

Primus Online Standard Form of Agreement for Internet Services

Schedule

ACIF Codes: special rights and protections

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1. Background

Industry Codes published by the Australian Communications Industry Form (ACIF) and registered by the Australian Communications & Media Authority (ACMA) give rise to special rights and protections for most residential and small business and non-profit customers.

‘You’ means the same thing as ‘Customer’.

‘Primus Online’ means Primus Online Pty Ltd ABN 29 092 063 691.

This schedule does not limit Your rights under any other law or ACIF Code.

Nothing in this schedule increases or extends Primus Online’s rights or powers, or Your obligations, or limits Your rights. Its only function is to ensure the customers who are subject to a Code receive the benefit of that Code. For that purpose, where this schedule applies, it overrides anything else in Your Agreement.

2. Who this schedule applies to

This schedule varies Primus Online’s Standard Form of Agreement, and applies to all Agreements made under it, whether on, before or after 4 November 2005.

3. ACIF Code C620:2005 – Consumer Contracts Code

This Code applies to You if:

- You acquire a Service for the primary purpose of personal or domestic use; or
- You are a business or non-profit organisation (including a body corporate, sole trader, partnership, trust, or registered charity) and at the time You enter into a contract with Primus Online:
 - You do not have a genuine and reasonable opportunity to negotiate the terms of the contract; and
 - You have or will have an annual spend with Primus Online which is, or is estimated on reasonable grounds by Primus Online to be, no greater than \$20,000 (calculated in accordance with the Consumer Contracts Code) –

but not if You acquire a Service for the purposes of resale.

Please see clause 7 below for the special rights and protections under this Code.

4. ACIF Code C541:2003 – Credit Management Code

This Code applies to You if:

- You have a contract with Primus Online for a Service; or
- You are eligible under Primus Online's criteria to enter into a contract for a Service; or
- You purchase a pre-paid product Primus Online offers, such as a pre-paid calling facility;

for a residential or small business purpose, but not if You acquire a Service for the purposes of resale.

Please see clause 8 below for the special rights and protections under this Code.

5. ACIF Code C547:2004 – Complaint Handling Code

This Code applies to You if:

- You have a contract with Primus Online for a Service; or
- You are eligible under Primus Online's criteria to enter into a contract for a Service –

but not if You acquire a Service for use in an internet service or telephony business.

Please see clause 9 below for the special rights and protections under this Code.

6. Important notice about implied warranties and liability limitations

Australian law about implied warranties and limitation of liability can be complex. There are some rights that cannot be taken away from You or limited, no matter what any contract says. These rights may be against Primus Online or someone else (e.g. a wholesaler of a Service).

Primus Online acknowledges these rights and encourages You to be aware of them. Nothing in any Agreement with Primus Online limits them.

If You have any doubts about Your rights under an Agreement, and especially about rights that cannot be taken away from You or limited, please contact Consumer Affairs (or equivalent) in Your State or Territory, or a community advice bureau or legal service, or Your own lawyer.

7. Your special rights if the Consumer Contracts Code applies to You

If the Consumer Contracts Code applies to You:

7.1. Primus Online will comply with the Code.

7.2. If Your Agreement has a Minimum Term (described as a Fixed Contract Period in the Code) which is still current, then, subject to clause 7.3, Primus will not unilaterally change the features, characteristics or Charges of Your Service unless Primus gives You 21 days' notice in writing, as required by the Code. Such a notice will offer You a 'Quit Option' i.e. the right to terminate the Agreement, within a further 42 days and incur no other Charges than (a) usage or network access Charges up to the end of the Agreement and (b) any outstanding installation costs and (c) any outstanding costs of equipment that You can use with another service provider.

7.3. Clause 7.2 does not apply if any of the following applies:

- The change is for a Charge that is a tax imposed by law.
- The change is for a Charge for an ancillary service such as a billing fee or credit card transaction fee and Primus Online also (a) offers You a reasonable alternative at no additional Charge or (b) gives You the right to terminate the Agreement without incurring Charges other than usage and network access Charges up to the end of the Agreement.
- The change is to a Charge for a content service or premium service sourced from a third party and (a) results from an increase in the third party's charges and (b) the price of the content service or premium service, and that it may change, was clearly stated by Primus Online and (c) Primus Online gives reasonable notice of the proposed increase within a reasonable time to anyone who has used the content service within the previous six months. In such a case, You may elect not to use the content or premium service without attracting any additional Charge.
- The change results from an amendment to Primus Online's contract with a wholesaler of Your Service and Primus Online gives You notice and an explanation in writing, in the way the Code requires. Such a notice will offer You a Quit Option.
- The change is likely to have no worse than a minor detrimental impact on You. (Please note that if You demonstrate that the change has had more than a minor detrimental impact on You, Primus Online will offer You a Quit Option.)

