

SWIFTNET- TERMS AND CONDITIONS

INTRODUCTION

The terms and conditions set out below will apply to the Services and Equipment that are provided to you by Swiftnet. You should read these terms and conditions carefully before using Services and Equipment provided by Swiftnet.

1. DEFINITIONS

In this agreement the following words and phrases shall have the following means unless the context clearly indicates otherwise:

“Swiftnet” means Swiftnet NZ Limited;

“Agreement” means any written agreement between Swiftnet and you for the provision of Services and Equipment and shall include the Terms and Conditions.

“Equipment” means all equipment and software provided to you by Swiftnet in order to provide the Services;

Services means the internet and telecommunications services as specified in the Agreement between Swiftnet and yourself;

“Terms and conditions” means the terms and conditions contained in this document; and

“You” and “Yourself” means the customer who has entered into an Agreement with Swiftnet for the provision of Equipment and Services.

2 TERM OF THE AGREEMENT

2.1 The term of the Agreement shall be in accordance with the contract term as specified in the Agreement between Swiftnet and yourself and shall continue thereafter until cancelled by either party giving one month’s written notice to the other.

3 SUPPLY AND USE OF SERVICES

3.1 Swiftnet shall provide the Services to you with reasonable care and skill. Swiftnet shall ensure that the Services are reliable and are of a high standard although Swiftnet does not guarantee that the Services will be continuous or fault free. Swiftnet shall ensure that all work that it performs in connection with the provision of the Services is carried out by competent and suitably qualified personnel and in a professional manner.

3.2 After an Agreement has been entered into by the parties, Swiftnet shall as soon as reasonably practical, arrange for the supply, delivery and installation of Equipment to your specified site. You shall, at your own expense, secure and maintain all necessary approvals and consents for the installation of the Equipment at or on your selected site, for any alterations at your site needed to install such Equipment and for the right of access to install the Equipment. Swiftnet shall have no responsibility whatsoever in relation to any such approval or consent.

3.3 Swiftnet shall be entitled at any time to alter, at its own expense, the mechanism or method by which Swiftnet provides the Services, provided that any such alteration shall not, diminish, impinge or otherwise reduce the quality, capacity or accessibility of the Services.

3.4 You agree to use the Services for lawful purposes only and in accordance with any acceptable use policy and software license agreement as published by Swiftnet from time to time.

4. SUPPLY AND USE OF EQUIPMENT

4.1 Swiftnet may supply Equipment to you in connection with the provision of Services to you. Ownership of all Equipment supplied to you will at all times remain with Swiftnet and you must not:

- remove the Equipment from your site without the prior written consent of Swiftnet;
- sell, lease, dispose of, lend or otherwise part with possession of or modify in any way the Equipment;
- use the Equipment for any purpose other than the Services in your specified site in accordance with the Agreement and these Terms and Conditions;

- deface, obliterate or remove any label or mark which identifies the ownership of the Equipment; or
- do any other act which may adversely affect or prejudice the ownership of the Equipment by Swiftnet.

4.2 You agree to supply at your sole cost electricity sufficient to operate the Equipment. To ensure that the Services continue when electricity is unavailable, Swiftnet strongly recommends you obtain an uninterrupted power supply unit.

4.3 You must immediately return the Equipment to Swiftnet on termination or cancellation of the Agreement.

4.4 Where you are unable to return the equipment Swiftnet has the right to enter the premises to obtain any unreturned equipment, this may incur a de-installation fee as set out in clause 10.4 of this agreement

4.5 You shall be liable for any loss (including by fire), theft, or damage caused to the Equipment. It is your responsibility to effect insurance cover if you elect to do so, against potential liability under this clause.

4.6 Swiftnet has the right during the term of the Agreement to enter your specified site in order to maintain, replace or repossess the Equipment or where Swiftnet has reasonable grounds to believe that you are not complying with your obligations under the Agreement.

5. PAYMENTS & CHARGES

5.1 If Swiftnet increases service prices or introduces chargeable services that were previously free, Swiftnet will give you a minimum of ten working days written notice (one month where possible). The notice will be delivered to your billing address or to your nominated contact email address.

