

Ultracom Limited – Terms and Conditions

- 1. Set out below are Ultracom Limited's (referred to as ULTRACOM) terms and conditions. These are the main terms of our agreement and form the basis of our contract with you.
- 2. You confirm that you are at least 18 years of age and that you are authorised and able to pay for the products and services to which you subscribe.
- 3. The application form provided to us by you also forms part of this contract. A facsimile copy of our application form will be treated as if it was an original.

Normally telephone applications will not be accepted, but if you complete an application form by telephone we will file your application and await a completed, signed application to be either emailed, Faxed or hand delivered to our offices. If you use our ULTRACOM internet service, our ULTRACOM Acceptable Use Policy will also apply and form part of our contract with you. A copy of our Acceptable Use Policy may be viewed on our website at <http://www.0800homeline.co.nz> or is available from us, upon request.

Our contract with you also includes our most current price list. The price list may change from time to time, but we will notify you of any changes when they happen. Copies of the price list are available on our website.

- 4. We reserve the right to amend these standard terms & conditions at any time. As this will vary our contract with you, when we do this we will notify you that we have amended these standard terms & conditions and we will post a copy on our website at www.0800homeline.co.nz. As one of our customers, it will be your responsibility to visit our website to obtain a copy of our amended terms. The amendments we make will apply from the date of our notice on our website. Your on-going use of our services after that date will be interpreted as constituting your acceptance of the amendments.

Definitions used in our Contract

- 1. In this contract the following terms are used:
- 2. "Ultracom", "ULTRACOM", "we", "our", and "us" to refer to Ultracom Limited Ltd and our representatives.
- 3. "you" and "your" to refer to the person who is identified on the front of this form as our customer
- 4. "Ultracom" to refer to our entire Internet services.
- 5. "Network" refers to any of the networks operated by ULTRACOM or other carriers used to provide you or us with various services.
- 6. "Internet" refers to the World Wide Web

Ultracom Commitment of Service to You

- 1. As a valued customer, once connected to our Network, our goal is to provide you with a consistently reliable and top quality service. We cannot guarantee that the service we provide will be perfect, but will always endeavour to bring you the best quality of service we are able to. If your connection is disrupted we will endeavour to do our best to reinstate our service to you as quickly as we can.
- 2. ULTRACOM Help Desk is available 8:30am to 4:30pm Monday to Friday. Service enquiries can be directed to the following: Telephone: 0800466354 or Email: neville.montefiore@netstar.co.nz
- 3. We reserve the right to choose the carriers and suppliers used to provide our services and we can change the carriers or suppliers at our discretion.
- 4. At times we may advise you about ways in which you can access our Network.

Paying Your Ultracom Bill

- 1. It is agreed that you will:
 - a) Pay for all goods and services we provide to you, regardless of whether it is you who uses them unless otherwise stated. Note: Our charges and fees are exclusive of GST unless stated otherwise.
 - b) Be liable for any charges incurred where your computer modem is programmed to dial overseas numbers without your knowledge or direction. We accept no liability for such charges. It is the customer's responsibility to safeguard their PC.
 - c) Immediately contact us if you dispute any of our charges. You will be required to provide us with full details of the reason you are disputing the charges. Any claims will not be recognised if you do not notify us of any disputed charges within 30 days of the date on which the account in dispute was sent to you. Any claim we are notified of within the required 30 days' timeframe will be looked into and you will be notified of the outcome. You must pay any undisputed charges by the due date for payment.
- 2. It is agreed that you will pay each account by the due date for payment by Direct Debit or Automatic Payment. If you do not we may charge you interest at a rate which is equivalent to our current bank overdraft interest rate plus 2% per annum on the overdue amount from the due date until payment of the relevant amount. We may also recover from you all legal and other costs incurred by us, arising from the collection of any overdue amount owed.
- 3. Our overdue charges invoices and any other notices will be sent to the most recent email address you have supplied to us. We will assume that you have received these invoices or notices once they have entered the system.
- 4. If you have not provided us with an email address or we are unable, to deliver invoices or other notices to the email address you have given us, we will deliver invoices and any other notices to the most recent postal address you have given us.

- 5. You are required to notify us if you change your email or postal address to ensure on-going supply of service from us. If you do not inform us of this, it may affect the supply of our services to you.

