

Terms and Conditions

Interpretation

In these Terms and Conditions the following words have defined meanings:

Amount Due means the amount you must pay us on the Delivery Date;

Calculation Date means:

for early termination by you pursuant to clause 12, the date the Contract is terminated;
and

for termination by us because of a breach of the Contract by you, the date that the Goods are either returned by you or repossessed by us, or (if the Goods are neither returned or repossessed) reasonably deemed by us to be lost or damaged beyond repair;

Collection Fee is our fee current at the time an appointment is made for collection of the Goods from the Customer Address;

Charge Period is the period for which you must pay rent in advance and which is specified in your Lease Schedule;

Consumer Protection Legislation means the Competition and Consumer Act 2010 (Cth) including the Australian Consumer Law, the National Consumer Credit Protection Act 2009 (Cth) including the National Credit Code, the Australian Securities and Investments Commission Act 2001 (Cth), equivalent State or Territory legislation and successor legislation, and regulations made under any such legislation;

Contract means this Telechoice Phone Payment Plan Agreement comprising these Terms and Conditions and the Lease Schedule;

Customer Address is the address you specified in the Lease Schedule;

Delivery Date is the date on which we deliver the Goods to you and which is specified in your Lease Schedule;

Early Termination Fee is:

- (a) the lesser of 95% of the outstanding balance of the Total Rental Amount or six months' Rental Amount; and

our reasonable expenses in attempting to recover the Goods; and

Goods means any goods listed in the Lease Schedule, including any accessories, manuals and software;

GST is any goods and services tax, consumption tax or similar impost;

Lease Schedule is the document called Lease Schedule signed by you;

Lease Period is the period for which you have agreed to lease the Goods, as specified in the Lease Schedule, together with any additional days arising from any variation to your Payment Date;

Payment Date is the date by which you must pay each Rental Amount;

Rental Amount is the rental payment per Charge Period specified in the Lease Schedule;

Replacement Value is the amount reasonably determined by us from time to time as the cost of replacing the Goods with goods of comparable value, quality and features;

Service Provider means TeleChoice Pty Ltd

Telecommunications Services Contract means the contract between you and the Service Provider which forms part of the TeleChoice Payment Plan;

Terms and Conditions are the terms and conditions in this document;

Total Rental Amount is the total amount which you are obliged to pay during the Lease Period. We have specified the Total Rental Amount in the Lease Schedule;

we, us or **our** means Thorn Australia Pty Ltd ABN 63 008 454 439 Australian credit licence 383003, the lessor of the Goods; and

you means the Customer named in the Lease Schedule, the lessee of the Goods.

Unless the context indicates otherwise, in these Terms and Conditions:

headings and words in italics are for convenience only and do not form part of the Contract;

month means a calendar month; and

the singular includes the plural and vice versa and words importing a gender include any gender.

The Contract

The Contract comprises your Lease Schedule and these Terms and Conditions.

The Contract commences when you sign the Lease Schedule.

If you have signed the Lease Schedule with another Customer, you will all be liable to perform this Contract and we can enforce this Contract against each one of you or all of you together.

We have included in the Contract all the terms and conditions which expressly bind you and us. We have not included any terms implied by legislation.

Conditions, warranties and guarantees may be implied into the Contract by Consumer Protection Legislation. Your rights under Consumer

Protection Legislation are not taken away or reduced by anything in this Contract.

We do not exclude or restrict any liability that cannot be excluded or restricted by law including liability under Consumer Protection Legislation.

Apart from those implied by law and which are not permitted to be excluded, all implied terms, conditions and warranties (including those as to the condition, capacity, age, description, specifications, quality, fitness for purpose or safety of, or title to, the Goods) are excluded from this Contract and we make no representation and give no other warranty or undertaking in relation to any of these matters.

No employee or agent of ours is authorised to agree to add anything to or change this Contract or agree to an additional contract with you. This includes any condition or warranty in relation to the Goods not already included in this Contract or implied by Consumer Protection Legislation.

This Contract is part of the TeleChoice Payment Plan. The TeleChoice Payment Plan also includes the Telecommunications Services Contract. The Telecommunications Services Contract is a separate contract. Your obligations under this Contract continue even if the Service Provider does not provide services under the Telecommunications Services Contract. We are not responsible for providing any of the services to be provided under the Telecommunications Services Contract.

Your payment obligations

You must pay the Amount Due and the Total Rental Amount.

