

# Standard Terms of Business – Equipment Hire

RIEDEL Communications Australia Pty Ltd

These Standard Terms of Business ("Terms") set out the terms of the agreement between Riedel Communications Australia Pty Ltd ABN 14 128 794 785 (with its licensees, assigns and nominated agents, "Riedel") and the person or entity to whom the accompanying Order Letter is addressed (the "Customer") upon which Riedel will provide the Customer with the temporary use of the equipment and/or services described in the Order Letter. These Terms and the Order Letter together constitute the agreement between Riedel and the Customer ("Agreement").

## 1. Agreement

- 1.1 This Agreement is the entire agreement of the parties in respect of the matters dealt with in this Agreement and supersedes any former written or oral agreements between Riedel and the Customer, except as otherwise expressly agreed in writing signed by both parties.
- 1.2 If a provision in these Terms conflicts with a term in the Order Letter, the provision in the Order Letter prevails to the extent of the inconsistency.
- 1.3 Any offer contained in the covering letter and Order Letter remains valid for a period of 30 days from the date of the offer. Any offer made by Riedel is subject to change and is only binding on the parties upon signing of this Agreement by the Customer.
- 1.4 For the avoidance of doubt, Riedel's published product information (for example, information about the capabilities, dimensions, performance specifications and data and any other information in relation to the Equipment or Services) does not form part of this Agreement.

## 2. Riedel Obligations

- 2.1 Riedel will:
- allow the Customer to take possession of and use the Equipment for the Hire Period;
  - provide the Equipment in good working order at Commencement (however, no guarantee is given that internally-charged Equipment will be fully charged on delivery, because factors such as temperature variation affect the battery charge level of such Equipment); and
  - where an item of Equipment ordered by the Customer is not available at Commencement, use best endeavours to provide a functionally substantially equivalent item of equipment to the Customer.

## 3. Customer Obligations

- 3.1 The Customer must:
- return the Equipment by the next business day unless otherwise agreed in writing by Riedel;
  - ensure that any person taking delivery of the Equipment on behalf of the Customer is properly authorised to do so;
  - treat the Equipment in a diligent and careful manner;
  - ensure that installation and use of the Equipment complies with all statutory requirements and regulations as are in force from time to time;
  - indemnify Riedel for any injury or damage caused by, related to or arising out of the Customer's hire or use of the Equipment;
  - properly secure and protect the Equipment at the place of hire;
  - return the Equipment in good working order;
  - where the Equipment is delivered or collected by the Customer in damaged, defective or faulty condition, notify Riedel within 24 hours of delivery or collection. If the Customer does not so notify Riedel, Riedel is entitled to assume that the Equipment is in good working order and condition at the time of delivery; and
  - where the Equipment is lost, damaged or stolen, immediately notify Riedel, and it is the Customer's sole responsibility to ensure that all internally-charged Equipment is sufficiently charged for the Customer's intended use.
- 3.2 The Customer must not:
- tamper with, alter, damage or repair the Equipment without Riedel's prior written consent. Where the Equipment is altered or damaged, the cost of restoring the Equipment to its original state and condition or replacing the Equipment as the case may be. Where the Equipment is radio equipment, the Equipment will be delivered set at pre-set frequencies unless otherwise agreed in writing prior to Commencement;
  - remove the Equipment from the state of Australia specified in the Order Letter or from Australia without Riedel's prior written consent; or
  - deface or remove any identifying marks, notices or warnings on the Equipment;
4. Hire Fee
- 4.1 The Customer must pay Riedel the fee quoted in the Order Letter for the equipment or services ("Hire Fee") and their delivery to the Customer.
- 4.2 The Hire Fee set out in Order Letter remains valid for a period of 30 days after the date of the order. The Hire Fee does not include the price of any transportation, shipping or insurance. The Customer must pay any and all transportation, shipping, insurance and other charges as invoiced.
- 4.3 Where the Customer fails to return the Equipment to Riedel in accordance with clause 2.1 Riedel may charge fees in addition to the Hire Fee at its discretion. Riedel will charge the Customer a fee for unreturned Equipment, calculated by reference to Riedel's undiscounted weekly hire card rate for such Equipment pro-rated on a daily basis. If Equipment remains unreturned for over 14 days after the Hire Period the cost of replacement of the unreturned Equipment will be charged to the Customer.
- 4.4 The Customer is responsible for the cost of repairing any damage to the Equipment (other than reasonable wear and

- tear) in addition to the Hire Fee as determined by Riedel.
- 4.5 Unless a Damage Waiver is expressly set out in the Order Letter no Damage Waiver applies.
- 4.6 In addition to the Hire Fee and any other charges it is entitled to make to the Customer, Riedel is entitled to charge the Customer the amount of any sales tax, duties or Goods and Services Tax payable in respect of the Equipment whether or not included in Riedel's invoice.

