



# Account Application

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YES, I would like to get started with the C-talk phone service.

## My details are:

Account type (individual/sole-trader or company): \_\_\_\_\_

Business or company name: \_\_\_\_\_

Name of Manager or Director: \_\_\_\_\_

Registered address: \_\_\_\_\_

\_\_\_\_\_

Postal Address: \_\_\_\_\_

\_\_\_\_\_

Business phone number: \_\_\_\_\_ Mobile contact number: \_\_\_\_\_

Contact Email: \_\_\_\_\_

## Desired C-talk Plan/Services

C-talk VoIP service Plan: \_\_\_\_\_

Other C-talk services: \_\_\_\_\_

## Trade References

Please provide reference details (name and contact number) for 3 businesses you already trade with:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

## Acceptance

YES, I have read and understood the C-talk terms of trade, and accept the pricing of the C-talk plan ticked above.

Signed: \_\_\_\_\_

Position: \_\_\_\_\_ Date: \_\_\_\_\_

# *C-talk Terms and Conditions:*



## **The Good**

## **The Bad**

## **And the Ugly!**

How many of us actually read the terms and conditions we sign? No? I don't really either. Our terms and conditions pretty standard, so instead we'll just highlight 3 key points for you about our terms of trade:

**1. The Good:** C-talk has no term contracts, minimum terms, minimum lengths and no cancellation fees! You can cancel the C-talk service at any time without penalty - you'll only owe any invoices that have already been generated, and any toll calls that you've made, up until the time you cancel.

**2. The Bad:** In return for not locking you into any contracts, we kindly ask that you pay your bill on time. By on time, we mean paid by (or very close to) the 20th of the month following the invoice date.

**3. The Ugly:** If we haven't received payment for your invoice by late in the month we'll send you a reminder of your overdue invoice. If we haven't received payment by early the next month, we'll send a 2nd reminder. After a few more days, if the bill still isn't settled, we'll restrict some aspects of your phone service until the invoice is paid. Of course, if you're in some special circumstances for one month, you can contact us to discuss a special arrangement. However, we won't repeatedly extend credit for any customers.

If you have any questions, please don't hesitate to enquire.

Many Regards,

The team @ C-talk.

## C-TALK LIMITED – TERMS OF TRADE

### 1. INTRODUCTION

1.1 These terms and conditions cover Work carried out by C-Talk for the Customer at the Customer's request. These terms and conditions and the Quote ("Agreement") constitute the entire agreement, (express and implied) between C-Talk and the Customer relating to the Work. Execution of the Quote by the Customer will be deemed as acceptance of these terms and the terms set out in the Quote. If the Quote conflicts with these terms and conditions then the Quote will prevail.

1.2 Unless otherwise agreed, the Work is being carried out by C-Talk for the Customer for the purposes of its business and accordingly the Consumer Guarantees Act 1993 does not apply.

1.3 **Customer** means the individual, company or other entity described in the Quote and requesting C-Talk to carry out Work for it.

1.4 **Hardware** means any equipment provided to the Customer by C-Talk.

1.5 **Quote** means the proposal document generated by C-Talk and presented to the Customer estimating the price and setting out any specific conditions for carrying out the Work. The Customer acknowledges that unless expressly stated as a fixed price, any costs and prices set out in the Quote are estimates only.

1.6 **Work** means the services to be provided by C-Talk to the Customer as detailed in the Quote.

1.7 **C-Talk** means C-Talk Limited.

1.8 **Software** means the computer programs, procedures and documentation provided by C-Talk to the Customer to run the VOIP system.

1.9 **VOIP** means voice over internet protocol.

1.10 **VOIP system** means a VOIP telephone system.

1.11 **VOIP service provider** means the provider of VOIP services.

### 2. PAYMENT

2.1 All sums owing under these terms and conditions will be paid by the Customer to C-Talk on the twentieth (20<sup>th</sup>) day of the month following the date of the invoice. Notwithstanding the provisions of clause 4.2(e), if payment is not made within that timeframe, C-Talk reserves the right to cease any Work until payment is made in full. Further, if payment is not made within 60 days of the date of an invoice relating to Work that involves the installation or provision of Hardware or Software to the Customer, C-Talk may, without prejudice to any other rights it may have against the Customer, enter onto the premises of the Customer and repossess any such Hardware or Software.

2.2 In addition to the above remedies and any other remedies C-Talk may have at common law, if payment is not made on the due date, C-Talk may charge interest on the amount outstanding at the rate of 20% per annum calculated from the date payment was due to the date payment is made.

2.3 If a deposit is payable in accordance with the Quote, such deposit will be paid by the Customer to C-Talk immediately upon execution of the Agreement.

2.4 The Customer agrees that C-Talk may send invoices to the Customer via the email address listed in the Quote or if no email address is so listed then via an email address provided to C-Talk by the Customer.

