

# GENERAL TERMS AND CONDITIONS FOR BUSINESS CUSTOMERS.

Effective 19 June 2023

# 1 INTRODUCTION.

- 1.1 We work hard to make sure that our obligations, and yours, are stated clearly in our terms and conditions. We want to ensure that our interests, and yours, are protected. These General Terms and Conditions for Business Customers (**General Terms**) apply to you as a non-residential customer. The General Terms apply in addition to our Specific Terms, any Offer Terms that apply to you, any additional or special terms advised to you and our Privacy Policy. Together, these form our agreement with you. and are referred to as this "**agreement**".
- 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) these General Business Terms & Conditions.
- 1.3 You are responsible for paying for the services in this agreement and for making sure your contractual obligations are met.
- 1.4 This agreement commences from any specific date that has been advised and agreed with you, or if no specific date has been advised, the earlier of the date that we accept you as our customer; or you first use services supplied by us; or the date determined by the relevant switching process regulations and rules. You will only be liable for charges from the date this agreement commences.

# 2 BECOMING OUR CUSTOMER.

## 2.1 Making an application

You may become our customer in a number of ways, including:

- (a) by making an application in writing, online, or communicating with us or one of our authorised agents; or
- (b) where you are an existing customer of another provider whose business or customers we acquire.

## 2.2 Accepting your application

- (a) We may choose not to accept your application if:
  - (i) you fail to meet any of our criteria (for example, not meeting our payment criteria or not providing us with all information we need to set up your account); or
  - (ii) you have a debt owing to us from a previous account.
- (b) Where you set up a new account with us, we may transfer to your new account any debt (including any collection and legal costs) owing to us by you from a previous account.
- (c) We may require you to enter into special terms if we consider this necessary.
- (d) There may be a fee applicable for establishing your account.
- (e) You authorise us to conduct a credit check on you from time to time when we consider, acting reasonably and in good faith, that it is appropriate.
- (f) Your premises must meet all relevant regulatory requirements for the supply of services before we can supply services to you.
- (g) We are not obliged to provide you with services unless we have mutually entered into an agreement for the provision of those services.

## 2.3 Switching to us from another energy supplier

- (a) Where you are the existing customer of another energy supplier at the premises and wish to switch to us, you will need to contact us to become our customer, and you agree that we will:
  - (i) arrange to end your current agreements with your existing energy supplier and, if applicable, network operator;
  - (ii) do all things necessary to arrange supply of energy services to your premises as soon as possible, including authorising the existing supplier to release any information held about the supply of energy to your premises; and
  - (iii) use the existing supplier's final meter reading (which may have been estimated) for our initial invoice.
- (b) If your current energy supplier has disconnected your supply and not reconnected it, you will need to contact them to have the energy supply reconnected before we can accept the switch.
- (c) We will comply with any relevant industry switching requirements (including your and our right to cancel a switch).
- (d) In order to supply you with certain services, you may be required to provide us with a certificate of compliance issued or approved by the lines company that certifies that the wiring to your Connection Point complies with industry standards and regulations. We will be under no obligation to provide you with energy services or other services until any required certificate of compliance has been provided.

## 2.4 Switching to us from another telecommunications service provider

- (a) Where you are the existing customer of another telecommunications supplier at the premises and you wish to switch to us, you will need to contact us to become our customer, and you agree that:
  - (i) if we are your new service provider, we will only provide those services agreed with you;
  - (ii) if there are services that you receive from your current service provider that we cannot provide, if you still wish to receive those services you will need to ensure your previous service provider, or another service provider will provide those services to you;
  - (iii) there may be consequences (such as changes in price or availability of service) with your previous service provider for services still provided by it;
  - (iv) you remain subject to the terms and conditions of use of your previous service provider for services provided by it and you will remain liable for all charges that you owe to it, including unbilled charges and termination charges; and
  - (v) we may charge you on behalf of your previous service provider for any services provided by it that it has not previously invoiced you for.

## 2.5 Moving into premises

- (a) Where you move into new premises you may find that the energy has been left on. To ensure that the supply is continued you must promptly make an application to become our customer. We may decline that application, in which case we may disconnect the energy supply to you. You may be required to pay for the energy consumed in the interim.
- (b) If your premises has been disconnected, or it is a new connection, you will need to make an application to become our customer. If we accept your application, and once you have complied with our requirements, we will arrange for the connection of your energy supply as soon as possible.
- (c) You will only be liable to pay for energy consumed at your premises from the date you owned the premises or began your tenancy at the premises, unless we have agreed another date with you.

# 3 VULNERABLE AND MEDICALLY DEPENDENT CUSTOMERS.

- 3.1 We will comply with all codes and other appropriate regulations with respect to customer care and vulnerable and medically dependent customers. Our Customer Care policy is available at [mercury.co.nz/consumer-care-policy](http://mercury.co.nz/consumer-care-policy).

- 3.2 You are a medically dependent customer if you are a domestic customer and you depend on mains electricity for critical medical support, such that loss of energy may result in loss of life or serious harm. Examples of this would be where an oxygen or dialysis machine is used within the home. For the avoidance of doubt, medical dependence on electricity could be for use of medical or other electrical equipment needed to support the treatment regime (eg, a microwave to heat fluids for renal dialysis). We require written confirmation from a health practitioner with an appropriate scope of practice that this equipment is housed within your premises to confirm your critical medical status. You can inform us at any time if you or someone living at the premises are or become a medically dependent customer. Please note that supply of electricity cannot be guaranteed and that the medically dependent customer needs to develop an individual emergency response plan to use during any electricity outages.
- 3.3 If for any reason we form the honest belief that you or someone temporarily or permanently living at the premises are a medically dependent customer, we will make all reasonable efforts to contact you or that person as soon as practicable to obtain an application for medically dependent status from that person. If, after we have informed you of the opportunity to notify us that you are a vulnerable or medically dependent customer, you have not told us, or it does not appear to us, that you are a vulnerable or medically dependent customer, we will assume that you are not a vulnerable or medically dependent customer.
- 3.4 If you take a landline service from us, you may be a vulnerable consumer if you do not have a means of calling 111 that will work for at least 8 hours during a service disruption, and you are at particular risk of requiring 111 emergency services. "At particular risk of requiring the 111 emergency service" means a consumer who is more likely than other consumers to require the 111 emergency service because of a specific circumstance applicable to that consumer. For instance, this might include being a medically dependent customer for electricity purposes. If this section applies to you, please refer to the 111 Contact Code details on our website or contact us for assistance.

