

WorldxChange Communications Limited Standard Terms and Conditions

Our Agreement with You

1. As a customer of WorldxChange Communications Limited these standard terms form the basis of WorldxChange's contract with you. Our contract with you also includes your application or order form which you complete and provide to us. You will be bound by a facsimile copy of our application or order form as if it was an original. If you complete an application or order form by telephone we will record our conversation with you and you will be bound in the same manner as if you had signed an application in writing. 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 is available from us, upon request. If you use our Xnet internet service, our Xnet Acceptable Use Policy will also apply and form part of our contract with you. A copy of our Xnet Acceptable Use Policy may be viewed on our website at <http://www.xnet.co.nz/legal/terms.shtml> or is available from us, upon request.

2. We may amend these standard terms at any time. This will vary our contract with you. When we do this we will notify you that we have amended these standard terms and we will post a copy of our amended terms on our website at http://www.xnet.co.nz/pdfs/terms_wxc.pdf. It will be your responsibility to visit our website to obtain a copy of our amended terms. We will send you a copy on request. The amendments we make will apply seven days from the date of our notice. We will interpret your ongoing use of our services after that date as constituting your acceptance of the amendments.

3. In this contract we use the terms:

- "WorldxChange", "we", "our", and "us" to refer to WorldxChange Communications Limited and representatives.
- "you" and "your" to refer to the person who is identified on the front of this form as our customer
- "Xnet" to refer to our Internet service.
- "Network" to refer to any of the networks operated by WorldxChange or other carriers used to provide you with various services from WorldxChange.
- "Internet" to refer to the World Wide Web

Our Commitment of Service to You

4. Once you are connected to our Network we aim to provide you with consistently reliable and good quality service. We do not guarantee that the service we provide will be perfect. When your connection is disrupted we will do our best to reinstate our service to you as soon as we can.

5. WorldxChange Help Desk is available 8am to 8pm Monday to Friday and 10am to 4pm Sat, Sun and public holidays. Service enquiries can be directed to the following:

Telephone: (Auckland) 308 1300 or Email: info@wxc.co.nz for voice related issues
Telephone: 0800 14 Xnet (9638) or Email: help@xnet.co.nz for Internet related issues Facsimile: (Auckland) 308 1301

6. We will supply the service to you in whatever way we think is appropriate. We can choose the carriers and suppliers used to provide our services and we can change the carriers or suppliers at our discretion.

7. From time to time we will advise you about ways in which you can access our Network. At present we can provide you with code or non-code access to our Network.

Paying Your Account

8. You agree that you will:

- Pay for all goods and services we provide to you, regardless of whether it is you who uses them unless otherwise stated. Our charges are inclusive of GST unless stated otherwise.
- Be liable for any charges incurred where your modem is programmed to dial overseas numbers without your knowledge or direction. We accept no liability for such charges and may refuse to reverse such charges from your account. It is the customer's responsibility to safeguard their PC.
- Notify us immediately if you dispute any charges, give us full details of the reason you are disputing the charges and evidence of the grounds for your dispute. We will not recognize any claim if you do not notify us of any disputed charges within 60 days of the date on which the account in dispute was sent to you. We will look into any claim which is made within the appropriate timeframe and you will comply with our good faith decision on the claim. You must pay the undisputed charges by the due date for payment.

9. You agree that you will pay each account by the due date for payment. If you do not we may charge you interest at a rate we specify and which is equivalent to our bank overdraft interest rate plus 2% per annum on the overdue amount from the due date until payment of the relevant amount and we may also recover from you all legal and other costs incurred by us, arising from the collection of any amount which you owe to us and which you do not pay to us when due.

