

Kayell Australia TBYB Term and Conditions

1. Price and Quotes

1.1 The cost of our TBYB (Try Before You Buy) Service is calculated by reference to the TBYB Period and the TBYB Price for the relevant Equipment. Any relevant Additional Fees and other payments specified in this Agreement are additional.

1.2 Unless otherwise stated, all prices quoted or invoiced are inclusive of GST.

1.3 Quotes for our TBYB Service are valid for seven (7) days only.

1.4 An order by you for our TBYB Service may only and must be confirmed by you signing the Contract provided by us to you, and emailing a signed copy to tbyb@kayell.com.au

1.5 These 'Terms and Conditions for TBYB' and the Contract together make up the agreement between us for the TBYB Service ordered by you ('the Agreement') and takes precedence over any preceding Quotes and other terms and conditions not recorded or incorporated by express reference in the Agreement.

2. Payment

2.1 In consideration of us providing the TBYB Service to you, you agree to pay the following:

(a) The TBYB Fees which is calculated with reference to our 48hr rate for the TBYB Service for the relevant Equipment (including for any additional Equipment ordered by you after your order is placed and that we agree to include in your order).

(b) For each day following the TBYB Period that you have not returned the Equipment to us, the daily rate (50% of our 48hr TBYB rate) of the TBYB Fees for the relevant Equipment will apply and together with an administration fee of \$50 for the late return of the Equipment, is due and payable by you in addition to the initial TBYB Fees.

(c) The Usage Charge which is calculated at 10% of our standard undiscounted prices for the sale of the Equipment (as new) to our customers, which is a once off (non-refundable) payment for the ordinary wear and tear that the relevant Equipment might be or is subjected to during your TBYB Period.

(d) The Consumables Charge which is calculated based on any consumables supplied with the Equipment and used by you but not replaced before you return the Equipment to us (including without limitation consumables such as modelling lamps, batteries and globes).

(e) The Security Deposit which is a minimum of \$500 or such higher amount as specified in the Contract, which may be used by us when Equipment

- (i) remains unreturned by you for more than 24 hours after the return date (in which event the Security Deposit is forfeited by you and becomes non-refundable), or
- (ii) is damaged in excess of normal wear and tear or lost or stolen during your TBYB Period and the period until the Equipment is returned to our possession (in which event we may use the Security Deposit towards the repair or replacement of the relevant Equipment and will refund any remaining balance to you). If no such events have occurred, we will refund the Security Deposit to you in full.

(f) The Freight or Delivery Costs if incurred by us at your request.

2.2 Unless you have made prior written arrangements agreed with us for late return:

- (a) you agree to pay the additional TBYB Fees if Equipment is not returned to our possession on time (whether or not as a result of any delays in returning the Equipment by you or any third party or any unforeseen events); and
- (b) if you don't return Equipment within 24 hours after that time, we may consider the Equipment stolen and notify the police. In each case, additional TBYB Fees will continue to accrue until all TBYB Equipment is returned.

2.3 Unless you have made prior written arrangements agreed with us, each of the initial TBYB Fees, the Usage Charge, the Security Deposit and any Freight or Delivery Costs must be paid before the Equipment is collected or delivered, and in any event are due and payable from that time without deduction, withholding or set off for any reason.

2.4 Any Consumables Charge for which you are liable must be paid in addition to the TBYB Fees, Usage Charge, Security Deposit and any Freight and Delivery Costs, and is due and payable by you (as relevant):

- (a) on return of the Equipment to us and our inspection and assessment of what consumables require replacement; and
- (b) immediately upon us issuing you with a tax invoice (including for costs not assessed or not able to be assessed at that time).

2.5 By signing and providing us with the Contract you unconditionally and irrevocably authorise us to debit your nominated bank card with, and so obtaining payment of, any amounts due and payable by you to us under this Agreement, including the TBYB Fees, Usage Charge, Security Deposit, Consumables Charge and any Freight and Delivery Costs.

