

General Terms for Business Customers



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1 About these terms

If we accept your request for a Service, we will provide you with Services on the terms and conditions set out in these General Terms, together with the applicable Service Terms.

The General Terms and the Service Terms, are our standard form of agreement under Part 23 of the Telecommunications Act.

We may change the General Terms and the Service Terms from time to time as allowed by the Telecommunications Act.

If anything in these General Terms is inconsistent with anything in the Service Terms, the Service Terms prevail to the extent of the inconsistency.

Certain terms used in these General Terms have special meanings, which are set out in the Dictionary.

2 Services

We will do our best, but do not guarantee, to provide each Service to you from the date that you have requested.

You confirm that you are not a Carrier or Carriage Service Provider. You must tell us if you are or become a Carrier or Carriage Service Provider. If you tell us or we believe that you are operating as a Carrier or Carriage Service Provider, we may cancel the Services immediately on notice to you.

We may provide the Services using the services of a Third Party Supplier. If we do this, you must comply with our reasonable directions to ensure compliance with the Third Party Supplier's supply terms.

You must arrange, pay for, and be responsible for any trenching or other equipment needed to house any cabling required to provide the Services.

We may modify or substitute any Service or Nexium Equipment used to deliver a Service, and determine the most appropriate means of providing a Service, at our absolute discretion.

You must provide us with all information and assistance that we reasonably require to enable us to comply with this agreement, any law, or any request, requirement or direction of any Regulator, emergency services authority, or applicable emergency management plan.

You must and we may be required to comply with the interception capability obligations and telecommunications data retention obligations imposed by the Interception Act, concerning the Services.

You and we must comply with any applicable laws and regulations.

You must not:

- use or allow others to use any Service to commit an offence, for any unlawful or immoral purpose, or in a way that interferes with the operation of the Service or makes it unsafe;
- damage our network or Nexium Equipment, or cause the quality of any service to be impaired; or
- re-supply a Service (or any part of it) without our prior written agreement.

3 Service Levels

We will do our best to provide each Service according to the Service Levels in the relevant Service Terms.

We do not guarantee that the Services will be continuous or fault free.

You acknowledge that any telecommunications capacity amounts offered under this agreement will include all overheads and protocols that may reduce the actual capacity amount that you can utilise.

4 Equipment

You must ensure that:

- all Customer Equipment complies with all applicable laws and regulatory standards, is capable of operating with the relevant service and Nexium Equipment, has all necessary regulatory approvals, and is not prohibited by ACMA; and
- you stop using and disconnect any Customer Equipment immediately if we ask you to (we will generally do this if the Customer Equipment is causing interference with our network or any Service).

You are responsible, at your own expense, for installing, operating and maintaining any Customer Equipment. You must arrange and pay for any electricity supply (otherwise, your Service may not work). You must also tell us about any relevant changes affecting your Service or Customer Equipment.

If we provide any Nexium Equipment to you for use with a Service:

- Nexium Equipment remains our property unless we sell it to you;
- we may modify, replace, service or remove the Nexium Equipment at any time;
- you must not allow anyone (other than us) to move, access or take possession of Nexium Equipment;
- you must comply with our directions concerning the Nexium Equipment;
- you must tell us immediately if you become aware of any damage to or malfunction in Nexium Equipment;

- you must keep the Nexium Equipment free from any Security Interest;
- you must provide a suitable environment (to a standard reasonably acceptable to us) for the installation, operation and use of Nexium Equipment for use with a Service;
- you must provide us (and our Personnel) with safe access to your premises to install, inspect, maintain, repair, replace or remove Nexium Equipment (including, if necessary, by obtaining the approval of the landlord or any other third party).

If we supply any Third Party Product for use with a Service:

- risk in the Third Party Product passes to you when it is delivered to you; title passes to you upon full payment;
- you must comply with any relevant licence, warranty and other terms and conditions applying to that Third Party Product; and
- we do not offer any warranties for the Third Party Product.

We will not be liable for any failure to provide, delay in providing or interruption to a Service, or failure to meet any Service Level caused or contributed to by your failure to meet any of your obligations concerning Customer Equipment, Nexium Equipment or Third Party Product, in this clause 4.

5 Adds, Moves and Changes

You must tell us in writing if you want to change your Service. If we agree to the changes, we will notify you of (and you must comply with) any new or changed terms (including charges) that will apply.

6 Charges and billing

You must pay us the Charges for the Services. We will try to bill you monthly, but may bill more or less regularly. Unless the Service Terms say otherwise, we will bill you in advance for all Charges. We may issue additional or amended bills for any unbilled or understated Charges, within three months after such Charges were incurred.

If we ask, you must pay interest on any overdue payment (including interest payable to any Third Party Supplier). You will be liable to pay

our expenses for any action we take to recover any outstanding amounts owed by you to us.

