

Cardy Communications Limited – Service Terms & Conditions

1. Customer's Obligations

1.1 The customer ("Customer") (being the customer of Cardy Communications Limited ("Cardy") under this Agreement will comply with all of the following obligations:

- (a) Pay all charges levied in connection with, and invoiced under, this Service Agreement by the 20th of the month following the date of invoice without deduction or set-off;
- (b) Operate all equipment used in connection with this Service Agreement ("equipment") in a proper manner having full regard to Cardy's recommendations for operation and use;
- (c) Not alter, add to or attach anything to the equipment or interfere with the equipment;
- (d) Not allow any repairs or other work to the equipment other than by Cardy;
- (e) Not assign this Agreement without written consent from Cardy;
- (f) Lodge a service call with Cardy whenever the equipment malfunctions;
- (g) To notify Cardy of any movement of the equipment to a different location;
- (h) Details of this Agreement must not be disclosed to a third party except where agreed or required by law or to pursue any debt under this Agreement. Both parties will take such precautions as may be necessary to maintain the strict confidentiality of the information provided in this Agreement;

1.2 Where the Customer fails to perform or comply with any of the material obligations outlined in clause 1.1 Cardy may terminate this Agreement by notice in writing to the Customer without prejudice to any other rights of Cardy, and charge the Customer a termination fee calculated under clause 5.

2. Cardy's Obligations

2.1 Subject to the other terms of this Agreement, Cardy shall during working hours (8.30am to 5.00pm Monday to Friday inclusive) but excluding public holidays and within a reasonable time after receipt of a request from the Customer, provide inspection and full maintenance services of the equipment, which shall include:

- (a) Should the Customer default on their payment obligations, Cardy, without prejudice to Cardy's rights and remedies may withhold service and support under this Service Agreement with the Customer. The Customer remains liable to pay Cardy for the service and support it would have received under the Service Agreement.

3. Service Not Covered

3.1 Cardy's obligations to provide inspection and full maintenance services of the equipment shall not cover:

- (a) Air conditioners, motor generators or other devices used for furnishing power to the equipment;
- (b) Damage to the equipment caused by faults and fluctuations in the power supply;
- (c) Replacement of the equipment;
- (d) Service or maintenance to any parts of the equipment which have been modified added to or altered without Cardy's consent;
- (e) On site service or maintenance to the equipment outside of a 50km radius of Cardy's service base;
- (f) Relocation or re-installation of the equipment;
- (g) Damage to the equipment due to misuse, abuse, incorrect operation, accident, neglect, lightning, water or fire damage, theft, transportation, removal and use of equipment away from the installation site, use or repairs by unauthorized personnel, any other cause or causes outside the ordinary use of the equipment;
- (h) Software related problems;
- (i) Problems directly caused by the Customer's network; and
- (j) Problems caused by The Customer's internet provider.

3.2 Cardy may at its discretion provide any services which are not covered by this Agreement at the request of the Customer (at Cardy's then-current rates or such rates as Cardy advises).

3.3 For equipment over 3 years old, major components deemed uneconomic to repair will not be covered under this Agreement. Cardy may immediately terminate the relevant machine and give upgrade options.

4. Cardy IT Support

Cardy's IT support is separate and additional to the Cardy Service Agreement. Cardy's IT support covers non-hardware related service calls for Cardy equipment. The IT support provides for up to two service calls per customer site per month. It does not cover application support such as Microsoft Office, it only covers Cardy equipment related software.

5. Term of Agreement

This Agreement is for a minimum term of thirty-six (36) months from date of commencement of the services, or the initial term of a Rental Agreement, whichever is the longer. Following this 36 month period the term of this Agreement will roll over for periods of twelve (12) months successively, unless cancelled in writing by either party. Notice of this cancellation is to be given no less than ninety (90) days prior to the end of any of the above periods. In the event you purport to cancel this Agreement or the provision of any service under this Agreement prior to the end of its term for any reason, then in addition to our other rights and remedies, a termination fee will be payable to us. If you continue to use our services in spite of termination of this Agreement, then notwithstanding anything else herein you will continue to be liable for all charges associated with the service until use of our services comes to an end.

