

Terms & Conditions

Terms of Supply

Clear Networks Broadband Services Terms and Conditions (Effective 1 January 2011) These are the standard terms and conditions of supply of Clear Networks Broadband (ABN 61567 251 011) and other services offered from time to time on the Clear Networks web site at <http://www.clearnetworks.com.au> ("the Service"). These terms apply to you as a user of the Service ("Client" or "you"). Please read these terms and conditions carefully. It is a condition of your use of the Service that you comply with these terms and conditions.

1. Definitions

- 1.1 'Acceptable use policy' means the conditions of use applicable to the service as published by Clear Networks from time to time;
- 1.2 'Access period' means a renewable period of one (1) calendar year;
- 1.3 'Charges' means the charges payable by the customer to Clear Networks pursuant to this agreement including connection, access, usage and other fees;
- 1.4 'Internet' means the worldwide connection of computer networks providing for the transmittal of electronic mail, on-line information, information retrieval and file transfer protocol;
- 1.5 'Peak' time means from 7am to 11pm
- 1.6 'Off-Peak' time means from 11pm to 7am
- 1.7 'Service' means interactive dial-up or broadband access/permanent connection access [one or the other] to Clear Networks' connection to the Internet, the provision of World Wide Web data and the incidental storage of data;
- 1.8 'World Wide Web' means a method of representing and obtaining graphical data and linking data items used by Internet users.

2. Access period

- 2.1 The minimum term of your agreement with Clear Networks is 12 months from the date of your connection to the Service.
- 2.2 This agreement may be renewed (renewal) for subsequent periods of twelve (12) months, subject to approval by Clear Networks.
- 2.2 Renewal of this agreement for a subsequent period may involve an adjustment to the charges as a condition of Clear Networks providing its consent to renewal.
- 2.3 Where a Client chooses to terminate the service prior to the minimum term, an early exit termination fee applies which is pro-rated for the remainder of the contract term. E.g. if a period of 6 months remains, then 6/12 * the early exit admin fee applies as applicable for your service.

3. Provision of service

- 3.1 Clear Networks, in accordance with the terms and conditions of this agreement, shall provide the customer with the service by such means as Clear Networks determines.
- 3.2 Clear Networks shall provide the service on a continuous basis during the term of this agreement. Clear Networks will inform the customer if the service is unavailable for access by the customer due to maintenance or any other foreseeable factor.
- 3.3 Clear Networks shall provide the customer with all identification and login information required for connection to the service.

4. DSL Component

- 4.1 Clear Networks has agreed to provide you, and you agree to purchase, the service as requested in the Service Application Form and in accordance with the general Terms and Conditions set out on this page (General Terms); and any other service descriptions and conditions that we agree upon with you.
- 4.2 In the event of any inconsistency between the General Terms and any other provision of the Agreement, the General Terms will prevail to the extent of that inconsistency.
- 4.3 The minimum term of your agreement with us is 12 months from the date of your connection to the service.
- 4.4 By signing this Agreement, you agree to and acknowledge the following:
 - 4.4.1 Clear Networks does not supply a standard telephone service with the ADSL/SHDSL access component and as such the Service is not subject to the "Customer Service Guarantee" standard administered by the Australian Communications Authority and it may be necessary to terminate the service if you request another carrier to provide a standard telephone service after the date of the Agreement;

