

PHONE & INTERNET TERMS AND CONDITIONS.

For Business Customers.

Effective 19 June 2023



1 INTRODUCTION.

- 1.1 These specific phone and internet Terms and Conditions ("**Specific Terms**") form part of our agreement with you and apply to our supply of landline phone and internet services ("**services**"), and add-on services you purchase from us from time to time ("**other services**"). These Specific Terms apply in addition to our General Terms for Business Customers ("**General Terms**"), any Offer Terms that apply to you, any additional or special terms and our Privacy Policy. Together, these form our agreement with you, and are referred to as the "**agreement**". These Specific Terms commence from the date specified in the General Terms and replace any other agreement you may have had with us for the services.
- 1.2 In the event of a conflict or inconsistency between the parts of the agreement, the following order of priority will apply:
 - (a) any special terms;
 - (b) the Privacy Policy;
 - (c) any additional terms;
 - (d) any Offer Terms;
 - (e) the Specific Term(s) that apply to your services; and
 - (f) the General Business Terms & Conditions.

2 OUR COMMITMENT TO YOU.

- 2.1 We will always try our best to provide you with reliable, good quality services, however, we cannot guarantee the services will be interruption, or fault free.
- 2.2 If you do have a problem with our service, at any time, please contact our customer service team on 0800 20 18 20 and we will work to restore the service as soon as it is practicable. If we cannot fix the problem in a reasonable timeframe, then you may cancel the service by telling us.

3 SERVICE AVAILABILITY.

- 3.1 The services will be provided to you using reasonable care and skill. We will make reasonable efforts to ensure that the services are provided as set out in these Specific Terms and the agreement. We are free to choose the manner in which, and the technology by which, we provide a service.
- 3.2 From time to time, we may amend or discontinue our services and our packages of services.
- 3.3 If we discontinue a service or a package of services, we will also endeavour to move you onto another comparable service or package of services. Where the provision of a service is dependent on a third party to provide services to us, we cannot promise that those services will always be available or fully functioning. However, we will endeavour to restore those services as soon as possible. We may need to terminate that service if the third party is unable or unwilling to provide a continued service to us. Where this occurs, we will provide as much notice as we are reasonably able to, and we will endeavour to provide alternative services.
- 3.4 While we will endeavour to make all services available to you where we can, not all services will be available to all customers and not all services will be available in all areas. We do not guarantee that the service can be supplied at a particular location. Where information is readily available to us, we will advise you of any restrictions at the time you purchase the service. If we establish the service is unavailable at your location during our onboarding process, we will notify you and work with you to determine whether a suitable alternative is available. If we are unable to find a suitable alternative, you can cancel these Terms without incurring any Early Termination Fees.

4 YOUR RESPONSIBILITIES.

- 4.1 When you choose a 'fibre broadband' plan, services (such as monitored alarms, medical alert devices, faxes, EFTPOS machines, Sky TV, and any other device that requires an analogue phone line) may not be supported by the Mercury fibre connection. It is your responsibility to contact your relevant service provider to ask whether such services are compatible with Mercury's fibre connection and make the appropriate arrangements with them for continued service.
- 4.2 When you choose a 'wireless broadband' plan, not all services are available or compatible with wireless broadband services. If you have a monitored alarm or medical alarm, it is your responsibility to update it to a wireless option. Most medical alarm providers offer wireless monitoring solutions. It is important that you arrange this with your provider before signing up. Other services that require an analogue phone link to work, such as faxes, the interactive features of Sky Digital or PABXs are also currently incompatible with Wireless Broadband.
- 4.3 Equipment (including routers, modems or SIMs) that we, or our wholesale service providers, supply and own at your premises may remain our, or their, sole and absolute property, as the case may be. You will provide and maintain, at no cost to us, or them, suitable space for the safe and secure housing of the equipment provided. You will also supply a safe and continuous power supply near the equipment for use by us to provide the services. If our network or any of our or the wholesale service providers' equipment is damaged by you or anyone at your premises you will be liable to pay for that damage. If equipment owned by you is damaged by you or anyone at your premises, you may need to replace it before we can continue to provide the services to you.
- 4.4 You must ensure that no person interferes with or damages our, or our wholesale service providers' equipment (including after termination of these Terms) housed at your premises without our, or our wholesale service providers' prior written consent. If any of our, or their, equipment is lost, damaged or stolen while in your possession (other than as result of fair wear and tear), then you are liable to pay to us the cost of making good that damage. If the equipment requires repair, you may be asked to send it to a repair centre we advise at your cost.
- 4.5 While we take reasonable security precautions, due to the nature of our services, we cannot guarantee the confidentiality of any calls or transmissions you make using our services.
- 4.6 You must keep confidential any password or PIN which is used by you to access our services. We recommend that you change this on a regular basis for security reasons. You must also change your password or PIN if we ask you to do so or meet any password complexity requirements that we set.

