



Customer Application for Supply of Dedicated Point to Point Dark Fibre Circuit Connection

Schedule 1 – Standard Terms and Conditions

A Guide to your Rights and Obligations

Network Tasman Limited (Network Tasman) is the owner and operator of a Fibre Optic Network (the Network) located in the Nelson region. Business address for Network Tasman Limited is: 52 Main Road Hope, Richmond 7020, Nelson, Postal address P O Box 3005, Richmond 7050, Nelson; Phone +64 3 989 3600, Toll-free within Network Tasman's distribution area 0800 508 098. email service@networktasman.co.nz, website www.networktasman.co.nz

These terms and conditions are the terms and conditions on which Network Tasman agrees to supply a Dark Fibre Circuit to your premises. If you contract to use a Dark Fibre Circuit supplied by Network Tasman you will be deemed to have accepted these terms and conditions. Network Tasman reserves the right to change these terms and conditions, modify the range of products and services offered and the individual costs and charges for these products and services from time to time unless you are on a Fixed Term Contract. If there is any change Network Tasman will notify those changes at least 90 days before they come into effect.

These terms and conditions form part of Network Tasman's Customer Application for Supply of Dedicated Point to Point Dark Fibre Circuit Connection, and any other relevant quotation documents.

Network Tasman works to provide a reliable and cost effective Network for the benefit of its customers. Please do not hesitate to contact a Network Tasman representative with any questions or comments.

General

Client Responsibility: You will be responsible for Network activity conducted by you through the connection provided by Network Tasman to your premises. This means, for example, that if you rent Dark Fibre from Network Tasman you will be responsible for providing media converters, any other active electronics, power supplies, and ongoing maintenance, operation and management of such equipment. Network Tasman is solely the provider of the Dark Fibre Circuit connection to your premises.

Duration of the Client's Connection: Unless your connection is for a Fixed Term Contract as specified in your Application for Supply of Dark Fibre Circuit Network Tasman's Minimum Period of Service is 12 months from connection to your premises. At the expiry of your Fixed Term Contract or after the Minimum Period your connection will continue for as long as you require it. If you vacate the premises or wish to cease using the Network, you must give notice of this.

Notice of Termination: Network Tasman requires at least 30 working days (1 month) notice of your intention to cease using Network. Notice must be provided to Network Tasman in writing and must be acknowledged by Network Tasman. The final day for termination of service will be the last day of the following month that notice of termination is delivered to Network Tasman.

Early Termination Fee: An Early Termination Fee will apply for early termination during any Fixed Term Contract period or prior to the Minimum Period For Service being reached, unless termination is on the grounds of the failure or inadequacy of the Dark Fibre Circuit not meeting acceptable performance in respect of availability and fault repair restoration times as measured against accepted good industry practice.

Effect of Termination: Following Notice of Termination, Network Tasman will disconnect the Dark Fibre Circuit from your premises.

Indemnity: You agree to indemnify Network Tasman against all reasonable costs (including but not limited to legal fees and commissions) incurred by Network Tasman, or its duly authorised agents relating to the recovery of any money you owe us pursuant to services and connections as described in these Terms and Conditions. This clause will survive the termination of your Application and Agreement for Connection.

Assignment: You may not assign or transfer any of your rights, benefits and obligations under these terms and conditions to any other person. If you are a company, any change in control will be an assignment for the purposes of this clause.

Joint and Several Responsibility: If you have entered into an arrangement for the provision of this connection service with other people or organisations, then these Terms and Conditions will apply jointly and severally to you and those other persons or organisations.

Personal Information: You have a right to access the personal information that Network Tasman holds on you. Should you consider the information to be inaccurate you may request that Network Tasman correct that information. We shall not release any personal information about you to any other person except as required by law. The information is collected for the purpose of providing services to you and may also be used to make available to you any other products or services which we think you may be interested in. We may also use your information for carrying out credit rating checks, and we may share that information with a debt collection agency if you owe us money.

