

TEKWORX RENTAL TERMS AND CONDITIONS

1.0 OWNERSHIP OF THE EQUIPMENT

1.1

(Ownership) You acknowledge and agree that the Equipment remain our property at all times and you do not have any right, interest or claim in or over the Equipment except the rights expressly set out in this Agreement.

1.2

(Authority) Nothing in this Agreement gives you any express or implied right or entitlement to, and You must not attempt or purport to sell, re-hire, lease, encumber, grant any right or interest (of any nature) in or over the Equipment and you must keep the Equipment free from charges, liens or Encumbrances.

1.3

(Identification)

(a)

Our Equipment is identified by appropriate lettering and numbering, which you must not change or obscure in any way unless we give you permission in writing to do so.

(b)

Subject to paragraph (a) above, you may add other markings as may be required, provided these markings are removed by you without damaging the Equipment prior to the return of the Equipment to us.

(c)

If you fail to remove any markings you may have added to the Equipment, we may do so at your cost.

2.0 DELIVERY, ACCEPTANCE, INSTALLATION AND RELOCATION

2.1

(Delivery and Acceptance) By signing a receipt acknowledgment for the Equipment that you rent, you acknowledge delivery and acceptance of the Equipment in good condition and working order.

2.2

(Location of Equipment)

(a)

You must keep the Equipment at the location at which it was delivered and installed by us or such other location as we agree to in writing.

(b)

You must not: (i) attach the Equipment to any land or property; or (ii) relocated the Equipment to any location other than a location referred to in paragraph (a) above, without our prior written consent.

(c)

If the Equipment is affixed to land, it does not become a fixture and may be removed by us at your cost.

2.3

(Change/Cancellation of Scheduled Dates)

(a)

Changes or cancellation by you of the scheduled dates of installation, as agreed by us, at any time less than two (2) weeks from the commencement of the installation program will incur a fee of [insert details].

- (b) Re-scheduled installation and/or training will be charged at the full daily rate; any previously agreed discounts on such rates will not apply.
- (c) Changes by you in the scheduled dates of installation and/or training may involve additional travel costs.
- (d) Changes during the installation program may require additional training days to be scheduled for re-training purposes.

3.0 RENT AND OTHER PAYMENTS

3.1

(Rent Payable)

- (a) Subject to clause 3.1 (b), you agree to pay to us the Rental Fee for the Term, no later than 10 Business Days prior to the proposed date the Equipment is to be delivered to you.
- (b) Provided an event of default has not occurred, you are not in breach of your obligations under this Agreement or this Agreement is not terminated prior to the end of the then current Term for any reason, you may pay the Rental Fee by paying the Rental Installments to us each month in advance on the Payment Date for the duration of the Term and any Extended Term, in accordance with the terms of this Agreement.
- (c) Your obligation to pay to us the first Rental Installment under this Agreement commences on the day that the Equipment is delivered to you in accordance with clause 2.1.

3.2

(Other Charges Payable by You) In addition to the Rental Installment, you must also pay any applicable statutory duties (including stamp duty), fees, taxes or charges in connection with this Rental Agreement or the Equipment.

3.3

(Payments)

- (a) All payments due to us must be made in Australian dollars by direct debit using a bank account or credit card acceptable to us.
- (b) You must pay the invoiced amount, without deduction, set-off or counterclaim.

3.4 (Late Payment)

- (a) If any amount due to us (including the Rental Installments and any costs and charges that you are liable to pay under this Agreement) is not paid on the due date, you will pay interest on the amount not paid (Overdue Amount).
- (b) Interest on any Overdue Amount will be calculated monthly, at eighteen percent per annum (18% pa), from and including the due date to and including the date that we receive the Overdue Amount plus interest in full.

3.5 (Fundamental Term) The provisions of this clause 3 are fundamental terms of this Agreement.

