

Baycom Terms and Conditions

Baycom Communications Limited (Baycom): Standard Terms and Conditions for the supply of products and/or services

Please read these terms and conditions carefully. These Standard Terms and Conditions are deemed to be included in any agreement you enter into with Baycom for products and services you purchase from us ("Agreement").

1. Definitions

In these Terms and Conditions, "we" and "us" means Baycom, and "you" means the CUSTOMER NAME purchasing products and/or services from Baycom under any agreement. Baycom and the CUSTOMER NAME may each be referred to herein as a "Party" and collectively as the "Parties".

"Baycom web site" or "our site" means the web site located at: <http://baycom.co.nz>

2. Entire Agreement

These terms and conditions together with any Agreement, service level agreement, schedule and any registration information supplied by you constitute the entire understanding and agreement between the Parties and supersede any and all prior or contemporaneous oral or written communications with respect to the Products and Services.

If any provision of these Terms and Conditions, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of these Terms and Conditions, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

3. Term of these Terms and Conditions and Termination

These Terms and Conditions will commence on the earlier of:

1. i. the date we accept your application or
2. ii. the date on which you start to use the Product or Service.

These Terms and Conditions will continue to apply indefinitely unless terminated under one of the following events:

- i. Upon the expiration of the initial or any successive term by you notifying us at least thirty (30) days prior to the expiration of the then current term that you desire to terminate the Agreement.
- ii. Either party may terminate the Agreement, upon giving the other one month's notice, in relation to any or all Products and Services provided by us to you if;
 - a. the other party is in material breach of these Terms and Conditions and/or the Agreement and has not remedied such breach within 30 days of being notified of such breach by the first party.
 - b. a receiver, provisional liquidator, administrator or other like person is appointed over any of the other party's undertakings or assets or if the other party enters into arrangement with any of its creditors or any class of its creditors or it becomes insolvent.
- iii. Despite the above paragraph, we may terminate the Agreement, upon giving you one month's notice, in relation to any or all Products and Services provided by us to you if;

- a. in our sole discretion we deem that you are in breach of these Terms and Conditions and/or the Agreement and have not remedied such breach within 10 days of being notified of such breach by us;
- b. immediately if a receiver, provisional liquidator, administrator or other like person is appointed over any of your undertakings or assets or if you enter into arrangement with any of your creditors or any class of your creditors or you become insolvent or otherwise are unable to pay your debts when they fall due.
- c. If your account is unpaid and overdue.
- iv. If you wish to terminate the Agreement following notification of a modification to these terms and conditions in accordance with clause 4 below within 7 days of receiving notification.
- v. If the Agreement is terminated in accordance with clause 9.
- vi. If your account is unpaid and overdue in accordance with clause 9v.
- vii. Where you desire to terminate the agreement prior to the expiration of the initial term, by you notifying us with at least thirty (30) days notice provided that you pay us all the Fees which would have been due until the expiration of the initial term, such fees to be calculated according to the formula:
 - 1. $C \times A = \text{Termination Fees}$
 - 2. Where:
 - 3. $C = \text{Monthly Fee}$
 - 4. $A = \text{Remaining months of agreed term}$

On termination of the Agreement, we will cease providing the Product or Service to you, and all amounts which you owe to us will immediately become due and payable.

4. Modification

Any amendment or modification of these Terms and Conditions must be in writing and agreed by both parties.

5. Warranties

All hardware supplied under this Agreement will be supplied with the full manufacturer's warranty, which we will supply details of in each case.

Except where you have documented SLA's specifically overriding the provisions of this clause, we will utilise our best efforts to maintain acceptable performance of the contracted Products or Services, but we make absolutely no warranties whatsoever, express or implied, including warranty of merchantability or fitness for a particular purpose.

We do not guarantee continuous service, service at any particular time, or integrity of data stored or transmitted via our systems or via the internet.

