

# Bluecherry Terms and Conditions for Business Service

## 1. DEFINITIONS

In this Contract the following terms have the definitions shown next to them:

"Bluecherry, 314 Midsummer Court, Midsummer Boulevard, Central Milton Keynes, MK9 2UB".

"BT" British Telecommunications plc of 81 Newgate Street, London EC1A 7AJ, registered in England Number1800000.

"BT Equipment" equipment (including any software) placed by BT at the Premises to provide the Service.

"Call" a signal, message or communication that is silent, spoken or visual.

"Call Diversion" diverting incoming Calls to another fixed line or mobile telephone number as set out in the Service Charter.

"Conditions" these terms and conditions for Bluecherry Telecom business service.

"Contract" these Conditions, Business Plan 15 and 50 and the Price List. This Contract begins on the date that [Reseller] accepts the Customer's request for the Service.

"Customer" the person with whom Bluecherry contracts to provide the Service.

"Customer Equipment" equipment that is not part of BT's network and which the Customer uses or plans to use with the Service.

"Minimum Period" the agreed period as per verification call of the Service after the completion of transfer period.

"Premises" the place at which Bluecherry agrees to provide the Service.

"Price List" the document containing a list of Bluecherry charges and terms that apply to the Service.

"Renewal Period" a rolling twelve month period after the end of each minimum period. This is governed by all the original terms and conditions.

"Service" the facility to make or receive a Call (or both) and any related services listed in the Price List that Bluecherry agrees to provide to the Customer under this Contract.

"Service Failure" the continuous total loss of the facility to make or receive a Call, or of any related service provided to the Customer under this Contract.

## 2. PROVIDING THE SERVICE

2.1 Bluecherry will provide the Service by the date agreed with the Customer. Bluecherry will agree the date following a survey of the Premises by BT.

2.2 Occasionally, for operational reasons, Bluecherry may have to change the codes or the numbers given to the Customer, or interrupt the Service. Bluecherry will restore the interrupted Service as quickly as possible.

2.3 The Customer accepts that occasionally Bluecherry will provide instructions regarding the Service. The Customer must follow these instructions.

2.4 Bluecherry may take instructions from a person who it thinks, with good reason, is acting with the Customer's permission.

## 3. PHONE BOOK AND DIRECTORY ENTRIES

3.1 The Service includes a telephone number. This number will be put in the appropriate BT Phone Books, together with the Customer's details, and made available from Directory Enquiries Services unless the Customer requests otherwise.

3.2 Bluecherry may agree to a special entry in the BT Phone Books at an additional charge.

3.3 The Customer does not own any number nor has any right to sell or to agree to transfer any number provided to it by Bluecherry.

## 4. MANAGING THE SERVICE

4.1 If the Customer reports a fault in the Service, Bluecherry will respond in line with the level of repair service the Customer has chosen.

4.2 If BT and/or Bluecherry agrees to work outside the hours covered by the repair service the Customer has chosen, the Customer must pay Bluecherry additional charges for doing so.

4.3 Bluecherry provides a Service Charter. If Bluecherry is late in providing the Service, or repairing a Service Failure, the Customer may be entitled to a Call Diversion or to claim compensation under the Service Charter.

4.4 If the Customer reports a fault and Bluecherry and/or BT finds that there is none, or that the Customer has caused the fault, Bluecherry may charge the Customer for any work as set out in the Price List.

4.5 Certain Bluecherry tariffs require a minimum monthly call spend to qualify for discounted line rental, if the customers monthly call spend falls below that threshold we reserve the right to implement a minimum monthly bill.

## 5. MONITORING CALLS

BT monitors and records all calls to the 999 or 112 service.

## 6. ACCESS TO AND PREPARING THE PREMISES

6.1 The Customer agrees to prepare the Premises according to any instructions Bluecherry and/or BT may give, and provide Bluecherry and/or BT with reasonable access to the Premises.

6.2 When Bluecherry and/or BT's work is completed, the Customer will also be responsible for putting items back and for any re-decorating which may be needed.