4.0 USE, CARE AND SERVICE OF THE EQUIPMENT

4.1

(Maintenance and Support) In addition to any general obligations we have under this Agreement, we will: (i) install the Equipment at the premises specified; (ii) provide the Support Services detailed including initial training to your nominated staff on how to use the Equipment at the time of installation; (iii) provide maintenance services as detailed; and (iv) provide operation manuals and literature and other material to you which in our opinion are required for the use and operation of the Equipment.

4.2

(Acts of employees and agents) You will be liable to us for, and be bound by, any act of your agents, employees, contractors or any other person acting as your representative or gains access to the Equipment whilst the Equipment is in your care and control including without limitation (i) any damage to the Equipment; or (ii) the receipt and delivery of the Equipment.

4.3

(Your general obligations) At all times during the Term of this Agreement you must: (i) provide us with access to your premises to install and service the Equipment; (ii) keep the Equipment in good working order and condition; (iii) only use the Equipment in its business operation and for the purpose for which the Equipment were designed; (iv) provide (at your own expense) adequate supervision, management and control of the use of the Equipment including ensuring that employees are adequately trained in the use and operation of the Equipment; (v) comply at your own cost with any laws relating to the use, operation, maintenance and possession of the Equipment, including obtaining any necessary licenses, permits or registration; and (vi) use the Equipment in accordance with any instructions on use supplied by us or the manufacturer.

4.4

(Service of Equipment) You must allow us to provide the maintenance and support services specified in the Schedule and you must not in any way change or service the Equipment without our prior written consent.

4.5

(Access) If access to the Equipment is required for any purpose by us (including to ensure that you are complying with your obligations under this Agreement or to exercise any of our rights), you will allow (and where necessary procure approval for) us and our employees, agents and representatives reasonable access to the Equipment and the premises where the Equipment is located, any related equipment or peripherals as may be necessary, for us to repossess, diagnose, service and repair the Equipment or otherwise provide the services covered by this Agreement.

4.6

(Limitation of Liability for Maintenance Services) To the full extent permitted at law, we are not liable or responsible to you for any damage, loss, cost or expense incurred by you or a third party caused by: (i) malfunctioning of the Equipment; (ii) interference with the Equipment by you or your employees, servants, agents or a third party; (iii) misuse or intentional damage to the Equipment by you or your employees, servants, agents or a third party; (iv) circumstances beyond our control; or (v) any changes to the Equipment or modification by a third party.

4.7

(Additional Service Charges) If you require us to do any service or repairs to the Equipment as a result of any of the matters referred to in clause 4.4, you agree to pay for such services and work at our charge rates applicable at the time.

4.8

(Suspension of Maintenance and Support Services) In addition to any other rights at law or equity we may have, if you breach this Agreement (including not paying any amount when due) we may elect to not terminate this Agreement but suspend the maintenance and support services we provide until you have rectified the breach to our satisfaction.

4.9

(Exclusion of Conditions and Warranties) You acknowledge and agree that: (i) this Agreement contains all the terms and conditions of this Agreement of whatever nature; and (ii) all other express or implied terms, conditions or warranties are excluded except to the extent any warranty or condition cannot be excluded by law.

5.0 INSURANCE

5.1

(Insurance) You must, at all times:

(a)

adequately insure against public liability for bodily injury or damage to property arising in connection with the Equipment. The Owners may require You to insure up to a specific amount; and

(b)

insure against loss, theft, destruction or confiscation of, or damage to the Equipment up to the greater of the Replacement Value or the Termination Value of the Equipment.

5.2

(Nature of Insurance) Any insurance effected by you must be satisfactory to us and note our interest in the insurance policy as the owner of the Equipment.

5.3

(Proof of Insurance) You agree to provide us with a copy of any insurance policy you have entered into in relation to the Equipment and such other information concerning the insurance as we reasonably request.

6.0 LOSS OR DAMAGE OF THE EQUIPMENT

6.1

(Loss) If during the Term the Equipment is lost; stolen; destroyed; or damaged (which in our sole opinion) is not repairable, you must: (i) immediately notify us in writing of the occurrence of such event; (ii) continue to pay the Rental Installments to us until the end of the Term; and (iii) at the end of the Term pay to us the Replacement Value for the Equipment.