3. Identity Security

3.1 Either on placing your order or on pick up of Equipment (either by you or on your behalf), you or someone on your behalf must provide us with:

- (a) satisfactory photo identification (such as a current driver's licence or passport); and
 - (b) an authorised credit card for use as specified in this Agreement.
- (c) for individuals, we may also require utilities bills that match the address on your current driver's licence or photo identification.

No Equipment will be delivered (including into the possession of any agent or other third party) unless we have first received or shown identification and authorisation to our satisfaction.

4. Risk and Insurance

4.1 Unless otherwise agreed to by us in writing in the Contract:

- (a) it is your sole responsibility, and you are required, to effect and keep in place suitable insurance in respect of the loss, damage or theft of the Equipment and, if requested by us, must provide documentary evidence of such insurance prior to the delivery to, or pickup of any Equipment by you or on your behalf. Our failure to request such documentary evidence, or us putting in place or maintaining similar insurance for our own benefit or yours for any Equipment or not doing so at all, do not in any way limit your obligation to effect and maintain such insurance for the Equipment.
- (b) Kayell Australia Pty Limited should be included and named as joint insured under all such policies of insurance effected or maintained by you under 4.1(a)..

4.2 You remain solely liable for any adverse event that may occur, such as but not limited to theft, loss or damage caused to the Equipment by you, any third party (including any third-party carrier) or any unforeseen event, including but not limited to fire, flooding or inclement weather ('Adverse Event') whilst the Equipment is at your risk or in your possession or control.

4.3 Without in any way limiting your obligations and liability under 4.1 and 4.2 above, in the event that you have insufficient coverage regarding an Adverse Event under your insurance policy (provided such lack of coverage is not as a result of unlawful or illegal acts or omissions) and have provided us with written evidence from your insurer of the lack of insurance cover for the Adverse Event, you may inquire with us regarding the extent that our insurance might cover that part of the Adverse Event not covered by your insurance. If you have provided us with such written evidence and if we have maintained relevant insurance (which we in our sole discretion may elect to do or not to do), we will make a claim against our insurance policy for the uncovered amount. We will also inform you of all reports and other evidence our insurer requires in relation to the claim (which you must provide to us or our insurer) and whether our insurer has accepted or rejected the whole or part of such claim. Where our insurer has agreed to indemnify us for the claim (in full or in part) you will be liable for and must pay immediately upon our written demand, the amount of excess payable by us to our insurer regarding the claim. Upon making the excess payment to us, you may deduct from your liability to us for the repair or replacement of the Equipment the subject of the Adverse Event the amount of our insurer's payout to us regarding the claim (which we will notify you of once received).

4.3 You acknowledge and agree that:

- (a) our insurer may in their sole and absolute discretion accept or reject the claim in whole or in part for any reason (including without limitation, late or insufficient notice or lack of evidence) and that we have no liability in this regard;
- (b) our insurance policy may include a range of exclusions that may, without limitation, from time to time include exclusions for: intentional damage or loss; negligence or wilful damage; water damage; damage caused by electrical currents; damage caused by domestic or wild animals; theft or unattended or unlocked vehicle, accommodation, business premises or other site; or not using the Equipment in accordance with our directions or the directions of the

relevant manufacturer, damage caused by misuse, mechanical or electrical derangement, exposure to salt water, exposure to water, exposure to dust, sand or other fine particle, exposure to salt, sand or mud, damage arising from war, invasion, act of foreign enemy, hostilities, civil war, rebellion, revolution, insurrection or military or usurped power, destruction of or damage from ionising radiations or contamination by radioactivity, damage to two way radios, or electric globes, or confiscation by Customs or other authorities; and (c) as between us, you remain solely responsible and liable to us at all times for the costs of repair or replacement of any Equipment the subject of an Adverse Event (whether or not an insurance claim has been made), and as otherwise and elsewhere determined in the Agreement.

4.4 Nothing in the Agreement is intended as the provision of insurance, a loan or lease by us to you and each party is an independent contractor.