5.2 Swiftnet’s service charges are published on the Swiftnet website found at www.Swiftnet.co.nz

5.3 You shall pay to Swiftnet the following payments:

- Any installation fees specified in the Agreement;
- As standard terms of trade, invoices are payable on the 20th of the month following invoice date or unless otherwise agreed;
- on demand any additional services or usage fees as specified in the Agreement or any relocation fees if any Equipment is relocated at your request to an alternate site;
- On demand, GST and any other applicable taxes, levies or duties which may be payable on payments under the Agreement;
- On demand, reimbursements for any costs caused by a dishonored payment from you;
- On demand, all reasonable costs incurred for the collection of any overdue debts owed by you to Swiftnet under the Agreement; and
- On demand, a reconnection fee of \$30 after disconnection of Services for non payment of account.

5.4 You agree to pay the payments referred to above without set-off, counterclaim or deduction.

5.5 Unless otherwise specified, all payments are to be made to Swiftnet NZ Limited, PO Box 847, Hastings.

5.6 Swiftnet may charge interest at the rate of 2% per month on any payments under the Agreement which remains unpaid after 30 days from the due date for payment.

6. NUMBERS, ELECTRONIC ADDRESSES & DIRECTORIES

6.1 Swiftnet may allocate phone numbers, electronic addresses and other codes to you in respect of the Services. You will not have any ownership rights in those numbers, addresses and/or codes and you may not transfer them to anyone else.

6.2 If required by law or if it is necessary to do so for operational reasons, we may change any phone number, electronic address or code allocated to you. However, Swiftnet will always give you as much notice as reasonably possible of any such change.

6.3 If you wish your details to be available through directory assistance and/or in the phone book then Swiftnet will pass your name, number and address to Telecom. You agree that Telecom can use your details for those purposes.

7. PRIVACY

7.1 During the term of the Agreement you may supply us with personal information. We may also obtain personal information from your use of the Services. You authorise Swiftnet to use this personal information collected about you for the purposes of marketing its products and services to you, market research, credit control and debt collection (this includes logging overdue debts and/or liquidated damages owed to Swiftnet with credit reference agencies). You acknowledge and agree that such personal information may be held by Swiftnet for such period both before and after termination or cancellation of the Agreement as Swiftnet in its absolute discretion considers appropriate.

7.2 Any personal information we collect is kept at our offices at Hastings. You are entitled to see any personal information we hold about you (although you must pay our reasonable charge for making it available) and to request that any incorrect information be corrected.

8. NO WARRANTY

8.1 You assume full responsibility and risk for use of the Services.

8.2 Swiftnet does not warrant that the Services will be continuous or fault free. Swiftnet does not warrant that any information, software or other material accessible via the Services will be free from viruses or other harmful components.

8.3 No verbal advice or information given by Swiftnet or its representative shall create a warranty.

9. LIABILITY

9.1 Swiftnet excludes all its liability to you in connection with the provision of the Services to you or failing to provide Services to you. Without limiting this, Swiftnet is not liable to you (and nor are any of Swiftnet’s officers, employees, contractors or agents liable to you):

- If any communication you make is intercepted;
- If any communication you make is not properly transmitted or received;
- If any of our Services are not available at any time or are faulty;
- For any delay in commencing the provision of Services;
- If any Equipment supplied by Swiftnet that does not operate Properly;
- For any error in any directory listing which Swiftnet arranges;
- (for internet customers) if your computer becomes affected by any virus or other harmful components.

9.2 We are not liable to you for any fault in or non-provision of Services which is caused by an event beyond our reasonable control.

9.3 If you use another service provider’s services during any period when Swiftnet’s Services are not fully operational, Swiftnet is not liable to pay any amount you are charged by that service provider.

9.4 You acknowledge that no third party whose network or services that Swiftnet uses to supply the Services to you (nor any officer, employee, contractor or agent of such third party) is in any way liable to you in connection with the Services. This clause is intended to confer a benefit which those third parties can enforce.

9.5 If Swiftnet is held to be liable to you for any reason, then Swiftnet’s liability to you is limited to an amount equal to Swiftnet’s average charges to you for one month in respect of any single event or related series of events and to a maximum amount equal to our average charges to you for a three month period in any one year.

9.6 Swiftnet’s network has been designed to support monitored alarm signaling to replicate the traditional analogue copper line communications networks but Swiftnet cannot guarantee that the transmission of alarm signals will be fault free. Accordingly, Swiftnet shall not be held liable in any way for any failure of alarm signaling over its network.

10. TERMINATION

10.1 Swiftnet may terminate the Agreement without written notice to you if:

- You fail to pay any monies payable to Swiftnet in terms of the Agreement on the due date;
- If you breach any other term of the Agreement; and
- If you use the Services in an unlawful manner.