6.2

(Damage) If the Equipment is damaged and can be repaired, you must immediately contact us to repair the Equipment to good working order and condition.

6.3

(Insurance Payments)

(a)

Where you have not complied with clause 6.1 or 6.2: (i) we are entitled to receive all amounts which are payable by an insurer or person as a result of an event in clause 6.1 or 6.2 occurring.

(b)

If you receive those amounts, you hold them in trust for us, and

(b)

- If you receive those amounts, you hold them in trust for us, and
- (c) where the cost incurred by us for the replacement of the affected Equipment, or for repair and restoration of the damaged Equipment, is or will be in excess of any amounts held on trust by Us pursuant to clause 6.3(a), you must pay that difference to us upon demand by us.

7.0 TERM

7.1

(Initial Term) Unless terminated earlier in accordance with clause 8, the term of your rental is as specified in the Schedule together with the period of any extension pursuant to clause 7.2.

7.2

(Extension of Term)

(a)

Subject to clause 7.2(b), at the end of the Initial Term, the term of this Agreement will be automatically extended on a monthly basis unless you advise us in writing, no earlier than 90 days and no later than 30 days, prior to the expiry of the then current Initial Term that you do not want to extend the Term of this Agreement. If

(b)

Despite clause 7.2(a), if we advise you prior to the expiry of the then current term that we do not wish to extend the term of this Agreement, the Term of this Agreement will expire at the end of the then current Term.

8.0 TERMINATION

8.1

(Termination) This Agreement will terminate on the earlier of: (i) the last day of the Term; or (ii) the date of that we terminate this Agreement in accordance with our rights under this Agreement.

8.2

(Right to Terminate)

In the event that:

(a)

any clause, provision or right that we have under this Agreement, is void or unenforceable; or

(b)

any other agreement that you have with us is terminated earlier than its expiry or termination date or not extended, for any reason,

We may elect to terminate this Agreement by giving written notice to the other party provided that such termination (i) will not affect the rights of the parties accrued as at the date of termination; (ii) relieve you from your obligation to pay to us the Rental Fee; and (iii) the provisions of clause 9 will apply as if an event of default had occurred.

9.0 END OF THE TERM

9.1

(Event Of Default) You will commit an event of default under this Agreement if: (i) you fail to pay any amount payable by you under this Agreement or any other agreement you have entered into with us, on the due date and you do not remedy your failure within two (2)

Business Days of the date that we notify you of your failure; (ii) you fail to perform any other obligation under this Agreement or any other agreement that you have entered into with us, and you do not remedy your failure within ten (10) Business Days of the date that we notify of your failure; (iii) you cease doing business, become insolvent, commit an act of bankruptcy or become the subject of any proceeding under any bankruptcy act, or its counterpart under the law of any territory outside of the jurisdiction of Australia.

9.2

(Our rights after an event of default or termination of this Agreement) If an event of default occurs, we may (but are not obliged to) immediately without notice to you and without releasing you from any accrued obligations do one or more of the following: (i) terminate this Agreement; (ii) declare the balance of the Rental Fee due and payable by you; (iii) retake possession of the Equipment; and (iv) remedy any default that you commit under this Agreement (at your cost).

9.3

(Right to use the Equipment cease) In the event that we terminate this Agreement you will no longer be in possession of the Equipment with our consent and you must immediately return the Equipment to us in accordance with the terms of this Agreement.

9.4

(Right to recover Equipment)

(a)

You hereby irrevocably authorise us to enter upon any property occupied by you for the purpose of removal of any Equipment if and when this Agreement expires, terminates or is terminated.

(b)

In the event that we are not given access to any property upon which the Equipment is located for the purposes of recovering the Equipment and as a consequence incur any costs in gaining such access, you will be liable to pay us for all such costs.

