

# Our Customer Terms

For Bolton Clarke InTouch Internet Service

## Bolton Clarke

ABN 90 010 488 454

Address Level 44 Musk Avenue Kelvin Grove 4059 QLD

## How to contact us:

Phone 1300 22 11 22

Email [InTouch@boltonclarke.com.au](mailto:InTouch@boltonclarke.com.au)

Website [www.boltonclarke.com.au/internet](http://www.boltonclarke.com.au/internet)

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## General Terms & Conditions

RSL Care RDNS Limited (ABN: 90 010 488 454) ("Us") will supply you with telecommunications services ("Services") on the terms and conditions set out below. Words not defined in these terms and conditions have the same meaning as in the *Telecommunications Act 1997* (Cth) ("Telecommunications Act").

### 1. Our Contract with You

- 1.1. These terms and conditions form the basis of your contract with us for the supply of telecommunications services ("Contract"). The Contract is for the supply to you of the services nominated in your application/order form (Services) which are supplied in accordance with the service description for those services found on our website (Service Description).
- 1.2. The Contract also includes your application/order form(s) or voice recording, which you complete and provide to us. We may accept and rely on a facsimile, email or scanned copy of the application or order form as if it was an original – and you'll be legally bound to that copy in the same way.
- 1.3. The Contract also includes any Service Description we provide to you for the Services you purchase from us.
- 1.4. The Contract also includes our current applicable price list. The price list may change from time to time, but we will notify you of any changes when they happen or prior to any such changes coming into effect. Copies of the price list are available from us, upon request.
- 1.5. The Contract is formed on the date we notify you that we have accepted your application.

### 2. Service Description

- 2.1. Services will be supplied to you using the networks and facilities operated by various carriers ("Carriers") that we select from time to time. The product description identifies the name of the principal Carrier(s) that we will use to provide the Services as at the date your services commence. You agree that we may elect to change those Carriers from time to time and we will notify you if that occurs.
- 2.2. You accept that we are only able to provide the Services to you to the extent and at the standard that the Services are provided to us by the Carriers.
- 2.3. If your connection is disrupted, we will do our best to reinstate our Services to you as soon as we can.
- 2.4. When using the Services, you agree:
  - 2.4.1. to comply with all statutes, regulations, by-laws or licence conditions of relevant government bodies;
  - 2.4.2. to not breach any person's rights or otherwise cause us or a Carrier loss, liability or expense; and
  - 2.4.3. that our obligations to provide the Services cease when we transfer your customer account to another supplier and the other supplier takes over responsibility for billing of those Services.

### 3. Charges and Payments

- 3.1. You agree during the term of the Contract:
  - 3.1.1. to be charged for the Services we provide to you, regardless of whether it is you who uses them, at our current prices;
  - 3.1.2. if our charges are expressed as being exclusive of any taxes, that we can pass on to you the full amount of any taxes payable on the charges; and
  - 3.1.3. to pay accounts for all of those charges (including any applicable taxes) by the date specified on the account (“Due Date”).
- 3.2. If you dispute in good faith an amount on the account, you must let us know in writing, or by calling us, within fourteen days setting out reasons for the dispute and the amount in dispute. Excluding any dispute over any amount of a charge, you must pay the balance of each account by the Due Date.
- 3.3. If you don’t pay the undisputed amount of your account by the Due Date, then we may charge a late payment fee and/or suspend all, or part of your Services, until the outstanding amounts on the account are paid. Nothing in this clause affects our rights to terminate the Contract under clause 10.
- 3.4. If you don’t pay the account by the Due Date, we also reserve the right (at our discretion) to reasonably adjust the prices you pay for the Services.
- 3.5. If you direct us to transfer any of the Services to another supplier, you will pay to us on receipt of an account under our normal payment terms:
  - 3.5.1. all of our accounts up until the time we stop providing the Services;
  - 3.5.2. all other proper charges that we become aware of after the date your Services stop that relate to the Services we provided to you; and
  - 3.5.3. any early termination charges or fees associated with the cancellation of your service.
- 3.6. Payments are collected by our authorised billing and payments provider Telecom Billing (ABN: 42 144 043 863) (or such other authorised billing and payments provider advised by us to you from time to time) acting as authorised agents for us.