6. Indemnity and Limitation of Liability

6.1 Neither party will be liable (whether in contract or tort, including negligence or otherwise) to the other party or any third party for indirect or consequential damages resulting from any breach of such party's obligations under this agreement, including without limitation any claims for loss of business, goodwill, contract, anticipated savings or profits or any other indirect or consequential loss whatsoever. This applies even when such party, its officers, employees or contractors are advised that such loss may, or is likely to, occur.

6.2 Baycom assumes no liability for any loss, injury, claim, liability or damage of any kind including loss of business, lost profits, lost data, or failure of security resulting in any way from your

use of the services, including without limitation any errors or omissions, any content, any delay or failure of performance, or the unavailability or interruption of service. Accordingly, Baycom shall not be liable for direct, indirect, special, incidental, consequential, punitive or exemplary damages of any kind whatsoever, whether or not foreseeable (including, without limitation, lawyers' fees) in any way due to, resulting from, or arising in connection with the services or the failure of a party to perform its obligations, regardless of any party's negligence. Termination of the Agreement shall be your sole and exclusive remedy for any and all damages or injury.

7. Software

To the extent that any of our Products or Services contains any software that we supply to you, we license that software to you on a non-exclusive, non-transferable basis for the term of the Agreement, solely for your use of that Product or Service. Where we do not own the software, we warrant that we have a right to grant such a licence.

You must use the software only on such equipment as we may designate for its use. You must use the software in accordance with any directions we provide to you from time to time.

We, or our suppliers, retain ownership of the software at all times, whether in its original form or as modified. You must not, in whole or in part, copy, attempt to reverse-engineer or modify, or attempt to combine or incorporate in any other program or system, the software without our written consent.

You must protect the software and related documents at all times from unauthorised access, use or damage.

8. Confidentiality

Each party must keep any information provided by the other party, which is marked confidential or which they ought reasonably to know is treated as confidential, from disclosure to any third party and use that information solely for the purposes of the relationship described in this Agreement. Each party consents to the other obtaining urgent interlocutory relief to restrain any breach or anticipated breach by the other of these confidentiality obligations.

You acknowledge that all intellectual property rights obtained or provided by us and used in the provision of the Products and Services are and shall remain our sole property and you shall do all such things as are necessary to protect our title to these intellectual property rights. You must return or delete from media, all those intellectual property rights at our request.

9. Your Obligation to Pay Us

In return for us providing these Products and Services to you, you must pay us the relevant fees, charges and costs specified in this Agreement ("Fees"). Any increase in Fees will not be effective unless agreed by both parties in writing.

Despite the provisions of this clause:

i. You are solely responsible for the use of the Products and Services and for all payment of any Fees arising from the use or provision of the Products or Services, whether or not the user had your authority.

ii. We will bill you for your use or our provision (as the case may be) of Products and Services as follows:

a. in advance for standard recurring charges such as support fees and data network charges;

b. in arrears for variable usage charges;

c. where you agree to pay us by credit card, your credit card will be debited the due amount on the due date stated on the invoice;

d. where you have arranged a credit account with us, payment will be due on the due date stated on the invoice. If your account is not paid by the 20th of the month following or receipt by you of a

correctly specified invoice, we reserve the right to charge a late payment fee on any overdue amounts on an invoice at the rate of 15% per annum of the amount overdue, calculated from the due date to the date of actual payment in full. We also reserve the right to place your account on 'Stop Credit' whereby a cessation in the supply of products and services will apply until such time as the account is brought back up to date. Reasonable notice will be provided (5 days' Notice) before such action takes place. Please note: This may result in your system/s being in-operable in the 'Stop Credit' Period.

iii. You must pay Goods and Services Tax and any taxes, duties, stamp duties, imposts, levies or government charges relating to the Agreement or the supply or usage of the Services or Products.

v. If your account is unpaid in part or in whole for a period of one month from the due date, we reserve the right to terminate your access to the products and/or services at any time in our discretion and to refer your information to a debt collection agency or credit reference agency without notice to you.

iv. You are responsible for the cost of any communication expenses you incur to access the Products or Services.

v. If you have a genuine dispute in relation to amounts we have charged you, you must pay the undisputed charges and notify us immediately you become aware of any disputed charges. You must give us full details for the reason of dispute as well as evidence of the grounds of dispute. We will investigate the issue and work together to resolve the dispute as quickly as possible.

