

Terms & Conditions

Wi-Sky Pty Limited ABN: 47 604 954 163

Security Master License No: 000110864

1. Terms and Conditions Overview

These Terms and Conditions (“Terms”) describe the terms on which Wi-sky Pty Ltd (“Wi-sky”), provides you (the “Subscriber”) with Internet access through the carrier Field solutions group and associated service(s) (“Services”). The usage of any Wi-sky Services or the signing of any service agreement (the “Agreement”) with Wi-sky deems the Subscriber to have understood and agreed to these Terms. No variation of the provisions of this Agreement is permitted. If your application to Wi- sky is accepted, Wi-sky will provide you with access to the Internet subject to these Terms. The Terms described in this Agreement shall apply to the exclusion of any other terms and conditions whatsoever.

Wi-sky reserves the right to refuse applications for Service in our complete discretion. Words importing the singular include the plural and vice versa. If a word or phrase is defined cognate words and phrases have corresponding definitions. A reference to a person includes a firm, unincorporated association, corporation and a government or statutory body or authority. A reference to a person includes its legal personal representatives, successors and assigns. This or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties. Clause headings do not affect the interpretation of this document. You may not transfer, nor try to transfer the right to receive the Wi-sky Service or any other right under this agreement to anyone else without our consent. We may transfer any of our rights or obligations under this agreement by sending you a notice.

2. Wi-sky Broadband Internet Service Terms of Provision

Wi-sky agrees to supply the Subscriber with a Service that consists of a broadband connection to the Internet, and other associated services. The provision of this Service is subject to these Terms. The Service is not available in all areas. You may check the availability of the service by telephoning Wi- sky or checking our website at www.wi-sky.com.au.

The Service availability information at Wi-sky’s disposal may not always be accurate. An advice that the Service is available on the Subscribers telephone line or area may later be altered to advise that the Service is not available. Wi-sky reserves the right to inform the Subscriber of the non-availability of the Service to the Subscribers premises, even after informing the subscriber that the Service would be available.

3. Wireless Broadband Customer Equipment

Wi-sky offers a fixed wireless broadband service and these terms and conditions apply. Fixed Wireless subscribers will require a wireless modem (User Terminal) in order to be able to connect to the wireless Service.

This modem will be supplied and installation organised by Wi-sky on payment of the Installation fee and these Terms apply to the modem supplied by Wi-sky to the exclusion of any other terms and conditions. Minimum system requirements to install the modem for use on a PC are Pentium + Windows 2000 or above, 32MB RAM, or a spare Ethernet port.

The actual bandwidth rates you experience maybe less than the nominated rates since these rates are affected by many factors including but not limited to congestion, packet overhead, wireless conditions and distance from transmission towers.

On expressed agreement with the subscriber wi-sky may install extra wireless equipment to service other locations from the subscriber's location where applicable. This installation will require written permission from the subscriber before it can proceed.

4. Payment

You must pay your bill when it is due whether or not you authorized the use of the Service. For plans that have an over usage charge, the subscriber must pay the monthly fee and additional megabytes ("MB") rate set out in the Wi-sky rate card for the pricing plan which you nominate from the date on which we commence supplying the Service to you. For the purpose of additional MB charges a gigabyte ("GB") equals 1000 MB. You agree that usage reports are updated no later than 6 hours after the time of the usage.

You will pay for your actual usage of the service, whether or not usage reports have been made available to you. You will be deemed to have commenced using the Service from the date of activation of the subscriber account. On the commencement of the Service, you will be billed for a connection fee, pro-rata fee for the remainder of the month after the Service is provisioned, any additional Services you have requested, and for the next month's fee in advanced. Thereafter you will be billed monthly in advance.

You must continue to pay the charges for the Service even if:

- your computer is not working;
- you actively cease using the Service for any reason in circumstances where the Service is available for use; or
- the Service is unavailable, or has limited availability, for a period due to a Network or system outage.

All bills and invoices are due and payable immediately. The Subscriber may change the nominated pricing plan. Migrating to another plan does not shorten the term of the

agreement or terminate the agreement, which will continue to apply for the term. The Subscriber shall be liable for any applicable taxes on the charges (including, but not limited to, a Goods and Services Tax), even if a third party incurs the charges using your account. We reserve the right to suspend your Services if any charges remain outstanding for 30 days. You agree that if you have paid for the Service in advance and you stop using the Service for any reason, you are not entitled to any refund except to the extent that Wi-sky is required by law to give a refund. This does not limit Wi-sky's right to give a refund for any reason at its sole discretion.

