

1 DEFINITIONS:

In these Terms and Conditions;

<p>“Acceptance” means any written communication or documentation from the Customer including but not limited to signed electronic or original copy Rental, Sale or Service Agreements, emails, purchase order, letter or remittance advice, indicating the Customer’s intention to proceed with, or Acceptance of the Agreement.</p> <p>“Agreement” means a written accepted Rental, Sale or Service Contract Agreement between the Customer or permitted assigns and CSE-Comsource or permitted assigns. Agreement types are Rental, Sale, Service or any combination of the Agreement types as stated in the Agreement.</p> <p>“CSE-Comsource” means CSE-Comsource Pty Ltd, part of CSE Australia Pty Ltd.</p> <p>“Customer” means the Customer stated as the party entering into the Agreement, and if the Customer is a company it is inclusive of its successors or assigns, and if the Customer is a person or persons then it includes their heirs, executors, administrators and permitted assigns.</p> <p>“Defective” means Equipment that is not fit for purpose.</p> <p>“End Date” means the date after which the Agreement Term has ended or expired.</p> <p>“Equipment” means any Equipment or Equipment Accessories provided to the Customer inclusive of replacements for Equipment that is damaged, lost, stolen or defective.</p> <p>“Rental Agreement” means the Agreement to hire CSE Comsource owned Equipment.</p> <p>“Notice” means any notice required to be given by either Party may without prejudice to any other mode of Service be deemed to be duly given if made and received in writing.</p> <p>“Off Hire” means the Customer has returned all Rental and or Serviced Equipment to CSE-Comsource premises in accordance with the terms of the Agreement.</p> <p>“On Hire” means the Customer is liable for all Rental and or Serviced Equipment and any associated Rent until all Equipment is returned to CSE-Comsource premises.</p> <p>“Property” means the Customer or CSE-Comsource claims ownership of the Equipment.</p> <p>“Party or Parties” means Customer and CSE-Comsource as stated in the Agreement that have an interest in the Agreement.</p> <p>“Rate” means the monetary cost in exchange for Rental, Sale or Service provided.</p> <p>“Rent” means the cost of hiring the Equipment at the Rate stated in the Agreement.</p> <p>“Sale Agreement” means the Agreement for the owner to sell Equipment to the Customer.</p> <p>“Security Deposit” means the Security Deposit at a Rate stated in the Agreement required to be paid by the Customer CSE-Comsource for hire of the Equipment.</p> <p>“Service Agreement” means the Agreement for CSE-Comsource to provide Services to the Customer.</p>	<p>“Site” means the location or locations stated in the Agreement for Equipment to be installed in or used at.</p> <p>“Start Date” means the date the Agreement starts or commences. This is the date the Agreement Term starts.</p> <p>“Term” means the period of Equipment Rental or Service commencing on the Start Date and continuing up to and including the End Date.</p> <p>“Termination” means the nullification of the Agreement.</p> <p>“User or Users” means the person or persons using the Equipment.</p> <p>“Variation” means a Variation or change to the Agreement.</p>
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2 ENTIRE AGREEMENT

The Agreement contains the entire Agreement between the Parties with respect to the subject matter of the Agreement, and the Parties agree that the Agreement supersedes and prevails over any prior Agreement or understanding (if any) between the Parties. For the avoidance of doubt any Acceptance purchase order or other documentation originating from the Customer with the intention to incorporate the Customer’s standard terms and conditions or any other conditions other than those contained in this document shall not be binding and shall not form part of the Agreement.

3 TERM OF AGREEMENT

The Termination or expiration of the Term issued by the Customer shall not affect the Term of the Agreement nor shall it limit the Customer’s obligation to pay Rent for the period of the Agreement, subject to the terms and conditions herein.

4 NO AMENDMENT

No amendment or Variation of the Agreement shall bind the Parties unless it is made in writing, and signed by all parties and stated to add to or replace the whole or a part the Agreement.

5 COMMENCEMENT OF AGREEMENT

The Agreement commences upon CSE-Comsource’s receipt of Acceptance from the Customer.

6 EQUIPMENT AVAILABILITY

While CSE-Comsource will make every effort to ensure the Equipment is available to the Customer on the agreed date, in the event the Equipment is not available;

- a. CSE-Comsource shall not be liable for failure to supply the Equipment;
- b. CSE-Comsource shall have the right to Terminate the Agreement at any time prior to the delivery of the Equipment on the grounds of inability to supply the Equipment;
- c. the Customer shall not be entitled to any damages whatsoever.