5 INTERNET SERVICES.

- 5.1 This clause applies if we provide internet access services to you.
- 5.2 We endeavour to provide an unconstrained network. We do not place any artificial speed or availability restrictions on our copper or fibre internet plans, unless your plan has a data cap, you exceed the cap, and you choose not to purchase additional data. On wireless broadband services, we may restrict your internet speeds or availability if:
- (a) your plan has a data cap, you exceed the cap, and you choose not to purchase additional data; or
 - (b) your plan does not have a data cap, and you exceed your monthly data allowance.
- 5.3 On wireless broadband services we also reserve the right to manage traffic at peak times (for example, by limiting the speed at which you can download or upload content), to ensure all customers get the best possible experience even at busy times. Overall, this should have a positive benefit for our customers.

- 5.4 When you have reached your monthly data allowance, one of the following (depending on the service and plan selected by you) will occur:
- (a) an auto or manually applied purchase of additional data; or
 - (b) a throttling back of speed; or
 - (c) another option that may be available to you.

You will be advised of the action that will be taken and any associated costs that will appear on your account.

- 5.5 We have some service restrictions in place which may impact certain types of customers. We block sites that are listed on the Digital Child Exploitation Filtering System. In some situations, we also use Carrier Grade Network Address Translation ("Carrier Grade NAT") technology in our network, meaning your IP address will not be publicly available, however a Dynamic or Static Public IP is available on request (costs may apply for a Static IP).

6 AVAILABILITY.

- 6.1 From time-to-time network congestion can occur, particularly when something unexpected happens like a network backbone outage (when there is physical damage to infrastructure carrying the network traffic, for example floods, fires, or damage to cables) or unexpectedly high traffic to a particular website. When congestion occurs, we will do our best to alleviate it as quickly as possible for the benefit of all our customers, regardless of what broadband plan they are on.
- 6.2 Factors outside our control, like the distance of your property from your local exchange, and the quality of the cabling connecting you to our network, can also affect broadband performance and the services available.
- 6.3 The "plan speed" stated for your services refers to average speeds at peak times. Where available, these speeds will be based on Measuring Broadband New Zealand (MBNZ) reports. Where MBNZ reports are not available for a plan speed, estimated average peak time speeds will be provided. You may experience higher or lower speeds than the average peak time speeds stated.
- 6.4 Factors that may influence the speed of your services include the device you are using and its capabilities, your operating system and web-browser, if you're connecting wirelessly to your router, and the number of devices connecting via WiFi. If you have a router supplied by us, this router is capable of providing the estimated peak time average speeds, subject to the factors described above. If you are using a router not supplied by us, you may not receive the stated speeds.
- 6.5 Wireless broadband is delivered over a third party network. It is not available in all areas and speeds vary as noted in clause 6.3 above. In addition to the factors listed in clause 6.4 above, additional factors which can impact on wireless broadband speed include the distance you are from a cell tower, the network capability and the overall use of that cell tower by other consumers.
- 6.6 You can only receive wireless broadband at the location you advised us of at the time you signed up to receive that service. If we become aware that you are using your router/SIM at a location other than the installed location, we reserve the right to withhold, restrict, suspend, or terminate the service without notice. The reason we retain this right is that we, and our service providers, need to be able to manage the network to ensure that all customers using the network receive a reliable and consistent service.
- 6.7 If you have wireless broadband services and are moving and would like to use your router at your new address, please contact us and we will let you know if you can continue to use our wireless broadband services at your new location. If the services are unavailable at your new location, we can advise what other internet service options we have available for you.
- 6.8 We cannot guarantee that our internet service will always be available, or that it can always be utilised for any particular purpose. If our internet service becomes unavailable, we will endeavour to restore the service as soon as possible.