5. Property and Equipment

5.1 Risk of theft, loss or damage in the Equipment passes to you:

- (a) on you or someone on your behalf collecting the Equipment from us; or
- (b) (if we have agreed to deliver the Equipment to a nominated location and including if you are not at the location at the time of delivery) on the Equipment leaving our premises for delivery to an address nominated by you.

5.2 Apart from reasonable fair wear and tear, you must at your costs return the Equipment to us in the same condition as it left our premises, and you must do so either before the TBYB Period expires or immediately on termination of this Agreement (whichever occurs sooner).

5.3 Return of the equipment to us shall be subject to our TBYB Support Team inspection for missing or damaged items. We will inform you within a reasonable time period if our TBYB Support Team reveal missing or damaged items.

5.4 Risk in and possession of the Equipment does not pass to us until our TBYB Support Team have checked the returned Equipment and accepted it.

5.5 Delivery is at the time and date the Equipment leaves our premises notwithstanding any provision for transportation of the Equipment by us to you.

6. PPSA and Title

6.1 You acknowledge that this Agreement may create a security interest in the Equipment for the purposes of the Personal Property Securities Act 2009 (Cth) (the PPSA).

6.2 You consent to us effecting a registration of our security interest in the Equipment on the PPSR and that we may exercise any remedies we may have under the PPSA. You agree to provide all assistance required by us to facilitate registration on the PPSR and/or to enable us to exercise our rights in connection with that security interest.

6.3 You agree not to bail or create any charge, encumbrance, lien or security over the Equipment and to notify us immediately in any change of name or address.

6.4 To the extent permissible by law (including the PPSA), you waive and contract out of your rights under the PPSA in relation to our enforcement of our security

interest in the Equipment, and you may not, without our prior written consent, grant, register or create any security interest in the Equipment, or attempt to do so.

6.5 We retain and at no time do you obtain any right, title or interest in the Equipment under this Agreement, other than the right to use the Equipment in accordance with their ordinary use at your locations for the sole purpose of trying and assessing the Equipment for such uses. Without limiting the generality of 6.5, you may not lease, licence, resell or in any other way transfer or deal with any right, title or interest in the Equipment.

7. Use of the Equipment & Your Obligations

7.1 You must use and maintain the Equipment in accordance with our instructions and the instructions of the relevant manufacturers.

7.2 You must as soon as possible (but in no case outside 8 hours from pick-up or delivery) check that the Equipment matches your Order and is functioning correctly. Unless you notify us of any discrepancy or failure within that 8hour period in writing, you are deemed to have accepted the Order and the Equipment as accurate and operative. Any Equipment listed in the Order and not returned will be deemed lost and will incur Additional Fees for its replacement.

7.3 It is your responsibility to ensure that:

- (a) the Equipment you order is suitable to your needs;
- (b) you and all relevant agents, contractors, employees and volunteers have sufficient knowledge to operate the Equipment correctly (we will endeavour to supply instructional literature or video links when requested, however this cannot be guaranteed);
- (c) you comply and ensure that all your employees, agents, contractors and any volunteers comply with all relevant occupational health, safety and rehabilitation obligations and codes of practice relevant to the Equipment and its use;
- (d) all Equipment within your Order is supplied on pick-up or delivery and is functioning correctly following pick-up or delivery, including testing of all equipment;
- (e) you order adequate reserves of all consumables you may need;
- (f) you check with us as to which items (if any) in your Order are consumables;
- (g) you replace or pay us for the replacement of any consumables we supply before you return Equipment to us;
- (h) all spare bulbs and any failed original bulbs fitted to the Equipment are returned with all items of Equipment at the end of the TBYB Period (or the cost of each bulb will be added as an Additional Fee);
- (i) when using flashes or LED Lights not plugged into mains power, You agree to only use these with an 'inverter' generator the Company approves. You acknowledge that flashes and LED Lights used on non-approved generators can explode which may result in property damage and/or injury. Without limiting our rights and remedies in any other clause in the Agreement, if You use a non-approved generator, You are entirely liable for all injury, damage, losses and costs of repair which may arise.