- 4.4.2 where we contract with a third party supplier for the provision of the Service we may provide name, address, telephone number and other information provided by you (Customer Information) to the third party supplier, its suppliers and its nominees for the purpose of fulfilling such contracts, including those related to the provision of a CPE Router where applicable.
- 4.5 If you are supplied with a CPE Router by us you acknowledge and agree that:
 - 4.5.1 we sell the CPE Router to you;
 - 4.5.2 we will arrange for the CPE Router to be delivered to the premises specified in the Service Application Form;
 - 4.5.3 you are responsible for the installation and configuration of the Router, unless, by request, on the Service Application form indicate a Managed Install (available in Metropolitan Melbourne only) charged at the Clear Networks standard rate
 - 4.5.4 Managed Install conditions;
 - 4.5.4 .1 a Managed Install only includes delivery, installation and configuration of the CPE Router to one (1) computer
 - 4.5.4 .2 a Managed Install does not include configuration of network properties beyond the initial computer;
 - 4.5.4 .3 The Provisioned Line has been installed as per Australian Telecommunication Standards.
 - 4.5.4 .4 The Line outlet is located in the same room as the computer that is being connected to the Internet
 - 4.5.4 .5 That, in the case of a computer not being located in the same room as the telephone line, there must be an approved CAT5 Network wiring (straight through) between the phone line location and the computer being connected. Additional charges may be applied if network hubs, switches or servers are associated with this network
 - 4.5.4 .6 The Customer must back up all data on the nominated computer prior to the ADSL installation
 - 4.5.4 .7 The clients PC must meet the following requirements:
 1. Not Networked to any other PC's (if there is an existing network this connection will be disconnected unless alternate arrangements are made between Clear Networks & the customer)
 2. Pentium II equivalent or above
 3. Windows 98, ME, 2000, XP or above (with original Operating System Software available)
 4. 32 MB RAM (for Windows 98 and ME)
 5. 64 MB RAM (for Windows 2000)
 6. 128 MB RAM (for Windows XP)
 - 1GB of RAM for above.
 7. Network Interface Card or PCI slot
 8. SVGA display 800x600x256 colours + 9. 150MB hard disk drive space
 10. Internet Explorer version 5.5 + 11. Microsoft Outlook Express or Microsoft Outlook software (if e-mail is required)
 - 4.5.4 .8 The Customer must provide full unhindered access to the premises. Where a installation is hindered or the services, network or hardware is incomplete a standard call out charge will be made to the customer additional to the standard installation charge
 - 4.5.4 .9 The managed install includes one (1) inline filter provided free of charge. One filter is required for each telephone/fax device that uses the same line (maximum of 4). Sometimes, if ADSL noise is still getting through the line to specific phones, extra filters may also be required. If further filters or hardware items are required, eg. Modular Adapter (old telephone socket style) to RJ12, RJ12 Double Adapters, Telephone Extension cables, the installer will install these on acceptance by the customer at the standard Clear Networks pricing schedule rate.
 - 4.5.5 During the contract period you will ensure that the CPE Router is operated and housed in an environment which meets the manufacturer's requirements;
 - 4.6 You agree to comply with the Clear Networks' Acceptable User Policy (see www.clearnetworks.com.au/aup.html) which is summarised as follows:
 - 4.6.1 not to send e-mail that may destroy or damage an e-mail recipient's computer;
 - 4.6.2 not to knowingly accept email which is unlawful, and violates or infringes upon the rights of any person or corporation;
 - 4.6.3 not to reveal confidential information about Clear Networks and/or its suppliers which may result in unauthorised usage of the Services by a third party;

- 4.6.4 not to transmit information which contains viruses or other harmful components;
- 4.6.5 not to interfere, damage or destroy computer systems operations of the Services including disobeying any requirements, procedures, policies or regulations of Clear Networks, other users and/or third parties.
- 4.6.6 not to store or transmit any unlawful, threatening, defamatory, offensive or pornographic material that constitutes a criminal or civic offence under State and Commonwealth laws.
- 4.7 We reserve the right to terminate or suspend the service in the event of a breach of this agreement.

5. Customer obligations

- 5.1 The customer must provide its own access facilities.
- 5.2 The customer is responsible for maintaining the secrecy and confidentiality of all identification and login information required by the customer to access the service.
- 5.3 The customer agrees not to disclose to any other person, corporation, entity or organisation any identification or login information, whether in use or not, or any other confidential information relating to the service or Clear Networks.
- 5.4 The customer is liable for all fees resulting from use of the service accessed through the customer's identification or log-in information, whether authorised by the customer or not.
- 5.5 An invoice raised by Clear Networks shall be deemed to be correct and prima facie evidence of all charges contained therein.