Your General Responsibilities

10. You agree that you will:

- Ensure that all of the information you give us is correct and complete.
- Comply with any legal requirements concerning the use of our services.
- Comply with any requirements of any other carrier in relation to the use of its network.
- Make sure everyone you are responsible for also meets these responsibilities.
- Do everything necessary to enable us to use and take over responsibility for your telephone and facsimile numbers to the extent this is necessary or desirable to enable us to provide our services to you.
- Provide reasonable access to our employees, contractors and representatives authorised by us or any other carrier to carry out any work required for the commencement, operation and continuance of our services to you, and the maintenance of the Network. We will normally carry out this work by appointment and during normal working hours. However, if we need to perform the work at any other time you must provide us with the access we require.
- If required by us, pay us a bond or provide us with other comfort of your ability to pay our charges. If you pay us a bond it will not accrue interest and we will repay it to you when our contract ends, provided you have paid us everything you owe us at that time.
- Adhere to the Xnet Acceptable Use Policy as set out at <http://www.xnet.co.nz/legal/terms.shtml> as amended from time to time.
- Provide us with Xnet login and Email information to enable us to rectify any faults with either the Network or your connections.

11. You are responsible for ensuring that all calls or other communications (collectively, "calls") specifically or inadvertently directed into our Network from your communications equipment or systems (including but not limited to telephone, facsimile, PABX, VoIP Softswitch, gateway, computer software or hardware) relate to:

- services you have ordered from us; and
- services we have agreed to provide to you and do not relate to services you have agreed to take from another carrier. You must ensure that if you have any pre-programmed calling procedures, then prior to the commencement of our service to you, all such pre-programmed calling procedures are deleted or removed from such equipment or systems.

12. If the obligations in paragraph 11 are not complied with:

- you will be liable for our charges in conveying or dealing with such calls; and
- you will not be entitled to receive any discount or benefit you would have received had you complied with those obligations.

13. We reserve the right to impose a credit limit on your account at any time. You agree that the credit limit imposed by us may be altered at our discretion from time to time without notice.

Suspension or Disconnection

14. If at any time you exceed your credit limit we will be entitled to suspend the provision of our services to you.

15. If you do not meet all or any of your responsibilities under this contract we may suspend or disconnect you from our Network, discontinue any other services we provide to you and/or terminate our contract with you.

16. We may suspend or disconnect you from our Network if another carrier suspends or interrupts its service to us and that suspension or interruption affects our ability to provide our services to you.

17. We may suspend or restrict a service in an emergency or whenever we, another carrier, or any other appropriate person considers that step necessary or reasonable to protect persons, systems or other property.

18. If you are suspended or disconnected from our Network for failing to meet any of your responsibilities under this contract you may be required to pay a recommencement fee before you can use our Network again. All costs and expenses of or incurred by us as a result of suspension or disconnection and any recommencement shall be payable by you upon demand.

19. Normal charges, as outlined in our price list, will continue to apply during your suspension or disconnection from our Network.

Compensation and Liability

20. If you are a residential customer, you may have rights under the Consumer Guarantees Act 1993 in addition to the rights set out in this contract and the terms of this contract shall apply subject to the provisions of the Consumer Guarantees Act 1993. If, however, you receive goods or services from us for the purposes of a business, then you agree that the Consumer Guarantees Act 1993 will not apply to this contract or any of our business dealings.

21. Subject as above we make no representation and give no assurance, condition or warranty of any kind to you in relation to the goods or services that we provide to you and we accept no liability for any direct or indirect or consequential loss or damage of any kind arising out of or attributable to any breach by us of any warranties, conditions or obligations under this contract or negligence or otherwise.

22. None of the persons referred to below are liable to you or has to pay you for anything else caused by or resulting from anything any of them does or does not do, or delays in doing, whether or not it is contemplated or authorised by this contract:

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

23. We will accept no liability for any loss or damage, including, without limitation, indirect and consequential losses, caused by another carrier suspending or interrupting its service to us which affects our ability to provide our services to you or any other cause beyond our reasonable control.

24. If any of our services fail to operate for any reason and you use a service provided by another carrier, we will not be responsible for that carrier's service charges.

25. This exclusion of liability applies whether or not our contract with you has ended and regardless of the type of damage you suffer or howsoever it was caused.

