

Standard Form of Agreement – Appendix iii

APPENDIX III – EQUIPMENT

IMPORTANT CUSTOMER INFORMATION: YOUR RIGHTS AND OBLIGATIONS

This Appendix iii forms both part of ACN's Standard Form of Agreement ("SFOA") and a Summary of ACN's SFOA in relation to equipment.

1. INTERPRETATION

"Acceptance Notice" means the notice attached to the inner packaging of the Goods entitled "Acceptance Notice".

"Associated Service" means the GSM Mobile Service, Mobile Broadband Service, Digital Phone Service or Fixed Broadband (ADSL) Service specified in your paper or electronic Customer Application Form ("CAF") or otherwise designated by ACN as being associated with the Goods ordered.

"Customer Contribution" means the amount of money, if any, you must pay to us for the Goods.

"Inner Packaging" means the inner packaging of the Goods to which the Acceptance Notice is attached.

"SFOA" means ACN's Standard Form of Agreement of which this Appendix iii forms a part.

"Distributor" means the organisation nominated by us who packages and arranges shipping of the Goods on our behalf.

"Goods" means a mobile phone handset, broadband modem, video phone or other telecommunications equipment ordered by you in your CAF or otherwise, but excludes bundled accessories provided by way of gift referred to in clause 2.7.

"You" and "your" means the customer.

"We", "us" and "our" means ACN Pacific Pty Ltd.

2. SALE OF GOODS

2.1 Sale. In consideration for you agreeing to enter into a minimum service term for the Associated Service and / or pay any Customer Contribution required, we agree to sell the Goods to you on the terms and conditions set out in this appendix iii and the other relevant sections of the SFOA.

2.2 Risk. Risk of loss or damage to the Goods shall pass to you when the Goods are delivered to the address you specified in the CAF.

2.3 Title. Title in the Goods shall pass to you when you open the Inner Packaging or 10 days have elapsed since dispatch of the Goods.

2.4 Lien. We retain a lien on the Goods for the amount of all charges you owe to us from time to time, including the Customer Contribution and the amount of any early termination fee payable in relation to the Associated Service or as applicable under clause 6.

2.5 Cooling Off. If you have not opened the Inner Packaging then we will allow you to cancel your order for the Goods and return them to us, without penalty, within 14 calendar days of the date on which the Goods were dispatched by sending, at your cost, the complete Goods in their unopened Inner Packaging to the return address listed on the Acceptance Notice and calling our Customer Contact Centre on 1300 881 778.

2.6 False and Fraudulent Information. We are not obliged to deliver the Goods to you (and we may terminate your order for the Goods and/or the Associated Service without notice, effective immediately, and without penalty) if we suspect that any information you provided to us in connection with your purchase order is false or we suspect that payment for the Goods or the Associated Service will be made fraudulently.

2.7 Bundled Accessories. From time to time we may supply accessories bundled with some of our Goods. The accessory item is a gift and as such has no cash value and is not part of the Goods. However if your accessory item is defective (and the defect is not caused by alteration, misuse, physical abuse, neglect or accident) within 30 days of the date we supplied the Goods to you, we'll gladly replace it, and this is your sole remedy in relation to the bundled accessories. However this will not warrant a cash refund or replacement of the Goods itself, nor will it warrant a waiver of your minimum service term obligations in relation to our supply of the Goods to you.

3. NO RESALE

You must not re-sell the Goods as new or within 6 months of delivery, unless we agree otherwise.

4. PAYMENT TERMS

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4.1 Payment Options. You must pay the total Customer Contribution, in accordance with clause 4.2, at the time of purchase, unless we say that there are different options for payment of the Customer Contribution. Where we say that there are different payment options available, you must select one of these payment options at the time you place your order. The two payment options are:

- (a) Upfront payment - You must pay us the total Customer Contribution, in accordance with clause 4.2, at the time of purchase.
- (b) Instalments - You must pay us: (i) the total Customer Contribution in (x) equal instalments, invoiced in advance, within (x) months commencing from the date of purchase (where (x) equals the number of instalments applicable to the instalment payment plan chosen by you when placing your order), unless we otherwise agree in writing; (ii) the first instalment, in accordance with clause 4.2, at the time of purchase; and (iii) all subsequent instalments within 14 days after the date of our invoice. We will invoice you monthly. The relevant billing and charges terms and conditions set out in the main section of the SFDA which do not conflict with this Appendix iii also apply.

4.2 Method of Payment.

(a) If you:

- (i) are an existing ACN customer;
- (ii) have elected to pay previous invoices by direct debit;
- (iii) have no aged charges; and
- (iv) at least one payment by direct debit in excess of \$10 has been successfully processed, you may choose to pay the Customer Contribution by direct debit or by credit card.

(b) If you are a new ACN customer you must pay the Customer Contribution by credit card. If payment is being made in instalments, then you must pay us in accordance with clause 4.1(b). If the first payment by credit card has been successfully processed, you may elect to make further payments by direct debit by notifying us in writing, in which case you must also comply with the following paragraph (c).