10. Your Use of the Products or Services

You acknowledge that we may be obliged to provide assistance to law enforcement agencies in respect of your acquisition or use of the Products and Services and that you will not make any claim against us in relation to that assistance.

11. Dispute Resolution

11.1 The parties agree to use their best efforts to resolve any dispute that may arise under this Agreement through good faith negotiations. No party shall commence any arbitration or litigation in relation to this Agreement unless it has first invited the chief executive of the other party to meet with its own chief executive for the purpose of endeavouring to resolve the dispute on mutually acceptable terms.

11.2 Any dispute arising under this Agreement which cannot be settled by negotiation between the parties or their respective representatives shall be submitted to mediation before commencing any litigation. Either party may initiate mediation by giving written notice to the other party.

11.3 If the parties cannot agree on a mediator within seven days of the notice, then the mediator will be selected by the President for the time being of LEADR (Leading Edge Alternative Dispute Resolvers) in New Zealand or its successor.

11.4 The parties shall continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending the final settlement of any matter referred to mediation.

12. Assignment and Delegation

Neither party may assign or transfer their rights or responsibilities under these Terms and Conditions without prior written consent from the other party.

Baycom may assign or transfer our rights and responsibilities under these Terms and Conditions and the Agreement to any party. We will give you written notice (60 days) in advance if we intend to do this.

Baycom may subcontract the performance of any of our responsibilities under these Terms and Conditions and the Agreement to any person, subject to your prior written consent in each case, such consent not to be unreasonably withheld or delayed.

CUSTOMER NAME may not assign or transfer any of your rights or responsibilities under these Terms and Conditions and Agreement to any person without our prior written consent.

13. Our Rights under these Terms and Conditions and the Agreement

i. You authorise us to obtain credit information from a credit reporting agency and information about your commercial activities or commercial credit worthiness from a business which provides that information to enable us to apply our credit policy. You also authorise us to obtain from and give to any credit providers information about your credit arrangements. This information may include any information about your credit worthiness, credit standing, credit history, credit capacity or other information that credit providers are allowed to give or receive from each other under the Privacy Act, 1993 (as amended from time to time).

14. Force Majeure

Neither Party shall be deemed in default of these Terms and Conditions or the Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, war, fire, natural disaster, accident, act of government, strikes, unavailability of material, Telco capacity or supplies, any failure of a Third Party Provider to supply goods or services associated with or comprising a Baycom Product or Service, shortages of or failure to deliver hardware and/or software not attributable to an act or failure to act of the Party seeking the protection of the force majeure or any other cause beyond the reasonable control of such Party ("Force Majeure"), provided that such Party gives the other Party written notice thereof promptly and, in any event, within fifteen (15) days of discovery thereof. In the event of such a Force Majeure, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure.

15. Notices

Notices under these Terms and Conditions and the Agreement shall be in writing and shall be deemed given when delivered (i) personally, (ii) by e-mail (with confirmation of receipt), (iii) by overnight mail or conventional mail (registered or certified, postage prepaid with return receipt requested).

Notices shall be addressed to Baycom at:

Email: admin@baycom.co.nz

PO Box 147192 Ponsonby, Auckland 1144

15 Williamson Ave, Ponsonby, Auckland, New Zealand

Notices shall be addressed to the CUSTOMER NAME at the Postal or Email addresses currently held by Baycom and as supplied by the CUSTOMER NAME. It is the CUSTOMER NAME's responsibility to ensure that Baycom has up-to-date records of the CUSTOMER NAME's details at all times.

16. Governing Law

These Terms and Conditions and the Agreement shall be governed by, and construed in accordance with, the laws of New Zealand, and the Courts of New Zealand shall have sole jurisdiction to hear and determine any disputes arising under or in connection with these Terms and Conditions and the Agreement.

