direct debit from a valid credit card. Changes to direct debit payments may take up to 30 days to be effected.
- 2.7 The customer agrees that if any debit to their nominated bank account or credit card is dishonoured the customer will pay a dishonour fee of \$25.00 for each and every dishonoured transaction.

## 3. Liability

- 3.1 The Customer agrees that it will not use the Services for any unlawful or improper purpose and will indemnify Exetel for any claim, cost, loss or damage arising out of its use of the Services. Except as required by law, Exetel will not be liable to the Customer or to any person claiming through the Customer, for any costs, loss, liability, damages, or consequential, indirect or economic loss whatsoever arising out of the acts, omissions or negligence of Exetel.
- 3.2 If Exetel is not able to so exclude liability, the Customer agrees that Exetel's total liability to the Customer is limited, at Exetel's option, to supplying the relevant service again or paying the cost of doing so.

## 4. Use and disclosure of Information

- 4.1 The Customer authorises Exetel and its related bodies corporate to use and exchange Customer information before, during and after the provision of credit to the Customer with any of their agents and any credit reporting agency credit providers, carriers, Customer's business references in accordance with the relevant State and Federal acts for the following purposes:
  - (a) considering or applying Exetel's credit policy to the Customer's application;
  - (b) ongoing credit management of Customer account(s) with Exetel or any of its related bodies corporate, including recovery of Customer overdue payments;
  - (c) ongoing maintenance of credit records about the Customer;
  - (d) to enable Service delivery to the Customer; and
  - (e) any other purposes permitted under the Telecommunications Act 1984.
- 4.2 The customer agrees that information referred to in Clause 4.1 includes but is not limited to:
  - (a) details and status of any of the Customer accounts with Exetel or its related bodies corporate;
  - (b) identification of Customer service numbers, whether with held or not;
  - (c) Customer credit history, including whether the Customer has made credit defaults, dishonoured cheques or credit infringements;
  - (d) Information about Customer creditworthiness or capacity; and
  - (e) Customer personal details even if the application is for a business or company.
- 4.3 "Customer" in this clause is defined to include the director of the Customer signing this form. The director signing this Agreement acknowledges that Exetel may do a credit check on him or her in their personal capacity.
- 4.4 Where the Customer is in default of payment to Exetel the Customer agrees that Exetel or its agents may utilise any information collected and recorded by Exetel or its related bodies corporate in relation to the Customer's account to assist Exetel in the process of debt recovery and may use debt collection agencies for that purpose.
- 4.5 Calls made to or from Exetel's Customer Service Centre may be recorded for customer service and verification purposes.
- 4.6 Exetel may obtain an alternative provider to provide Services to the Customer. The Customer agrees to assignment of Exetel's rights under this Agreement to that alternative provider; and irrevocably authorises Exetel to execute on the Customer's behalf any documents necessary to give effect to that transfer. Substitute services may not be available immediately. If substitute services are made available, they may be charged by the alternative provider at its then current rates and terms and condition, and the Customer will be billed accordingly.
- 4.7 The Customer should keep confidential all passwords it nominates in connection with the Services. The Customer acknowledges that Exetel will disclose any information in connection with the Customer's accounts to any who correctly quotes the password.

## 5. Termination

- 5.1 Exetel may terminate this Agreement at any time by giving the Customer thirty days written notice.
- 5.2 Exetel may terminate this Agreement immediately on notice to the Customer, if the Customer;
  - (a) breaches any clause of this Agreement and the breach is not remedied within 7 days of the receipt of written notice from Exetel; or
  - (b) has a liquidator appointed, has an order made for its winding up, or has an administrator or a receiver appointed over all or a portion of its assets.
- 5.3 The Customer may terminate this Agreement at any time.
- 5.4 The Customer will remain liable for all charges incurred by the Customer prior to termination of this Agreement for whatever reason.

## 6. Governing Law and This Entire Agreement

- 6.1 Unless the parties otherwise agree, this Agreement will also apply to any other services acquired by the Customer from Exetel in the future. If the Customer wishes to acquire additional services, the parties will negotiate and attach an additional Service Schedule to this Agreement.
- 6.2 These terms plus the terms of the chosen Service(s) constitute the entire Agreement between the Customer and Exetel in relation to Services. Any condition, warranty, representation or other term which might otherwise be implied into or incorporated into these terms and conditions, or any collateral contract, wither by statute, common law or otherwise, is hereby excluded. Neither party shall have any remedy in respect of any untrue statement made to it upon which it relied in entering into this Agreement (unless such untrue statement was made fraudulently) and each party's only remedy shall be for breach of contract as provided in this Agreement.
- 6.3 The Customer must not assign any of its right or obligations under this Agreement without Exetel's consent.
- 6.4 Any notice under this Agreement whether required to be written or otherwise may be given by Exetel to the Customer by post, personal service, e-mail or voice message.
- 6.5 These terms are governed by the laws of New South Wales.