### 4. GST

- 4.1. In this clause, an expression defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (“GST Act”) has the same meaning.
- 4.2. Our prices are taken to be GST inclusive unless they are expressed to be ‘GST exclusive’, ‘exclusive of GST’, ‘+ GST’ or similar.
- 4.3. If any amount is expressed to be inclusive of GST, the GST inclusive price assumes a GST rate of 10%. If the rate of GST changes, the GST inclusive price will be adjusted to reflect that change.
  - 4.3.1. Where any amount is expressed to be GST inclusive, it is the gross amount, inclusive of any GST payable in respect of the relevant taxable supply.
  - 4.3.2. If GST is payable on a taxable supply made under or in connection with your Contract, the party making the supply (GST Supplier) may recover from the recipient of the supply (Recipient) the amount of that GST (GST Amount) in addition to any consideration otherwise payable or provided for the supply.

- 4.4. The Recipient must make payment of the GST Amount to the GST Supplier at the same time and in the same manner as it provides the consideration for the relevant supply subject to the Recipient receiving a tax invoice from the GST Supplier on or before the due date for payment.
- 4.5. If these terms require you to pay, reimburse or contribute to an amount paid or payable by us in respect of an acquisition of a taxable supply from a third party, the amount you must pay, reimburse or contribute will be the value of the acquisition by us less any input tax credit to which we are entitled plus, if our recovery from you is a taxable supply, any GST payable under this clause.
- 4.6. We may recover any GST payable under this clause in the same manner as our charges.

## 5. Amending Terms and Conditions

- 5.1. We may change these terms and conditions with immediate effect by updating these terms and conditions or other relevant documents, if we reasonably consider the change is likely to benefit you or have a neutral effect on you. We may also notify you of the change in view of the nature of the change and any other matters we consider relevant. We may change these terms and conditions with immediate effect, if you have agreed to that change;
  - 5.1.1. to accommodate a change in law or where required by law or a regulator;
  - 5.1.2. to reflect a change in any charges for third party products or services which we on supply to you, where varied from time to time by those third parties, which have a neutral or beneficial effect on you;
  - 5.1.3. due to security or technical reasons, which have a neutral or beneficial effect on you; or
  - 5.1.4. to prevent fraud.
- 5.2. If we reasonably consider the change is unlikely to benefit you or have a neutral effect on you, we'll notify you at the same time as the change, or as soon as reasonably possible afterwards in view of the nature of the change and any other matters we consider relevant.
- 5.3. If we want to make a change to these terms and conditions in ways that are not described in clauses 5.1 or 5.2, we will give you reasonable notice before making the change. This includes making a change that's required by a Carrier, whether under contract or by law, or a change made in connection with a Carrier service that we resupply to you.
- 5.4. For changes we are required to notify you about under clauses 5.1.1 or 5.2, you may choose to cancel your Contract with us by notifying us during the 30 calendar day period after we notify you of the change. If you do so:
  - 5.4.1. the change we notified will be of no effect and will not form part of your Contract, unless otherwise required by law;
  - 5.4.2. your Contract will end within 5 business days of your cancellation request and you will receive a refund for charges paid in advance for the remainder of your billing period on a pro-rata basis; and
  - 5.4.3. except as noted below, we will waive any applicable early termination fee under clause 10.2.

## 6. Credit Check

- 6.1. Before we accept your application, we may need to complete a credit check so we can assess the application and your ability to pay for the products and services we supply.
- 6.2. We may request information from you in order to allow us to complete a credit check. You accept that we may decline to process your application until that information is provided.
- 6.3. You consent to:
  - 6.3.1. us obtaining a credit report from a credit reporting agency that contains personal information about you;
  - 6.3.2. us giving to, and seeking from, any credit provider named in a credit report or in your application, information relating to your credit rating - including without limitation any information about your credit worthiness, credit history or credit capacity that credit providers are allowed to give or receive from other credit providers under the Privacy Act 1988 (Cth) ("Privacy Act");
  - 6.3.3. us making independent enquiries of third parties concerning your financial standing and for this purpose you have authorised and permitted such third parties to supply such information regardless of any confidentiality or privilege which applies to the information sought; and
  - 6.3.4. us providing any information we obtain about you to the relevant Carrier that we use to assist us to provide services.