26. To the extent permitted by law if, despite the provisions contained in the previous section, we or another carrier is liable to you for any breach of this contract, or for breach of any other obligation that might be owed to you, our liability shall be limited, at our discretion, to any one or more of the following:

- If the breach relates to the provision of services:
 - supplying of the relevant services again; or
 - payment of the cost of having the relevant services supplied again; and
- If the breach relates to goods:
 - replacement of the relevant goods or supply of equivalent goods;
 - repair of the relevant goods;
 - payment of the cost of replacing the relevant goods or of acquiring equivalent goods; or
 - payment of the cost of having the relevant goods repaired.

27. Regardless of the legal basis of any claim of any kind made against us, our maximum liability to you will be limited to the lesser of the price paid for the goods or services supplied by us which give rise to that claim or the price paid for the goods or services supplied by us to you during any 12-month period.

Privacy and Personal Information

28. You agree, for the purposes of this contract and the performance of our obligations to you, that we may collect information about you. The information we collect about you may be obtained from you and others. We may obtain information about you when the services offered to you are used, either by you or anyone else.

29. We will treat all personal information in a manner which meets the requirements of the Privacy Act 1993.

30. You may decide not to provide any information sought from you. If you do not provide it then we may not be able to provide our services to you.

31. We may use the information we hold about you and may exchange information about you with our contractors, agents and representatives, with other carriers, and with credit reporting and debt collection agencies for the purposes of our business.

32. All information held by us will be held at our offices at Level 9, Tower Two, Shortland Street, Auckland. You may obtain access to, and correct, any information held by us under the Privacy Act 1993.

33. You agree that we may monitor and record calls that you make to us or that we make to you for the purpose of maintaining and improving the quality of our services to you.

Other Terms

34. Other terms may apply to some of the services provided by us to you. We will tell you about the terms that apply in those circumstances.

Invoices and Notices

35. Where you have provided us with an email address, we will deliver our invoices and any other notices to the most recent email address that you have given us. We may assume that any such invoice or notice has been received by you at the time that the invoice or notice enters the information system to which your email address relates.

36. Where you have not provided us with an email address or we are unable, for whatever reason, to deliver invoices or other notices to the email address you have given us, we will deliver invoices and any other notices to the most recent postal address you have given us. We may assume that any such invoice or notice has been delivered five days after we have posted it.

37. It is essential that if you change your email or postal address or move premises, you must inform us of this event in writing so that we may ensure there is no interruption in our supply of services to you. If you do not inform us of this event, we may not be able to ensure the continuous supply of our services to you.

Assignment and Delegation

38. We may assign or transfer our rights and responsibilities under this contract to someone else. We will give you written notice in advance if we intend to do this.

39. We may also subcontract the performance of any of our responsibilities under this contract to anyone else.

40. You may not assign or transfer any of your rights or responsibilities under this contract to anyone else without our prior written consent.

Terms Separately Binding

41. If, for any reason, any provisions of this contract cannot be enforced or relied on by either of us, all other terms of our contract with you remain binding.

Waiver

42. If for any reason we delay in exercising our rights that will not mean we have waived or given up our rights.

Termination

43. If you do not pay any of the invoices we send to you or you otherwise fail to meet your responsibilities to us we may end our contract with you immediately without notice. Ending the contract between us in this way shall not release you from any outstanding obligations or responsibilities you owe to us.

44. If you want to end the contract between us please write to us at PO Box 3296, Shortland Street, Auckland. Our agreement will end and all charges will cease 30 days after you give us notice that you wish to end this contract provided you have paid us in full all outstanding amounts due to us.

45. On termination of our contract with you, we will cease providing our services to you and all amounts which you owe to us will immediately become due and payable. We shall not be liable to you for any loss or damage suffered, or claimed to have been suffered, by you on or following termination of the supply of our services to you.

New Zealand Law Applies

46. This contract is governed by New Zealand law and any claims made by you must be brought and heard in New Zealand