(j) Equipment is properly cleaned before being returned to us (or an Additional Fee will be charged).

7.4 You must not modify the Equipment without our prior written consent.

7.5 If Equipment breaks down or fails during the TBYB Period, you must contact us as soon as possible and return it to us. Under no circumstances should you attempt to repair Equipment without our prior written consent.

7.6 Without limiting your other obligations in respect of the Equipment, you may not:

- (a) take any of the Equipment out of Australia without our prior written consent;
- (b) use the Equipment on any abnormal or hazardous assignments;
- (c) transport or use the Equipment in helicopters or light aircraft without our prior written consent; or
- (d) use the Equipment where it could be but is not limited to the following: affected by salt water, extremes of heat or cold, neglect due to lasers, pointing equipment directly at the sun causing sun damage, or atmospheric corrosion.

8. Your Liability

8.1 You are responsible for the care, safety and maintenance of the Equipment and for any damage to or loss of the Equipment until it is returned to us. You will guard the Equipment against theft, damage or loss until its return to us. You must notify us immediately of any damage to or theft or loss of the Equipment.

8.3 Without limiting our other rights and remedies, you are liable to us for

- (a) any losses arising from our security interest in the Equipment
- (b) any action taken by us to protect our security interest in the Equipment;
- (c) any costs incurred under Clause 11.5; and (d) any costs incurred by us (including for staff time) for cleaning, repair or replacement of Equipment.

8.2 You indemnify us and hold us harmless, including our officers, employees, agents and related companies (together, the Indemnified) against any and all liability, loss, damages claims, demands and/or expenses which any of the Indemnified may incur or suffer as a result of or in connection with your performance or non-performance of this Agreement including, without limitation,

- (a) any breach of this Agreement, or
- (b) any negligent act or omission, or
- (c) any unlawful act, by you or your officers, employees or agents, and including any indirect or consequential loss such as loss of revenue, profit or opportunity while Equipment is repaired.

8.3 You must provide any assistance and information and make any arrangements for us that are reasonably necessary for us to perform our obligations or to exercise our rights under this Agreement.

9. Our Obligations and Liability

9.1 To the maximum extent permitted by law, all implied terms, conditions, warranties, statements, assurances and representations in relation to the Equipment, the TBYB Service or arising from this Agreement are expressly excluded.

9.2 If any of the exclusions or limitations set out in this clause are declared unenforceable, illegal or void or if there has been a breach of a term, condition, warranty, statement or assurance which cannot be excluded by this Agreement, then, to the maximum extent permitted by law, our entire liability and your exclusive remedy is limited to, at our discretion, the replacement of the Equipment or the supply of equivalent Equipment.

9.3 To the maximum extent permitted by law, in no event will we (including our agents, employees or contractors) be liable for any indirect or consequential loss (even if we are aware of the possibility of such loss or if such loss was otherwise foreseeable), or any additional expenditure, lost management time, loss of revenue, profits, production, data, opportunity or goodwill; or business interruption under or in respect of this Agreement.

9.4 To the maximum extent permitted by law, our maximum cumulative liability under or in respect of this Agreement for all claims of whatever nature shall not exceed an amount greater than the fees and charges paid by you under the Agreement.

10. Cancellations

10.1 Subject to clause 10.2, you may cancel an order or part of an order by providing written notice to us prior to your provision to us of a signed Contract.

10.2 If you cancel the Agreement :

- (a) more than 48 hours prior to the TBYB Period, the TBYB Fees and other charges will not be payable;
- (b) between 48 and 24 hours prior to the TBYB Period – 50% of the TBYB Fees remains due and payable by you; and
- (c) less than 24 hours prior to the TBYB Period, the TBYB Fees remain due and payable in full by you.

11. Term and Termination

11.1 We may terminate your TBYB Service by notice in writing if you commit a breach of this Agreement and fail to remedy the breach within 24 hours of being required to do so by written notice.