7 FORCE MAJEURE DELAY

CSE-Comsource shall not be liable to refund or credit due to an event beyond CSE-Comsource’s control caused by, including but not limited to;

transportation charges, any loss, damage, delay, non-delivery, mis-delivery, failure to deliver, any act, default or omission of any courier or other party engaged to transport the Equipment, inadequate or incorrect markings or address on the Equipment, acts of God, perils of the air, weather conditions, mechanical delays, disruptions in air or ground transportation networks, acts of public enemies, quarantine, war, strikes or other labour disruptions, terrorism, riots or civil commotion, acts of public authorities (including customs or health officials) with actual or apparent authority, shipments requiring extraordinary handling, documentation or routing.

8 EXCLUSION OF LIABILITY

CSE-Comsource shall not be liable for any loss or damage (including liability in negligence) suffered by the Customer or any other person or corporation as a result of the Agreement, which shall include but shall not be limited to failure of the Equipment (whatever the cause), power failure, disruption or discontinuance of any communication service or any other service. The Customer indemnifies and shall keep indemnified CSE-Comsource, its employees, officers or agents against any liability or loss by

reason of any damage or loss to the Customer or any other person or corporation arising directly or indirectly out of or resulting from or caused by;

- a. the use, operation or failure of the Equipment (whatever the cause);
- b. any act, omission or negligence of the Customer, or it's assigns;
- c. failure by the Customer or CSE-Comsource to comply with any statute or legislation;
- d. delay, non-delivery, mis-delivery or failure to deliver the Equipment caused by events beyond CSE-Comsource's control.
- e. CSE-Comsource performing any Services within the scope of the Agreement.

9 NOTIFICATION

Any notice required to be given by one Party to the other Party under these Agreement terms and conditions herein may without prejudice to any other mode of service be deemed to be duly given if made and received in writing.

10 SEVERABILITY

If any provision or part of the Agreement terms and conditions herein shall be for any reason unlawful, invalid or un-enforceable, the offending provision or part shall be severed from the Agreement terms and conditions herein without affecting the validity or enforceability of the remainder of the Agreement terms and conditions herein.

11 WAIVER

Failure or delay on the part of CSE-Comsource to exercise any right, remedy, power or privilege to which it is entitled under the Agreement terms and conditions herein shall not operate as a waiver of such right, remedy, power or privilege.

12 WARRANTY

CSE-Comsource shall extend the same benefit of any warranty to the customer, as is provided by the manufacturer of the equipment.

13 RISK

The Customer shall be fully liable and responsible for Rental and or Serviced Equipment until it has been Off Hired. The Customer will continue to pay full Rent for all Equipment that is damaged, lost or stolen at the Rate and Term stated in the Agreement:

- a. notwithstanding the Equipment not being in the Customer's possession or in working order as a result of damage, loss or theft;
- b. until the Equipment repair has been completed to the satisfaction of CSE-Comsource;
- c. the Equipment has been replaced notwithstanding the expiration of the Term;
- d. until CSE-Comsource has received full payment for the replacement cost of the damaged, lost or stolen Equipment.

14 DEFECTIVE EQUIPMENT

If the Customer receives Defective Equipment from CSE-Comsource then the Customer;

- a. shall immediately advise CSE-Comsource by facsimile or email of the details of the Equipment defect;
- b. shall return any defective Equipment to CSE-Comsource at the Customer's expense;
- c. shall not permit any person not authorised by CSE-Comsource to repair or interfere with the Equipment with the only exception being battery replacement;
- d. is liable for the cost of subsequent repair if any repair is made necessary as a result of the actions of the Customer;
- e. shall not be entitled to any compensation from CSE-Comsource for any loss or damage resulting from Termination of the Agreement for the defective Equipment.

If CSE-Comsource receives returned Equipment from the Customer that is not defective as a result of any act or omission by the Customer then CSE-Comsource limited to and in its sole discretion either;

- a. exchange the defective Equipment for substitute Equipment that is subject to the same Agreement and terms and conditions herein as the defective Equipment;
- b. reserve the right to Terminate the Agreement for the defective Equipment at its discretion and refund the price;
- c. repair the defective Equipment and return it to the Customer at its expense;
- d. otherwise correct the defect for which written notice of the defect under the warranty is received by CSE-

Comsource within the applicable warranty period.