## **4 PREPAYMENTS.**

- 4.1 We may ask you for a bond or prepayment. Generally, we need a bond or prepayment if you do not have a satisfactory payment record, are unable to establish a satisfactory credit record, or have had your services disconnected in the past. If we need such payment, we will provide you with the reasons why. We may apply the payment to recover any amount owing to us by you.
- 4.2 If you have provided a bond or prepayment, to ensure your account remains prepaid you must continue to make all payments as required by this agreement. Any other details of your bond or prepayment will be explained to you at the time we request it.
- 4.3 We may decide that we no longer require the bond or prepayment. We will typically decide this after 12 months of satisfactory payment performance. If we no longer require the payment, we will apply it to any amount owing to us by you and, if there is any surplus, any amount owing to us by you as it arises. We will not repay the payment to you.
- 4.4 If this agreement is terminated or you are otherwise no longer our customer, we will apply the bond or prepayment to any amount owing to us by you by crediting your account. This includes any amounts owing to us where you terminate the agreement for a reason other than a detrimental change (as further described in clause 20.7). If any surplus bond or prepayment remains after all amounts owing to us by you have been paid, we will refund that surplus to you.

## **5 OUR COMMITMENT TO YOU.**

- 5.1 We will supply you with energy and telecommunication services and provide other associated services as necessary or as agreed in accordance with the Specific Terms, Offer Terms and pricing plan (as the case may be) and we will at all times take reasonable steps to ensure the quality of the services that we provide to you meets:
- (a) the requirements set out in this agreement, including using reasonable care and skill;
  - (b) all legal requirements and applicable statutes, regulations, and industry rules and codes of practice (as amended, varied, or replaced from time to time) and good industry practice; and
  - (c) the applicable requirements of any service provider to which we are subject.

## 6 YOUR COMMITMENT TO US.

- 6.1 In return for us providing the services to you, you agree:
- (a) to comply with your obligations in this agreement;
  - (b) to follow our (and where applicable, our service providers') reasonable instructions and guidelines about using the services;
  - (c) to use the services for only the purposes that they are provided and only in the ways that they are intended;
  - (d) that we can act on any verbal instructions you, a joint customer, or a person authorised by you as a contact person give us in relation to the services;
  - (e) to pay the charges for the services that we provide to you and charge to your account by the due date shown on your invoice (even if somebody else uses those services, as such services will be treated as having been used by you regardless of whether you agreed to such use or not);
  - (f) to provide us with all information we reasonably request in connection with this agreement and ensure that all information you give us and (where applicable) our service providers is correct. Where any information you have supplied to us changes (such as contact details) you must provide us with updated information as soon as possible;
  - (g) to not use the services in any way which we or our service providers consider, acting reasonably and in good faith, to be unlawful, malicious, obscene, abusive, offensive, or for an illegal or fraudulent purpose or in a manner that could interfere with our network or other service provider's networks or interfere with another customer's use of our services, or any service provider's provision of, our services;
  - (h) to comply with the law and all relevant codes and regulations;
  - (i) when using the services, not to interfere with anyone else's equipment or services, and respect our and our service providers' intellectual property rights;
  - (j) to respect our staff, and not threaten, bully or harass our staff, or anyone else (when using the services);
  - (k) not sell or otherwise make the services available to others or commercially exploit the services in any way;
  - (l) ensure not to imply that we or any of our service providers have endorsed or sponsored you in any way, unless we have agreed to that;
  - (m) to not use the services in a way which could result in claims being made against us that might arise from any content or services provided by you;
  - (n) to not use the services in a manner that infringes on the privacy rights of any other person;
  - (o) to take all reasonable care to prevent the spread of viruses, or contamination by virus of any software or hardware operated by any other person;
  - (p) to be responsible for protecting your computer and devices (including taking reasonable steps to ensure those working in your organisation are responsible for protecting their computers) against any virus, unauthorised access, or spam, and for any additional traffic that may result from any virus, spam or unauthorised access;
  - (q) to make sure that any other person that uses the services that we provide to you agrees to be bound, and also abides, by this agreement. If someone uses your account (regardless of whether or not they had your permission), it is your responsibility, unless we are the ones who caused it to happen;
  - (r) be responsible addressing any faults caused by you;
  - (s) be responsible for all usage of the services we provide to you, whether authorised by you or not, unless that usage was by us or persons we are responsible for; and
  - (t) to be bound by, and comply with, the terms and conditions of any of our service providers which we use to provide the services (which we will provide to you) and agree that our service providers may enforce those terms directly against you should you breach them.

## 7 USING OUR SERVICES.

- 7.1 Our services are provided for your own business use only, and you will not resell these services or in any way use them to supply telephone, internet, energy or mobile services to a third party without our written consent. Notwithstanding any other rights that we may have, we may restrict or terminate the supply of services to you if we believe that you are not complying with this obligation.
- 7.2 You are allowed to supply third parties with telephone or internet services as a part of your product or service, where there is added value by you, and where the supply of our services is not the primary purpose of the product or service, nor a substantial part thereof. You are responsible for passing any restrictions under these Terms through to those third parties, and you will be responsible for the acts and omissions of those third parties.
- 7.3 If you are using the directory assistance services and phone book listing as set out in our Specific Terms for Phone and Internet, you acknowledge that you are using those services for business purposes and therefore the provisions of the Consumer Guarantees Act 1993 will not apply to the provision of such services.
- 7.4 Responsibility for energy passes to you on delivery of energy to your connection point.
- 7.5 You agree to notify us, in advance, of any significant and foreseeable change in your energy or telecommunications consumption volume or pattern, or of any proposed change in equipment at your premises that may affect the supply of services to you in any material way.