## 7. Transfer of Services

- 7.1. If you are wishing to transfer to us from another provider, you should check with that provider if there are any costs or restrictions on transferring on you completing that transfer.
- 7.2. When you do transfer any services ("Transferred Services") from a Carrier, a telecommunications service provider or equipment supplier who supplies telecommunications services or equipment to you at the time we accept your application ("Current Supplier"), you authorise us to sign on your behalf and in your name any forms required by the Current Supplier to transfer the Transferred Services as we direct.
- 7.3. You may also need to contact your Current Supplier once your account is activated with us to close off your services with them.
- 7.4. You agree to immediately pay to the Current Supplier any amounts owing for the Transferred Services up to the date of the transfer.

## 8. Australian Consumer Law rights

- 8.1. You have important rights under the Australian Consumer Law that can't be limited, excluded, restricted or modified.
- 8.2. Nothing in your Contract limits, excludes, restricts or modifies those rights in any way.
- 8.3. Full details of these rights and the consumer guarantees are available from the Australian Competition and Consumer Commission at [acc.gov.au](http://acc.gov.au) or from a local consumer protection agency.
- 8.4. If we supply you with products or services under a Contract, and you have been told they come with a "manufacturer's warranty" or "product assurance" or similar, those rights are in addition to, and not instead of, your rights under the Australian Consumer Law.

- 8.5. To the extent permitted by law, and subject to the requirements of the Australian Consumer Law, we otherwise give no condition, warranty or undertaking and we make no representation to you about the condition or suitability of any product or service provided under a Contract, or its quality, fitness or safety, other than those set out in the Contract. We do not warrant or represent the performance, accuracy, reliability or continued availability of the Services, or that the Services will operate free from faults, errors or interruptions.
- 8.6. To the extent permitted by law, including the Australian Consumer Law, our liability for breach of any implied conditions, warranties or undertakings is (at our option) limited to:
  - 8.6.1. providing equivalent products or services to those provided under your Contract; or
  - 8.6.2. paying you the cost of replacing the products or services, or acquiring equivalent products or services, provided under your Contract.

## 9. Limit on Liability

- 9.1. To the extent permitted by law (including the Australian Consumer Law), you will not be liable to us and we will not be liable to you, for any indirect or consequential loss, or any economic loss, business interruption, loss of revenue, profits, anticipated savings, actual or potential business opportunities or contracts or loss of data.
- 9.2. Your liability to us, and our liability to you, for any loss or damage suffered is limited to \$1,000 in aggregate for the term of our Contract, except that this limit will not apply to the following:
  - 9.2.1. a party's liability for personal injury or death caused by that party's negligence;
  - 9.2.2. a party's liability for fraud, criminal act or wilful misconduct;
  - 9.2.3. your liability to pay the charges and any expenses under your Contract with us;
  - 9.2.4. your liability to compensate us for any damage to products owned by us or a Carrier;  
or
  - 9.2.5. your right to claim for losses under the Australian Consumer Law (see clause 8).

## 10. Terminating the Contract

- 10.1. If you wish to cancel your Service, you can do so by simply notifying us. Your Contract will end within 5 business days of your cancellation request and, unless your Contract says otherwise, you'll receive a refund for charges paid in advance for the remainder of your billing period on a pro-rata basis. In some cases an early termination charge may apply (please see clause 10.2.)
- 10.2. This clause applies if you have agreed to purchase a Service from us for a fixed or minimum term. If you wish to terminate your Service before the end of the fixed or minimum term then, unless otherwise provided by your application, we may charge you an early termination fee, charges for any product or installation services that were supplied on a subsidised, periodic or no upfront fee basis, plus service and usage charges to the date the Service is actually cancelled.
- 10.3. Early termination fees will only be charged to you where you terminate under clause 10.2. Early termination charges are not payable where you terminate for our breach or where you exercise your rights under clause 5.4. The early termination fees will be calculated at the rate set out in your application or service description document and, if not set out there, will be calculated at the rate of 25% of the minimum monthly fee for each whole month between the date your Service ends and the end of the fixed or minimum period.

