

# Terms and Conditions of Hire

## Background

- A The Customer wishes to place orders to hire Products.
- B The Supplier agrees to supply the Products for the Hire Period to the Customer on the following terms and conditions.

## Agreed terms

### 1 Ordering

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- 1.1 Subject to payment of the Hire Fee, the Supplier hires out the Products to the Customer.
- 1.2 If the parties agree that the Supplier must deliver the Products to the Customer, the Supplier must endeavour to deliver or request a third party to deliver the Products at the Customer's cost from the location nominated by the Supplier at times nominated by the Supplier.
- 1.3 The Customer acknowledges that any delivery dates nominated or agreed to by the Supplier are indicative only, and are not binding on the Supplier.
- 1.4 If the parties agree that the Customer must collect the Products from the Supplier, the Customer must collect the Products from the Supplier's address at the date and time nominated by the Supplier.

### 2 Fees and risk

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- 2.1 The Customer must pay the Hire Fee for the Products monthly in advance, commencing on the date of delivery or collection of the Products as the case may be, unless otherwise set out in an invoice.
- 2.2 The Customer bears the risk relating to the Products from the time the Products are delivered to or collected by the Customer until the time the Products are returned to the Supplier.

### 3 Retention of title

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- 3.1 The Products remain the property of the Supplier at all times.
- 3.2 The Customer must not grant or allow another to hold a security interest (as defined in the PPSA) in:
  - (a) the Products;
  - (b) the proceeds of the Products; or
  - (c) any goods to which the Products are installed or affixed.
- 3.3 It is a condition of this deed that the Customer complies with clause 3.2.

- 3.4 Upon taking possession of the Products, the Customer must maintain the Products in such a way that the Products are recognisable as the property of the Supplier.
- 3.5 The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs) incurred or suffered by the Supplier however caused in connection with the Supplier exercising its rights under this clause 3 or attempting to do so.

### 4 Use and return of products

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- 4.1 The Customer must only use the Products and must maintain the Products in accordance with the applicable Specification and any directions of the Supplier from time to time.
- 4.2 The Customer must arrange for the Products to be returned to the Supplier by the end of the Hire Period in the same condition (subject to normal wear and tear) that the Products were in at the Commencement Date.

### 5 Warranties

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- 5.1 The Customer represents and warrants, and it is a condition of this deed, that:
  - (a) all information provided by the Customer or on the Customer's behalf to the Supplier is accurate and is not, whether by omission of information or otherwise, misleading;
  - (b) the Customer has not withheld from the Supplier any document, information or other fact material to the decision of the Supplier to enter into this deed; and
  - (c) the Customer did not rely upon any representation made to the Customer by the Supplier or any Related Body Corporate of the Supplier (if any) prior to entry into this deed.
- 5.2 Subject to clause 6.4, the Customer acknowledges and agrees that the Supplier does not give any express or implied representations or warranties in connection with the Products, including that the Products will operate in accordance with the Specification (if any), or that the Products will have any particular functionality or be fit for any particular purpose; and
- 5.3 Without limiting clause 5.2, the Supplier makes no representation and gives no warranty that the use of the Products by the Customer or any third party will not infringe the intellectual property rights (including copyright, trade marks, patents and designs) or other rights of a third party.

### 6 Liability

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- 6.1 Subject to clauses 6.3 and 6.4, any liability of the Supplier for any loss or damage, however caused (including by the negligence of the Supplier), suffered by the Customer in

connection with a Product is limited to in the Supplier's discretion:

- (a) the Hire Fee paid by the Customer to the Supplier for that Product; or
- (b) resupply of that Product.

- 6.2 The limitation set out in this clause 5.2 is an aggregate limit for all claims, whenever made.
- 6.3 Subject to clause 6.4, the Supplier is not liable for any Consequential Loss however caused (including by the negligence of the Supplier), suffered or incurred by the Customer in connection with a Product.
- 6.4 If the Competition and Consumer Act 2010 (Cth) or any other legislation states that there is a guarantee in relation to any good or service supplied by the Supplier in connection with this agreement and the Supplier's liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 5.2, 6.3 and 7 do not apply to that liability and instead the Supplier's liability for such failure is limited to, in the case of a supply of goods, the Supplier replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, the Supplier supplying the services again or paying the cost of having the services supplied again.