15 DAMAGED, LOST OR STOLEN EQUIPMENT

In the event of damage to Rental and or Serviced Equipment during the Term, the Customer shall:

- a. immediately advise CSE-Comsource by telephone, facsimile or email the full details of the damage and the way in which the damage was incurred;
- b. at the request of CSE-Comsource and at the Customer's expense, immediately arrange for the damaged Equipment to be returned to CSE-Comsource; continue to pay Rent for the duration of the Term until the damaged Equipment is returned to CSE-Comsource premises.

In the event of damage to Rental and or Serviced Equipment during the Term, CSE-Comsource shall:

- a. upon receipt of the returned damaged Equipment from the Customer, cease charges for Rent and Off Hire the damaged Equipment;
- b. arrange for the damaged Equipment to be repaired, or, at its discretion, replaced;
- c. the repair or replacement and return of the repaired or replaced Equipment to the Customer shall be at CSE-Comsource's expense, subject to Equipment Defects as stated in the terms and conditions herein.

In the event of loss or theft of Rental and or Serviced Equipment, the Customer shall:

- a. immediately report Equipment theft to the Police and promptly provide a copy of the report to CSE-Comsource;
- b. immediately provide CSE-Comsource with a written description outlining the circumstances and details of the Equipment loss or theft;
- c. continue to pay Rent for the duration of the Term until the replacement cost payment is received by CSE-Comsource for the lost or stolen Equipment.

In the event of loss or theft of Rental and or Serviced Equipment during the Term, upon receipt of the theft report and or written details of the loss, CSE-Comsource shall:

- a. arrange for replacement Equipment delivery to the Customer at the Customers expense.

16 CUSTOMER RESPONSIBILITIES

During the Term of and in accordance with the Rental and or Service Agreement the Customer agrees that it shall:

- a. be liable for all Rental Equipment that is stated in the Agreement until it is Off Hired;
- b. assume complete responsibility for control of the physical operation of the Equipment in accordance with the terms of Radio Communications Act 1992 Regulations and any other Act of Parliament or government regulation regulating the use of the Equipment;
- c. as soon as reasonably practicable after delivery of the Equipment, perform appropriate inspections to ensure that:
 - i. the correct Equipment and Equipment Accessories are included in the delivery as stated in the Agreement;
 - ii. any Equipment Accessories have been attached to the Equipment as stated in the Agreement;
 - iii. testing of the Equipment is done to determine the Equipment is not Defective and free of damage;
 - iv. the Equipment has been programmed with the correct frequencies, talk groups and channels;
 - v. the Equipment is prepared for the purpose as stated in this Agreement.
- d. not permit the Rental Equipment to be used:
 - i. by any person other than the Customer, and it's assigns; or
 - ii. by any person whom CSE-Comsource has advised is not authorised to use the Equipment.
- e. permit CSE-Comsource to inspect the Equipment upon reasonable request.
- f. not lease, hire or sub-let sell or otherwise dispose of the Equipment without the prior written consent of CSE-Comsource.
- g. at all times exercise due care towards the Equipment and take steps as are reasonably necessary to prevent damage to, destruction of, loss or theft of the Equipment;
- h. prior to use of the Equipment, provide all users of the Equipment, all instructional and safety documentation provided by CSE-Comsource.
- i. prior to use of the Equipment ensure that all users of the

Equipment are provided with training for the correct and proper use of the Equipment.

- j. ensure that the Equipment is not used outside the Project Location as stated in the Agreement;
- k. ensure that all users of the Equipment are aware of the channels, talk groups and frequencies they are authorised to use and of the location/s in which they are permitted to use the Equipment.
- l. take all reasonable steps to ensure that all users of the Equipment restrict use of the Equipment only to channels, talk groups and frequencies they are authorised to use.

17 PAYMENT TERMS

The payment is subject to the terms stated in the Rental, Sale or Service Agreement and CSE-Comsource's right to vary payment terms and are to be:

- a. for a period of one calendar month or more, the Customer shall pay Rent in monthly instalments in arrears for Rental, or Service Agreements; or
- b. for a period of less than one calendar month, the Customer shall pay Rent on the End Date of the Term for Rental and or Service Agreements.
- c. either Cash On Delivery (C.O.D) or on a Customer 30 day account as stated in the Sale Agreement.

18 RIGHT TO VARY PAYMENT TERMS

CSE-Comsource reserves its right to vary the frequency and timing for payment of Rent during the Term and may at any time advise the Customer that it:

- a. requires immediate payment of the total Rent payable during the Term; or
- b. requires Rent to be paid in monthly instalments in advance.