## 8 ACCESS.

- 8.1 You will give us, our service providers, and our respective representatives rights of access to your premises for the purpose of:
- (a) installing, connecting or disconnecting, commissioning or de-commissioning, testing, inspecting, maintaining, repairing, replacing, operating, moving or removing any of our or a service provider's equipment (including upon termination of this agreement), delivering LPG, and for any other purpose related to our agreement with you or a service provider;
  - (b) inspecting or taking readings from meters and verify metering information;
  - (c) ascertaining and remedying the cause of any interference to the quality of the line function services being provided by a service provider to any person;
  - (d) clearing trees and other vegetation where the service provider is required or entitled to do so, or so as to maintain public safety or the operational integrity of the network;
  - (e) protecting or preventing danger or damage to persons or property;
  - (f) connecting or disconnecting the supply of services;
  - (g) carrying out other work required in relation to the services; and
  - (h) any other purpose related to the above activities or the service provider's rights, or benefits conferred under or pursuant to our agreement with the service provider.
- 8.2 If you do not ensure such rights of access, we may suspend, disconnect, restrict or discontinue your services in accordance with these General Terms, and in the case of LPG, you may be charged a fee for non-delivery or additional delivery.
- 8.3 Except in routine situations (such as, for example, reading or inspecting a meter) or emergencies, before accessing your premises, we, each service provider, and our respective representatives will provide written notice to you:
- (a) when we or they will be accessing your premises; and
  - (b) provide the reason why we or they are accessing your premises.
- The notice will be given:
- (a) at least 10 working days prior to entry if the purpose of access is to undertake construction, upgrade, repair or maintenance work (or any other time agreed with you); or
  - (b) within a reasonable timeframe where the purpose of access is to inspect or operate any equipment used in, or in connection with, the generation, conversion, transformation or conveyance of energy.

- 8.4 When accessing your premises, we, each service provider and our respective representatives will:
- (a) take reasonable steps to minimise any direct impacts on your premises and any inconvenience to you; and
  - (b) comply with any of your reasonable requirements (such as, for example, the time of entry, leaving gates as found, driving in a safe manner and taking reasonable steps not to disturb stock and avoiding access through specific areas).
- 8.5 We and each service provider will require our respective representatives, when accessing your premises, to:
- (a) carry identification that shows they are authorised representatives of us or a service provider and present this identification on request;
  - (b) identify themselves to you before entering your premises; and
  - (c) act courteously, considerately, and professionally at all times.
- 8.6 Our procedures for ensuring the secure storage, use and return of any keys and/or other security information that we have for your premises that is in our or our representatives' possession are available on request – please call us on 0800 20 18 20.
- 8.7 Any dog or other animal that may put us, any service provider or our respective representatives at risk when accessing your premises must be controlled when we visit. You will be liable for all costs, loss or damage arising out of your unsafe premises or any threats or attacks made by you, anyone on your premises, or any dog or other animal.
- 8.8 You must keep your trees and other vegetation regularly trimmed to a safe distance from any equipment. If you do not, you will be liable for the costs of carrying out such work and we may not supply services to your premises.
- 8.9 The rights of access are in addition to any right of access under statute or regulation.

## **9 CHARGES & FEES.**

- 9.1 The charges that will apply to your services are those we have advised to you.
- 9.2 If you use a service for which a charge has not been advised, you will be charged for that service according to our current schedule of charges.
- 9.3 Some services may incur a minimum monthly charge. If this is the case, we will advise that charge to you.
- 9.4 If you change from one internet plan to another during a monthly billing period, the monthly charge for that billing period will be pro-rated between the old plan price and new plan price based on the date during the monthly billing period that you changed plans.
- 9.5 Where a service is commenced, terminated or amended part way through a monthly billing period, then any pre-paid fixed usage charges shall be non-refundable.
- 9.6 If our energy prices change during a billing cycle (subject to the terms of your plan and any Offer Terms that apply to you), we will pro rate the energy used over the period to determine a daily average usage and then apportion your bill at the different rates.
- 9.7 Subject to eligibility and the terms of your plan and any Offer Terms that apply to you, you may choose an alternative pricing plan for your energy services which you wish to apply to you and notify us of your choice. Should you be eligible for the plan chosen, we will transfer you to the alternative pricing plan chosen by you within 30 days of receiving such notice from you.
- 9.8 For landline services, from time to time, you may incur charges for calls or transactions made on another operator's network where these charges are charged to the phone line billed to you by us. These charges include, but are not limited to, 0900 calls, collect calls, directory or operator assisted calls, calling card calls, diverted calls, conference calls, message exchange calls, pager calls or additional installation charges and site visits by a technician. You will be responsible for those charges and be charged at a rate determined by us taking into account the rate published by that network operator for those services. These charges may not be subject to other Mercury discounts.

- 9.9 For landline services, while calls within the local calling area are free of charge, please be aware that the manner in which the telecommunications system works in New Zealand means that if you include the area code when you dial a local phone number it will be treated as a national toll call and you may be charged at national rates accordingly.
- 9.10 For advice and an up-to-date list of prices, charges and fees see [mercury.co.nz/fees](http://mercury.co.nz/fees) or call us on 0800 20 18 20. If you request a service that will involve additional cost to you, including if the service is non-standard or bespoke, we will, in most cases, advise you of that cost at the time. Where it is not possible for us to provide you with the cost at the time of enquiry, we will provide an estimate of the cost or arrange to contact you in a reasonable timeframe with that estimate before the service is provided.
- 9.11 If any circumstances arise, or are likely to arise, where you may be charged a fee that is not set out on the website or that is variable (such as an installation charge), we will use reasonable endeavours to give you reasonable notice of those circumstances before the fee is incurred. If possible, we will also advise you if and how those fees can be avoided.
- 9.12 You must pay our charges for the services we provide to you, including charges incurred by anyone using the services we provide to you and any applicable fees such as disconnection or reconnection fees. You will also be responsible to pay any costs we incur in collecting your outstanding accounts. These may include costs such as credit agency fees and legal and court costs. These may be added to your account and will be payable by you to us. We may use any prepayment or advance payment made by you to pay any amounts owing to us. We may also charge fees for the administration of late payments. Where you have not met a responsibility you have to us, and as a result we have withheld, suspended or restricted any or all of your services, you will remain liable for all monthly or other periodic charges during this period