6.3 If BT needs to cross other people's land, or put BT Equipment on their property (for example a neighbour or landlord), the Customer agrees to obtain their permission.

6.4 BT will meet the Customer's reasonable safety and security requirements when on the Premises and the Customer agrees to do the same for BT.

6.5 The Customer agrees to provide, at its expense, a suitable place and conditions for BT Equipment and where required a continuous mains electricity supply and connection points.

6.6 The Customer agrees to look after any BT Equipment and to pay for any repair or replacement needed if it is damaged, unless it is due to fair wear and tear, or is caused by BT or anyone acting on BT's behalf. Bluecherry or anyone acting on Bluecherry's behalf, will look after the Customer's physical property as set out in paragraph 12.2.

## 7. CUSTOMER EQUIPMENT

7.1 If the Customer wishes to connect Customer Equipment to BT's network other than by using a BT main telephone socket, the Customer must get Bluecherry's permission.

7.2 Any Customer Equipment must be:

(a) technically compatible with the Service and not harm BT's network or another customer's equipment; and

(b) connected and used in line with any relevant instructions, standards or laws.

## 8. MISUSING THE SERVICE

8.1 Nobody must use the Service:

(a) to make offensive, indecent, menacing, nuisance or hoax Calls; or

(b) fraudulently or in connection with a criminal offence.

The Customer agrees to take all reasonable steps to make sure that this does not happen. The action Blue Chery can take if this happens is explained in paragraph 11. If a claim is made against BT and/or Blue Chery because the Service is misused in this way, the Customer must reimburse Bluecherry in respect of any sums Bluecherry is obliged to pay.

8.2 The Customer accepts that nobody must advertise the phone number for the Service in or on a BT phone box without BT's consent. If this happens, Bluecherry may suspend the Service or end this Contract, but Bluecherry and/or BT will write to the Customer before taking this action.

## 9. CHARGES AND DEPOSITS

9.1 The Customer agrees to pay all charges for the Service as shown in the Price List (or as otherwise agreed) and calculated using the details recorded by Bluecherry.

9.2 Unless paragraph 9.4 applies, rental charges will normally be invoiced monthly in advance, and call charges will normally be invoiced monthly in arrears. Where possible the charges will appear on the Customer's next invoice but sometimes there may be a delay.

9.2a The Business Plan 15 and 50 line rental is paid a year in advance for year one, then reverts to standard monthly in advance.

9.3 Bluecherry will send its first invoice shortly after providing the Service, and then at regular intervals, usually every month. Sometimes Bluecherry may send the Customer an invoice at a different time. If the Customer orders a temporary Service, Bluecherry may invoice the Customer for the rental charge in advance for the whole period of the temporary Service.

9.5 Bluecherry will send invoices for the Service to the address requested by the Customer.

9.6 The Customer agrees to pay all charges for the Service whether the Service is used by the Customer or someone else and upon receipt of Bluecherry's invoice.

9.7 In some cases the Customer may need to pay a deposit or provide a guarantee as security for paying future charges.

9.8 You must pay all charges and rental by Direct Debit as soon as these become due, which will normally be 10 days from date of invoice. If you cancel your Direct Debit for any reason we reserve the right to charge £50. If we have not received payment of your bill by the due date, we may disconnect your telephone service. If this is necessary the following conditions may apply:

(a) Normal monthly rental will continue to be charged during any period of disconnection.

(b) You will be charged a fee for reconnection to our services, which is £99 per affected line, subject to VAT.

(c) If Outgoing Call Barring is placed on your line because we have not received payment by the due date, an administration payment will be required in advance before Outgoing Call Barring is removed.

9.9 If the customers direct debit does not clear, Bluecherry will charge £10 for each failed direct debit collection.

9.9.1 All prices quoted ex VAT.

9.9.2 3p call connection charge applies to all calls except international and mobile call where the connection charges of 4p and 9p apply respectively. All prices quoted are ex VAT.