10.2 Swiftnet may provide notice of the termination of the Agreement to you by email address to your email account, or by mail or courier service to the address of your specified site. Your notices to you shall be deemed effective immediately.

10.3 You have the option to terminate the Agreement by paying an Early Termination Fee of \$199 inc GST

10.4 De-installation of Swiftnet’s Equipment may be charged and will cost up to \$100.00+ GST.

11. CANCELLATION

11.1 You may cancel the agreement and must provide 1 months written notice to Swiftnet, PO BOX 847, HASTINGS

11.2 Failing to provide notice will forfeit your month paid in advance.

11.3 Fees for deinstallation of unreturned equipment set out in clause 10.3 and 10.4 may apply

12. FORCE MAJEURE

11.1 If Swiftnet is prevented from carrying out any obligation imposed upon it in terms of the Agreement by reason of any act of God, inclement weather, act of State, riot, insurrection, civil commotion, strike, sanctions, boycott, embargo or any other circumstances beyond Swiftnet’s reasonable control, Swiftnet must endeavor to advise you of the existence of the circumstances and the expected duration thereof. The performance of the Agreement will, to the extent that it is made impossible by such circumstances, be suspended until such circumstances cease to prevail. Swiftnet shall not be liable for any loss, damage, compensation of other reimbursement arising from any damage done to your equipment or network by reason of any of the matters specified in this clause.

13. ACKNOWLEDGEMENT

12.1 You acknowledge that:

- You are aware the internet contains unedited materials, some of which are sexually explicit or may be offensive to you and that Swiftnet has no control over and accepts no responsibility for such materials;
- all content accessed by you through the Services is accessed and used by you at your risk and Swiftnet and its representatives shall not be liable for any claims losses actions damages or proceedings arising out of or otherwise relating to access to such content by you;
- Swiftnet specifically disclaims any responsibility for the accuracy, quality and confidentiality of information obtained through the Services.
- Other entities may be able to access and/or monitor your use of the Services.
- Any sensitive or confidential information (such as credit card numbers or other financial information, medical information or Trade secrets) sent by you or to you are sent at your sole risk.

Swiftnet and its representatives shall have no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such actions;

• you are aware that when using the Services to access the internet or any other online services, there are certain applications, such as FTP, HTTP, proxy or gateway server applications, which may be used to allow other service users and Internet users to gain access to your computer. Swiftnet and its representatives shall have no liability whatsoever for any claims, losses, actions, damages, suits or other proceedings resulting from, arising out of, or otherwise relating to the use of such applications by you, including, without limitation, damages resulting from others accessing your computer;

• you are aware that the Services provided by Swiftnet to access the internet is undertaken on the basis of a “shared” form of internet delivery service, meaning time critical applications (video conferencing, online gaming etc) may not be suitable for you, or maximum data transfer speeds may not always be available.

13. GENERAL

13.1 Swiftnet may be required to change these Terms and Conditions from time to time. If so, Swiftnet will provide you a minimum of ten working days (one month where possible) written notice. The notice will be delivered to your billing address or to your nominated contact email address. This document can be located on the Swiftnet website www.Swiftnet.co.nz

13.2 The Agreement supersedes all prior discussions and agreements that you may have had with Swiftnet for the provision of the Services and Equipment.

13.3 Swiftnet may at any time assign the Agreement to any person, company or business entity. You may not assign or otherwise transfer your rights under the Agreement.

13.4 Swiftnet may at any time subcontract out any or all of its obligations under the Agreement without your consent as long as Swiftnet is ultimately responsible for its obligation under the Agreement.

13.5 The parties agree that the Agreement may be executed in several counterparts (including copies), all of which when taken together shall constitute one single agreement between the parties.

13.6 If any clause or term of the Agreement shall be invalid, Unenforceable or illegal, then the remaining conditions of the Agreement shall be deemed to be severable there from and will continue in full force and effect until such invalidity, Unenforceability or illegality is fundamental to the Agreement.

13.7 The failure of either party at any time or times to require Performance by the other party of any term of the Agreement Shall not affect the right to enforce the same. The waiver by either party to any breach of any one or more terms contained in the Agreement shall not be construed to be a waiver of any Succeeding breach of such term or any other term.

13.8 The Agreement shall be governed by and construed in accordance with the laws of New Zealand. Any dispute regarding the provision of the Services under the Agreement is to be determined by New Zealand courts.