6. Use of the service

- 6.1 The customer shall comply with all reasonable directions by Clear Networks in relation to the access and use of the service.
- 6.2 Throughout the access period and any renewal, the customer shall comply with the acceptable use policy.
- 6.3 The customer warrants that in accessing and using the service it will only use software that it is legally entitled to use.
- 6.4 The customer acknowledges that Clear Networks does not and cannot in any way supervise, edit or control the content and form of any information or data accessed through the service and Clear Networks shall not be held responsible in any way for any content or information accessed via the service.
- 6.5 Clear Networks disclaims all or any liability for any material on the Internet that the customer finds offensive, upsetting, defamatory or personally offensive.
- 6.6 The customer shall refrain from disruptive activities which may include, but are not limited to, the circulation of any unsolicited publicity or advertising material, propagation of computer worms and viruses, use of the service to gain unauthorised access to any other computer system, the sending of harassing, obscene, offensive or threatening electronic mail, forgery of electronic mail and the placement, transmission or storage of any defamatory material on the Internet.
- 6.7 The customer will not access, nor permit any other party to access, the service for any purpose or activity of an illegal or fraudulent nature.
- 6.8 The customer will not reproduce, distribute, transmit, publish, copy, transfer or commercially exploit any information accessed through or received from the service that would infringe the intellectual property right of any person.
- 6.9 The customer is responsible for preparing and maintaining sufficient back-up files and data storage capacity for all customer data including electronic messages.
- 6.10 Clear Networks has no responsibility to provide training in the use of the service pursuant to this agreement. Training may be provided or procured for an additional fee.

7. Charges

The customer shall pay the charges at the rate and in the manner specified in the Application. Payment must be made in the names provided in the Application.

8. Indemnity

The customer releases and indemnifies Clear Networks, its servants and agents from and against all actions, claims and demands which may be instituted against Clear Networks arising out of a breach of this agreement by the customer or of any other person for whose acts or omissions the customer is vicariously liable.

9. Implied terms

- 9.1 Subject to subclause 9.2, any condition or warranty that would otherwise be implied in this agreement is hereby excluded.
- 9.2 Where legislation implies in this agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this agreement. However, the liability of Clear Networks for any breach of such condition or warranty shall be limited, at the option of Clear Networks, to one or more of the following:
- 9.2.1 if the breach relates to goods;
- 9.2.1.1 the replacement of the goods or the supply of equivalent goods;
- 9.2.1.2 the repair of such goods;
- 9.2.1.3 the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- 9.2.1.4 the payment of the cost of having the goods repaired.
- 9.2.2 if the breach relates to services:
- 9.2.2.1 the supplying of the services again; or
- 9.2.2.2 the payment of the cost of having the services supplied again.

10. Liability of Clear Networks

Clear Networks shall be under no liability to the customer in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of goods supplied or the provision of the service pursuant to this agreement or in respect of a failure or omission on the part of Clear Networks to comply with its obligations under this agreement.

11. Termination

- 11.1 For the purpose of this agreement, the following are terminating events -
- 11.1.1 the breach or threatened breach by the customer of any of its material obligations under this agreement;
- 11.1.2 the appointment of any type of insolvency administrator in respect of the property or affairs of the customer;
- 11.1.3 the entry or proposed entry by the customer into any scheme, composition or arrangement with any of its creditors;
- 11.1.4 the permanent discontinuance of use of the service by the customer;
- 11.1.5 the merger with or the takeover of either party by another person;
- 11.1.6 any event described in this agreement as a terminating event; or
- 11.2 The service may be terminated immediately by Clear Networks on the happening of a terminating event.
- 11.3 The customer shall immediately on termination return to Clear Networks all copies of all documents in the possession of the customer relating to the service and Clear Networks.
- 11.4 Any termination of the licence shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of this agreement that is expressly or by implication intended to continue in force after such termination.

12. Entire agreement

This agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the services. No addition to or modification of any provision of this agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.

13. Law

This agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of Victoria, Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that State.

14. Waiver

No forbearance, delay or indulgence by a party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

15. Dispute resolution

Any dispute or difference arising in connection with this agreement shall be submitted to arbitration in accordance with, and subject to, the Rules for the Conduct of Commercial Arbitrations of the Institute of Arbitrators, Australia. During such arbitration, a duly qualified legal practitioner may represent both parties.