If you use a Service to access a third party service, and we are billed for this, you must pay us for that service.

You must pay for any use of your Services, whether authorised by you or not. We do not monitor your Services for excessive or unusual use.

We may need to collect, record or generate billing information concerning the Services. You permit us to disclose such information to third parties concerning any billing disputes with other Carriers or Third Party Suppliers.

7 Taxes

You must pay any GST and stamp or transaction duty on this agreement and any charges related to those taxes and duties. Otherwise, the Charges include all State and Commonwealth taxes (**Taxes**). If the amount of any Tax changes, we may change the Charges accordingly.

If a Charge is not stated as GST inclusive the following provisions apply:

- a recipient of a taxable supply under or in connection with this agreement must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier (or the representative of the supplier's GST group) in respect of the taxable supply; and
- the recipient must make that payment to the supplier when the consideration or part of it is provided, except that the recipient need not pay any amount referable to GST unless the recipient has received a tax invoice for that taxable supply.

Words in this clause 7 have the same meaning as in the GST law, unless the context makes it clear that a different meaning is intended.

8 Payment

You must pay each bill:

- within 30 days from the date of the bill;
- in full and without deducting, withholding, setting off or counter claiming any amount;
- by EFT.

Our records are sufficient proof of the amount payable, unless you can prove that they are incorrect. You must make any claim that charges are incorrect within 12 months of the bill's due date.

9 Security

If we ask you at any time, you must provide us with a form of Security acceptable to us. We are not obliged to provide any Services to you if you do not provide the required Security. If all your Services are cancelled, we will return the Security to you, less any amounts you owe us.

10 Cancelling or suspending a Service

We may cancel or suspend a Service immediately if:

- we believe it is necessary to do so to maintain, upgrade, restore or do any other work concerning our network or systems;
- the law or a Regulator requires, directs or allows us to do so;
- an event beyond our control or an emergency occurs;
- we are unable to provide the Service as specified because of an act or omission of a Third Party Supplier;
- you damage our network or Nexium Equipment, or cause the quality of any service to be impaired;
- you do not meet your obligations concerning Customer Equipment or Nexium Equipment under clause 4;
- you no longer occupy your premises;
- you use the Service (or any part of it) to commit an offence, or for any unlawful, immoral or improper purpose, or in a way that interferes with the operation of the Service or makes it unsafe;
- you breach these General Terms and do not remedy that breach within five Business Days of our notice requiring you to do so; or
- you become, or appear likely to become, insolvent.

We will try to give you written notice of suspension but we may suspend a Service

without notice. We will give you notice if we cancel a Service.

You may cancel the Services by giving us 30 days' written notice if:

- there is no Minimum Period for the relevant Service, the Minimum Period has expired, or you have paid the applicable charge for cancelling the Services before the end of the Minimum Period;
- we materially breach the General Terms (this does not include any failure to comply with Service Levels) and do not remedy that breach within 20 Business Days of your notice requiring us to do so; or
- we are insolvent.

If there is a Minimum Period for a Service, and you or we cancel the Service during the Minimum Period (except because of a breach by us), you will immediately become liable to pay us the early cancellation charges specified in the Service Terms. You agree that this is a genuine pre-estimate of the loss we will suffer if you terminate the relevant Service before the end of the Minimum Period.

11 After cancellation or expiry

If we or you cancel any or all of the Services, or any Service Terms expire:

- you must stop using the Services that have been cancelled or expired; and
- you must promptly and at your cost allow us access to your premises to enable us or our Personnel to remove the Nexium Equipment (if you do not, you owe us the value of the Nexium Equipment as a debt due); and
- all accrued rights and obligations will continue to apply.

12 Liability

Except as set out in this clause 12, we are not liable to you in contract, tort (including negligence) or otherwise for any Loss (including Consequential Loss).

Where any legislation implies any guarantee, condition or warranty in these General Terms, and that legislation voids or prohibits provisions which exclude or modify the operation of such terms, the guarantee, condition or warranty is deemed to be included in these General Terms.

To the extent permitted by law, our liability is limited to resupplying the Services, or paying the cost of having the Services supplied again, or, if the breach relates to goods, replacing, repairing or paying the cost of replacement or repair of the goods.

We are not liable if we do not comply with the Terms because something happens that is beyond our control.

We accept liability to you for our negligence in supplying Services where the negligence causes:

- personal injury or death;
- damage to your equipment or property, but only for our choice or repair or replacement of the equipment or property, or the cost of that repair or replacement.

Any liability to you under this clause 12 is reduced to the extent that your act or omission (or that of your Personnel or any third party) caused or contributed to the Loss.