If you choose to disconnect your Service while your account is still under contract, the payment of a disconnection fee which is the remaining value of the contract will apply. If you wish to relocate a fixed wireless Service, you will need to pay a reconnection fee which covers the cost of installation and reactivation of the service at your new location. All transactions are processed in Australian

Dollar AUD. Should a transaction fail to be processed on a credit card or by direct debit, for whatever reason, Wi-sky has the right to debit that card or account in a subsequent period to collect amounts owing from the subscriber.

5. Additional fees

Any additional charges we receive from a bank or other institution relating to a failed direct debit or credit card transaction will be re-charged to the subscriber. There is a 5% surcharge for paying by American Express card or Diners Club card and a 1% surcharge for paying by Mastercard or Visa card.

6. Shaping and Download Limits

Wi-sky offers speed shaping on certain selected Wireless Broadband access plans but plans that have unlimited data shaping does not apply. Shaping allows you to download even when you go over your monthly download quota at no extra cost. Speed is reduced to 64 kilo bits per second ("kbps") once the monthly download quota is reached.. Wi-sky maintains an Acceptable Use Policy, see 11 below, that govern the use of the Service. Wi-sky will only meter download usage but not upload usage, however, upload usage is governed by the Acceptable Use Policy. Wi-sky reserves the right to take action on subscribers that breach this policy.

7. Limit of Liability

While Wi-sky takes reasonable care and skill in providing broadband Services through Field solutions group, we do not warrant or guarantee that the Service will be continuous, error-free or that speed won't vary from time to time. The liability of Wi-sky in these circumstances is expressly limited to the price paid by you for the Services provided such claim is received by Wi-sky within 14 days of the date of a claim under this provision. Wi-sky shall not be liable to you or your servants agents or

representatives for any direct, indirect, incidental or consequential loss or damages of any nature however caused including but not limited to loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expenses and damage to equipment or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the provision of the Services.

You acknowledge and represent that these limit of liability provisions are fair and reasonable having regard to the nature of this Agreement. In particular, you acknowledge and represent to Wi-sky that, in respect of these Terms, Wi-sky is not in a position of relative bargaining superiority to you and Wi-sky has offered no inducement in entering into this Agreement. Wi-sky does not warrant that the manuals or any related documentation is free of errors and shall not be liable for any failure to perform its obligation under this agreement for any cause beyond its reasonable control including without limitation fire, flood, strikes, transportation delays, fuel and energy shortages and defaults of sub-contractors or suppliers to Wi-sky. Wi-sky makes no representations about the suitability of the Service for a particular purpose.

8. Service Level Guarantees

Wi-sky may from time to time offer a guarantee on the level of service provided to the subscriber, which may include rebates for outage periods. Unless a rebate is specifically agreed with the Subscriber in writing, the full invoice or bill remains payable by the Subscriber, regardless of the level of Service.

9. Refund Policy

If, within 7 days of purchasing your fixed wireless Service, you are experience an unsatisfactory level of Service, which is not related to an incorrect choice, change of mind or other reasons advanced by the Subscriber, and wish to cancel the Service Wi-sky will, subject to meeting the criteria below, refund in full the purchase price paid for the Service. This is only to be done within the 7-day “the cooling off period “from the date of purchasing the Service.

Additionally, all of the following criterion must be met for a refund of the installation charge to be issued:

- Failure of the Service to achieve 50% of the maximum speed during the cooling off period
- The Subscriber has returned the unit, which must be in its original packing material and it must be in its original undamaged condition, within 7 days of advising Wi-sky of the cancellation of the Service and All accessories, CD's, cables and anything else included have to be returned to Wi-sky.

Subscribers claiming a refund outside of the 7 day cooling off period will not be given any remuneration for installation charges or be given the option to get a refund for any hardware purchased from us. Subscribers under contract have the obligation to pay out the full price of the contract for refund claims outside of the 7day cooling off period. Please allow up to a maximum of 20 days for the refunds to be processed. Advertised plan speeds are the maximum possible speeds attained for that plan and at no point are they guaranteed. Failure to attain the highest possible speed is typically due to subscribers using their services in areas of poor reception. Wi-sky is unable to determine exact reception levels at any particular location and coverage maps are only an indication of coverage levels. For this reason, the 7-day cooling off period allows the Subscriber to test the Service in-situ to ensure acceptable levels of Service.

10. Contract Term

Wi-sky Service is delivered for the agreed contract term (month-to-month contract, 12 month contract or 24 month contract). If you have agreed to a 12 month or 24 month contract term, and choose to disconnect your service while the account is still under contract, a disconnection fee for the remaining value of the contract will apply. Contracts maybe entered into by the subscriber by either signing a contract agreement, or by agreeing to these terms and conditions on commencement of Service. Usage of the Service constitutes agreement to these terms and conditions. If you have agreed to a 12 month or a 24 month contract term, usage of the service constitutes agreement to pay the agreed fee for the duration of the contract term. If the Subscribers Wi-sky account is disabled for any reason, a reactivation fee of \$60 will apply. Unless either Wi-sky or the Subscriber terminates the account after expiry of the initial contract term, the account will continue to renew for rolling 30 day periods, and will continue to be provided subject to these Terms.