- 10.4. If you terminate under clause 10.2 and you have purchased any products or installation services from us that were supplied to you on a subsidised, periodic or no upfront fee basis, then we may charge you an amount equal to the unpaid balance that would have been paid by you to us for the products or installation services over the fixed or minimum term had the Contract not been cancelled by you early. We may suspend or restrict a service or cancel your Contract by giving you notice at any time if, without our prior written consent:
- 10.5.1. you materially breach any term or condition of our Contract and fail to remedy that breach within a period of 30 days after we give you notice to remedy it;
  - 10.5.2. you pass away;
  - 10.5.3. we reasonably believe that it's necessary to do so;
  - 10.5.4. a Carrier ceases to provide us with any services that we need to provide to you or which we use to provide services to you;
  - 10.5.5. it becomes technically impractical to continue providing the service;
  - 10.5.6. if we are required to do so due to a requirement in a Contract we have with a Carrier, by law or the order of a court or other regulatory body;
  - 10.5.7. we reasonably believe that you have become a serious credit risk or that we are unlikely to receive or retain payments made by you for amounts payable under our Contract;
  - 10.5.8. a receiver or receiver and manager is appointed over any of your property or assets;
  - 10.5.9. a liquidator or provisional liquidator is appointed to you;
  - 10.5.10. you become bankrupt;
  - 10.5.11. you enter into any arrangements with your creditors;
  - 10.5.12. you assign or otherwise deal with your rights under the Contract;
  - 10.5.13. you being a business cease to carry on business; or
  - 10.5.14. there is a material change in your direct or indirect ownership or control.
- 10.6. If we terminate our Contract in accordance with this clause and a Carrier arranges to supply you services other than through us, you acknowledge that the Carrier may not be able to make those arrangements immediately and once the Carrier has made arrangements, the services acquired by you from the Carrier will be acquired on the Carrier's then current tariffs and terms and conditions - and the Carrier will bill you accordingly.
- 10.7. We will not disconnect, suspend or restrict a service under our Contract for credit or debt management reasons without informing you first, except where we reasonably assess that an unacceptably high credit risk exists, we reasonably suspect fraud or attempted fraud or the service has reached a point, nominated by you, at which service will be restricted.
- 10.8. We will take reasonable steps to give you at least 5 business days' notice (where possible, for example where urgent or emergency situations exist) before disconnecting, suspending or restricting your services, and we'll provide all other notices and take all other precautions required by applicable regulatory codes before disconnecting, restricting or suspending your service.
- 10.9. If we suspend, restrict or terminate your services then unless that termination was a result of our mistake or caused by a situation that is completely out of your control, we may charge a reconnection charge for re-instatement of a service that has been suspended, restricted or terminated.



## 11. Information

- 11.1. Without limiting clause 6, you agree to provide us with any information we ask for that relates to us providing the Services to you under this Contract.
- 11.2. You authorise and consent to the following:
  - 11.2.1. us conducting a physical audit of the services and any equipment supplied in respect of the services if we consider necessary (acting reasonably);
  - 11.2.2. us exchanging all information about you and the services provided to you in our possession or control with Carriers if need be. This includes, but is not limited to, your name, billing address, street address, relevant telephone numbers, any information obtained by us for the purpose of your application and our Contract; and
  - 11.2.3. the Carrier exchanging with us any information in the Carrier's possession or under its control in relation to the services including, without limitation, all your records and, in particular, exchange line details, account information, call charge records and call event records; and
  - 11.2.4. Our use (and the Carrier's use) of the information referred to above for purposes reasonably connected with us supplying services to you.