(c)

We are not liable to make good any premises upon which the Equipment was located unless the damage caused to the premises occurred was not reasonably foreseeable from the removal of the Equipment by us.

9.5

(Property attached to the Equipment) Without limiting your indemnity obligations under clause 14, in the event that we retake possession of all or any part of the Equipment, you hereby irrevocably authorize us to take possession of any property in, on or attached to the Equipment which is not our property, and you acknowledge and agree that we are not liable for its care or safekeeping.

9.6

(Replacement of non returned Equipment) If you do not return any Equipment within twenty (20) Business Days of the termination of this Agreement, you must pay to us an amount equal to the Replacement Value (such amount will not include depreciation).

9.7

(Effect of Termination on your obligations) Termination of this Agreement will not relieve or discharge you from any liabilities or obligations incurred to us prior to termination.

10.0 RETURN OF THE EQUIPMENT

10.1

(Return) On the termination or expiry of this Agreement, you must immediately allow us to repossess the Equipment.

- 10.2 (Delay in return) If the Equipment is not returned on the day it was due to be returned, you must pay to us an amount equal to two days' rental for each day during which the Equipment was not returned unless we otherwise agree in writing.
- 10.3 (Payment for damage) Except for normal wear and tear, you agree to pay to us on demand for all damage to, loss, destruction of, the Equipment that occurs after delivery of the Equipment to you and prior to its return to us.
- 10.4 (Assessment of Damage) Upon the return or recovery of the Equipment on termination or expiry of this Agreement, we will inspect the Equipment and assess any damage to the Equipment for which you are liable under clause 10.3.
- 10.5 (Removal of Third Party Software) Prior to the return of the Equipment you must (at your own cost) removal any third party software or information contained on the Equipment which was not supplied by us with the Equipment on its delivery to you.

11.0 SOFTWARE AND OTHER RIGHTS

- 11.1 (Use of Third Party Software) You must not install or use any third party software with the Equipment without our prior written consent.
- 11.2 (Third Party Licences) If we consent to the installation and use of any Third Party software on the Equipment, you must ensure that you hold all necessary rights and licences to use any third party software installed on the Equipment, from time to time and that the software is compatible with the Equipment manufacture's software install or used with, the Equipment.

12.0 INDEMNITY

Without prejudice to any other right we have under this Agreement, you agree to indemnify and hold us harmless for any loss, cost, damages, expense or liability we incur or may incur (including legal costs on a full indemnity basis, charges, taxes, penalties, levies and expenses) as a direct or indirect result of:

- (a) our exercise of a right under this Agreement or doing something you should have done under this Agreement;
- (b) a breach of your obligations under this Agreement;
- (c) a person being injured or killed or property being damaged directly or indirectly by the Equipment in their use, design or operation;
- (d) a claim by any person that the use of any software install or used by you on the Equipment infringes that person's intellectual property rights including without limitation in relation to trade mark, copyright, patent or other intellectual property right;
- (e) any loss, destruction, damage or seizure of the Equipment during the Term; or
- (f)

this Agreement terminating in relation to some or all of the Equipment before the end of the Term.

13.0 EXCLUSION OF LIABILITY

13.1

(State of Equipment) You acknowledge and agree that you have inspected the Equipment prior to its delivery to you and accept it in its current state

13.2

(Exclusion of Warranties) To the full extent permitted by law, we exclude all express or implied terms, conditions and warranties other than those expressly set out in this Agreement.

13.3

(Specific Warranties Excluded) Without limiting clause 13.2, we make no express or implied warranty in relation to (i) the fitness of the Equipment for any particular purpose; (ii) the merchantability of the Equipment; or (iii) the description, state, r quality or condition of the Equipment.

13.4

(Limitation of Liability)

(a)

To the full extent permitted by law, you agree that if you suffer a loss (including economic loss), damage, cost, expense or claim howsoever arising from the use of the Equipment or the maintenance and support supplied by us, our liability to you is limited to the repair or the replacement of the relevant Equipment.