11. Acceptable Use Policy

The Subscriber warrants that they will not engage in conduct that could be construed by anyone in any location as constituting sending of spam. This includes sending or causing the sending of any unsolicited or unauthorized advertising, promotional materials, junk mail, bulk unsolicited email, mail bombing, chain letters, multiple newsgroup cross-posting, or other form of solicitation. The Subscriber warrants that they will not host any website or mail server when using Wi-sky's mobility wireless services which includes Unwired. The Subscriber warrants that they will not employ any identity disguising techniques in connection with spam, including relaying email via a third party's mail server without permission, hosting an open mail relay server, or employing similar techniques

12. Privacy

Information concerning the Subscriber will be held in a database. The database will contain the Subscriber's name, address, telephone numbers, bank account or credit card details, billing details, information relating to the provision and use of the Service, and information provided by you in connection with this agreement. This information may be used to enable Wi-sky to perform obligations to you under this agreement, including to provide the Service and to enable Wi-sky to ensure that you perform your obligations under this agreement. Wi-sky may obtain and use information concerning your to hide or obscure the source of an email. The Subscriber warrants that they will not host any content which infringes any copyright, trademark trade secret, patent or other property or other intellectual property rights of any third party unless the Subscriber is the owner of, or have the permission of the owner to post or transmit the content. The Subscriber warrants that they will not including knowingly host or transmit any content that contains any software viruses or any other computer code, files or programs designed to Interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment. The Subscriber warrants that they will not host or transmit any content the hosting or transmitting of which would be a contravention of any law of the Commonwealth of, or a State in, Australia, such as, for example, material of a pornographic nature. The Subscriber warrants that they will not engage in malicious activity against any host on the Internet, including defacing of websites without the permission of the website owner, obtaining (or attempting to obtain) unauthorized access to data by circumventing (or attempting to circumvent) security controls designed to prevent un-authorized access or interference with Service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system. Excessive usage contravenes the Acceptable Usage Policy. Excessive use is a continuing and unreasonably disproportionate use of the service when compared to other users or consistently significantly exceeding the download limit specified by your plan. Excessive usage of an "Unlimited" plan occurs when the level of download activity is significantly disproportionate to other "Unlimited" users. Wi-sky reserves the right to change the plan a subscriber is on if they contravene the Acceptable Use Policy. In this event, we will make reasonable efforts to contact you and advice of the amendment or change and we will allow you the option of terminating the Services without penalty. commercial activities and credit worthiness from a credit reporting agency or other business that reports on commercial credit worthiness to assess your application or to collect overdue payments.

13. Security Policy

When purchasing from Wi-sky, your financial details are passed through a secure server using the latest 128-bit SSL (secure sockets layer) encryption technology. 128- bit SSL encryption is approximated to take at least one trillion years to break, and is the industry standard. If you have any questions regarding our security policy, please contact our customer support centre support@Wi-sky.com.au.

14. Credit Terms and Default reporting

- i. In entering into a contract with Wi-sky, the subscriber acknowledges and consents to the terms and conditions in relation to the Privacy ACT of 1988 which allows Wi-sky access to consumer credit reporting to allow subscriber credit assessment.
- ii. The applicant allows Wi-sky to report to the credit-reporting agency any overdue amounts of more than 60 days and for which debt collection has started.
- iii. It is understood that payment is due seven days from the date of invoice. Should payment be defaulted then the total account becomes due and Wi-sky reserves the right to use the services of a debt collection agency or solicitor to collect debts and if necessary report the default to a credit reporting agency. The person making the application is the person to whom Wi-sky will look for payment