(c) If you choose to pay by direct debit you must complete all necessary authorisations. We will not accept your order until we have received confirmation that all necessary authorisations are complete.

(d) You hereby authorise us to charge all amounts owed to us to your bank account or credit card. We will debit your bank account or credit card on the date on which the amounts are due. You are responsible for notifying us of changes in your credit card numbers or expiration dates.

(e) If a payment by direct debit or credit card is denied, you must pay us for any resulting bank or other charges incurred by us.

4.3 Failure to Pay. Without limiting any other rights we may have, if you fail to pay any amount of money when due under this SFDA you will be in breach of this appendix and we may do any one or more of the following things:

- (a) notify you of your failure to pay and give you 7 days from receipt of the notice to pay the outstanding amount;
- (b) suspend or disconnect the Associated Service or any other Service that we supply to you;
- (c) demand that you pay the total outstanding balance of the Customer Contribution. On that demand that amount is immediately due and payable;
- (d) exercise our lien over the Goods and require you to return them to us failing which we shall; have the right to enter your premises to repossess the Goods; and/or
- (e) start court proceedings against you for the recovery of the Customer Contribution and any early termination fee for the Associated Service plus our costs incurred in taking such action.

5. DELIVERY

On delivery you must check that the outer packaging of the Goods is undamaged and the attached packing list shows number and type of Goods ordered, sign for the Goods (if requested) and produce a driver's licence or other form of identification reasonably required by us, if we or our agent request. You must call us within 24 hours of delivery if the outer packaging is damaged or the packing list does not show the number and type of Goods ordered. If you fail to produce such identification, we or our agent can refuse to deliver the Goods and we may charge you additional shipping and handling fees to re-deliver the Goods to you. We will not deliver Goods to a post office box. We will not be liable to you for late delivery.

6. FAILURE TO ACTIVATE ASSOCIATED SERVICE

If our commencement of supply of the Associated Service is dependant upon you taking certain action (e.g. porting your mobile phone number to us) and you fail to take that action within 21 days of the date you receive the Goods then the Customer Contribution shall increase by an amount equal to the early termination fee which would be applicable for terminating the Associated Service on the first day of the 24 month minimum service term and you must pay us the full Customer Contribution immediately (any instalment arrangements shall be cancelled).

7. WARRANTIES AND LIABILITY

7.1 Manufacturer Warranties. The Goods will be subject to the standard manufacturer warranty conditions ("Warranty") in respect of the Goods (if any). We will provide you with an Equipment Information Sheet ("EIS") for the Goods with contact details for

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the relevant manufacturer of the Goods in the event you wish to make a Warranty claim. A copy of the Warranty and EIS will be provided to you with the Goods at the time of delivery. We will also provide you with a copy of the Warranty and EIS before delivery if you request. The SFDA will prevail over the EIS to the extent of any inconsistency between them. The information set out in the EIS is a guide for information purposes only and is not to be construed as any warranty given by us. The information contained in the EIS is based on policies and procedures of the relevant manufacturers of the Goods as at the time of purchase. Such manufacturers may change their policies and procedures from time to time, and we accept no responsibility for this.

7.2 DDA/ELF. Subject to clause 7.1, we will arrange to replace certain Goods that fails within a period specified in the EIS from the time of purchase, known as the Dead on Arrival/Early Life Failure (“DDA/ELF”) period. The EIS will set out who to contact in the first instance in these circumstances. That party may refer you to us instead. If so, you should contact us. If an item of Goods fails and is not covered by a DDA/ELF period at that time, you will need to refer to the manufacturer’s Warranty information included with the item.

7.3 Goods Returns. In respect of Goods which you believe to be faulty or defective, either within a DDA/ELF period or otherwise, you must:

- (a) pay for the cost of replacement Goods, if the Goods proves not to be defective or have been wilfully damaged, misused, neglected, submerged in liquid or modified or repaired (without our authorisation); and
- (b) provide the manufacturer or us or the Distributor (as the case may be) with any information required by the manufacturer’s Warranty or as set out in the EIS.

7.4 Limitation of Warranty. Your rights under the Warranty will be subject to any conditions expressed in the Warranty. For example, without limitation, the Warranty may describe situations in which you will have no rights under the Warranty.

7.5 Other Warranties Excluded. Except as provided under clause 7.1, all other warranties of any kind, either express or implied, are excluded to the maximum extent permitted by law.

7.6 Implied Warranties. Nothing contained in this clause 7 shall be read or applied so as to exclude, restrict or modify the application of applicable provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State or Territory statute which by law cannot be excluded, restricted or modified. To the extent that any such statute permits us to limit our liabilities to compensate or indemnify you or any other person for breach of an implied condition or warranty, our respective liabilities for such breach shall be limited to, at our option:

- (a) the replacement of the Goods or the supply of equivalent Goods or payment of the cost of replacing the Goods or acquiring equivalent Goods; or
- (b) the repair of the Goods or payment of the cost of having the Goods repaired.

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