7 SOFTWARE & HARDWARE.

- 7.1 We are responsible for activating your internet connection via the network provided. Where we provide you a router/SIM for the provision of the services, we provide internet connectivity support to this device only. If you purchase your own device for which you require an internet connection, connection support to that device is your responsibility, and you may need to contact the manufacturer of that device for such support.
- 7.2 We strongly advise you to password protect any WiFi router/modem/SIM that you use, so that others who are not authorised by you cannot access your network. We also strongly recommend that you use internet security software such as, but not limited to, anti-virus and anti-malware software.
- 7.3 If you have an ADSL or VDSL service and your copper line is permanently disconnected for any reason, we will be unable to provide ADSL or VDSL internet service to you or a landline through your copper line. This will mean that you have terminated these Terms for the provision of those service(s). If ADSL, VDSL, or copper landline services are able to be reinstalled you may incur installation charges.
- 7.4 If you change your address or phone number, you should provide us with as much advance notice as possible so we can minimise any service disruption to you. You may also need to cancel some or all of your current services otherwise you will still be responsible for paying for the services that we provide to your old address or phone number.
- 7.5 Services are provided with a dynamic IP address or "Carrier Grade NAT". A static IP address can be allocated to you on request, at an additional cost. While only one IP address is supported per account, in some cases more than one IP address may be allocated on specific services. We may need to recall IP address space for administrative purposes, which may require you to update your systems. If you change between services provided by us, your IP address may also change. This may also require you to update your systems.
- 7.6 If you use our virus filter, then you acknowledge that that service works by attempting to prevent our mail servers from forwarding contaminated emails to the recipient. However, we cannot guarantee that the service will prevent all viruses from being forwarded (as an example, it may not identify new viruses). The service will not filter out viruses that do not pass through our mail servers (such as viruses contained on "Hotmail" or contaminated disks). We are also not liable for any viruses or other harmful code which you download via the internet, whether intentionally or unintentionally.
- 7.7 If you use an email address provided by Mercury, we will always do our best to deliver your email to the destination to which it is addressed whenever this is reasonably possible.
- 7.8 We do not guarantee our email service will:
- (a) detect all unsolicited "spam" email received by your mailbox;
 - (b) classify all valid emails as valid – some valid emails that you receive may be classified as spam; or
 - (c) be real time i.e. there may be a delay between sending and receiving email.
- 7.9 If you use an email address provided by Mercury, we will retain ownership of any email address that is allocated to you as part of our provision of the services. If the agreement is terminated, we may allocate that email address to another customer.
- 7.10 We are not liable for any charges associated with the change of IP addresses resulting from a service change.
- 7.11 We have no obligation to compensate you for:
- (a) any extra purchases of hardware or software you make to utilise our network connection; or
 - (b) any cost you incur by directly engaging a third party (other than us) without our prior written consent, to perform any service in relation to our network; regardless of whether or not our network is fully operational at any given time.

8 CONTENT.

- 8.1 You are responsible for downloading to your computer any email that you wish to keep. We may ask you to remove any email that remains on our servers for more than 90 days. If you do not regularly remove your emails or allow them to build up to unreasonable levels, we may remove the emails ourselves upon reasonable notice, or charge additional fees for the additional resources used.
- 8.2 We do not control the information that can be accessed through the internet. Accordingly, we are not responsible for any inaccurate, illegal or offensive information which may be obtained from your use of our services. We are not liable for any viruses or other harmful code which you download via the internet, whether intentionally or unintentionally.
- 8.3 You must not use our services for any improper use.

9 IMPROPER USE.

- 9.1 We can, at our discretion, restrict you from our services if we consider that you (or anyone using your internet connection) have engaged in improper use of our services.

10 EMERGENCY CALLING PHONE NUMBERS AND DIRECTORIES.

- 10.1 Mercury's phone service over copper lines, fibre, or wireless broadband supports access to emergency calling services (111). Our phone and broadband services over fibre or wireless broadband will not be available in the event of a power failure or faulty equipment. This means that emergency calls cannot be made until the power is restored, or the equipment is repaired or replaced.
- 10.2 We recommend that you maintain or have access to a mobile phone service and keep a charged mobile phone at your premises in case you need access to 111 and other emergency call services during a service disruption.
- 10.3 Any phone number that we allocate to you does not become your property.
- 10.4 If you advise us that you want your details to be available through directory assistance and/or in the phone book, then we will pass your name, number and address to the directory service provider or their appointed agent. You agree that the directory service provider can use your details for those purposes.
- 10.5 Subject to the terms of the Consumer Guarantees Act 1993, you agree that no member of the directory service provider (or their officers, employees, contractors or agents) has any liability to you in connection with the directory assistance service or your phone book listing.

11 FAULTS AND CALL-OUT SERVICES.

- 11.1 We will endeavour to have any fault on the services we provide to you, that you report to us, resolved as quickly as possible. If no fault is found or the equipment in your house is at fault, there will be a minimum charge (such charge may vary from time-to-time so please call on 0800 20 18 20 for an up-to-date price). If a technician is dispatched and no one is home, they will leave a contact card at the property. If you have not responded to this within 48 hours the fault will be closed and a callout fee may be charged.