9.9.3 If you settle your monthly invoice by way of a cheque a £4 admin fee will be applied to your account per month.

## 10. CANCELLING OR ENDING THIS CONTRACT

10.1 The customer may cancel this Contract with no penalty any time before the completion of transfer period date, this request must be made in writing and sent by Royal Mail recorded delivery or by telephone or email. If a customer cancels after the transfer date, the Customer must pay Bluecherry for early termination. (see 20.2)

10.2 The contract will continue for the minimum period and shall automatically renew of periods of 12 months on the expiry of the minimum period (each such period shall be a "Renewal Period") unless and until terminated under clause 20.1.

10.2a Bluecherry reserves the right to charge for a cease line.

10.3 If the customer breaches the contract during the minimum period, the customer must pay Bluecherry for early termination (per line) for each case of breach, excluding the renewal period where there would be a nominal fee of £50 + VAT (per line). If a customer terminates their agreement they will also forfeit any service charges and line rentals paid in.

10.3a A welcome pack is sent to all customers; however we can not be held responsible for loss of post. Our full Terms and conditions are available on the website. If a customer does not receive the welcome letter they are still bound by the terms and conditions.

10.4 New installs - If an existing customer adds a new install to a current account that line is bound by the original contract term of the original agreement. If the new install is set up as a new account the line will be in a minimum 12 month contract.

## 11. IF THE CUSTOMER BREAKS THIS CONTRACT

11.1 Bluecherry can suspend the Service or end this Contract (or both) at any time without notice if one of the following applies:

(a) The Customer breaches this Contract or any other agreement the Customer has with Bluecherry, (b) Bluecherry reasonably believes that the Service is being used in a way forbidden by paragraph 8.1. This applies even if the Customer does not know that the Service is being used in such a way;

(c) bankruptcy or insolvency proceedings are brought against the Customer; or if the Customer does not make any payment under a judgement of a Court on time, or makes an arrangement with its creditors; or a receiver, an administrative receiver or an administrator is appointed over any of its assets; or the Customer goes into liquidation; or a corresponding event under Scottish law.

11.2 If the Customer does not pay a bill, Bluecherry can suspend the Service or end this Contract until payment is made. If payment is not received within the time period Bluecherry will expect payment over the phone to prevent the customer's phone line being suspended. If Bluecherry Telecom has to collect payment over the phone, they reserve the right to charge an administration fee.

11.3 If the Service is suspended, Bluecherry will tell the Customer what needs to be done before it can be re-instated. However the Customer must continue to pay rental charges whilst this Contract continues.

11.4 If either party delays in acting upon a breach of this Contract that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Contract that waiver is limited to that particular breach.

## 12. LIMITS OF LIABILITY

12.1 Bluecherry accepts unlimited liability for death or personal injury resulting from its negligence.

12.2 Bluecherry accepts liability for loss or damage to the Customer's physical property arising from its negligence, up to £1,000 in any 12 month period.

12.3 Bluecherry cannot guarantee that the Service will never be faulty. However, Bluecherry accepts liability if it is late in providing the Service or repairing a Service Failure as set out in the Service Charter.

12.4 Unless Bluecherry is negligent, Bluecherry's only liability under this Contract is as set out in the Service Charter.

12.5 Unless the Service Charter or paragraph 12.3 says otherwise, Bluecherry is not liable to the Customer for any loss of business, revenue, profit or expected savings, wasted expense, financial loss or data being lost or corrupted or for any loss that could not have been reasonably foreseen.

12.6 Unless paragraphs 12.1 and 12.2 apply, Bluecherry's liability to the Customer in contract, tort (including negligence) or otherwise in relation to this Contract is limited to £1000 in any 12 month period.

12.7 Each provision of this Contract that excludes or limits Bluecherry's liability operates separately. If any part is disallowed or is not effective, the other parts will still apply.

## 13. MATTERS BEYOND BLUECHERRY'S REASONABLE CONTROL

13.1 Sometimes Bluecherry may be unable to do what it has agreed because of something beyond its reasonable control.

13.2 If this happens, Bluecherry is not liable to the Customer. However, Bluecherry will try to provide Call Diversion to the Customer. If Bluecherry cannot do this then the Customer is entitled to a rental refund for any whole or part day, that there is a Service Failure.