13 Customer indemnity

You indemnify us against (and must pay us for) any Loss we suffer in connection with the supply of the Services, concerning:

- any act or omission of you or your Personnel;
- your breach of these General Terms or the Service Terms;
- any act or omission of, or claim brought against us by, any third party with whom you have a contractual relationship or who uses your Service;
- any claim made against us by your landlord or other third party concerning our entering your premises; and
- any claim brought against us or another Ergon Group member by a Third Party Supplier (or its nominee), to the extent that the claim arises concerning any negligent act or omission of you, your Related Bodies Corporate, your Personnel, or any third party with whom you have a contractual relationship or who uses your Service.

14 Benefit of liability and indemnity provisions

In consideration of the promises made by us under the Terms (which you acknowledge to be valuable consideration), you agree that:

- the exclusions and limitations of liability in clause 12 have also been entered into for the benefit of, and may be relied on by, the Ergon Group and any Third Party Supplier; and
- the indemnities given by you in clause 13 extend to the Ergon Group, and you indemnify the Ergon Group under clause 13.

As the duly authorised agent of Ergon Energy Corporation Limited and its related bodies corporate (**Ergon Group**), we notify the Ergon Group's acceptance of the promises made under this clause 14, for the purposes of section 55 of the *Property Law Act 1974* (Qld).

15 General

If any part of the Terms is void or unenforceable, that part is taken to be removed from the Terms. The remaining parts of the Terms continue to have effect.

We are entitled, to the extent permitted by law, to set-off any amount we owe to you by any amount you owe to us or in relation to which we have a valid claim, under these Terms.

16 Dictionary

In the Terms, the following words have the following special meanings.

ACMA means the Australian Communications and Media Authority.

Business Day means a day other than a Saturday, Sunday or public or bank holiday, in Brisbane, Queensland.

Carriage Service Provider has the meaning given by the Telecommunications Act.

Carrier has the meaning given by the Telecommunications Act.

Charges means any fees or charges applicable to the Service as set out in the relevant Service Terms or Pricing Table.

Consequential Loss means consequential, special, indirect liability, loss, damage, cost or

expense, direct or indirect loss of profit, direct or indirect loss of revenue, loss or corruption of data, loss of any anticipated or expected revenue or profits, economic loss of any kind and loss of goodwill.

Customer Equipment means all equipment (including cabling) which you use concerning the Services, but excludes Nexium Equipment.

EFT means electronic funds transfer.

Ergon Group means Ergon Energy Corporation Limited ACN 087 646 062 and its Related Bodies Corporate (including us) and any body corporate, person or entity in which any of the parties has an interest.

General Terms means this document.

GST law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or if that Act does not exist for any reason, means any acts imposing or relating to the imposition or administration of a goods and services tax or any similar tax in Australia and any regulation made under that Act.

Interception Act means the *Telecommunications (Interception and Access) Act 1979* (Cth).

Loss means any loss, cost, damage, expense or liability.

Minimum Period means a minimum period for the supply of a Service as specified in the relevant Service Schedule.

Nexium Equipment means all equipment and facilities (including cabling) as supplied or used by us in providing the Services, but excludes Customer Equipment.

Personnel means employees, contractors, agents, and contractor's employees and agents.

Pricing Table means our list of prices for applicable Services as set out on our website from time to time.

Regulator means ACMA, the Australian Competition and Consumer Commission or any other relevant government authority or statutory body with authority to enforce regulation.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Security includes a security deposit, charge or bank guarantee.

Security Interest means a security interest that is subject to the *Personal Property Securities Act 2009* (Cth) or any other mortgage, pledge, lien, charge or other arrangement of any kind which in substance secures the payment of money or the performance of any obligation, or that gives a creditor priority over unsecured creditors.

Service means a service that we have agreed to supply to you under these Terms.

Service Levels means, concerning any Service, the levels of service specified in the applicable Service Terms.

Service Terms means the terms for a Service, (as set out in the relevant Service Definition found on our website) which, together with the General Terms, form the standard form of agreement for the Service.

Taxes has the meaning given in clause 7.

Telecommunications Act means the *Telecommunications Act 1997* (Cth).

Terms includes the General Terms and any applicable Service Terms.

Third Party Product means any good, equipment, hardware, software, software tools and related technology and documentation, re-supplied by a Third Party Supplier to us for re-supply by us to you.

Third Party Supplier means a Carrier, Carriage Service Provider or an equipment, facilities or service supplier other than a member of the Ergon Group.

we, us and **our** refer to Ergon Energy Telecommunications Pty Ltd ABN 34 106 459 465 trading as Nexium Telecommunications.

you, your and **yours** refers to the customer for a Service under these Terms.

In the Terms, unless indicated otherwise:

- words in the singular include the plural and vice versa;
- a gender includes the other gender;
- if a word or phrase is defined its other grammatical forms have corresponding meanings;

- “includes” means “includes without limitation” and “including” has a corresponding meaning;
- a reference to:
 - a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
 - any legislation includes subordinate legislation under it (as varied or replaced from time to time).