Your General Responsibilities

- 1. We agree that you will:
 - a) Ensure that all of the information you have provided to us is accurate and complete.
 - b) Comply with all legal requirements while a ULTRACOM customer using our services.
 - c) Comply with any requirements of any other carriers in relation to the use of its network.
 - d) Ensure everyone you are responsible for who will also be using our services, are also aware of their responsibilities and adhere to these terms and conditions.
 - e) Assist us where necessary to enable us to use and take over responsibility for your telephone and facsimile numbers in order that we are able to provide our services to you.
 - f) Provide access to our employees, contractors and representatives authorised by us or any other carrier to carry out any work required for the connection, operation and continuance of our services to you, and for any maintenance of the Network. We will normally make an appointment to carry out this work during normal working hours. However, if we need to perform the work at any other time you are required to provide us with the access we require to carry out any such works.

(See below - Additional terms for Installed Services)

- g) Adhere to the ULTRACOM 'Acceptable Use Policy' as set out at:

www.0800homeline.co.nz and as may be amended from time to time.

- h) Provide us with your ULTRACOM login and Email information to enable us to rectify any faults with either the Network or your connections.

- 2. You are responsible for ensuring that all calls or other communications, specifically or inadvertently directed into our network from your communications equipment or systems (including but not limited to telephone, facsimile, PABX, VoIP Soft switch, gateway, computer software or hardware) relate to services you have ordered from us, and not to services you have with another carrier. Any pre-programmed calling procedures you have must be deleted or removed from such equipment or systems prior to the commencement of our service to you. If you do not comply with these conditions you will be liable for our charges in conveying or dealing with such calls.

Disconnection / Suspension of Ultracom Services

- 1. If at any time you exceed any credit limits we may have agreed to, we will be entitled to suspend the provision of any, or all of our services to you.
- 2. If you fail to meet all or any of your responsibilities under this contract we are entitled to suspend or disconnect you from our Network or, suspend / block any other services we provide to you and/or terminate our contract with you.
- 3. If another carrier suspends or interrupts its service to us and that suspension or interruption affects our ability to provide our services to you, we may suspend or disconnect you from our Network.
- 4. In an emergency or whenever we, another carrier, or any other appropriate person considers it necessary or reasonable to protect persons, systems or other property, we may suspend or restrict a service we provide to you.
- 5. If you are failing to meet any of your responsibilities under this contract you may be suspended or disconnected from our Network and required to pay a recommencement fee before you can use our Network again. Any costs and expenses incurred by us as a result of suspension or disconnection and any recommencement shall be payable by you upon demand.
- 6. During your suspension or disconnection from our Network, normal charges, as outlined in our price list, will continue to apply.

Liability, Compensation & Indemnification

- 1. Residential customers may have rights under the Consumer Guarantees Act 1993 in addition to the rights set out in this contract and the terms & conditions of this contract shall apply subject to the provisions of the Consumer Guarantees Act 1993.

Customers receiving goods or services from us for the purposes of a business, agree that the Consumer Guarantees Act 1993 will not apply to this contract or any of our business dealings.

- a) It is agreed that we will indemnify you against all costs, expenses, loss or liability you incur arising from any breach of these Terms and Conditions by us (other than a breach that arises from an event beyond our reasonable control as detailed below in Force Majeure Event) or from any negligent, fraudulent or unlawful act or omission by us.
- ULTRACOM will not be liable to you:
 - b) For any loss of profit, or any consequential, incidental or indirect loss or damage suffered by you;
 - c) For any reduction, fault or defect in the quality of the Internet services which can be attributed to equipment provided by you or installed by another provider that has not been approved by us;
 - d) If any breach by us of these Terms & Conditions was caused or contributed to by you, a family member or friend breaching these Terms & Conditions by negligent, fraudulent or unlawful act or omission;

- e) If any third party has accessed the ULTRACOM network causing alterations to, or loss, theft or destruction of data files, programs, procedures, policies or information.
- f) Loss or reduction of services due to equipment failure where this equipment is non-approved by ULTRACOM, purchased by you, a family member, friend or another supplier, or where it is found ULTRACOM equipment has been tampered with, stolen, or damaged in any way.
- g) If another carrier suspends or interrupts its service to us which affects our ability to provide our services to you resulting in any loss or damage, including indirect and consequential losses suffered by you.
- h) For charges arising from the services of another supplier in the event of our services failing to operate.

Regardless of any legal basis, our liability under these Terms and Conditions shall not exceed:

- i) The total sum of the amounts billed to you (excluding GST) under our three most recent invoices immediately preceding the occurrence of the breach, in respect of any one breach; and;
- j) One Thousand Dollars (\$1,000) in any twelve (12) month period, irrespective of the number of breaches in that period.

