

TERMS AND CONDITIONS

1 BACKGROUND

- 1.1 These **Terms and Conditions** are entered into between Keyzee PTY LTD ABN 73 667 623 618 (**Keyzee, we, us, or our**) and you, together the **Parties** and each a **Party**.
- (a) You accept these Terms and Conditions on the earlier of:
 - (b) ticking a box indicating you accept the Terms and Conditions; or
 - (c) placing an Order using the Order Form.
- 1.2 Keyzee is a provider of Access Products and manages all aspects of Access Products replacement requests, on behalf of various property managers.
- 1.3 Keyzee agrees to provide the Services to you in accordance with these Terms and Conditions.
- 1.4 By agreeing to these Terms and Conditions or placing an Order, you warrant that you have the authority to enter into this transaction and agree that any Access Products provided pursuant to these Terms and Conditions will remain with the Property at the conclusion of any lease (if applicable).

2 ORDERS

- 2.1 You may make an Order by completing the Order Form, subject to your acceptance of these Terms and Conditions and Keyzee Privacy Policy.
- 2.2 The Manager will approve or decline an Order (**Approved Order**).
- 2.3 On receipt of an Approved Order, and subject to your compliance with these Terms and Conditions, Keyzee will provide the Services to you in accordance with the details of the Order or as otherwise agreed between Keyzee and you.

3 PROVISION OF GOODS AND SERVICES

3.1 Provision of Services

- (a) We will provide the Services in accordance with the Order and these Terms and Conditions, subject to your compliance with these Terms and Conditions.
- (b) You will provide such access and facilities to enable us to comply with our obligations to provide the Services without delay or disruption, and free from harm or injury.

3.2 Goods

- (a) We will arrange for the delivery of the Access Products to you at the Delivery Address within the time indicated in the Order Form or otherwise agreed with you, subject to your compliance with these Terms and Conditions. –
- (b) Anyone at the Delivery Address who receives the Access Products will be treated as authorised by you to receive the Access Products.
- (c) The Access Products will be deemed delivered when we deliver the Access Products to the Delivery Address.
- (d) Risk of the Access Products passes to you on delivery of the Access Products to the Delivery Address.
- (e) Upon risk in the Access Products passing to you, it is your responsibility to ensure that the Access Products are properly handled, maintained, stored, and protected.

- (f) We may, in our sole discretion, decide not to deliver the Access Products where we reasonably believe that the Access Products are likely to be stolen or damaged, or deem the Delivery Address to be unsafe for any reason. In this case, we will contact you to arrange alternative delivery options.
- (g) You are responsible for ensuring that you provide a sufficiently secure Delivery Address, and as such we exclude any and all liability for any loss, damage, or claim (including in negligence) suffered or incurred by you as a result of delivery of the Access Products to the Delivery Address.
- (h) If you request 'no signature required on delivery' when you place your Order:
 - (i) the Access Products will be deemed delivered to the Delivery Address when the third-party courier tracking status displays 'delivered' ('Deemed Delivery'); and
 - (ii) you agree that this selection is at your own risk, as Keyzee will not be liable to replace the Order once Deemed Delivery has occurred.

3.3 Delay

- (a) We will, as soon as practical, notify you of any actual or anticipated delay in respect of an Order.
- (b) If we are unable to provide the Access Products and/or Services within the agreed timeframe, we will (at our election):
 - (i) arrange another time with you; or
 - (ii) cancel the Order and refund any Price paid.