Availability of the Network Connection: The Network is a constantly changing network as the needs and requirements of our customers changes. Although the Network is located in a number of locations, connections are not always available. You should contact Network Tasman for details of your nearest connection point.

Access to Customer Premises: You must provide ready access to Network Tasman's authorised personnel to the Network Tasman connection points for the purposes of Network management, configuration and repair. This will typically be during normal working hours; but to assist with the working requirements of some customers access may be outside these times.

Identification: Network Tasman will ensure that any such authorised personnel are suitably identified. You are entitled to ask any person to provide evidence of their identity before letting them into your premises.

Obstruction: If it appears to Network Tasman that you are preventing our authorised personnel from gaining access for the purposes set out above, Network Tasman may treat this as a breach of these Terms and Conditions, which may lead to disconnection.

Public Liability Insurance: Network Tasman's legal liability for personal injury and damage to property caused by the negligence of its authorised personnel in the course of construction or servicing of the cable network is limited to \$5,000,000.

Occupational Safety and Health: Network Tasman is a responsible company and maintains a strict policy for Occupational Safety and Health. In all its activities, Network Tasman will ensure the safety of its staff and contractors.

Accounts and Payment

Delivery of Accounts: Accounts will be sent to the address given by you on your application. Accounts will be deemed to be received 3 days after posting. You must advise Network Tasman immediately if any of the details shown on your account information details are incorrect or become incorrect.

Due Date: Single invoice/statement accounts are payable within 14 days of receipt of the combined invoice/statement.

Payments: Accounts for regular charges such as the Monthly Service Charge will be invoiced monthly in advance.

Disconnection for Non-Payment: If you have not paid your account by the "due date" as shown on your account, Network Tasman may give you notice of its intention to disconnect your Network connection. This disconnection may take place at the end of the period set out in the notice. Network Tasman will not disconnect you if you have a genuine dispute over the amount to be paid on your account. However, you may be disconnected if the issue has been resolved and the amount due remains unpaid 14 days after notice of the resolution.

Reconnection: If you have been disconnected for non-payment of an account, your service connection may be re-instated within 2 working days of the following conditions being satisfied: *payment of the amount owing; a cash deposit; and the appropriate reconnection fee.*

Liability for Loss

Non-availability of network: Network Tasman will make every possible endeavour to maintain constant access to the Network and ensure that the Network is available for use by you. However, Network Tasman cannot be held responsible for accidental non-availability or outages of service, or for unforeseen interruptions to service. Neither is Network Tasman liable for the provision of services over the Network. Network Tasman shall not be held responsible for any loss or damage incurred by you or any other person caused by any failure of any nature on the part of your service supplier, to supply you with sufficient services and connections, to maintain the quality of service or network that Network Tasman may be endeavouring to supply.

Planned Interruption to Service: Where outages or interruptions are planned, Network Tasman will make every effort to ensure these outages are of minimum duration and that you are notified of the schedule of these outages.

Special Circumstances: In special circumstances of Network activity, Network Tasman may impose Network restrictions, if required, in order to permit safe and reasonably careful installation, maintenance, repair and/or management of the Network, or other plant or equipment or if needed to minimise danger to human life or damage to property.

Liability for Damage: Furthermore, notwithstanding any other provisions in these Terms and Conditions, Network Tasman will not be liable for any loss or damage incurred by you or any other person caused by an interruption or failure in the Network, or by any other cause which is the result of: an act or default or omission of, or any representation made by, any person other than Network Tasman or Network Tasman's employees, or agents, or a cause independent of human control.

Restoration of Services: In the event of a Network outage or interruption of service, Network Tasman will endeavour to restore a connection and services as soon as possible.

Force Majeure: Notwithstanding any other provision, non-performance by Network Tasman or any of its obligations shall be excused, without liability for non-performance; during the time and to the extent that such performance is prevented, wholly or substantially by Force Majeure.