## 10 MONTHLY ACCOUNTS.

- 10.1 Every month, unless otherwise agreed with you, we'll send you an account for your services for payment either as a paper invoice or in electronic form depending on the delivery method you have chosen. Your account will list the previous month's transactions as well as the current month's service charges and usage (or estimated usage, where applicable), fees and charges for other services that we or our service providers have provided to you, if any. Fixed charges are normally payable in advance. Usage based charges are usually payable in arrears. The account will also include fees or charges from regulatory agencies, service provider charges that are charged either to us, or charged to you and included in our account. If these charges include line function services, we will also include the name of the lines company. As some of our charges are expressed to a number of decimal points, your invoice may show some minor rounding to get to whole numbers. Our account will also include the identifier numbers of all installation control points (ICP) that are covered by the account. We may elect to carry forward charges to the next billing period if your usage is below a minimum level.
- 10.2 If you would like an explanation as to how estimates are calculated, please call us on 0800 20 18 20 and we will provide that to you.
- 10.3 You must pay the account whether or not the account is based on an actual or estimate amount. If your account is based on an estimate amount that seems inaccurate, you may provide us with a valid meter reading of your own. If this occurs, phone us with your meter readings or email us the details if you have chosen online billing. We'll produce a corrected account with new due dates. We may adjust your account if your reading is later found to be inaccurate.
- 10.4 Sometimes charges will not show on your bill until some time after the month in which they were incurred (for example, charges for tolls to some overseas destinations or possibly to 018 or 0900 services). You will still be liable for such charges.

## 11 PAYING YOUR ACCOUNT ON TIME.

- 11.1 Our accounts must be paid on or before the due date shown on your bill without deduction or set off.
- 11.2 Any payment you make will be allocated to the oldest outstanding debt on your account.
- 11.3 If you are not responsible for the lateness of an invoice and:
- (a) the invoice is provided more than two months after the end of the period that it covers, you will by arrangement have at least the length of time covered by the invoice to pay it; or
  - (b) the invoice is more than three months late, we will negotiate an appropriate discount with you.
- If we have made a mistake, we will correct it and make the required adjustments to your invoice. If we substantially undercharge you over a period of time, we will arrange for a reasonable period of time for which you can pay those charges. We will not seek to recover amounts undercharged if an unreasonable period has elapsed (for example, more than three years).
- 11.4 You are not required to pay interest on outstanding amounts on incorrect or late invoices.

## 12 CHOOSE HOW YOU'D LIKE TO PAY.

- 12.1 There are a number of ways you can pay our invoices. Some of these options attract a fee. Please visit [mercury.co.nz/ways-to-pay](http://mercury.co.nz/ways-to-pay) or call us on 0800 20 18 20 or for details and explanations on our payment options.
- 12.2 If any of the payment methods relevant to you are to change, we will provide you with not less than 30 days' notice of that change and explain why the change is being made.

## 13 NON-PAYMENT.

- 13.1 You must pay each invoice by the due date shown on your bill. If it appears to us that for some reason you've overlooked an account, we'll send you a friendly reminder by the preferred communication method you have agreed with us, and other communication methods if appropriate. If, after the friendly reminder, you still don't pay, or get in touch to make a payment arrangement, we may start the process to discontinue the supply of services to you.
- 13.2 If you dispute any amount shown on your invoice, you must let us know immediately. You will need to tell us the amount in dispute and why you are disputing it. We will investigate the disputed amount as quickly as possible. When you are disputing part of an invoice, you still need to pay all other amounts not in dispute.
- 13.3 We will not disconnect your services if you have not paid amounts that are genuinely in dispute, and we are aware of this. We may however:
- (a) except where prohibited by law or industry standards, suspend, restrict, discontinue or disconnect your services, including refusing to supply LPG to your premises, if you do not pay undisputed amounts;
  - (b) in the case of LPG, remove the equipment from your premises if you do not pay the undisputed portion of your invoice, and fail to contact us;
  - (c) impose a credit limit or toll bar on your account;
  - (d) withhold any rebate, discount or similar incentive which would otherwise be available to you;
  - (e) charge you an "overdue payment notification" fee, a "disconnection notice" fee when your services are restricted, discontinued or disconnected and/or a "late payment" fee as described in more detail on our website at [mercury.co.nz/fees](http://mercury.co.nz/fees)) or such similar fees;
  - (f) charge you any disconnection or reconnection fees, including any Early Termination Fees that may apply to your services;
  - (g) continuing to charge you any recurring monthly charge applicable for those services during the period of suspension;
  - (h) recover from you any debt recovery costs;
  - (i) require you to put in place a direct debit payment arrangement for payment of our invoices; and
  - (j) if you are disconnected, pass your debt to a debt collection agency.

- 13.4 If your account (or any undisputed part of it) remains unpaid, we'll send you a disconnection notice (or in the case of LPG, a discontinuation notice) in the post or by email (if you have registered for our email service). We will give you at least seven working days' notice to make payment. If we send you a disconnection/discontinuation notice you will be charged a fee. The disconnection/discontinuation notice that we send you will specify the earliest date that disconnection/discontinuation may occur and that it will occur no later than 7 working days after that date. All disconnection/discontinuation notices will include the timeframe within which disconnection/discontinuation will take place and information about what you need to do to prevent disconnection/discontinuation. We will also provide you with a final warning not less than 24 hours before disconnection/discontinuation. If payment is not received, we may disconnect your services after this notice period but will only do so on a working day that is not a Friday or the day before a public holiday, and during normal business hours. We will also not disconnect your services during severe weather events or a civil emergency.
- 13.5 Your electricity or gas services will not be disconnected or discontinued for non-payment of an estimated amount unless we reasonably believe that it is fair and reasonable in the circumstances to do so and we reasonably believe the estimated reading is a reasonable estimation of actual consumption. In some circumstances we may require you to pay a fee for disconnection/discontinuance. Please visit [mercury.co.nz/fees](http://mercury.co.nz/fees) or call us on 0800 20 18 20 for information on these fees.
- 13.6 If a payment arrangement is made after a disconnection/discontinuation notice has been provided, no further recovery action will be undertaken while the conditions of the arrangement are being met. If, however, after a short period of time, you fail to honour that payment arrangement it may result in disconnection of your services upon at least 24 hours' notice. There is a fee for making a payment arrangement.
- 13.7 You will be responsible to pay any costs we incur in collecting your outstanding accounts. These may include, without limitation, costs such as banks fees, credit agency fees and legal and court costs. These will be added to your account and will be payable by you to us. We may use any prepayment or advance payment made by you to pay these amounts. We may also charge fees for the administration of late payments.
- 13.8 If we have suspended, restricted, discontinued or disconnected your services for non-payment or other breach and you have satisfied our requirements for reconnection, we will restore your services as soon as reasonably practicable. A fee for reconnection may also apply. The reconnection will be subject to our standard credit approval.