15. Technical Support

If you experience a problem with the Service or the broadband transmission facilities, you should report it to Wi-sky by telephone or email. Wi-sky will use reasonable efforts to rectify the problem as soon as possible. In order for Wi-sky to provide telephone support you must be in front of the computer which is connecting to the Internet when calling and have a computer with functioning software and hardware. Wi-sky support staff are not qualified to advise you on networking issues including but not limited to issues concerning your local area network (LAN), your local wireless network (WLAN), configuration of routers or switches. Advice provided by support staff is of a general nature only and further assistance from a suitably qualified person maybe required at your expense. Wi-sky does not warrant that support advice given will resolve all problems encountered. If you report a fault and we find there is no fault or the fault was not caused by us, we may charge you for any work we have done to try to find the fault or repair it in accordance with the rate card. If Wi- sky supplies a modem to you at the commencement of your agreement with us, we agree to service and maintain that modem to keep it free from defects in workmanship and materials, under normal use during the maintenance period. If this agreement is terminated for any reason before the end of the contract we will no longer provide maintenance services under this clause. Wi-sky will only supply service on the modem if we have supplied the modem to you and you have maintained the modem in accordance with the instructions we provide and you have not modified the equipment in any way. Any modem warranties will be voided in the case of any abuse, misuse, neglect, mishandling or misapplication, accident, improper maintenance or service, unusual hazards (including, but not limited to, exposure to excessive humidity, heat, cold, dust, food, liquids, magnetic or electromagnetic interference or incorrect power voltage), any electrical supply problems or failure to provide a suitable environment for the modem, or any natural disaster (including but not limited to floods, lightning and fire), acts of terrorism or any

other cause beyond our reasonable control. If we do not exercise or delay in exercising our rights under this Agreement, we will not be taken to have waived our rights. If asked, the Incumbent Carrier will also provide support, which will be provided at a charge. The procedure for billing for support given to you is via Wi-sky. Wi-sky will in turn bill you at a rate of \$120 per instance.

16. Suspension and Termination

Wi-sky may terminate the service or any contract, with a reasonable notice, in the event that any third party supplier is unable provide the network service or in the case of force majeure. Wi-sky reserves the right to terminate or suspend your account, at our sole discretion, in the event of any breach of these Terms by you or anyone using your account. Such termination or suspension may be without notice to you. Wi-sky may suspend your account for technical reasons and will attempt to provide notice to you if this is necessary. It may not be possible to provide notice to you of a suspension of your account due to technical reasons. Suspended accounts that are still under a fixed term contract continue to incur the contracted charge and therefore will continue to be invoiced until the end of the contract. Accounts that have been suspended for longer than one month are required to pay a reconnection fee of \$60. You can only terminate accounts if they are out of the contract period, or you pay the agreed termination fee. You must provide a minimum of 30 days notice in writing by email, letter or by fax if you wish to terminate your account. The 30 days is calculated from the day the notice is received by Wi-sky, including the day of receipt. The following contact details for cancellations must be used: email; support@Wi-sky.com.au, Post; "Bengarra", Coolac, NSW 2727. If your account is terminated for whatever reason you must pay any and all outstanding fees and charges immediately. Subscribers are advised that they should keep proof of notification after their contract has been terminated. In the case of any future billing dispute, they will be able to provide this proof of termination to Wi-sky. Wi-sky will not be in a position to offer refunds to subscribers who cannot provide proof of termination.

17. The Spam Act

We comply with the Spam Act 2003 (Cth). If we send you promotional emails, you will be able to respond asking us not to send you any more promotional emails. However all of our official communications with you will be by email, notice of upgrades and outages, invoices and so on. You agree as part of your acceptance of these Terms to our sending you emails for those and related purpose.

18. General

Wi-sky may amend or change these Terms by giving you reasonable notice, by email, through our website, or by other means. If any amendment or change is likely to have a detrimental impact on you, including any adverse economic impact, we will make

reasonable efforts to contact you and advise of the amendment or change and we will allow you the option of terminating the Services without penalty. Your continued use of the Service after the implementation of any amended Terms shall constitute acceptance of the new Terms. If a provision of these Terms is found to be void, voidable or unenforceable, it may be severed from the Terms without affecting the operation or the remainder of the Terms. The laws of New South Wales govern these Terms, and each party submits to the jurisdiction of the courts of that state. You agree that Wi-sky may modify or change any terms of these Terms including any fees, rates and charges from time to time at its sole discretion. It is your responsibility to check periodically these terms and conditions for modifications and changes and to comply with the terms and conditions in effect at all times. Your continued use of the Service after such a change is additional evidence of your acceptance of the variation. Notices regarding changes may also be provided under these Terms by email, post or facsimile, and can also be posted on the website. You acknowledge that you must regularly check your default email address as allocated by Wi-sky or, if you have arranged for emails sent to your default email address to be forwarded to an alternate email address, that alternate email address. It is the subscriber's responsibility to ensure that their default email is kept up-to-date. When Wi-sky elects to provide notices to you by email, you will be deemed to have received the email notification, in the absence of any evidence received by Wi-sky to the contrary. If you acquire the Wi-sky Service by signing an Agreement provided to you by a dealer, you acknowledge the dealer is acting as Wi-sky's agent only for the purpose of receiving the Agreement from you and providing it to Wi-sky. The dealer is not Wi-sky's agent for any other purpose or in any other capacity and the dealer does not provide the Service.