Breach of Agreement

Breach: Failure to comply with these Terms and Conditions or with any obligations placed on customers by any statute or regulation relevant to the supply of network connections and services pursuant to this agreement may amount to a breach of the contract between you and Network Tasman.

Disconnections: If you are deemed by Network Tasman to have breached the conditions of these Terms and Conditions, Network Tasman may serve you with a notice setting out the nature of the breach, and the steps that must be taken to remedy the situation. If you have not complied or taken appropriate steps within five (5) working days, Network Tasman will disconnect you from the Network without further notice.

Safety

Disconnections: If Network Tasman is required to disconnect your supply for reasons of statute, regulation or safety, your service and network connection will be disconnected immediately and without notice to you.

Unauthorised use of Network or Services

Dedicated Fibre circuits: Fibre connections are dedicated fibre services to be used by customers for their own operational needs. No connections, other than the subscriber's contracted end nodes, will be made to the circuit.

Disconnections: If you take or make use of the Network connections or services in any unauthorised manner, Network Tasman reserves the right to disconnect supply and/or services without notice to you and may take legal proceedings in respect of unauthorised use.

No Right to On-Sell: For purposes of clarity, Network Tasman customers have no right other than the use of the network for their own purposes in terms of signalling, communication and entertainment. Network Tasman does not allow the on-sale or re-selling of access or unused portion of access to its, unless expressly agreed in writing.

Consumer Guarantees Act 1993

The Provisions: Of the Consumer Guarantees Act 1993 shall have effect notwithstanding anything to the contrary in these Terms and Conditions unless Sections 40 or 41 of the Act apply.

If you are a Business: Or have presented yourself as a business, then any rights or remedies under the Consumer Guarantees Act 1993 shall not apply in respect of goods and services supplied pursuant to any agreement between you and Network Tasman.

Supply and Installation Requirements

General: The Network could be brought into your premises by a variety of means. Generally, a form of underground or overhead cable is brought in from a neighbouring connection point. Typically a cable will be brought in and may carry on to another customer. This will not affect your use.

Point of Entry: If the Network cable entry is through your premises, it must be immediately accessible to Network Tasman's authorised personnel at all times. You must make sure that the point of entry is not damaged. As the point of entry is on your property, any repairs or maintenance carried out on your behalf to the point of entry by Network Tasman will be paid for by you. If the Network cable entry or any other equipment of Network Tasman is to be installed on property that does not belong to you, you must obtain the consent of the owner of the property on terms acceptable to Network Tasman (including the provision of any easement over the property at your cost) before the installation of any of Network Tasman's equipment. If you fail to get consent, you will indemnify Network Tasman for all loss suffered by Network Tasman as a result of such failure and for claims made by the owner of the property or any other person.

Your Responsibilities: You are responsible for the installation, repair and maintenance of all cables and equipment from the Network Tasman service cabinet to your own equipment.

Network Tasman's Responsibilities: Network Tasman is responsible for the installation, repair and maintenance of its own cables, poles, trenches and connectors in the streets.

Compliance: You must comply with any reasonable instructions, orders or regulations made under the Telecommunications Act 2001 and any other relevant legislation.

Customer Installations: The installation of a Network connection must be carried out in accordance with Network Tasman's Network Requirements.

Property

Ownership: All cable and network components remain the property of Network Tasman. You may be held liable for any damage caused to Network Tasman cable or components located on your premises in the event you directly or indirectly cause such damage.

Prohibited Use

Network use: The Dark Fibre Circuit connection is not designed, manufactured or intended for use or resale in applications in which the failure or inaccuracy of the connection carries a risk of causing death or serious bodily injury. This includes, but is not limited to, various applications found in nuclear facilities, aircraft navigation or communication, air traffic control, and/or sea traffic control, medical life support or other applications representing a similar degree of potential hazard.