You must pay the Amount Due at the time of delivery of the Goods to you.

You must pay the Total Rental Amount by paying the Rental Amount no later than the Payment Date for each Charge Period until the end of the Lease Period if the Lease Period.

We may also require you to pay at the time of delivery a sum of money as a deposit or bond if this amount is specified in the Lease Schedule. Clauses later in these Terms and Conditions explain how this money is dealt with.

Your obligation to pay the Rental Amount no later than Payment Date for each Charge Period continues even if the Goods break down, are defective, damaged, under repair or otherwise not in your possession.

You are required to pay any fee or charge referred to in this Contract and any new fee or charge which we impose in accordance with our rights under this Contract.

The Payment Date for the first Charge Period is the Delivery Date. Subsequent Payment Dates are on the same day of each subsequent Charge Period. Where the Payment Date for a Charge Period would fall on a date that does not occur

in a particular month (ie because the Goods delivered were on the 29th, 30th or 31st of a month) then the Payment Date for that Charge Period is taken to be the last day in the relevant month.

Our right to receive payment

If you are overdue with your payment:

we may deduct the amount overdue from any money held by us as a deposit or bond;

we will be under no obligation to keep the Goods in good working order; and

we may terminate the Contract and re-take possession of the Goods.

Your obligations in relation to the Goods

You do not own the Goods.

You must ensure that the Goods are insured under your household contents insurance policy or another insurance policy for the Goods acceptable to us. If the Goods are not covered by such insurance you must indemnify us against any loss of, or damage to, the Goods.

You must provide us with reasonable access to:

recover the Goods; or

inspect the Goods to enable us to check the condition of the Goods, maintain the Goods in good condition and repair, and monitor your compliance with the Contract.

This Contract is for the purpose of allowing you to use the Goods either at the Customer Address or at other places, provided the Goods remain in your possession and control.

You must tell us within seven (7) days of our written request where the Goods are used or ordinarily kept and if the Goods are not in your possession, you must give us all the information that you have that might assist us to trace the Goods.

On the termination of the Contract for any reason or (but subject to clause 0) on the expiry of the Lease Period you must:

at your own expense, return the Goods to us, in the same condition (except for normal wear and tear) as the Goods were delivered to you; and

if the Goods are not in your possession, do everything you can to help us to locate the Goods.

Because you are not the owner of the Goods, you must not:

attempt to sell or give away the Goods;

deposit or pledge the Goods with or to someone else or otherwise use the Goods as security to borrow money or for any other reason; or

lend, lease or hire the Goods to any person without our consent.

You must immediately inform us and your insurer, where applicable, if the Goods are lost, stolen or damaged.

If you let any person have possession of the Goods without our consent:

you will be responsible for any damage to the Goods (including any costs of repair);

we may terminate the Contract; and

you must pay us the Replacement Value if the Goods cannot be recovered or are damaged beyond reasonable repair.

You give us a security interest in the Goods when you sign the Contract. You must do what we may reasonably request to preserve our security interest in the Goods and the priority of our security interest.

Liability for loss or damage

If the Goods are lost or stolen you must pay us the Replacement Value of the Goods.

Subject to clause 0, if the Goods are damaged or break down you must pay us the cost of their repair. If we decide that the Goods are beyond reasonable repair you must pay us the Replacement Value of the Goods.

If you have indicated in the Lease that you have insurance cover for the Goods, you must keep the insurance current during the Contract.

Our warranties and obligations in relation to the Goods

Subject to the provisions of clauses 0 and 0 we will keep the Goods in good working order during the Lease Period.

If we consider it necessary to do so, we may replace the Goods with goods which we believe are comparable in quality, features and performance unless it is not reasonably possible for us to do so. Any replacement goods will be deemed to be the Goods.

Our obligation to maintain the Goods in good working order does not apply if the Goods are damaged, rendered defective or not in good working order by reason of:

the use of unauthorised parts;

failure to provide a suitable physical environment;

unauthorised alterations and attachments;

repair or service not authorised by us;

tampering with or removal of any protective seal or mark;

act of God;

computer virus or any improper or illegal use, abuse or accident; or

your breach of any of the terms of the Contract.

Our obligation to maintain the Goods in good working order does not apply if:

you have failed to make a payment which has fallen due under the Contract; or

you do not comply with clause 0.