## 12. Assigning rights

- 12.1. Your rights under our Contract are personal – so you must not assign or attempt to assign any right or obligation under our Contract without our written consent. We may transfer, assign or novate our Contract as part of a sale of all or a substantial part of our telecommunications business without seeking your consent but we will let you know in writing if we do so.

## 13. Warranty of Authority

- 13.1. You warrant that any persons signing this Contract on your behalf have full power and authority to bind you in respect of this Contract.

## 14. Our Equipment

- 14.1. Risk in any equipment provided by us or any third party to you for purchase or hire ("Equipment") passes to you once it's been delivered. You will accept any Equipment on the basis of these terms and conditions - and any additional terms and conditions we tell you about at the time of delivery.
- 14.2. Ownership (title) to any Equipment provided for purchase does not pass to you until all amounts owing to us under our Contract and the cost of such Equipment has been paid in full. Until then, the Equipment will be held by you as bailee for us.
- 14.3. If the Equipment is installed at premises occupied by you, you must not interfere with the Equipment or its installation.
- 14.4. If the advertised Equipment becomes unexpectedly unavailable, we may supply substitute Equipment that's substantially equivalent to the advertised Equipment.
- 14.5. If the advertised Equipment is not technically suitable for your situation, we may supply substitute Equipment that's substantially equivalent to the advertised Equipment.

- 14.6. Once your Contract is terminated for any reason, you will immediately return all Equipment owned by us or make it available for our collection. If you don't do this within 30 days of the date of termination, you will be invoiced for the replacement cost of the Equipment as applicable.

## 15. Installation and Connecting Equipment

- 15.1. This clause only applies if we expressly agree to install or connect Equipment.
- 15.2. We will install the Equipment at your site within a reasonable time after the delivery date to connect you to the Service during normal business hours in your area. You will need to provide us with safe access.
- 15.3. You must prepare the site for the installation (in accordance with any directions or specifications issued by us) at your own expense, including providing:
  - 15.3.1. appropriate electricity supply;
  - 15.3.2. appropriate electrical and mechanical fittings;
  - 15.3.3. appropriate environmental conditions;
  - 15.3.4. a secure location for the Equipment, including if applicable a suitable point for mounting an external satellite dish without obstructions;
  - 15.3.5. all facilities needed to locate the Equipment;
  - 15.3.6. access to all relevant personnel including your technical personnel; and
  - 15.3.7. where necessary, permission for us and our representatives and agents to enter your site and install the Equipment - including making any minor physical modifications (within reason) to help us do that.
- 15.4. You warrant to us that as at the date of installation and connection to the service, you will have notified any relevant parties - and obtained all relevant permissions for us to enter onto your site, install Equipment and connect your service.
- 15.5. You must indemnify us against any claim made against us, or loss incurred by us (including legal cost on full indemnity basis), in connection with such entry and installation - except to any extent that we cause or contribute to it by:
  - 15.5.1. our negligence; or
  - 15.5.2. our breach of any applicable consumer standards.
- 15.6. You must obtain and maintain, at your expense, any permits, licences, approvals, authorisations, including local council planning approval needed to install and operate the Equipment and connection to the service.
- 15.7. If the installation has to be rescheduled because you breach this clause, we charge a reasonable amount for our additional costs.

## 16. Lost, Stolen and Damaged Equipment

- 16.1. You are responsible for any lost, stolen and damaged Equipment owned by us, unless it's caused by us or our personnel.
- 16.2. You'll need to pay us for Equipment that is lost, stolen or damaged, except if it is caused by us or our personnel.