17. Waiver

Any waiver of any right under the Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

1. Website Use

By accessing this web site, you are agreeing to be bound by these web site Terms and Conditions of Use, all applicable laws and regulations, and agree that you are responsible for compliance with any applicable local laws. If you do not agree with any of these terms, you are prohibited from using or accessing this site. The materials contained in this web site are protected by applicable copyright and trade mark law.

2. Use License

- a. Permission is granted to temporarily download one copy of the materials (information or software) on Baycom's web site for personal, non-commercial transitory viewing only. This is the grant of a license, not a transfer of title, and under this license you may not:
 - i. modify or copy the materials;
 - ii. use the materials for any commercial purpose, or for any public display (commercial or non-commercial);
 - iii. attempt to decompile or reverse engineer any software contained on Baycom's web site;
 - iv. remove any copyright or other proprietary notations from the materials; or
 - v. transfer the materials to another person or "mirror" the materials on any other server.
- b. This license shall automatically terminate if you violate any of these restrictions and may be terminated by Baycom at any time. Upon terminating your viewing of these materials or upon the termination of this license, you must destroy any downloaded materials in your possession whether in electronic or printed format.

3. Disclaimer

- a. The materials on Baycom's web site are provided "as is". Baycom makes no warranties, expressed or implied, and hereby disclaims and negates all other warranties, including without limitation, implied warranties or conditions of merchantability, fitness for a particular purpose, or non-infringement of intellectual property or other violation of rights. Further, Baycom does not warrant or make any representations concerning the accuracy, likely results, or reliability of the use of the materials on its Internet web site or otherwise relating to such materials or on any sites linked to this site.

4. Limitations

In no event shall Baycom or its suppliers be liable for any damages (including, without limitation, damages for loss of data or profit, or due to business interruption,) arising out of the use or inability to use the materials on Baycom's Internet site, even if Baycom or a Baycom authorised representative has been notified orally or in writing of the possibility of such damage. Because some jurisdictions do not allow limitations on implied warranties, or limitations of liability for consequential or incidental damages, these limitations may not apply to you.

5. Revisions and Errata

The materials appearing on Baycom's web site could include technical, typographical, or photographic errors. Baycom does not warrant that any of the materials on its web site are accurate, complete, or current. Baycom may make changes to the materials contained on its web site at any time without notice. Baycom does not, however, make any commitment to update the materials.

6. Links

Baycom has not reviewed all of the sites linked to its Internet web site and is not responsible for the contents of any such linked site. The inclusion of any link does not imply endorsement by Baycom of the site. Use of any such linked web site is at the user's own risk.

7. Site Terms of Use Modifications

Baycom may revise these terms of use for its web site at any time without notice. By using this web site you are agreeing to be bound by the then current version of these Terms and Conditions of Use.

8. Governing Law

Any claim relating to Baycom's web site shall be governed by the laws of the New Zealand without regard to its conflict of law provisions.

General Terms and Conditions applicable to Use of a Web Site.

Privacy Policy

Your privacy is very important to us. Accordingly, we have developed this Policy in order for you to understand how we collect, use, communicate and disclose and make use of personal information. The following outlines our privacy policy.

1. Before or at the time of collecting personal information, we will identify the purposes for which information is being collected.
2. We will collect and use of personal information solely with the objective of fulfilling those purposes specified by us and for other compatible purposes, unless we obtain the consent of the individual concerned or as required by law.
3. We will only retain personal information as long as necessary for the fulfilment of those purposes.
4. We will collect personal information by lawful and fair means and, where appropriate, with the knowledge or consent of the individual concerned.
5. Personal data should be relevant to the purposes for which it is to be used, and, to the extent necessary for those purposes, should be accurate, complete, and up-to-date.
6. We will protect personal information by reasonable security safeguards against loss or theft, as well as unauthorised access, disclosure, copying, use or modification.
7. We will make readily available to customers information about our policies and practices relating to the management of personal information.
8. We are committed to conducting our business in accordance with these principles in order to ensure that the confidentiality of personal information is protected and maintained.