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

The person giving the warranties in this Contract is Thorn Australia Pty Ltd. Our business address is **PO Box 452 Regents Park NSW 2143**. Our telephone number is **1300 699 514** and our email address is **enquiries@thornfinance.com.au**.

To make a claim under a warranty you must provide notice before the applicable warranty period expires.

You can submit a claim by contacting TeleChoice on **1300TELECHOICE** or at any TeleChoice store.

You will bear any expense of claiming a warranty under this Contract.

The benefits to you given by the warranties are in addition to other rights and remedies you may have under a law in relation to the Goods.

We are only liable to you if we breach our obligations to you expressly stated in this Contract or implied by legislation.

This clause 0 does not affect your liability under clause 0.

Your right of early termination

In addition to your rights under clause 0, you have the right to terminate the Contract before the expiry of the Lease Period. We call this your right of early termination.

However, in order to exercise your right of early termination you must:

return the Goods to us or a person we nominate;

pay us as liquidated damages the Early Termination Fee; and

pay us the amount of any other money which you are liable to pay under the Contract.

The amount of any bond or deposit which you paid to us will be returned to you, after deduction of any amount then owed by you to us.

You may ask us to calculate the applicable Early Termination Fee without having to exercise your right of early termination.

Your rights and obligations on expiry of the Lease Period

The Contract is not an offer by us to sell the Goods to you and you have no right or obligation to purchase the Goods from us.

Your right to retain the Goods comes to an end on the expiry of the Lease Period and you must return the Goods to us unless:

you reach agreement with us for a new Lease Period at a mutually agreed rental; or

you make us an offer to purchase the Goods and we accept your offer.

If you would like to reach agreement with us for a new Lease Period you must give us reasonable notice of your decision prior to expiry of the Lease Period. We are not obliged to enter into any such agreement with you.

If you would like to make us a written offer to purchase the Goods, your offer must specify the price which you are willing to pay. We may choose not to accept your offer.

If you return the Goods to us, the amount of any bond or deposit which you paid to us will be returned to you, after deduction of any amount then owed by you to us.

If you make us a written offer to purchase the Goods and we accept your offer, the amount of any bond or deposit which you paid to us will be returned to you, after deduction of any amount then owed by you to us.

If we make an appointment with you to collect the Goods from the Customer Address on the expiry of the Lease Period or on termination of the Contract for any reason and you fail to keep the appointment, you must pay us the Collection Fee. This is in addition to any other amounts for which you must pay us.

On return or repossession of the Goods the Contract will be at an end and neither party will have any further obligations under it.

Breach of contract

You are in breach of the Contract if you:

do not comply with any provision of the Contract; or

become insolvent or bankrupt; or

do not keep the Goods insured; or

are in default under any other Contract you have entered into with us.

We will be in breach of the Contract if we do not comply with any obligation we have in the Contract, including any obligation implied by legislation into the Contract.

If you are in breach of the Contract:

we may be entitled to compensation;

we may also be entitled to terminate the Contract;

the Service Provider may cease to provide services to you under the Telecommunications Services Contract; and

if the Goods are a mobile phone, the Service Provider may deactivate the phone so that you are unable to use it.

Termination for breach of contract

If you breach the Contract we may terminate the Contract by giving you written notice of termination.

We may choose to give you an opportunity to remedy your breach. If you are given the opportunity to remedy your breach but do not do so to our reasonable satisfaction, we may terminate the Contract.

Unless we are in breach of a condition implied by legislation you must not terminate the Contract for breach by us without first giving us written notice of the breach which allows us a reasonable opportunity to remedy the breach.

Because any termination by you which does not comply with this clause will be a serious breach of contract, you should discuss the matter with us if you think that we have breached the Contract.

Your liability on termination by us

If we terminate the Contract under clause 0, or in reliance on any right of termination conferred by law, you must immediately return the Goods to us.

If you do not do so:

we will not enter any part of premises used for residential purposes for the purpose of taking possession of the Goods unless a court has authorised entry or after we have informed the occupier of their rights under the legislation and the occupier has given us consent in writing; and

we will give you thirty (30) days written notice of our intention to exercise a right under this Contract to take possession of the Goods.

However, we need not give you the notice under clause 0 if:

we believe on reasonable grounds that you have disposed of the Goods or intend to dispose of the Goods, contrary to the terms of this Contract;

we have made reasonable attempts to locate you without success;

you are insolvent; or

a court authorises us to do so.