## 5. Payment and interest

- 5.1 Riedel will provide an invoice to the Customer for the Equipment (or the Services set out in the Order Letter).
- 5.2 Except as otherwise agreed in writing, the Customer must pay to Riedel the Hire Fee as invoiced within 15 days from the date of the invoice.
- 5.3 Time is of the essence in relation to payment of the Hire Fee. Time is not of the essence in relation to delivery.
- 5.4 The Customer is responsible for any import duties.
- 5.5 Riedel may charge simple interest on overdue amounts, calculated at the most recently published Reserve Bank cash rate plus eight percentage points, and applied to daily balances outstanding until payment in full of all amounts owing.
- 5.6 Riedel must be advised in writing of any disputed invoices or accounts within 10 days of date of invoice, otherwise the Customer will be deemed to have accepted the Hire Fee and any other amount included in the invoice as correct.

## 6. Delivery

- 6.1 Where the Order Letter specifies that Riedel will deliver the Equipment to the Customer, Riedel will use its best endeavours to deliver the Equipment within the time specified in the Order Letter.
- 6.2 Delivery of the Equipment is conditional upon the timely compliance by the Customer with any reasonable requests by Riedel for technical and other information.
- 6.3 Neither party will be liable (or be deemed to be) in default of this Agreement for any delay or failure resulting from a Force Majeure Event provided that the party claiming that a Force Majeure Event has occurred notifies the other party as soon as practicable after it becomes aware of that Force Majeure Event.

## 7. Risk and Title

- 7.1 Riedel deals in highly specialized communications equipment, much of which is of high value. Accordingly, if Riedel suspects that the Equipment is likely to be damaged, stolen, seized or taken possession of as part of any liquidation, receivership or similar event, Riedel will unilaterally terminate the term of this Agreement and take possession of the Equipment. If this happens the Customer's only remedy will be a refund of that portion of the Hire Fee relating to the portion of the Hire Period then unexpired at the date Riedel takes repossession of the Equipment, but only to the extent that Riedel does not have some other claim or set off under this Agreement.
- 7.2 Risk in the Equipment delivered pursuant to this Agreement passes to the Customer on Riedel's delivery to the Customer. The Customer must insure the Equipment against that risk.
- 7.3 The Customer is responsible for loss or theft of the Equipment.
- 7.4 Title and ownership in Equipment will remain with Riedel at all times. The Customer holds all Equipment as bailee and fiduciary agent on Riedel's behalf. As such Customer must store the Equipment safely, and in a manner so it is clearly identifiable as Riedel's;
- 7.5 If any of the following occur: the Customer fails to pay all or part of the Hire Fee for Equipment and/or Services when due; or the Equipment is not returned at the end of the Hire Period; or the Customer becomes insolvent; or, whether voluntarily or involuntarily, the Customer is subject to winding up, insolvency administration or receivership, then Riedel has the immediate right to:
- recover possession of the Equipment wherever it may be; and
  - on reasonable notice, enter into Customer's premises or any other premises on which the Equipment is held to search for and remove it.
- 7.8 Customer must notify Riedel promptly on any such event arising and assist and indemnify Riedel in Riedel's recovery.

## 8. Application of the Personal Property Securities Act 2009 (Cth)

- 8.1 Customer expressly acknowledges that Riedel has registrable security interests under the *Personal Property Securities Act 2009* (Cth) in relation to the supply in Australia (the "Act") in any Equipment supplied under this Agreement. Without prejudice to any other rights or remedies arising out of a breach of this Agreement by the Customer, if Riedel registers a security interest under the Act, it may exercise any or all remedies afforded to it as a secured party under the Act. Customer expressly agrees, to the extent permissible by law (including under the Act): that the Customer will not rely on, Customer waives and Customer contracts out of, any rights it may have under the Act in relation to Riedel's enforcement of any security interest created or provided for by the terms of the Agreement; and that Customer will not seek to enforce and Riedel is not obliged to abide by, any obligations the Act may impose upon Riedel in relation to any registrable security interests created by this Agreement.