Privacy and Personal Information

- 1. For the purposes of this contract and the performance of our obligations to you; you agree that we may collect information about you. Any information we collect about you may be obtained from you and others. We may obtain information about you when the services offered to you are used, either by you or anyone else.
- 2. All personal information will be treated in a manner which meets the requirements of the Privacy Act 1993.
- 3. If you decide not to provide us with any information sought from you, we may not be able to provide our services to you.
- 4. For the purposes of our business, we may use the information we hold about you and may exchange information about you with our contractors, agents and representatives, with other carriers, and with credit reporting and debt collection agencies.
- 5. All information held by us will be held at our offices at 109 Cameron St, Whangarei. You may obtain access to, and correct, any information held by us under the Privacy Act 1993.
- 6. You agree that we may monitor and record calls that you make to us or that we make to you for the purpose of maintaining and improving the quality of our services to you. This may also include use for staff training purposes.

Assignment and Delegation

- 1. If necessary, we may assign or transfer our rights and responsibilities under this contract to someone else. If this was to occur, you will be given written notice in advance of our intention to do this.
- 2. If necessary, we may also subcontract the performance of any of our responsibilities under this contract to anyone else. Again you will be notified of our intention to do this.
- 3. Be advised, you may not assign or transfer any of your rights or responsibilities under this contract to anyone else without our prior written consent.

Terms Separately Binding

- 1. If any of the provisions in this contract with you cannot be enforced or relied on by either of us for any reason, all other terms of our contract with you remain binding.
- 2. Waiver: Any delay in exercising our rights will not mean we have waived or given up our rights.

Additional Terms for Installed services

- 1. If we are providing services in relation to equipment installed or connected in your home (whether installed or connected by us or another approved installer), the following terms also form part of your agreement with us.
 - Installation
 - a) You will arrange to install the services at your home. If you live in rented premises then you agree to ensure that your landlord is happy for us to install our services at those premises. (Note - Landlords permission will be acknowledged on the application form you sign). Where we attend at your home at the arranged time and are not able to gain entry you may be charged for that attendance.
 - b) You or your nominated agent may be required to provide us with proof of identity before commencing work.
 - c) Once we have finished work we will ask you to confirm that the installation has been completed to your satisfaction. If you are not going to be at home on the day scheduled for the install then you may nominate an agent (who must be over 18 years old) to do this on your behalf.
 - d) You must pay for all costs of installation, including any additional costs resulting from non-routine installations. We will tell you in advance if any additional costs will be payable.
 - e) If we are providing you with high speed internet services you are responsible for obtaining and installing a suitable network card for your computer.
 - f) If for any reason, including if we feel it is unsafe or uneconomical to connect services to your household, ULTRACOM reserves the right not to connect the services to you.

We may exercise this right at any time even if we have accepted your application for services.

Speed & Quality of Service

- 1. Your ULTRACOM plan speed refers to the maximum possible connection speed on your ADSL or VDSL. Where ever possible these speeds will be Full Speed, but we cannot give 100% guarantees other factors out of our control may affect speeds. These factors include such things as moving the data around New Zealand, International gateways, upstream providers etc. Please note, WiFi connections can be affected by a number of disturbances that are out of our control. As such, ULTRACOM will not be responsible for the performance of WiFi within your property, unless we identify the issue relates directly to the performance of a modem or router purchased from us. We do not support the performance of any modem or router that you have purchased or was supplied by another provider.
- 2. ULTRACOM Broadband is not guaranteed to be fault free or continuous.
- 3. Certain types of traffic such as web and email may be prioritised. Other types of traffic such as peer to peer (P2P) may be deprioritised.

Other Terms & Conditions

- 1. Other terms & conditions may apply to some of the services provided by us to you. We will tell you about the terms & conditions that apply in those circumstances.

Termination of Contract & Services

- 1. Non-payment for the services we supply to you or, if you otherwise fail to meet your responsibilities to us, we may end our contract with you immediately without notice. If the contract between us ends in this way, it shall not release you from any outstanding obligations or responsibilities you owe to us.
- 2. If you want to end the contract between us within the first 2 months of signing up to our services, please write to us at PO Box11010, Whangarei. An early termination fee of your monthly fee will apply.
- 3. We will cease providing our services to you on termination of our contract. All amounts which you owe to us will immediately become due and payable. We shall not be liable to you for any loss or damage suffered, or claimed to have been suffered, by you on or following termination of the supply of our services to you.

Changing addresses

- 1. If you move house then you will need to notify us to stop the services that we are providing to you at your old address. You therefore agree to give us at least 14 days' notice before you move house, otherwise you will still be responsible for paying for the services that we provide to your old address. Depending on where you move to, we may or may not be able to provide you with the same services. Contact us for change of address fees that may be applicable.

