

## AGREEMENT BETWEEN YOU AND US

These Service & Rental Terms & Conditions, together with:

- (a) each Schedule provided to You by Us, whether signed or not; and
- (b) any Special Conditions specific to the Services supplied or type of Equipment You have rented,

set out the terms of the agreement (the "Agreement") between You and Us. The provision or acceptance of a Schedule shall not form a separate agreement between You and Us, but shall constitute part of this Agreement. Any terms contained in any document supplied by You, including any terms on Your purchase order, will not form part of the Agreement.

### 1. DEFINITIONS

When We refer to the following terms in this document:

**"ACL"** means the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010*.

**"Credit Account"** means any billing arrangement We have extended to You for the Equipment and the Services.

**"Equipment"** means any equipment provided by Us to You under the Agreement, or detailed in the Schedule, including any attachments or accessories.

**"Fees"** means the fees, rates and charges payable by You for the Services and rental of the Equipment.

**"Non Excludable Provision"** has the meaning set out in clause 14.3.

**"Related Body Corporate"** has the same meaning as in the *Corporations Act 2001*.

**"Rental Period"** means the period described in clause 3.

**"Schedule"** means the document provided by Us to You which includes Your details, details of the Services and the Equipment You have rented, the Fees, any other applicable charges, and the address for delivery of the Equipment.

**"Services"** means the supply of a sim card by Us for the supply of telephone services, in accordance with the telephone plan specified in the Schedule. Under this Agreement, the Services may be provided by a third party.

**"Special Conditions"** means, where applicable, the special conditions attached to your Schedule.

**"We/Us/Our"** means Daktel Australia Pty Ltd ABN 66 618 062 025, any Related Body Corporate of Daktel Australia Pty Ltd and their successors and assigns.

**"You/Your"** refers to the person, firm, organisation, partnership, corporation, trust or other entity renting Equipment from Us. The reference to "You/Your" includes any of your employees, agents and contractors.

### 2. OUR RENTAL COMMITMENT TO YOU

We agree to rent the Equipment to You and will:

- (a) provide the Equipment to You in good working order;
- (b) allow You to exclusively use the Equipment during the Rental Period.

### 3. THE RENTAL PERIOD

4.1 The Rental Period commences on the earlier of the following:

- (a) when We deliver the Equipment to the address in the Schedule; or
- (b) when You take possession of the Equipment.

4.2 The Rental Period is for an indefinite term and ends when the Equipment is back in Our control or possession.

4.3 A minimum Rental Period of three (3) months applies to all items of Equipment ("Minimum Rental Period"). If You return the Equipment to Us before the expiration of the Minimum Rental Period, You are required to pay all Fees in respect of the Minimum Rental Period.

### 4. HOW WE CALCULATE YOUR FEES

5.1 You will pay Us for the Services and rental of the Equipment at the Fees set out in the Schedule.

5.2 The Schedule will specify the type of rate which will apply to You and any method of calculation.

5.3 You will be charged for the Services and rental of Equipment for the full Rental Period. This obligation survives termination of the Agreement.

5.4 Fees will commence from the Rental Period and continue until the date the Equipment is returned to Us.

### 5. OTHER CHARGES

In addition to the Fees, You agree to pay:

- (a) if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Schedule;
- (b) charges for payment made by credit card; and
- (c) a flat fee of \$10 for every occasion Your payment is dishonoured or We are required to re-present your payment.

### 6. PAYMENT

7.1 You must pay all Fees and other fees, charges and costs that become due and payable under this Agreement within 7 days of the date of invoice.

7.2 If You do not pay the invoice in full by the payment due date, We may charge, in addition to any other costs recoverable under this Agreement:

- (a) a late fee of \$10 per month for every month or part thereof that the full payment is not received; and

- (b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Agreement.

## **7. YOUR OBLIGATIONS TO US**

- 8.1 This Agreement is personal to You and You must not re-rent or have possession of the Equipment at any time, unless expressly agreed by Us in writing.
- 8.2 You agree that before taking delivery of the Equipment, You have satisfied Yourself as to the suitability and condition of the Equipment and You will ensure that the Equipment is used only for the purpose for which it was designed by the manufacturer. Subject to clauses 14.2 and 14.3, We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose.
- 8.3 You must:
  - (a) not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent;
  - (b) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment.

## **8. OWNERSHIP OF THE EQUIPMENT**

- 9.1 Except as detailed in clause 9.4, You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment (even if You go into liquidation or become bankrupt during the Rental Period). Your rights to use the Equipment are as a bailee only.
- 9.2 You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- 9.3 You acknowledge that We may rent or lease Equipment from a third party if we cannot provide the Equipment to You ("Third Party Owner"), and if this occurs, title in the Equipment remains with the Third Party Owner.