## 9. Limitation of liability

- 9.1 Subject to those warranties that cannot be specifically excluded under the *Competition and Consumer Act 2010*, Riedel makes no warranty to any person in relation to the Equipment or Services. Other terms, conditions, warranties, undertakings, inducements or representations, whether express or implied,

or implied under statute, including without limiting the foregoing each State *Sale of Goods Act*, are expressly excluded.

- 9.2 Where any relevant legislation implies any term, condition or warranty into this Agreement that cannot be excluded, restricted or modified at all or only to a limited extent, the term, condition or warranty will apply, except to the extent it can be excluded. Riedel's liability for breach of any such term, condition or warranty (other than a term, condition or warranty implied by the *Competition and Consumer Act 2010*, Schedule 2, *The Australian Consumer Law*, Part 3-2 Division 1) will be limited at Riedel's option, to any one or more of the following:
- In the case of goods: the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; or
  - In the case of Services: the supplying of the Services again or the payment of the cost of having the Services supplied again.
- 9.3 To the extent permitted by law, Riedel will not be liable to the Customer whether in contract (including failure to abide by the terms of this Agreement) or for negligence or otherwise for any indirect or consequential loss or damage (including loss of profits, loss of data or failure to realise anticipated savings or benefits), however caused, including but not limited to loss or damage caused by a breakdown of data lines or as a result of the failure of the security or integrity of any data communications conducted over the Internet.
- 9.4 Notwithstanding any other provision of this Agreement, Riedel's maximum total liability to the Customer pursuant to this Agreement is limited to a refund to the Customer of any amount paid to Riedel for the Equipment or Services pursuant to this Agreement in the 12 month period prior to the date the liability arose.
- 9.5 Each party will use its best efforts to mitigate any loss, cost, expenses or damage which it incurs in connection with this Agreement.

## 10. Intellectual Property

- 10.1 The Customer must not, directly or indirectly: (a) reverse disassemble, decompile or reverse engineer, or allow a third party to reverse disassemble, decompile or reverse engineer the whole or any part of the Equipment or any software used or supplied with the Equipment or otherwise attempt or allow any other party to obtain the algorithms by which the Equipment perform their functions except as and to the extent that the Customer is authorised to do so under this Agreement; nor (b) combine, incorporate or use any item of Equipment or software in connection with the Equipment or Services in any way other than where approved in writing by Riedel or in accordance with this Agreement.

## 11. Services

- 11.1 Where Riedel agrees to provide additional services to the Customer, those services are limited to the services set out in the Order Letter ("Services"). The timely performance by the Customer of any preliminary or preparatory works (deemed necessary by Riedel at its discretion) at the Customer's expense is a condition precedent to the performance of any Services and Riedel is not obliged to verify the proper performance of any equipment supplied by the Customer.
- 11.2 Any expense incurred as a result of any delay in performing the Services due to factors outside Riedel's control will be borne by the Customer at the rates set out in Riedel's price list.

## 12. General

- 12.1 The construction, validity and performance of this Agreement is governed in all respects by the laws of New South Wales, and the parties submit unconditionally to the jurisdiction of the Courts of New South Wales.
- 12.2 For the avoidance of doubt, in this Agreement, unless the context otherwise requires, words denoting the singular include the plural and vice versa.

## 13. Further Assurances

- 13.1 The Customer, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Deed, including but not limited to authorising Riedel to gain access to the Equipment in the circumstances described at clause 7.5.

## 14. Dictionary

- 14.1 "Commencement" means the date when the Customer takes possession of the Equipment.
- 14.2 "Damage Waiver" means an agreed uplift in the Hire Fee, intended to cover the risk of certain types of damage.
- 14.3 "Equipment" means those items of equipment set out in the Order Letter and includes any tools, parts and accessories that are supplied to the Customer with the Equipment.
- 14.4 "Force Majeure Event" means events, occurrences, or causes beyond the control and without negligence of that party, including without limitation acts of God, strikes, lock-outs, riots, acts of war, earthquakes, fire and explosions and failure of third party technology providers such as internet service providers and carriers.
- 14.5 "Hire Period" means from Commencement until the end of the period set out in the Order Letter.