## 14. RESOLVING DISPUTES

Bluecherry will try to resolve any disputes with the Customer. However, if the parties cannot agree, the Customer may refer the dispute to any recognised dispute resolution service. - CISAS. www.cisas.org.uk

## 15. CHANGES TO THIS CONTRACT

15.1 Bluecherry can change the Conditions (including the charges) at any time.

15.2 Bluecherry will forward the changed Conditions to the Customer upon request by the Customer.

15.3 Bluecherry guarantees the call rates will not rise during the minimum period or renewal period.

## 16. TRANSFERRING THIS CONTRACT

The Customer cannot transfer or try to transfer this Contract, or any part of it, to anyone else.

## 17. THIRD PARTY RIGHTS

The parties agree that the terms of this Contract are not enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999.

## 18. NOTICES

If the parties need to write to each other they must do so as follows:-

(a) to Bluecherry at the address shown on the bill or any address which Bluecherry provides to the Customer;

(b) to the Customer at the address to which the Customer asks Bluecherry to send invoices, the address of the Premises or, if the Customer is a limited company, its registered office.

## 19. THE SERVICE CHARTER

### 19.1 BLUECHERRY'S CHARTER

#### 19.1.1 Bluecherry's guarantees:

(a) to provide the Service by the date agreed with the Customer as described in paragraph 2.1;

(b) to repair a Service Failure in line with the repair service the Customer has chosen. For standard service this means by midnight on the first weekday (not including public and bank holidays) after the day the fault is reported to Bluecherry;

(c) not to disconnect the Service by mistake; and

(d) to keep any appointment Bluecherry makes with the Customer under this Contract.

19.1.2 If Bluecherry is late in providing the Service or repairing a Service Failure, the Customer may choose either:

(a) Call Diversion - as described in paragraph 19.2. This is only available if it is reasonably practicable,

and technical restrictions may sometimes prevent Bluecherry from offering this option; or

(b) compensation - the Customer may not claim any compensation.

19.1.3 If Bluecherry disconnects the Service by mistake, the Customer may claim a fixed rate compensation of £10 per day, from the date of disconnection.

19.1.4 If Bluecherry does not keep an appointment, the Customer may claim a specified sum, as shown in the Price List.

### 19.2 CALL DIVERSION

19.2.1 If Bluecherry provides Call Diversion, Bluecherry will divert the Customer's incoming Calls, on request, to another fixed line or mobile telephone number of the Customer's choice. Once Bluecherry has provided the Service or repaired a Service Failure, Bluecherry will cancel the Customer's Call Diversion.

19.2.2 The number chosen must be a UK number, but there are some number ranges to which will not divert the Customer's Calls (for example, 0800 and 0870 numbers).

19.2.3 If Bluecherry diverts the Customer's Calls to a mobile number, the person calling the Customer will not have to pay extra costs for making that Call. The Customer is liable for the additional cost of these diverted calls.

### 19.4 PAYMENT OF CLAIMS

Bluecherry will deduct any compensation amounts that Bluecherry owes to the Customer under this Charter from the Customer's next phone bill, unless the Customer asks for payment by cheque.

### 19.5 APPLICATION OF THIS CHARTER

19.5.1 This Charter applies to the Service, including generally any related services Bluecherry provides to the Customer. However, its application to some of the related services may vary as shown in the Price List.

19.5.2 This Charter does not apply if:

(a) someone, other than Bluecherry, has caused the fault,

(b) Bluecherry and/or BT asks for access to the Premises and the Customer does not allow this, or

(c) Bluecherry and/or BT reasonably asks for other help and the Customer does not provide it.

## 20. SUSPENSION & TERMINATION

20.1 This contract may be terminated in writing by either you or us for convenience by giving notice within 30 days of the end of minimum period or any renewal period, this request must be sent by Royal Mail recorded delivery.

20.2 If the customer wishes to completely terminate their contract with Bluecherry they must pay the early termination fee of £395 + VAT per line, the customer will also forfeit any service charges & line rental paid in advance.