7.4. Our Acceptable Use Policy (if any), and changes to it, must comply with the Code.

- 7.5. If Your Agreement has a Fixed Contract Period which comes to an end, Your Agreement does not automatically renew or extend for another Fixed Contract Period. (Unless you otherwise agree, it continues from month to month.)
- 7.6. If under Your Agreement Primus becomes entitled to impose a Charge:
- in respect of an Early Cancellation by you; or
 - because Primus is unable at your request to relocate an xDSL service; or
 - by way of a reconnection fee; or
 - because of a breach by you of the Agreement –
- 7.7. Primus Online will ensure that the Charge does not exceed 'Primus Online's Reasonable Loss' i.e. a genuine pre-estimate of the loss Primus Online will suffer or is likely to suffer as a result.
- 7.8. Primus Online may only terminate the Agreement if one of the following applies:
- It has no Minimum Term, or its Minimum Term has expired, and Primus Online (a) gives at least 30 days' notice of termination of the Agreement to You (in the way the Code requires) and (b) refunds any unexpired prepaid credits or (if You agree) credit them to another Service.
 - You breach the Agreement in a material way.
 - You breach an applicable Acceptable Use Policy in a material way.
 - There is evidence to suggest fraud or other illegal conduct in relation to the Service by You or anyone else using it.
 - You have died, become bankrupt, insolvent or subject to a similar insolvency event and Primus Online reasonably believes it is unlikely to receive or retain payments for Charges.
 - It is unavoidably required to do so in order to comply with legislative or regulatory requirements, a warrant or other court order or lawful direction of a competent authority.
 - Termination is in accordance with the Credit Management Code, for Your non-payment of invoices by the due date or a later date if agreed by the parties.
 - You re-sell a Service.
 - Reasons outside Primus Online's reasonable control (including loss of wholesale access to the Service).
- 7.9. Primus Online will only suspend the Agreement or a Service if one of the following applies:
- for a reasonable period for maintenance, repair or similar operational reasons
 - if there are reasonable grounds for believing: (i) a threat or risk exists to the security of the Service or the integrity of the Primus Online network or

- (ii) the provision of the Service may cause death, personal injury or damage to property
 - if there is an emergency, including for the provision of support to emergency and other essential services
 - if You breach the Agreement in a material way
 - if You breach an applicable Acceptable Use Policy in a material way
 - if there are reasonable grounds for suspecting fraud or other illegal conduct in relation to the Service by You or any other person using the service
 - if there are reasonable grounds for believing You represent a credit risk in relation to that Service, provided Primus Online has taken reasonable steps to give notice to You of the suspension or restriction of the Service
 - if You have died, become bankrupt, insolvent or subject to a similar insolvency event and Primus reasonably believes it is unlikely to receive or retain payments for Charges
 - suspension is in accordance with the Credit Management Code, for Your non-payment of invoices by the due date or a later date if agreed by the parties
 - it is unavoidably required to do so in order to comply with legislative or regulatory requirements, a warrant or other court order or lawful direction of a competent authority
 - if You re-sell a Service
 - reasons outside Primus Online's reasonable control (including loss of wholesale access to the Service).
- 7.10. If Primus Online suspends the Agreement or a Service:
- it may not do so indefinitely
 - it may do so until (a) the circumstance giving rise to the suspension ends or (b) if those circumstances entitle Primus Online to terminate the Agreement, Primus Online does so.
- 7.11. Services, including (without limitation) Web site hosting Services are subject to any warranty that is implied by law and cannot be excluded.
- 7.12. If there are legal proceedings between You and Primus Online, this Agreement does not limit the evidence You may present, or impose any evidential burden on You.
- 7.13. You are not required to transfer to Primus Online any intellectual property rights in communications between end users of telecommunications.
- 7.14. The Agreement is subject, on a non-exclusive basis, to the law of the State or Territory in Australia in which You ordinarily reside and to the jurisdiction of the courts in that State or Territory.

8. Your special rights if the Credit Management Code applies to You

If the Credit Management Code applies to You:

- 8.1. Primus Online will comply with the Code.
- 8.2. Primus Online will only take credit management action against You in accordance with the Code.
- 8.3. Primus will only suspend or restrict a Service in accordance with the Code, including making reasonable attempts giving You advance notice and information as required.
- 8.4. Before disconnecting Service for non-payment of Charges, Primus Online:
 - will make reasonable efforts to inform You of its intentions and of other matters under the Code
 - will make reasonable efforts to inform You of impending disconnection at least 7 days in advance
 - will send You a separate disconnection notice in writing, if required by the Code –and will otherwise comply with the Code.

9. Your special rights if the Complaint Handling Code applies to You

If the Complaint Handling Code applies to You:

- 9.1. Primus Online will comply with the Code.
- 9.2. If You make a complaint, You do not have to pay any genuinely disputed amount while it is being investigated (but You must still pay any undisputed amount or part of the amount).
- 9.3. You may make any complaint directly to Primus Online.

10. Contact phone numbers

Please note that You can contact:

- Primus Online's customer assistance line: 1800 265 265
- the National Relay Service: 133 677
- the Translating & Interpreting Service 13 1450