(b)

We are not liable under any circumstances for any direct, indirect, economic, special or consequential loss or damage of any nature that you may suffer from the use of the Equipment.

14.0 ACKNOWLEDGEMENTS

You acknowledge that:

(a)

you have not relied on our skill or judgment in deciding to enter into this Agreement but on your own skill and judgment;

(b)

we are entitled to insert dates and such other information into this Agreement where no dates or such information has been inserted by you;

(c)

we may assigns any of its rights under this Agreement or in connection with the Equipment without your consent and any amounts payable by you to such assignee must continue to be paid without set-off, counterclaim or deduction;

(d)

we may (but we not obliged to) do anything which should have been done by you under this Agreement but which we consider you have not done or have not done properly.

15.0 GUARANTEE AND INDEMNITY

15.1

(Guarantee) In consideration of our agreement to enter into this Agreement with the Renter at the request of the Guarantor, the Guarantor hereby guarantees to us the due and punctual performance of the Renter's monetary and other obligations under this Agreement (Guaranteed Obligations).

15.2

(Indemnity) As a separate and independent obligation the Guarantor agrees to indemnify us and hold us harmless against all losses, costs, liabilities or damage which we may suffer or sustain as a result of non payment of any money or the non performance of any obligations under this Agreement by the Renter or the Guarantor, whenever and as often as such events occurs.

15.3

(Principal Obligations) The obligations of the Guarantor under this Guarantee and Indemnity are principal obligations imposed upon the Guarantor as principal debtor, and we have the right to make a claim or demand against the Guarantor pursuant to this Guarantee and Indemnity without having first taken any proceedings against the Renter or any other person.

15.4

(Satisfaction of obligations) This guarantee and indemnity is not to be considered as wholly or partly discharged unless and until all of the Guaranteed Obligations have been received in full by us.

15.5

(Saving Provisions) This Guarantee and Indemnity is not impaired or discharged by:

(a)

any variation (with or without the consent of the Guarantor) whenever made to this Agreement;

(b)

any breach, willful or otherwise, of any of the Renter's obligations under this Agreement with or without the consent or knowledge of the Guarantor;

(c)

the granting of time, credit, forbearance, indulgence or concession to the Renter or to any other Guarantor;

(d)

any compromise, abandonment, waiver, release, variation or redemption or compounding by us of any rights under the Agreement or against any other Guarantor;

(e)

the unenforceability in whole or in part of the Agreement or this Guarantee and Indemnity against the Renter or any other Guarantor or that any other Guarantor has not executed this agreement;

(f)

the fact that all or any part of the money owing by the Renter may not or may cease to be recoverable from the renter or any other person liable for any reason (other than the same has been fully paid or satisfied);

(g)

the liquidation, death, insolvency or bankruptcy (as the case may be) of the Renter or Guarantor;

(h)

the avoidance for any reason by statute or otherwise of any payment by or on behalf of the Renter or any Guarantor;

(i)

the transfer or assignment of the benefit of the Rental Agreement to any person or corporation; You being under any legal liability;

- (j) any other matter or thing which but for this provision could or might operate to abrogate the effect of provisions of this Guarantee and Indemnity;

15.6 (Joint and Several Liability) If there are two or more Guarantors then the obligation under this Guarantee and Indemnity binds them jointly and each of the severally.

16.0 GENERAL PROVISIONS

16.1 (Notices) All billings, payments and written notices from either party to the other must be given to the address shown in this Agreement, or to such other address as may be designated in writing by either party to the other.

16.2 (Binding) This Agreement is binding upon the parties, their successors and assigns and will be governed by the laws of New South Wales. If you take possession of or retain any Equipment after the provision of this Agreement, then this Agreement is valid and binding on you whether or not you have signed it.

16.3 (Costs) You must pay our costs and legal fees for any action brought to enforce any of the provisions of this Agreement or any right granted to us under this Agreement.