## **14 MOVING PREMISES AND SALE OF BUSINESS.**

- 14.1 If you move out of your property, you must give us at least 5 business days' advance notice together with details of your forwarding address. In the case of energy services, we will arrange for a final meter reading to be carried out. The charge for that service, and our energy charges, will be included in your next invoice, along with charges for any other services that you have with us.
- 14.2 Depending on where you move in New Zealand, we may still be able to supply you with services. If we agree, at our absolute discretion, to commence supplying you with services at your new address, your account with us will, from the date such supply commences, cover both the supply of services at your new address and all outstanding charges carried over from your old address.
- 14.3 If you sell or otherwise dispose of the business to be supplied with services under this agreement, you must give us at least 5 business days' advance written notice, together with details of the new owner.
- 14.4 If you do not give us any of the notifications required under this clause 14, you will remain liable for all service charges and fees supplied to the premises being supplied until such notice is actually received by us or the date some other person becomes our customer in respect of those premises, whichever is the earlier.

## 15 TERMINATION.

- 15.1 A fixed or minimum term may apply for some or all of our services. If a fixed or minimum term applies, we will tell you. Where a fixed or minimum term applies, this agreement will continue to apply after expiration of that fixed or minimum term, until you give us notice to terminate your services.
- 15.2 Except where you have an agreement with us for a fixed or minimum term, if you no longer require us to provide services to you, you will need to notify us as set out in the Specific Terms for each of the services that you have with us. Please refer to the Specific Terms for further details.
- 15.3 The circumstances in which we may suspend your services and/or terminate our agreement with you are set out in clause 13 (non-payment) above and the Specific Terms for each of the services that you have with us, and any Offer Terms (if applicable). Please refer to the Specific Terms and Offer Terms for further details.
- 15.4 We may also terminate our agreement with you where you materially or persistently breach the terms set out in clause 6 (Your Commitment to Us), provided that the breach has been clearly established and is not the subject of a dispute resolution proceeding. In that event, where the breach is capable of being remedied (and unless the Specific Terms or Offer Terms say otherwise), we may give you 14 days' written notice of default. If you:
- (a) remedy that breach within that 14 day period, the notice of default shall be deemed to be withdrawn and this agreement shall continue in full force and effect;
  - (b) fail to remedy that breach within that 14 day period, we may at our discretion, on 1 business days' notice, terminate this agreement with respect to the corresponding supply of services; and
  - (c) breach any term not capable of remedy we may, at our discretion, immediately terminate this agreement with respect to the corresponding supply of services.
- 15.5 The consequences of terminating (by either party) including the application of any Early Termination Fees and specific actions are set out in the Specific Terms and the relevant Offer Terms.
- 15.6 Early Termination Fees will not apply if you sell your business or cease operating.
- 15.7 Upon termination of this agreement, the following provisions shall remain in effect until their purpose is served:
- (a) clause 4 (Prepayments), to the extent it relates to the repayment or application of any prepayment;
  - (b) clause 6 (Your Commitment to Us);
  - (c) clause 9 (Charges and Fees);
  - (d) clause 16 (Intellectual Property);
  - (e) clause 17 (Loss or Damage);
  - (f) ownership and responsibility for equipment, to the extent it relates to equipment not owned by you, as set out in the Specific Terms;
  - (g) access to the extent necessary for final readings, disconnections and removal of equipment not owned by you, including as set out in the Specific Terms;
  - (h) your obligations regarding services supplied, as set out in the Specific Terms; and
  - (i) any other provision of our agreement with you which is expressly or by implication intended to continue in force after termination or expiry.

## 16 INTELLECTUAL PROPERTY.

- 16.1 We or others may have intellectual property rights in the services and in any equipment, including software, we provide to you. These rights include, for example, all copyright, trademark, and design rights relating to the services or equipment. All those rights are retained when we provide services or equipment to you.
- 16.2 Any intellectual property rights arising from any improvement or change to any service devised or made by us or by someone else on our equipment, software or services belongs to us or our licensor.