### 3. INTELLECTUAL PROPERTY

3.1 Any intellectual property rights existing in any Hardware or Software or other items provided by C-Talk to the Customer, including (without limitation) copyrights, patents and know how ("Intellectual Property"), shall remain the property of C-Talk or where applicable its licensors.

3.2 Upon receipt by C-Talk of full payment for the Work, C-Talk grants, to the extent that C-Talk is able to do so, the Customer a non-exclusive and non-transferable licence to use the Intellectual Property for the Customer's business purpose. C-Talk does not warrant that the Customer shall receive any licence to use any Intellectual Property that is the property of any third party.

### 4. TERMINATION

4.1 Either Party may terminate this Agreement upon giving 30 days written notice to the other party.

4.2 C-Talk may, in addition to its other rights, terminate this Agreement and immediately, cease undertaking any further Work for the benefit of the Customer if:

- a. the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- b. the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- c. the Customer, being a natural person, dies;
- d. the Customer ceases or threatens to cease conducting its business in the normal manner; or
- e. the Customer fails to make a payment on the due date of such payment

4.3 Upon Termination by either party, C-Talk may:

- a. Enter onto the premises of the Customer and repossess any Hardware or Software or any of its property in the possession, custody or control of the Customer that has not been paid for in full by the Customer;
- b. retain any moneys paid by the Customer and require payment of all monies due and payable as at the date of termination;
- c. charge a reasonable sum (which may be the total amount set out in the Quote) for Work performed but not previously charged for;
- d. be regarded as discharged from any further obligations under this Agreement; and
- e. pursue any additional or alternative remedies provided by law.

4.4 The following clauses shall survive termination of this Agreement: 3, 4, 7, 8,10.

### 5. VOIP INSTALLATION

5.1 If VOIP Hardware and/or Software is to be installed by C-Talk at the Customer's premises in accordance with the Quote, the provisions of this clause 5 will apply.

5.2 The Customer will provide C-Talk or C-Talk's agent with reasonable access during normal business hours to the Customer's premises for the purposes of installation of the VOIP system.

5.3 The Customer acknowledges that the installation of the VOIP system may be undertaken during more than one visit to the Customer's premises and may be undertaken by a subcontractor of C-Talk.

5.4 The title to the Hardware installed at the Customer's premises shall only pass to the Customer upon full payment of the invoice in respect of such Hardware.

5.5 The license to any Software installed at the Customer's premises shall only pass to the Customer upon full payment of the invoice in respect of such Software

5.6 C-Talk does not warrant the quality or effectiveness of the services provided by a third party VOIP service provider.