19 SECURITY DEPOSIT

If stated in the Agreement, the Customer shall pay any Security Deposit to CSE-Comsource prior to the Start Date. The Security Deposit shall be refunded to the Customer within 7 working days of the End Date, less any deduction required as stated in the Agreement and in accordance with the terms and conditions herein.

20 INTEREST ON UNPAID MONIES

The Customer shall pay interest at 18% per annum on any unpaid monies due to CSE-Comsource until such time the unpaid monies are paid in full.

21 INSURANCE

The Customer shall remain liable for any loss of Rent incurred by CSE-Comsource as a result of accidental damage, loss or theft of the Equipment. If the provision of an insurance policy is included in the Agreement and the policy premium is paid by the Customer, the Customer must comply as the insurer reasonably requests in connection with any claim, and CSE-Comsource shall provide the necessary insurance policy against damage, loss or theft for the Equipment only. The insurance policy is not inclusive of loss of Rent.

The Customer shall remain liable for any costs and any payment recovered from insurer to CSE-Comsource to replace or repair Equipment will not be forwarded to the Customer in the event of a claim if:

- a. any damage, loss or theft caused by reckless or negligent acts of the Customer, its assigns, or any person to whom the Equipment was made available by the Customer.
- b. a result of any negligent act or omission by the Customer, either in the care and handling of the Equipment, or assisting the insurer with the claim.

The insurance policy shall be subject to the insurer's excess to be paid by the Customer in the event of any claim. The Customer must pay this excess at the same time as the Customer gives notification to the insurer and CSE-Comsource of any claim. If the Customer does not pay this excess, then the Customer shall remain liable for the total value of the loss to CSE-Comsource, in addition to loss of Rent.

22 DEFAULT AND REMEDIES

CSE-Comsource may, in addition to any other remedies available to it at law, immediately Terminate the Agreement by notice in writing, if at any time after the Customer:

- a. fails to make any payment due under the Agreement;
- b. fails to comply with any other term or condition herein of the Agreement
- c. if a natural person becomes insolvent or bankrupt or is unable to pay his debts or makes an assignment for benefit of creditors or a bankruptcy reorganisation, or if a corporation is placed in liquidation, voluntary administration, or receivership or in either event if proceedings for relief under any bankruptcy or insolvency law for the benefit or debtors are instituted against the Customer or by the Customer on its own behalf or if a warrant of execution is issued by any person or corporation against the goods of the Customer or any goods of the Customer are otherwise seized on behalf of any creditor.

23 RETENTION OF EQUIPMENT AFTER AGREEMENT TERM

All Rental and or Service Equipment shall remain On Hire and the Customer remains liable for Rent for all Equipment Rented and or Serviced as stated in the Agreement until the Equipment is Off Hire, notwithstanding the Term. If the period:

- a. of retention of the Equipment or any part of it by the Customer continues beyond the End Date, either with or without the consent of CSE-Comsource, then the rights of CSE-Comsource under the Agreement, and the obligations of the Customer under the Agreement including the payment of Rent shall continue until the Equipment is Off Hire, notwithstanding the Term.
- b. The liabilities of the Customer shall continue as stated in the Agreement, notwithstanding the Term, unless otherwise Accepted between the parties, forming an Accepted Variation to the Agreement.

24 PROPERTY IN EQUIPMENT

The Customer acknowledges that Property in the Rental and or Serviced Equipment shall at all times remain with CSE-Comsource.

- a. In the event of Termination of the Agreement either by expiry of the Term or as stated in the Agreement, the Customer shall forthwith return the Equipment to CSE-Comsource in good functional order and condition.
- b. In the event of failure by the Customer to return the Equipment, CSE-Comsource may retake and hold possession of the Equipment without any other notice and may enter upon any premises where the Equipment or any part of it may be found to recover the Equipment using such force as may be reasonably necessary to do so, and repossess the Equipment without prejudice to any other remedy which CSE-Comsource possesses as stated in the Agreement and terms and conditions herein.
- c. In the event any costs are incurred by CSE-Comsource in the collection of the Equipment as a result of the default of the Customer shall be due and payable by the Customer to CSE-Comsource forthwith upon CSE-Comsource giving notice.

25 PREMATURE CANCELLATION

If the Customer returns the Rental and or Serviced Equipment to CSE-Comsource prior to the End Date, the Customer shall be immediately liable to pay the balance of Rent owing for the entire Term stated in the Agreement.