13 TERMINATION.

- 12.1 Where there is no fixed or minimum term for your service, you may ask us to stop the particular service or terminate these Specific Terms or the agreement at any time and for any reason by giving us 5 working days' notice. If a fixed or minimum term applies to a service, you may stop that service at the end of the minimum term by giving us 5 working days' notice.
- 12.2 Where a fixed or minimum term applies for your service, if you terminate these Specific Terms or this agreement before the end of the fixed or minimum term unless you are terminating in accordance with clause 20.7 of our General Terms (Detrimental Change) (or we do so for any of the reasons specified below in clause 12.3 before the end of the fixed or minimum term), you may incur an applicable Early Termination Fee.
- 12.3 We may restrict, stop or suspend a particular service, or terminate these Specific Terms or the agreement, at any time if:
- (a) you do not pay for any of our services by the due date shown on your bill and the non-payment process set out in the General Terms will apply);
 - (b) you give us incorrect information; or
 - (c) you have not given us a prepayment or bond we have asked for;
 - (d) you have not complied with these Specific Terms, the agreement or the end-user terms of our wholesale service providers (which can be provided on request);
 - (e) we consider it necessary to protect or maintain our network (or the networks of those that supply services to us);
 - (f) we suffer a force majeure event (as defined in the General Terms); or
 - (g) as otherwise set out in these Terms.
- 12.4 We may stop or suspend a particular service or terminate these Specific Terms or the agreement after any agreed term has expired, so long as we have given you reasonable notice.
- 12.5 If we terminate these Terms or the agreement for one of the reasons listed in clause 12.3 above, you will:
- (a) be liable for any applicable disconnection and termination fees, including any Early Termination Fees;
 - (b) still have to pay for all services that we provide to you up until the effective date of termination;
 - (c) pay any recurring charges or charges that are subsequently billed that are owed by you until the effective date of termination or the end of your current billing period (whichever is later); and
 - (d) be liable for any subsequent reconnection fees.
- 12.6 If you terminate these Specific Terms or the agreement, you will:
- (a) be liable for any applicable disconnection and termination fees, including any Early Termination Fees, unless you are terminating in accordance with clause 20.7 of our General Terms (Detrimental Change);
 - (b) still have to pay for all services that we provide to you up until the effective date of termination;
 - (c) pay any recurring charges or charges that are subsequently billed that are owed by you until the effective date of termination or the end of your current billing period (whichever is later), unless you are terminating in accordance with clause 20.7 of our General Terms (Detrimental Change); and
 - (d) be liable for any subsequent reconnection fees.
- 12.7 You will not be liable to pay Early Termination Fees under clauses 12.2, 12.3, or 12.5 where we or our service providers have caused the termination, or where we have otherwise breached our agreement with you.
- 12.8 If you cancel your service with us, and we are your email account provider, we will store your undelivered emails for 30 days, after which time they may be deleted and be unrecoverable.

13 DEFINITIONS AND INTERPRETATION.

Clause and other headings must be ignored in construing the Specific Terms and references to the plural include the singular and vice versa. In this agreement, "Mercury", "we", "our", or "us" are used when referring to Mercury NZ Ltd (including its employees, agents, contractors, successors and assignees), and we say "you" or "your" when referring to you, our customer. If we use the word "includes" "including" or "for example", this applies as if the words "but without limitation" were also set out. Where the following terms are used in the Terms, they have the following meanings:

"improper use" means any use of the services which, in our reasonable opinion, is illegal, infringes anyone's rights (including intellectual property rights), is malicious, obscene, offensive, or otherwise causes detriment to us, our customers and/or third parties. Specific activities that will be considered improper use include: illegal downloading, including but not limited to in breach of the Copyright Act 1994; sending unsolicited electronic messages (spam) including but not limited to in breach of the Unsolicited Electronic Messages Act 2007, offensive or objectionable messages or publications, threats, unsolicited bulk email chain letters, pyramid schemes or hoaxes; knowingly receiving, transmitting or distributing signals, spam, worms or viruses, or otherwise using services in a way which is intended to or may damage or compromise the security of our network or anyone else's network; or making any kind of deliberate attempt to overload the network or anyone else's network, including mail bombing, excessive pings or otherwise causing excessive internet traffic or connecting devices to or that affect our equipment that are not compliant with New Zealand standards. Improper use also means any use of the services which in our reasonable opinion is a use for which the services were not intended. This includes but is not limited to acting as an ISP, providing data storage services, providing aggregated content or upload services for commercial benefit.

"wholesale service providers" include, but are not limited to, Spark New Zealand Limited, Tuatahi First Fibre Limited, Chorus New Zealand Limited, Enable Networks Limited, Northpower Fibre Limited, BROADSPECTRUM (New Zealand) Limited, Vocus (New Zealand) Limited and their respective successors and assigns.

14 OUR CONTACT DETAILS.

We're here to help. If there's anything here that seems unclear, or if there's any question you want to ask us:

- You can email questions to customerservice@mercury.co.nz or call us on 0800 20 18 20.
- You can visit our website, mercury.co.nz, or contact us via web chat at ask.mercury.co.nz
- You can write to us at:
Mercury
Private Bag 12023
Tauranga Mail Centre
Tauranga 3143

Mercury 