## **9. RESPONSIBILITY FOR THE EQUIPMENT**

You are responsible for any loss, theft or damage to the Equipment from any and every event whatsoever and howsoever and by whosoever caused during the Rental Period.

## **10. RETURN OF EQUIPMENT**

The Equipment must be returned to Us in the same clean condition and good working order it was in when You received it, ordinary fair wear and tear excluded.

## **11. WHAT TO DO IF EQUIPMENT BREAKS DOWN**

- 12.1 Except if clause 13 applies, upon receiving notice from You that the Equipment has broken down during the Rental Period, We will:
  - (a) take all reasonable steps to repair the Equipment or provide suitable substitute Equipment as soon as reasonably practicable after being notified by You; and
  - (b) not impose any Fees for that portion of the Rental Period for which the Equipment was broken down, nor the costs associated with any repair or replacement of the Equipment.

## **12. WHAT TO DO IF EQUIPMENT IS LOST, STOLEN OR DAMAGED**

If the Equipment has broken down as a result of Your acts or omissions, (or the acts or omissions of Your employees) or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Rental Period, You will be liable for any costs incurred by Us to recover and repair or replace the Equipment.

## **13. INDEMNITIES AND EXCLUSION OF LIABILITIES**

- 14.1 Subject to clause 14.3, and except as expressly provided to the contrary in this Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Agreement or its subject matter are excluded to the maximum extent permitted by law.
- 14.2 Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Consumer Guarantees.
- 14.3 Where We are not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Agreement, ('Non-Excludable Provision'), and We are able to limit Your remedy for a breach of the Non-Excludable Provision, then Our liability for breach of the Non-Excludable Provision is limited to (at Our election):
  - (a) in the case of Equipment, the repair or replacement of the Equipment or the supply of substitute equipment (or the cost of doing so); or
  - (b) in the case of Services, the supplying of the Services again, or the payment of the cost of having the Services supplied again.
- 14.4 Subject to Our obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Our maximum aggregate liability for all claims under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the fees paid by You under this Agreement.

14.5 Subject to clauses 14.3 and 14.4, We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your customers for or any loss suffered by third parties under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

14.6 You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us in respect of:

- (a) personal injury;
- (b) damage to property; or
- (c) a claim by a third party,

in respect of Your rental or use of the Equipment or Your breach of the Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.

14.7 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement.

#### **14. TERMINATION OF AGREEMENT**

15.1 Either party may terminate this Agreement and any Rental Period immediately by giving notice to the other party, if:

- (a) that other party breaches any term of the Agreement and fails to remedy the breach within 7 days of written notification of the breach; or
- (b) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

15.2 If this Agreement is terminated in accordance with clause 15.1, You agree to pay all Fees for the Minimum Rental Period if it has not been completed.

15.3 Following the completion of the Minimum Rental Period, either party may terminate the Agreement and any Rental Period for any reason by giving 60 days' written notice.

15.4 These rights of termination are in addition to any other rights either party has under the Agreement and does not exclude any right or remedy under law or equity.

#### **15. RECOVERY OF THE EQUIPMENT**

If You are in breach of the Agreement or if the Agreement or a Rental Period has been terminated under clause 15, We may, at Your cost, take all steps necessary (including legal action) to recover the Equipment.

#### **16. PRIVACY**

17.1 We will comply with the Australian Privacy Principles in all dealings with You.

17.2 We may need to collect personal information about You, including but not limited to, Your full name and address, drivers licence details, credit card details, date of birth, and credit or business history. You consent to Us using Your personal information in order to:

- (a) fulfill functions associated with the rental of Equipment to You, including but not limited to assessing Your credit worthiness;
- (b) provide goods or services to You;
- (c) enter into contracts with You or third parties; and
- (d) to market to You and maintain a client relationship with You.

17.3 You also consent to Us disclosing Your personal information:

- (a) to any credit provider or credit reporting agency for the purposes of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness; and
- (b) to Our service providers, contractors and affiliated companies from time to time to help improve and market Our services to You.

17.4 You have the right to access the personal information We hold about You.

17.5 A copy of Our Privacy Policy is available upon request or visit [www.daktel.com.au](http://www.daktel.com.au).

#### **17. FORCE MAJEURE**

Neither party will be responsible for any failure in the Services, or delays in delivery or installation of the Equipment, due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, or failures on the part of telephone service providers.

#### **18. SEVERABILITY**

If any part of this Agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

**19. GOVERNING LAW**

The Agreement is governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings arising in connection with the Agreement.

**20. ENTIRE AGREEMENT**

The Agreement comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order supplied by You) apply to the rental of the Equipment.