6. Additional Service Charges

6.1 Cardy reserves the right to charge the Customer the following additional charges:

- (b) A fee for re-installation or relocation of the equipment;
- (c) A charge when Cardy personnel have been unable to obtain safe access to the equipment at the installation site;

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(d) An additional travelling charge equal to Cardy's usual call out rates for travel expenses, plus \$2.00 per kilometre, to repair any equipment beyond a 50km radius of Cardy's service base;

(e) A fee for reinstallation of software;

6.2 Cardy charges additional fees for:

(a) A collection cost for collection of equipment at the end of the contract term.

6.3 Cardy may increase the rates and fees in this clause 6 on each anniversary of the commencement date provided that any such increase is reasonable.

7. Service Charge Variation

Cardy may at its discretion vary service charges, acting reasonably;

8. Termination

(a) Cardy may terminate this Agreement at any time by giving 60 days' notice.

(b) Cardy may terminate this agreement immediately should the Customer:

I. Materially breach any term of this Agreement or any of the Cardy standard terms of trade.

II. Default on payment and not remedy that default within 14 days of being notified.

III. Go into liquidation, receivership, become insolvent or enter into an arrangement or composition with creditors.

IV. Change more than 50% of its ownership (from ownership as at commencement date).

(c) If the customer terminates the contract prematurely, the remaining monthly rental & average monthly spend to date, will be due immediately. For example, if the rental is \$150.00+GST per month and the average monthly usage is \$75.00+Gst per month, and there are 18 months remaining then the formula will be: $(150 + 75) \times 18 = \$4050.00 + \text{Gst}$

(d) Termination of this agreement will in no way release you from your obligations under any lease agreements with Cardy. Upon termination under this agreement the maintenance service on the machine will cease.

(e) At the expiration of this Agreement or upon the sooner determination of this Agreement, at sole discretion of the Cardy, the Customer will either, deliver up the Equipment at the Customer's expense to Cardy at such place as the Cardy may in writing reasonably direct, in good order, repair and condition, or Cardy will recover the equipment at a charge of \$500 plus GST per site. The costs of collection and delivery of the equipment shall be payable by the Customer to Cardy.

9. Limitation of Liability

To the fullest extent permissible under law, Cardy shall not be liable to the Customer for any loss of profits or any consequential indirect or special loss or damage or injury of any kind whatsoever suffered by the Customer arising directly or indirectly from any breach of Cardy's obligations arising under or in connection with this Agreement.

10. Default:

Cardy may charge interest at the rate of 2% per month, calculated on a daily basis on any amount under this Agreement which is not paid by its due date. The Customer indemnifies Cardy for all liability, loss, costs and expenses (including legal fees on a solicitor own client basis) resulting from any direct breach by the Customer of this Agreement including failure to make payment of amounts on their due date.

11. Consumers Guarantees Act:

The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires products and services from Cardy for the purposes of a business in terms of Section 2 and 43 of that Act.

12. Privacy Act 2020:

Your privacy is important to us. All information will be treated in accordance with the Privacy Act 2020. More details can be found at <https://cardycomm.co.nz/privacy-statement>

13. General

No waiver by Cardy of any default, breach or repudiation of this Agreement by the Customer shall affect the rights of Cardy in respect of any further or continuing default, breach or repudiation. If any provision contained in this Agreement is rendered void, invalid or unenforceable, then such provision shall be severed from this Agreement without affecting the remaining provisions. Any notice to be given by Cardy shall (without prejudice to any other method of giving notice) be deemed to have been given if delivered or placed in the post addressed to or transmitted by email to the Customer at the address of the Customer referred to in the schedule or the address of the Customer last known to Cardy.

14. Notices placed in the post addressed to the Customer as above shall be deemed to have been received on the fifth business day following such posting and notices transmitted to the Customer by email shall be deemed to have been received when sent (unless a transmission error notice is received by the sender).

15. This Agreement is governed by and is to be construed in accordance with the laws of New Zealand and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Courts of New Zealand.