## 17. Telephone numbers and public addressing identifiers

- 17.1. The Telecommunications Numbering Plan 2015 (Cth) sets out rules for issuing, transferring and changing telephone numbers. You and we must comply with the Telecommunications Number Plan.
- 17.2. In addition to telephone numbers, the Service may use other identifiers such as an IP address or domain name (Public Addressing Identifiers). You must comply with the requirements of any regulatory authority or other body which administers Public Addressing Identifiers.
- 17.3. You are entitled to continue to use any telephone number we issue to you, except in circumstances where the Telecommunications Number Plan allows us to recover the number from you.
- 17.4. You acknowledge and agree that:
  - 17.4.1. we do not control the allocation of Public Addressing Identifiers
  - 17.4.2. we are not liable to you if we are required to change, withdraw, suspend or re-assign any Public Addressing Identifier as a result of any direction given by a Regulatory Authority or other body which administers Public Addressing Identifiers; and
  - 17.4.3. on cancellation of the Service, your right to use a Public Addressing Identifier may cease.

## 18. Miscellaneous

- 18.1. Any notice, demand, consent or other communication that needs to be given to either party must be delivered personally or sent by prepaid mail or facsimile to the last-notified address of the other.
- 18.2. The Contract shall be governed by and construed in accordance with the laws of the State or Territory of Australia where the Services are connected - and the parties agree to the non-exclusive jurisdiction of the courts of that State or Territory of Australia.
- 18.3. These terms and conditions, the application and any service description we provide, contains yours and our, full understanding to the exclusion of any and all prior or collateral agreement or understanding relating to the services, whether oral or written.
- 18.4. If any part of our Contract is found to be invalid or of no force or effect, our Contract shall be considered as though such part had not been inserted and the remainder of the Contract shall retain its full force and effect.
- 18.5. Our detailed policies are available on our website and include Policies for
  - 18.5.1. Acceptable Use
  - 18.5.2. Complaint Handling
  - 18.5.3. Privacy
  - 18.5.4. Regulatory Compliance Statement
  - 18.5.5. Family and Domestic Violence
  - 18.5.6. Financial Hardship
  - 18.5.7. Payment Assistance

## 19. Authorised Representative

- 19.1. If you wish to appoint an authorised representative (“Authorised Representative”) to deal with us on your behalf, you may do so.
- 19.2. Please consider carefully before authorising somebody to make changes to your account. An Authorised Representative you appoint can deal with us on your behalf as your agent (including making a complaint) and;
  - 19.2.1. if you specifically give them limited rights; has only those rights (including any limitations you specify on access to your information); and
  - 19.2.2. if you do not give them limited rights; has power to act and access information as if they are you.
- 19.3. We may also accept a person who holds an appropriate Power of Attorney or Guardianship Order as an Authorised Representative for a customer. You will need to forward a certified copy of the Power of Attorney or Guardianship Order to us - and we may need to have the documents checked before we can accept the appointment. Please ask for a copy of the form to add an Authorised Representative from our Customer Service team if you want to add an Authorised Representative to your account.

## 20. Personal Guarantee

- 20.1. Where you are a company (“Customer”), the persons named in the application form as directors of the Customer hereby jointly and severally guarantee to us:
  - 20.1.1. payment of all amounts payable by the Customer under the Contract on the day and times and in the manner due thereunder; and
  - 20.1.2. due and prompt performance and observance of any and all covenants, obligations, terms and conditions on the part of the Customer to be performed or observed pursuant to the Contract.
- 20.2. This guarantee will be a continuing guarantee and will not be released by any partial payment or by any neglect or forbearance on the part of us or any time or other indulgence granted by us to the Customer, nor shall we be required to first demand payment from the Customer as this guarantee will operate as an independent agreement which is in no way dependent upon the terms of any other agreement. You covenant to indemnify us and keep us indemnified from and against all actions, proceedings, costs, damages, expenses claims and demands whatsoever for or in respect of the non-payment of the said amounts or any part thereof or the breach, non-performance or non-observance of any of the said covenants or conditions of the Contract by the Customer.

## 21. Technical Support

- 21.1. We will provide technical support services as described on our website
- 21.2. We are not responsible for, and may not be able to provide support for, any fault caused by:
  - 21.2.1. any customer equipment;
  - 21.2.2. the interaction of the Service with third party software packages used by you;
  - 21.2.3. the inability to gain wireless connectivity from your wireless access point/router to your computer; or

- 21.2.4. Services provided by any third-party supplier or carrier (other than our third-party suppliers).