

## 1. INTRODUCTION

These 24 Hour Help Line Terms & Conditions, together with each Schedule provided to You by Us, including the customer information form, whether signed or not, 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.

## 2. 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 Services.

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

"**Non-Excludable Provision**" has the meaning set out in clause 8.3.

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

"**Schedule**" means the document provided by You to Us and includes the customer information form.

"**Services**" means the operation of a 24 hour call centre by Us to provide assistance to You in the form of a phone call to a third party nominated by You on the customer information form or as directed. Our Services are not emergency services. Under this Agreement, the Services may be provided by a third party.

"**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 who has completed the customer information form or other relevant Schedule. The reference to "You/Your" includes any of your employees, agents and contractors.

## 3. AGREEMENT BETWEEN YOU AND US

We agree to provide you with the Services for the Term and you agree to pay us the Fees.

## 4. TERM

The Term is for an indefinite period which commences on the date We start providing the Services to You and ends when this Agreement is terminated in accordance with clause 9.

## 5. FEES

5.1 You will pay Us the Fees for the Services as set out in the Schedule.

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

5.3 Fees will commence from the time We provide the Services and continue until the date of termination of this Agreement.

## 6. OTHER CHARGES

In addition to the Fees, You agree to pay:

- (a) For any of the services, regulatory bodies or statutory authorities we call on Your behalf and any fines or penalties that may arise from such calls;
- (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.

## 7. 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.

## 8. INDEMNITIES AND EXCLUSION OF LIABILITIES

8.1 Subject to clause 8.3, 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.

8.2 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.

8.3 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 the supplying of the Services again, or the payment of the cost of having the Services supplied again.

8.4 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.

8.5 Subject to clauses 8.3 and 8.4, 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, 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.

8.6 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 use of the Services 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.

8.7 You are liable for and indemnify Us against any failure by you to supply correct information in the customer information form, or to regularly and promptly update Your customer information form specifying which third party We will contact when You call Us.

8.8 You expressly acknowledge that We do not represent or intend the Services to be emergency services and that We are not responsible or liable for any failure by any person or entity to respond to You or Your requested communication by Us to a third party.

8.9 We do not make, and expressly exclude, any guarantee or claim whatsoever that the Services will in any way prevent any accident, loss or damage to You or Your property.

8.10 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.

### 9. TERMINATION OF AGREEMENT

9.1 Either party may terminate this Agreement without penalty by giving 7 days' notice to the other party.

9.2 If this Agreement is terminated in accordance with this clause, You agree to pay all Fees for the Services provided to You.

9.3 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.

### 10. PRIVACY

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

10.2 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 providing the Services to You, including but not limited to assessing Your credit worthiness;
- (b) enter into contracts with You or third parties; and
- (c) to market to You and maintain a client relationship with You.

10.3 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.

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

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

### 11. FORCE MAJEURE

Neither party will be responsible for any failure in the Services 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 or emergency service providers.

### 12. 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.

### 13. 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.

### 14. 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 Services.