## 17 LOSS OR DAMAGE.

- 17.1 Neither we nor you will be liable to the other (in contract or in tort or otherwise) for any loss or damage the other may suffer (including any actual damage to property) unless this arises due to:
- (a) a failure to comply with the terms of this agreement or in your case any of our service provider terms; or
  - (b) a negligent act or negligent omission of (as the case may be) us or yourself (or any person for whom we or you are responsible);
- and that loss or damage is:
- (a) reasonably foreseeable and is directly caused by the failure, or negligence; and
  - (b) not caused by an event or circumstances beyond (as the case may be) our or your control.
- 17.2 An event or circumstance beyond a party's control (a force majeure event) includes declared or undeclared war, threat of war, act of public enemy, terrorist act, blockade, revolution, riot, declared civil defense emergency, epidemics or disease, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, acts of animals, accidental collision, earthquakes, fires, lightning, storms, landslide, accumulation of snow or ice, explosion, and other similar events, the failure to generate sufficient energy, the inability to purchase sufficient energy, the failure by another party to supply us with energy or energy of a certain quality or character and third party industrial disputes, acts or omissions by a network provider, distribution company or equipment supplier, problems with your LPG gas pipes on your premises, problems with the distribution of LPG, problems arising because of health and safety hazards at your premises, government restraint, act of parliament, other legislation or bylaw, fault or failure of any plant or equipment which could not have been reasonably mitigated against by the affected party, but does not include a lack of financial means. If we suffer a force majeure event which affects your services we will endeavour to limit the effects as much as we are able and if your services are interrupted, we will resume your services as soon as is reasonably practicable.
- 17.3 If we are unable to carry out any of our obligations to you because of a force majeure event, this agreement shall remain in place except our obligations shall be suspended without liability for a period equal to the period of the continuing force majeure event, and you will not be required to pay for any services that we do not provide. If we suffer a force majeure event that will last for a significant period of time we will endeavour to notify you of this at the earliest practical time.
- 17.4 Notwithstanding any other provision in this agreement, except where such liability cannot be excluded by law, neither we nor you will be liable to the other for any loss of profit, revenue, savings or opportunity including, any loss resulting from loss or corruption to any computer or electronically stored data or software, (whether direct, indirect or consequential); any loss or damage which is indirect or consequential; or any special loss (even if the relevant party has been advised of the possibility of such loss.
- 17.5 Except as set out in this agreement under the heading "Liability of Third Parties", Mercury will not be liable to you for any loss or damage you may suffer due to some act or omission of, or due to the negligence of, a third party, including the network owner, a service provider, equipment provider, Transpower or any generator.
- 17.6 To the extent allowable by law and except as set out in clause 17.8 below, the total liability of us to you and of you to us in any 12 month period under or in relation to this agreement whether or not the liability is caused by the failure, or negligence, of us or you, or by any third party whether or not under the control of us or you, will be limited to:
- (a) with respect to power, piped gas, and LPG services, \$10,000;
  - (b) with respect to landline phone and internet services, \$3,000; and
  - (c) with respect to mobile services, \$10,000.
- 17.7 The limits set out in this clause 17 are the maximum amounts payable (they're not automatically payable if one of us does something wrong).
- 17.8 The limits set out in this clause 17 do not limit your responsibility to pay any outstanding charges or other amounts you owe us, and also don't apply when it comes to any loss or damage caused by you or us for fraud, wilful breach or wilful damage.

- 17.9 Apart from the warranties expressly given to you in these terms and conditions, all other warranties, express or implied, are excluded (to the extent permitted by law).
- 17.10 As you are acquiring our services for business purposes, the provisions of the Consumer Guarantees Act 1993 will not apply to the provision of these services.
- 17.11 Notwithstanding any provision to the contrary in this agreement, nothing in this agreement will exclude or limit the application of any law in New Zealand where such law applies to any services we supply, to the extent that to do so would:
- (a) contravene that law; or
  - (b) cause any part of this liability section to be void.

## **18 LIABILITY OF THIRD PARTIES.**

- 18.1 Any agreement we have with our employees, agents, representatives and contractors or our service providers or their employees, agents, representatives and contractors does not create an obligation or other legal relationship between them and you and does not confer any right, benefit or privilege from them to you.
- 18.2 Except to the extent that such claims cannot be excluded by law, the following people will not have any liability to you:
- (a) our employees, agents, contractors, representatives, or our service providers and their employees, agents, representatives and contractors;
  - (b) other network operators who use our network and allow us to use their networks, and their employees, agents, contractors and representatives; and
  - (c) any person who provides any service which is part of our services, and their employees, agents, contractors and representatives.
- 18.3 Notwithstanding any other provision in this agreement, except where such liability cannot be excluded by law, the people listed in clause 18.2 will not be liable to you for any: loss of profit, revenue, savings or opportunity (whether direct, indirect, or consequential); any loss or damage which is indirect or consequential; or any special loss (even if the relevant party has been advised of the possibility of such loss).
- 18.4 Notwithstanding any other provision of this agreement, where the people listed in clause 18.2 are unable at law to exclude their liability, except to the extent you are expressly permitted by law to take a direct claim against those persons, you must bring any claim against us and not against them directly and any liability they may have to you in any 12 month period shall not exceed \$3,000 in value however such liability arises (unless at law their liability cannot be limited to such sum).
- 18.5 Any agreement you have with your employees, agents, representatives, and contractors or does not create an obligation or other legal relationship between them and us and does not confer any right, benefit or privilege from them to us. To the extent permitted by law, your employees, agents, representatives and contractors will not have any liability to us, however you remain responsible for the actions of your employees, agents, representatives and contractors, and any breach by them of your agreement will be considered a breach by you for which we are able to take action or bring a claim directly against you.
- 18.6 This clause is intended to confer a benefit which those third parties can enforce.

## **19 COMPLAINTS.**

- 19.1 If you have a complaint about our supply of services to you, please contact us on 0800 20 18 20. We will try to resolve your complaint within two working days. If we cannot do so, we will give you a response within seven working days. We may refer your complaint to a service provider for resolution. If we do so, we will advise you of this.
- 19.2 In some instances, we may ask you to put your complaint in writing to help us resolve your issue.
- 19.3 The information below sets out the process for engaging with dispute resolution service providers. In addition to the processes below, you may also refer your complaint to the Disputes Tribunal, the Court or other third party.

- 19.4 If your complaint relates to energy services (electricity, piped gas or LPG); and
- (d) we have not resolved your complaint within 20 working days and have not written to you explaining why we need more time to reach a resolution; or
  - (e) we have taken longer than 40 working days to resolve your complaint; or
  - (f) you are not happy with our proposed resolution; then
- you may refer your complaint to Utilities Disputes Limited ("UDL") who provide a free and independent dispute resolution service.
- The UDL's contact details are set out below.
- Phone: 0800 22 33 40
  - Website: [www.udl.co.nz](http://www.udl.co.nz)
- 19.5 If your complaint relates to telecommunications services (landline phone, internet and mobile); and
- (a) you have registered your complaint with us; and
  - (b) we have not resolved your complaint within 20 working days and have not written to you explaining why we need more time to reach a resolution; or
  - (c) we have taken longer than 6 weeks to resolve your complaint; or
  - (d) you are not happy with our proposed resolution, then
- you may, at your discretion, refer the dispute to the Telecommunications Dispute Resolution ("TDR") who provide a free and independent dispute resolution service. The TDR's contact details are set out below. Please note that before contacting the TDR, any complaints must be registered with us first.
- Free phone: 0508 98 98 98
  - Email: [contact@tdr.org.nz](mailto:contact@tdr.org.nz)
  - Website: [www.tdr.org.nz](http://www.tdr.org.nz)
- Telecommunications Dispute Resolution  
Freepost 214075  
PO Box 5573  
Wellington 6011
- 19.6 If you make public comments or statements about the products or services we provide you, or the relationship we have with you, we reserve the right to make such public comments as may be necessary to respond or correct any misconceptions or errors of fact. If you make any public comments about your account, then you agree to us replying as we think appropriate using the information that we have about your account.
- 19.7 We may record correspondence that we have with you (phone conversations, webchat or email) so that we may maintain accurate records of our dealings with you. This information will be handled in accordance with our Privacy Policy.