Schedule 2 – Service Level Agreement

Non-availability of Network and Faults

- **Network Tasman:** Will make every reasonable endeavour to maintain constant access to the Fibre Network and ensure that the Fibre Network is available for use by you. In the case of fault situations requiring the assistance of Network Tasman personnel, Network Tasman will respond to requests for assistance logged with the company's telephone service on 03 989 3600 or toll free 0800 508 098. You must identify such calls as Fibre Fault calls, so that the appropriate level of urgency can be applied.
- **The Client:** Is primarily responsible for reporting any observed fault or problems with the Fibre Network connection promptly. You are liable for a reasonable callout charge to be invoiced by Network Tasman in the event that the "fault" cause was not related to the Fibre Network.
- **Network Tasman shall not:** Be held responsible for any loss or damage (incurred by you or any other person) caused by any failure of any nature on the part of your service supplier to maintain the quality of service or network that Network Tasman may be endeavouring to supply.
- **Fault Time Frames:** When a fault call has been placed, Network Tasman personnel will endeavour to respond within the following time-frames:

	Business Hours Service Support	After Hours Service Support
Return call to Client	20 min	30 min
Network Tasman personnel on-site (Nelson)	60 min	120 min
Network Tasman personnel on-site (Marlborough)	120 min	180 min
Expected Cable Network Repair time from fault call	8 hours	12 hours

- Network Tasman personnel will attempt to restore service by means of alternate existing cable paths within the Network as a first line of repair.
- Should a major cable be damaged, Network Tasman will use its best endeavours to repair and restore service, within a 6 to 8 hour time window (elapsed time).
- Fault Process Summary
 - Client identifies fault on Network Tasman network link or network connection.
 - Client reports fault to Network Tasman service line (03 989 3600) or call free (0800 508 098)
 - Fault call details logged in Network Tasman Fault Call Register
 - Network Tasman or its agent contacts Client (if needed) to localise or further define fault condition
 - Network Tasman or its agent allocated fault call (with Network Tasman personnel or its agents callout if needed after hours)
 - Network Tasman or its agents manages fault to conclusion (with Client kept informed as needed)
 - Client informed of the nature of the fault discovered and rectified
 - Fault Call Register signed off upon satisfactory fault clearance.

Schedule 3 – Charges

- (a) “Year 1” shall begin and be measured from the Commissioning Date of the Service (“Year 1 Start Date”) and shall end the day before the anniversary of the Year 1 Start Date;
- (b) “Year 2” shall begin the day after the end of Year 1 (“Year 2 Start Date”) and end on day before the anniversary of the Year 2 Start Date;
- (c) Years 3 onwards shall begin and end in the same manner as described for Year 2 above.

Glossary of Terms

Network Tasman: Network Tasman is a trading name for Network Tasman Limited, a registered limited liability trading company.

Cable: Any communications medium, which provides the transmission of information signals. This would include fibre optic, coaxial, UTP, STP, twisted pair, etc.

Circuit: A circuit is defined to be a single network path represented by one or more unique circuit elements which start and end at common physical node points. A circuit element is any single span of cable connecting two node points for a single customer. The span may carry any one unique Network Tasman service.

Client: The user of Network Tasman's products and services, the term Client is interchangeable with the term Customer.

Fibre: Optical filaments drawn out into a cable and covered in a protective sheath.

Dark Fibre: A segment of "fibre cable" which is provided without any information signal processing, termination equipment, protocol definitions, operational management, or network services.

You and your: Indicating or instructing the potential or existing client reader of this document.

Force Majeure: means any act of God, fire, earthquake, storm, flood or landslide; strike, lockout or other labour hindrance; explosion or public mains electrical supply failure; electromagnetic radiation, power surge, sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not); requirement or restriction of, or failure to act by, any government or semi-governmental or judicial entity; unavoidable accident; and any other similar cause beyond the reasonable control of Network Tasman.

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