- 5.7 C-Talk does not warrant the effectiveness or continuity of the Customer's internet connection or power supply.
- 5.8 The Customer acknowledges that in the event of an interruption to the Customer's power supply the VOIP system will not operate unless a backup power supply has been installed.
- 5.9 The Customer acknowledges that in the event of an interruption or other fault in the Customer's internet connection or failure by the Customer's VOIP service provider the VOIP system will not operate to the specifications of the Hardware and Software installed by C-Talk.
- 5.10 C-Talk will not be liable in the event that the VOIP system is not functional due to a fault in the Customer's connection to the internet, an interruption of the Customer's power supply, or (if clause 6 does not apply) a fault in the services provided by the Customer's VOIP service provider.
- 5.11 C-Talk will not be liable for any losses resulting from the Customer's installation of any hardware which is non-compliant with the Hardware ("Non-compliant Hardware").
- 5.12 C-Talk will not be liable for any losses resulting from the Customer's installation of any software which conflicts with the Software ("Non-compliant Software"). Non-compliant Software includes without limitation any software obtained by the Customer via an online upgrade.
- 5.13 The Customer warrants that the premises within which the VOIP service is to be installed has an internet connection and agrees to pay C-Talk a reasonable fee for any Work performed by C-Talk for the Customer which must be discontinued due to the absence of an internet connection.
6. **VOIP SERVICE PROVISION**
- 6.1 If VOIP services are to be provided by C-Talk to the Customer in accordance with the Quote, the provisions of this clause 6 will apply.
- 6.2 C-Talk does not warrant the effectiveness or continuity of the Customer's internet connection. C-Talk will not be liable in the event that the VOIP service is not functional due to a fault in the Customer's connection to the internet.
- 6.3 If fees for VOIP service provision are set out in the Quote, the Customer agrees that the VOIP service provision fee is payable upon the specified dates or otherwise upon receipt by the Customer of an invoice from C-Talk.
- 6.4 The Customer will have no remedy against C-Talk in relation to any delayed completion of the installation of Software or Hardware, where such delay or failure is the direct or indirect result of any act or omission of the Customer or breach by the Customer of the Agreement.
- 6.5 If C-Talk is unable to adhere to any timeframes set out in the Quote as a direct or indirect result of any act or omission of the Customer or as a direct or indirect result of a breach by the Customer of the Agreement:
- a. C-Talk may invoice the Customer for any time, overtime, travel, materials, or resource use resulting directly or indirectly from such an act or omission of the Customer; or
  - b. If such an act or omission or breach causes delay exceeding 30 days beyond the day upon which the Software or Hardware is to be installed, terminate the Agreement where upon it may pursue such remedies as may be available under the Agreement or at law.
- 6.6 The Customer agrees that C-Talk will continue as the Customer's VOIP service provider on the terms set out in this Agreement indefinitely provided that the Customer continues to pay C-Talk's VOIP service provision fee which will be subject to change.
- 6.7 If the Customer has not paid (in full) an invoice for the provision of VOIP services by C-Talk (including any toll charged that apply) C-Talk may suspend the Customer's VOIP service until such time as the invoice (plus any interest that has accrued in accordance with clause 2.2) is paid in full.
7. **CONFIDENTIALITY**
- 7.1 Neither party shall, without the prior written approval of the other, disclose that other party's Confidential Information.
- 7.2 A party will not be in breach of clause 7.1 in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- 7.3 Each party will take all reasonable steps to ensure that its employees and agents, and any subcontractors engaged for the purposes of the Agreement, do not make public or disclose the other party's Confidential Information.
- 7.4 For the purposes of the Agreement, Confidential Information means the information of either party which relates to the subject matter of the Agreement and includes:
- a. Information relating to the provision of VOIP services.
  - b. Information relating to the personnel, policies or business strategies C-Talk.
8. **LIABILITY**
- 8.1 C-Talk will not be liable (whether due to negligence or any breach of these terms and conditions or otherwise) for:
- a. Damages for any breach to the extent that the damages are attributable to the default, negligence, misconduct or breach of the Customer, its employees or agents; or
  - b. Any amounts for any indirect, consequential losses or punitive damages of the Customer, including in relation to third parties.
- 8.2 C-Talk's maximum liability (in contract and in tort, including negligence or otherwise) for losses incurred by the Customer arising from any error, act or omission of C-Talk or breach of these terms and conditions or the Quote will be limited to:
- a. \$2,000 (including GST, if any) per event or series of related events; and
  - b. not more than a total of \$5,000 (including GST, if any) in any 12 month period.
- The Customer must give C-Talk written notice of the claim within six months of the event, otherwise C-Talk will have no liability.
- 8.3 If any condition or warranty is implied into these terms and conditions under any trade practices, sale of goods or fair trading legislation applicable in New Zealand which cannot be excluded, then except to the extent that it is not permitted by law, the liability of C-Talk for breach of the condition or warranty will be limited to \$2,000 including GST.
- 8.4 To the maximum extent legally possible, all conditions and warranties which may be implied into these terms and conditions by law are excluded.
9. **CONTINUING SERVICE**
- 9.1 C-Talk agrees to provide to the Customer ongoing maintenance and troubleshooting services in respect of the VOIP system installed by C-Talk.
- 9.2 The charge for such maintenance and troubleshooting services will be as set out in the Quote or if no rate is set out in the Quote then at \$120.00 per hour for every hour spent by C-Talk or its agent attending to such maintenance or troubleshooting matter.

- 9.3 The charge set out in clause 9.2 will not apply in a case where the fault or issue requiring maintenance or troubleshooting services by C-Talk is caused by a failure or omission of C-Talk or a failure in any Hardware or Software where that failure is covered by a warranty from the manufacturer of the Hardware or Software; provided that C-Talk is able to successfully reclaim the cost of any such maintenance under the warranty.
10. **GENERAL**
- 10.1 This Agreement shall be governed by the Laws of New Zealand. The courts of New Zealand shall have the non-exclusive jurisdiction to hear and determine any claims under or in connection with this Agreement.
- 10.2 C-Talk will not be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure. If a delay or failure of C-Talk to perform its obligations is caused or anticipated due to Force Majeure, the performance of C-Talk's obligations will be suspended. If a delay or failure by C-Talk to perform its obligations due to Force Majeure exceeds sixty (60) days, C-Talk may immediately terminate the Agreement on providing notice in writing to the Customer. For the purposes of this clause, Force Majeure shall mean any act of God, non-supply of materials by a supplier of C-Talk, strike, lockout or other labour disturbance or any other event beyond the reasonable control of C-Talk.
- 10.3 The Customer shall not assign this Agreement without written consent to such an assignment from C-Talk.
- 10.4 The Customer acknowledges that emergency calls may not be made via the VOIP system.
- 10.5 The Customer approves the carrying out by C-Talk of a credit check on the Customer.