## 20 CHANGES TO THIS AGREEMENT.

- 20.1 We may from time to time amend these these General Terms, the Service Terms, the Offer Terms or any other terms that apply to our services. Changes may include (but are not limited to):
- (a) amending or discontinuing a service, a package of services, and/or a plan on a service;
  - (b) changing the speed of a service or amount of data available on a service;
  - (c) changes to our pricing and rates (subject to our Offer Terms or any other special or additional terms);
  - (d) changes to our fees;
  - (e) changes to the technology by which we provide a service;
  - (f) changes to available payment methods;
  - (g) changes to the terms applicable to a service;
  - (h) changes to the wireless broadband traffic management policy; or
  - (i) changing any phone number we allocate to you.

- 20.2 Where changes are made to these General Terms, the Service Terms, the Offer Terms or any other terms that apply to our services that are minor and either beneficial to you or of immaterial consequence to you (including a change to more closely align them with good industry practice or mandated requirements), no notice of the changes will be given to you. We can reduce our charges or our fees at any time without notice. We will also not contact you if you are on a pricing plan that provides for energy price flexibility, meaning that the energy prices relating to the time and volume of energy may increase in a shorter timeframe in accordance with that plan. By continuing to use the services, you agree to such amended Terms or additional terms.
- 20.3 If we make a change other than in accordance with clause 20.2, we will give you not less than 30 days' notice of the changes (or if the change is caused by a third party change and we cannot give you 30 days' notice, we will give you as much notice as reasonably possible) by sending you a letter, email, or SMS to the last postal or email address, or mobile number, you have given us. If we are increasing a charge or fee for energy and increase in that charge or fee or the total invoiced price of the energy supplied is more than 5% (and in the case of a fee, the increase is reasonably likely to have a material effect on you) then a separate notice of that increase will be separately communicated to you in writing as soon as possible and that notice will include an explanation for the reasons for the increase. In addition, we may also use one or more of the following methods:
- (a) calling you;
  - (b) including a statement on your invoice;
  - (c) putting a notice on our website;
  - (d) advertising in your local daily newspaper; or
  - (e) a combination of the above.
- 20.4 Subject to eligibility, you may choose an alternative pricing plan which you wish to apply to you and notify us of your choice. Should you be eligible for the plan chosen, we will transfer you to the alternative pricing plan chosen by you within 30 days of receiving such notice from you.
- 20.5 Unless otherwise set out in this agreement, our accounts or notices to you will be:
- (a) delivered to your property;
  - (b) mailed to the latest postal address you have given us;
  - (c) in the case of billing, be made available online where you have selected an online billing option;
  - (d) sent to the latest email address you have given us;
  - (e) sent to you by electronic means (for example, SMS);
  - (f) by telephone call in case of urgent requirements; or
  - (g) by putting a notice on our website or advertising in your local daily newspaper (where appropriate).
- 20.6 Notices will be considered to have been received by you three days after being mailed by us or our mailing agent, on the day of delivery if delivered to your property, on the day of transmission if sent by email or other electronic means, or on the day of publication for notices in newspapers or our website.
- 20.7 If you reasonably believe that changes made under clause 20.3 are detrimental to you, we may permit you to remain on the unchanged terms, if possible, or you may terminate the affected service and/or, if applicable, our agreement with you without incurring any exit or other Early Termination Fees, by giving us notice within a reasonable time of our notification of the change. You will need to pay any outstanding amounts on your account.
- 20.8 However, where we change the manner or technology by which we provide a service, provided the service itself remains materially similar, this shall not be a reason for you to terminate the service. If you do not terminate the service and/or these Terms or any additional terms in accordance with clause 20.7, you agree to the change.
- 20.9 Unless you are notified otherwise, changes under clause 20.3 will come into effect at the end of the notice period advised. Changes under clause 20.2 will come into force from the date they are made.

## 21 CONFIDENTIALITY.

- 21.1 You must keep confidential any information you receive from us which you would expect to be confidential or commercially sensitive. Any pricing, special terms, network, equipment or software design information must be treated as confidential. You may only disclose confidential or commercially sensitive information if you are required to by law or applicable stock exchange rules, to perform your obligations or exercise your rights under this agreement, or with our prior written consent. We must keep confidential any information we receive from you which we would expect to be confidential or commercially sensitive. We will only disclose confidential or commercially sensitive information if we are required to by law or applicable stock exchange rules, to perform your obligations or exercise our rights under this agreement, or with our prior written consent.

## 22 GENERAL.

- 22.1 This agreement is to be interpreted in accordance with the laws of New Zealand and you submit to the non-exclusive jurisdiction of the New Zealand courts.
- 22.2 Those aspects of this agreement that confer a benefit on a third party (for example our employees, agents, and contractors, or a wholesale service provider or their employees, agents, and contractors) are enforceable by such third parties pursuant to the Contract and Commercial Law Act 2017, but may be amended by us without their consent.
- 22.3 We may transfer or assign any or all of the obligations that we have under this agreement to someone else where in good faith we do not believe it would be detrimental to you (including another service provider) or the transfer is of a debt you owe us to a debt collection agency pursuant to clause 12.3. Where we do this, we will notify you that this agreement is being transferred to another party and will let you know where you can access the information that you need to contact the other party and when the transfer will take place.
- 22.4 You may not assign any rights, obligations or responsibilities set out in this agreement to any other person.
- 22.5 We may subcontract or delegate the performance of any of our responsibilities under this agreement.
- 22.6 If any provision of this agreement is, or becomes, unlawful, invalid, or unenforceable, it will be severed from this agreement to the extent it is unlawful, invalid or unenforceable. The rest of this agreement will remain in force.
- 22.7 A delay in exercising any right is not a waiver of that right. A failure to exercise a right on any occasion does not prevent any subsequent exercise of that right.
- 22.8 Termination of these Terms will not affect any other accrued rights or legal remedies either party may have, nor does it affect any provision which is expressly or by implication intended to survive termination.
- 22.9 Subject to any changes that may be made to our agreement from time to time as advised to you, these General Terms, the Service Terms, any Offer Terms, and special terms and any other terms advised by us to you is our entire agreement and supersedes all prior agreements, understandings, and communications between us. It is subject to all statutes, regulations, industry rules and codes of practice relating to the supply of energy and telecommunications services, as well as any requirements that the lines company may impose relating to use of its local lines network.