11.2 This Agreement automatically terminates if you:

- (a) become insolvent or bankrupt or commit an act of bankruptcy or make an assignment for the benefit of a creditor;
- (b) enter into or resolve to enter into any agreement, composition or compromise with, or assignment for the benefit of, your creditors or any class of them (or threaten to do so) otherwise than for the purposes of an amalgamation or reconstruction;
- (c) go into "administration" or appoint or have a "liquidator" appointed as those terms are defined in the Corporations Act 2001; or
- (d) cease to carry on your day-to-day business activities.

11.3 Termination:

- (a) will not affect the parties' rights and obligations accrued prior to the date of termination (including under any indemnity provided by you) and, notwithstanding any such termination, each party will remain fully responsible and liable for all charges, expenses and costs incurred or earned as at the date of termination; and
- (b) will not affect any clauses of this Agreement which by their nature are designed to survive or operate in the event of the termination; and
- (c) will not prejudice the rights of either party in respect of any breach prior to termination.

11.4 We may without previous notice to you and without prejudice to any of our other rights (and including by our servants and agents) retake and resume possession of the Equipment and may enter your premises or any other place where the Equipment may be located if:

- (a) clause 11.2 applies;
- (b) you fail to pay the whole or any part of the TBYB Fees or any other charges for the Equipment when due;
- (c) you part with possession of the Equipment; or
- (d) this Agreement is otherwise terminated.

11.5 On termination (for whatever cause and without limiting any other of our rights and remedies), you must promptly return all Equipment to us and pay to us any costs we incur following termination to recover the Equipment.

11.6 If any fees and charges due and payable by you under the Agreement remain outstanding past their due date, we, without limiting our other rights and remedies, may take legal steps to collect such amounts from you and you agree to pay for such legal steps on a full indemnity basis.

12. Dictionary

12.1 Equipment means all equipment and accessories ordered by you, and including any batteries, battery chargers, memory cards, lens hoods, lens caps, filters, cables, bags, cleaning equipment, manuals, remote controls, peripherals and software.

12.2 TBYB Period means, unless this Agreement is terminated early, the period stated in the Order or from the day you take possession of the Equipment until the day the Equipment is returned (whichever is longer) but excludes transit time. For clarity:

- (a) from Monday to Friday a day is the 24hour period from the time the Equipment is booked for pick-up;
- (b) For pick-ups arranged for a Friday they must be returned by 9.30am the following Monday unless it's a public holiday.
- (c) for a weekend the period between 3.00 pm on a Friday afternoon and 9.30 am on the following Monday morning; and

12.3 PPSR means the Personal Property Security Register.

12.4 Company, us and we, means Kayell Australia Pty Limited (ABN 13 087 954 149) , including its successors and assigns.

12.5 You means the person named as the client in the Order, whether the Order is placed by you or on your behalf. You may also be referred to as the Customer

13. General

13.1 If any provision of this Agreement is held to be invalid or unenforceable for any reason, it will be severed and will not affect the remaining provisions of this Agreement.

13.2 You must not assign or in any other way transfer your rights or obligations under this Agreement without our prior written consent. We may assign our rights and novate our obligations under this Agreement to any other person without your consent.

13.3 The waiver or failure of either party to exercise any right provided for in this Agreement will not be deemed a waiver of any further right under this Agreement. Any waiver of our rights must be made in writing by an authorised representative.

13.4 Our records of acceptance of the Equipment by you or on your behalf is evidence of that Equipment being part of an Order.

13.5 You irrevocably appoint us your attorney for the purpose of doing all acts and things which under this Agreement are to be done by you or which we are authorised or empowered to do so as to give effect to this Agreement.

13.6 This Agreement is governed by and must be interpreted in accordance with the laws of New South Wales, Australia and the parties submit to the exclusive jurisdiction of the courts of that state.

13.7 This Agreement constitutes the entire agreement between the parties in relation to its subject matter and may not be varied except in writing and signed by authorised personnel of both parties.