### 7 Indemnity

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The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs) incurred or suffered by the Supplier however caused in connection with:

- (a) any use of the Products other than in accordance with the Specification;
- (b) personal injury or death of any person (including any employee of the Customer) in connection with the use of the Products;
- (c) damage to property in connection with the use of the Products; or
- (d) any act or omission of the Customer, its officers, employees or agents.

### 8 Intellectual property rights and rebranding

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The Customer acknowledges and agrees that nothing in this deed grants the Customer any intellectual property rights (including copyright, trade marks, patents and designs) of the Supplier.

## 9 Term and termination

- 9.1 This deed commences on the Commencement Date and continues for the Hire Period unless terminated earlier in accordance with this clause 9.
- 9.2 If the Customer commits a breach of this deed then the Supplier may terminate this deed by written notice to the Customer in which case this deed will terminate on the date specified in that written notice or, if no date is specified, immediately.
- 9.3 The Supplier may terminate this deed at any time by written notice to the Customer in which case this deed will terminate on the date specified in that written notice or, if no date is specified, immediately.
- 9.4 The Customer expressly waives any rights it may have to terminate this deed.
- 9.5 The Customer acknowledges that the Supplier may terminate this deed under this clause 9 without considering the impact of the termination on the Customer.
- 9.6 On termination or expiry of this deed accrued rights or remedies of a party are not affected.
- 9.7 Termination of this deed will not affect clauses 3, 4, 5, 6, 7, 8 and 9.6 and any other clause of this deed which is expressly or by implication intended to come into force or continue after termination.

## 10 Taxes

- 10.1 Subject to clause 10.3, the Customer must pay all stamp duty, taxes, duties, government charges and other taxes of a similar nature (including fines, penalties and interest) imposed, levied, assessed or payable in Australia or overseas in connection with this agreement.
- 10.2 The consideration for a Supply made under or in connection with this agreement includes GST.
- 10.3 If a Supply made under or in connection with this agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
- (a) the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this agreement for that Supply); and
- (b) the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.
- 10.4 In clauses 10.2 and 10.3:
- (a) capitalised terms that are not defined in clause 12 have the meaning given in the A New Tax System (Goods and

Services Tax) Act 1999 (Cth); and

(b) GST Act Supplier means the entity making the Supply.

## 11 General

- 11.1 The laws of Queensland, Australia govern this deed.
- 11.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.
- 11.3 The Customer must not assign, in whole or in part, or novate the Customer's rights and obligations under this deed without the prior written consent of the Supplier.
- 11.4 Unless expressly stated otherwise, this deed does not create a relationship of employment, trust, agency or partnership between the parties.
- 11.5 Each provision of this deed will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.
- 11.6 The Supplier may subcontract the performance of all or any part of the Supplier's obligations under this deed.
- 11.7 Without limiting any other remedies available to the Supplier, if the Customer fails to pay any amount payable under this deed, the Customer must pay Interest on that amount.

## 12 Definitions and interpretation

### 12.1 Definitions

In this deed:

- Commencement Date** means the date specified in the Schedule.
- Consequential Loss** means consequential loss, indirect loss, loss of revenues, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain, lost opportunities (including opportunities to enter into arrangements with third parties) and loss or damage in connection with claims against the Customer by third parties.
- Customer** means the customer specified in the Schedule.
- Hire Period** means the period specified in an invoice provided by the Supplier to the Customer from time to time.

### Interest

means interest on any payment owing under this deed calculated:

- a) at the rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for personal loans or, if lower, the maximum rate permitted by applicable law; and
- b) daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant Interest.

### PPSA

means the *Personal Property Securities Act 2009* (Cth).

### Products

means the products described in the Schedule.

### Hire Fee

in respect of a Product means the hire fee and cost of delivery for that Product specified in an invoice provided by the Supplier to the Customer from time to time.

### Related Body Corporate

has the meaning given to that term by section 9 *Corporations Act 2001* (Cth).

### Specification

means the specification provided to the Customer by the Supplier in respect of each Product (if any), as amended by the Supplier from time to time.

### Supplier

means Think Mobility Pty Ltd ACN 168 540 252.

### Supplier Mark

means any registered or unregistered trade mark owned by, licensed to or nominated by the Supplier from time to time.

### 12.2 Interpretation

In this deed:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) no rule of construction applies in the interpretation of this deed to the disadvantage of the party preparing the document on the basis that it put forward this document or any part of it; and
- (c) a reference to a party is a reference to the Supplier or the Customer, and a reference to the parties is a reference to both the Supplier and the Customer.