In addition, you must pay the amount of each of the following to us:

any payments which have fallen due but remain unpaid including any Rental Amount which fell due for payment after the date of termination and prior to the Calculation Date;

as liquidated damages, the Early Termination Fee;

any other money which you are liable to pay under the Contract; and

any fees or other payments which we make or incur in connection with termination.

If you do not return the Goods to us, or the Goods have been lost or we determine that they have been damaged beyond reasonable repair you must pay to us the Replacement Value in addition to the Early Termination Fee.

The amount of any bond or deposit which you paid to us will be returned to you, after deduction of any amount then owed by you to us under this clause.

Our liability on your termination

If you validly terminate the Contract for breach of contract by us, and you have paid rental payments in advance, we must pay to you (after deduction of any amount then owed by you to us) a sum equal to the amount of:

unused rental payments; and/or

any bond or deposit.

The amount of unused rental payments will be calculated from the time you notify us of termination, provided that within a reasonable time:

you return the Goods to us, or

you make the Goods available for collection by us.

You must pay to us any other money which you are liable to pay under the Contract.

This clause does not apply if you exercise your right of early termination.

Transfer of rights

You are not entitled to transfer any of your rights or responsibilities under this Contract without first obtaining our written consent.

We may transfer any of our rights under this Contract without your consent. We cannot transfer our responsibilities without your consent.

Variation of contract

We may vary the Rental Amount at any time to reflect the net effect of any change in the rate of GST

applicable to the Contract or any supply made under it.

We may change the amount or frequency of payment of any fees and charges and impose new fees and charges at any time without your consent. We will tell you in writing if we do so. Such change or imposition of new fees and charges will be to the extent permitted by and subject to the requirements of any law.

We may also decide to increase or decrease the Rental Amount. If we decide to increase the Rental Amount for any reason other than your decision to change the Goods, you may terminate the Contract by:

returning the Goods to us in good operating order and condition (fair wear and tear excepted); and

paying all rental due up to the date of return of the Goods.

If you terminate the Contract, the amount of any bond or deposit which you paid to us will be returned to you, after deduction of any amount then owed by you to us.

We and you must agree in writing to any other variation to the Contract. This includes any supplementary Contract between you and us.

Delay in enforcement of rights

We are not obliged to exercise any right under the Contract within any particular time. Therefore, if we take time to consider our position you must not assume that we have decided not to exercise the right.

Similarly, if we choose on any occasion not to enforce any right under the Contract, you must not assume that we will not exercise other rights, or the same right on a future occasion.

Severability

If Consumer Protection Legislation would otherwise make a provision of this Contract illegal, void or unenforceable or a provision of this Contract would otherwise contravene a requirement of any Consumer Protection Legislation, this Contract is to be read as if that provision were varied (or omitted) to the extent necessary to comply with the provisions of the Consumer Protection legislation.

Software and data

You acknowledge that:

any software used with the Goods may be subject to copyright;

we are not the owner of the copyright of any such software;

your use of any such software is governed by a copyright licence from the owner of the copyright;

if you copy, modify or transfer the whole or any part of the software without the copyright owner's consent you may be in breach of copyright laws and liable to the copyright owner;

no statement, representation or warranty about the copyright owner or the software has been made by us except as expressly stated in this clause 0; and

we have no obligation to maintain or upgrade any software preloaded into the Goods.

You must:

comply at all times and in all respects with any copyright licence referred to above and advise us immediately if you become aware of any violation (or threatened violation) of the licence; and

provide such assistance as we may reasonably require in connection with any action which may be taken in relation to any breaches of the copyright owner's copyright.

You acknowledge that:

the Goods you are renting may be subsequently rented by us to another customer after the expiry of the Lease Period;

prior to the Goods being rented to another customer, we will use our best endeavours to erase, clean, delete and remove any of your personal information from the Goods;

we expressly advise you that there is a risk that some of your personal information may be undetected by us during those processes and remain stored on the Goods when rented to another customer, and as a result, a subsequent customer who rents the same Goods may have access to your personal information;

you accept the risk of your personal information remaining stored on the Goods and absolve us from responsibility or liability for any unauthorised access, use or disclosure by another customer of your personal information stored on the Goods; and

the provisions of this clause do not merge on expiry or termination of this Contract.

Allocation of payments

Payments received by us under this Contract may be applied by us to any amount you owe under this Contract in any order we determine.