- 22.10 For energy services, if we commit an "event of default" (as that term is defined in the Electricity Industry Participation Code 2010) the Electricity Authority (or its successors or assigns) may assign our rights and obligations under this agreement to another energy retailer ("the recipient retailer"). The terms of this agreement may be amended upon assignment to the recipient retailer to:
- (a) the standard terms the recipient retailer would have offered to you immediately before the event of default; or
  - (b) such other terms that are more advantageous to you than the standard terms as the recipient retailer and the Electricity Authority agree; and
  - (c) include a minimum term in respect of which you must pay an amount for cancelling the contract before the expiry of the minimum term.

To facilitate this process, we may be required to pass information about you to the Electricity Authority, who may pass it on to another retailer. This clause is for the benefit of the Electricity Authority for the purposes of the Contract and Commercial Law Act 2017

## 23 DEFINITIONS & INTERPRETATION.

- 23.1 Clause and other headings must be ignored in construing this agreement 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 (or any assignee), and we say you when referring to you, our customer. If we use the word "including" or "for example", this applies as if the words "but without limitation" were also set out. Where the following terms are used in this agreement, they have the following meanings:

**"business day"** means a day, other than a Saturday or Sunday, on which New Zealand registered banks are open for business in Auckland.

**"charges"** means the charges for your access to, and use of the services provided to you by Mercury, our service providers, together with any third party charges paid for services and content accessed by you using the services.

**"customer"** means a non-residential customer, including non-profit organisations and businesses.

**"electricity"** means electrical energy measured in kilowatt-hours (kWh).

**"equipment"** means any fittings, meters or other equipment that form part of the system that supply services to you.

**"export meter"** means equipment installed at your premises that is used to measure surplus electricity.

**"fee"** means any additional fees for or related to the provision of the services, but excludes the charges, including any fees specified or defined in any Specific Terms.

**"fittings"** means wires, pipes, plant and equipment used in the delivery or use of electricity or gas.

**"industry codes and standards"** includes all relevant electricity and gas industry codes and standards, rules and protocols.

**"gas"** means piped gas and/or LPG.

**"generator"** means any person who generates or wholesales energy.

**"good industry practice"** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar conditions in New Zealand at that time.

**"industry standards"** means accepted industry arrangements, guidelines, protocols and codes of practice as well as good industry practice.

**"lines company"** means the company that operates the electricity distribution network by which electricity is supplied to your connection point, and where appropriate, includes the lines company's directors, officers, employees, authorised agents, contractors and professional advisers.

**"line function services"** means the provision, maintenance, and operation of fittings in accordance with our agreement with the network owner for the supply of energy to your premises.

**"meter"** means metering equipment and other apparatus to measure the quantity of energy conveyed to your relevant point of connection and/or the quantity of electricity generated at your premises and exported back into the network (if applicable) and/or your patterns of energy usage and/or energy demand, and any associated relays and includes all associated fittings, aerials, pre-payment metering equipment, remote meter reading devices and export meters.

**"meter equipment provider"** means an entity that owns and/or is responsible for installing, maintaining and repairing meters located at your premises.

**"metering services"** means the provision and maintenance of meters, relays, ripple receivers, collection of data from the meters and ancillary services as determined by Mercury.

**"network owner"** means the person that owns or operates the network to which your premises are connected.

**"Offer Terms"** means the terms and conditions of any special offer relating to services that we may make from time to time.

**"other services"** means any and all additional services provided by us to you that are related to or associated with our provision of the services to you.

**"our representatives"** means any person we engage in connection with the products and services we offer to our customers, and may include third party service providers, our employees or contractors or agents, or the employees, contractors or agents of:

- (a) the lines company or network operator;
- (b) the meter reader; and
- (c) the meter owner.

**"person"** includes a corporation and vice versa.

**"point of connection"** means the point at which the responsibility for the equipment that supplies energy transfers between the network owner and you.

**"premises"** means any premises all or part of which you occupy or on which metering or other equipment is installed.

**"services"** means one or more of the following services provided by us to you:

- (a) electricity
- (b) piped gas
- (c) LPG
- (d) landline phone
- (e) internet
- (f) mobile phone.

**"service provider"** means any third party which allows or facilitates our supply of the services to you, including (but not limited to) network owners, network service providers, wholesale service providers and equipment suppliers.

**"Specific Terms"** means the terms and conditions that apply to specific services.

**"telecommunications"** means landline phone and/or internet and/or mobile phone.

**"Transpower"** means Transpower New Zealand Limited.

**"we", "us", "our"** means Mercury NZ Limited and includes its officers, employees, contractors, agents, successors, and assignees

**"you"** and **"your"** means you, the customer.

23.2 Reference to any statute or regulations includes a reference to that statute or those regulations as amended, modified, or replaced and, in the case of a statute, includes all orders, ordinances, regulations, and by-laws made under or pursuant to that statute.

## 24 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](mailto:customerservice@mercury.co.nz) or call us on 0800 20 18 20.
- You can visit our website, [mercury.co.nz](http://mercury.co.nz), or contact us via web chat at [ask.mercury.co.nz](http://ask.mercury.co.nz)
- You can write to us at:  
Mercury  
Private Bag 12023  
Tauranga Mail Centre  
Tauranga 3143

Mercury 