Additional Terms for Residential Phone Line Services

- If you receive residential phone line services from us then the following terms also form part of your agreement with us.
- 1. Our services and charges in relation to termination of some or all services, you agree that:
 - a) You will give us 30 days' notice if you wish to terminate a service.
 - b) An early termination fee will apply (see Termination of Contract & Services above)
 - c) where you wish cancel any package of services you have been receiving from us or any part of a package of services, new prices may apply to any services that you continue to use. (see Termination of Contract & Services above)
- 2. Internal wiring maintenance
 - a) We will assume that you require an internal wiring maintenance service unless you tell us otherwise. If however you are transferring your residential phone line services to us from another service provider, and you did not purchase the internal wiring maintenance service from that other service provider, we will not provide you with the service unless you tell us otherwise. Additional fees may apply for internal wiring maintenance services.
- 3. Telephone numbers and directory services
 - a) All telephone numbers that we allocate to you do not belong to you. This means that we may change any number allocated to you, so long as we have given you notice in advance. We are not responsible for any costs incurred by you as a result of a change in your telephone number.
 - b) Any telephone numbers that are ported to our service will attract a porting fee of \$25.00 per line.
- 4. Directory listing and caller line identification
 - a) If you would like to be listed for 018 directory assistance and/or in the white pages, it is your responsibility to make these arrangements with Telecom and pay all applicable charges.
 - b) If you tell us that you would like your details to remain unlisted then we will do our best to respect that wish. You acknowledge that your details may still be provided to emergency service providers and to authorised government agencies.

Other Terms & Conditions for Phone Service

- 1. We are not obliged to provide services unless we accept your application. We can decide whether or not to accept any application.
- 2. You understand that the VoIP service is not a traditional phone service and is provided on a best efforts basis. We will use all reasonable endeavours to make our services available to you at all

times. However things beyond our control such as power outages or the performance of our upstream carriers may disrupt the service we provide.

- 3. You accept that our services are not required to support emergency calls
- 4. You accept that ULTRACOM VoIP might not be compatible with non-voice communications equipment such as home alarms, fax machines, Sky Digital and St John Alarms.

Ultracom Calling Plans

- 1. Toll calls are any call you make that is not a local call (e.g. national, international and calls to mobile phones). All ULTRACOM toll calls are supplied on a Prepaid Basis only.

Once you have prepaid your tolls, you will receive a PIN number to access toll calling. Prepaid Toll services are supplied by ULTRACOM. If you cancel your contract with us, any funds remaining in your account for prepaid tolls will be used to pay any arrears owing. The balance of your account, less a 15% administration fee will be refunded to you.

- 2. You are responsible for any charges incurred on your ULTRACOM telephone account for toll calls and 111 calls whether they are unintentional or unauthorised.
- 3. It is your responsibility to make sure you have sufficient security to prevent malicious toll calls being generated by unauthorised software or viruses.
- 4. ULTRACOM VoIP plans are available to residential & business customers. Residential plans are available on our website along with our calling rates. . Please contact us if you are a business wishing to acquire our services
- 5. There is a one monthly billing cycle minimum term on all ULTRACOM plans. Other billing cycles can be arranged by contacting us on 0800466354. Billing is by Direct Debit or Automatic Payment only on a day agreed to by us and you.
- 6. When you agree to subscribe to a ULTRACOM plan you must purchase the service for a minimum contract period of 2 months. You are required to give us a minimum notice period of 30 days. See our Terms & Conditions for termination of contract details.
- 7. For National & International Calling Rates, please contact us. Local Calls are free.

Faults

- 1. If you experience a service fault please contact us immediately on 0800466354 and we will make every effort to restore your service as soon as possible.
- 2. If the fault was caused by you or people for whom you are responsible or non-approved equipment used or put in place by you or another installer other than ULTRACOM at your request, you may be charged a fault diagnosis fee.

New Zealand Law

- This contract is governed by New Zealand law. Any claims made by you must be brought and heard in New Zealand.

FORCE MAJEURE EVENT

- 1. We will not be liable to you for any failure to perform our obligations under this agreement during the time and to the extent that such performance is prevented by reason of any event or circumstance beyond our reasonable control, including (without limitation) any act of God, fire, flood, storm, earthquake or any natural disaster, any act of a public enemy, sabotage, embargo, malicious damage, riot, terrorism or war, any Government intervention and any defect in or failure of any third party electricity network or infrastructure ("Force Majeure Event").
- 2. We will notify you as soon as practicable after the Force Majeure Event occurs and endeavour to provide you with information regarding the extent of our inability to perform and an estimate of the time likely to be required to overcome the Force Majeure Event. We will use our reasonable endeavour's to remedy or mitigate the effect of the Force Majeure Event and to complete our obligations under this agreement as far as is reasonably practicable. For the avoidance of doubt, you will not be required to pay any charges for any services to the extent that such services are not provided by us due to a Force Majeure Event.