16.4 (Inconsistency) If there is any inconsistency between the terms set out in this document and the terms of the Schedule, the terms of the Schedule will prevail but only to the extent of the inconsistency.

16.5 (Waiver of rights) No failure to exercise nor delay in exercising any right, power or remedy by us operate as a waiver.

16.6 (Cumulative rights) Our rights under this Agreement are in addition to, and do not exclude, any right at common law, equity or any other agreement between you and us.

16.7 (Variation of terms and conditions) We may amend the terms and conditions of this Agreement upon written twenty (20) Business Days notice to you of the proposed changes.

16.8 (Taxes) You are responsible for the payment of all taxes and levies, duties or charges which might arise under or in connection with this Agreement (including, if any, stamp duty payable in respect of the execution, delivery and performance of this Agreement) but excluding taxes on our net income.

16.9 (Continuing Indemnity) The indemnities referred to in this Agreement are continuing obligations, and survive the termination or expiry of this Agreement.
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16.10 (Demand) Any amount payable by under an indemnity is payable on demand by us.

16.11 (GST)

(a)

The prices shown for the Equipment in this Agreement do not include GST.

(b) If we become liable to pay GST in respect of the hire or supply of the Equipment, the Rental Fee payable under this Agreement will be increased by the amount of the GST payable by us in respect of that hire or supply (being GST on the increased price including the GST)

(c) The GST amount will be notified by us to you and must be paid by you to us in the same manner and at the same time as the rest of the Rental Fee.

16.12

(Essential term) This clause is an essential term of this Agreement.

16.13

(Further Assurances) You agree to execute and deliver any instruments and do such other things, as we may at any time request in connection with the enforcement of our rights under this Agreement.

16.14

(Assignment) You may not assign or otherwise deal with your rights under this Agreement without out prior written consent.

17.0 INTERPRETATION

In this Agreement, unless a contrary intention appears:

“Agreement” means the agreement comprised by these terms and conditions, the Schedule and any other document that we agree in writing is an agreement for the purposes of this document.

“Business Day” means any day (other than a Saturday, Sunday or Public Holiday) we are open for business in Sydney.

“Encumbrance” means any interest in, right or any form of security over the property, including, but not limited to:

(a)

any mortgage, pledge, lien or charge; or

(b)

any other security or preferential interest or arrangement of any kind with any creditor but not limited to have its claim satisfied in priority to other creditors.

“Extended Term” means, where you continue to rent the Equipment under this Agreement after the end of the Initial Term, each consecutive period of three calendar months commencing on the day following the end of the Term.

“Equipment” means, for this Agreement, the goods and other property listed in the Schedule, including all licenses, associated documents, manuals, installation certificates, maintenance records, spare parts and accessories and includes any replacement Equipment.

“GST” means the goods and service tax imposed by the GST Law.

“GST Law” has the same meaning as the term “GST” in the GST Law.

“GST Act” means A New Tax System (Equipment and Service Tax) Act 1999 and all related and auxiliary legalisation.

“Initial Term” means the terms specified in the Schedule as the Initial Term in accordance with clause 7.1.

“Payment Date” means dates for the payment of the Rental Installments specified in the Schedule for the duration or the Term and any Extended Term.

“Renter” or “You” means the person or persons named on the first page as the renter and if there is more than one, means each of them jointly and severally and includes your successors and assigns.

“Rent Installment” means for the duration of the Term and any Extended Term, the amount of the rent installment (inclusive of stamp duty) plus GST payable in relation to that amount, as set out in the Schedule.

“Replacement Value” of the Equipment means the cost of replacing the affected Equipment (as defined in clause 7) with new goods having specifications as nearly as possible the same as, but at least equal in all material respects to, those of the affected Equipment.

“Schedule” means the schedule to this Agreement.

“Term” means the Initial Term and any Extended Term of this Agreement.

“We”, “our” or “Us” means Tekworx Telecommunications Pty Limited (ACN).