4 WARRANTIES AND OBLIGATIONS

- 4.1 You must do everything necessary to give Keyzee access to provide the Services at the Site, safely and securely, and agrees that any deficiency in the Services or Access Products as a result of your failure to do so will not constitute a breach of these Terms and Conditions by Keyzee, notwithstanding any other clause of these Terms and Conditions.
- 4.2 You agree that any Access Products provided pursuant to these Terms and Conditions will remain with the Property at the conclusion of any lease (if applicable).
- 4.3 For Access Products that are keys:
 - (a) Keyzee may require the 'key code' in order to provide the Services. You must provide us with the key code when requested, per our instructions, otherwise we cannot guarantee that the key will fit. We will not provide a refund or replacement if the key code was not provided when requested; and
 - (b) If you report that a key is not functioning and the issue is determined by a qualified locksmith to be the barrel, then you bear the cost of the locksmith to attend and repair the barrel.
- 4.4 Each Party continually warrants and represents to the other that:
 - (a) it is able to pay its debts as and when they fall due;
 - (b) it has all necessary rights, licenses, permits, and consents to perform its obligations under these Terms and Conditions and will comply with all applicable laws in doing so; and
 - (c) it will not do anything that may adversely affect the other Party's goodwill, brand, or reputation.
- 4.5 You warrant that:

- (a) You have all rights and authority to perform your obligations and provide the information to Keyzee in the Order Form, and that any such disclosure by you, or use of the information by Keyzee, will not violate or infringe upon the rights of any person; and
- (b) All information provided to Keyzee in the Order Form or otherwise is accurate, true and correct.

4.6 Keyzee will:

- (a) perform the Services in good faith and with due care and diligence; and
- (b) comply with all applicable laws in performing the Services.

5 PAYMENT

5.1 You must pay the Price to Keyzee without deduction or set off, in accordance with the Payment Terms.

5.2 Unless these Terms and Conditions state otherwise, each amount payable by a party under these Terms and Conditions in respect of a taxable supply by the other party is expressed as a GST inclusive amount.

5.3 Payment Terms

- (a) If, in relation to the Property, you are a tenant or owner, you must pay us the Price up-front via credit card upon submitting the Order.
- (b) If, in relation to the Property, you are an Agent, you must pay us the Price either in accordance with clause 5.3(a) above, or within 30 days of the date of the date of issue of a valid invoice, as directed by Keyzee.

5.4 Refunds and returns

- (a) In addition to your rights under the Australian Consumer Law, we will provide a refund or replacement for any Access Products that are defective or faulty.
- (b) If you believe the Access Products are defective or faulty or are otherwise not functioning, you must contact us within 14 days of Delivery.
- (c) Other than under clause 5.4(a) above, we do not provide refunds or returns for Access Products once an Order has been placed.

6 CONFIDENTIALITY & PRIVACY

6.1 Each Party agrees to keep the other Party's Confidential Information secret and safe, and not use it or disclose it to any person (or allow anyone else to do so) without the other Party's written consent, except to the extent necessary to: (a) comply with these Terms and Conditions; (b) obtain professional advice in relation to these Terms and Conditions; or (c) comply with applicable law, provided that the other Party is given reasonable notice of the required disclosure.

6.2 You warrant that you will:

- (a) comply with Privacy Laws;
- (b) obtain all required consents and make all the required disclosures and notifications to ensure that you have the right to use, collect, provide and disclose to Keyzee any Personal Information required for Keyzee to provide the Services and perform its obligations under these Terms and Conditions.

7 LIABILITY & INDEMNITY

7.1 You acknowledge that Keyzee relies on the information provided by you and the Manager in order to provide the Services and perform its obligations under these Terms and Conditions.

- 7.2 You acknowledge that some Access Products may only function as a part of a building-wide system, and you release Keyzee from all liability for any loss or damage you may suffer as a result of the malfunction of such a system.
- 7.3 You agree that Keyzee may deactivate the Access Product upon the direction of the Manager.
- 7.4 To the maximum extent permitted by law, Keyzee will not be liable for any loss, cost, damage, expense, or claim, suffered or incurred by you in connection with these Terms and Conditions.
- 7.5 You indemnify Keyzee and its Affiliates from and against any loss, cost, expense or damage (including legal costs on a full indemnity basis) which is suffered or incurred by a third party, Keyzee or its Affiliates as a result of:
- (a) any breach of these Terms and Conditions by you;
 - (b) injury, death, or property damage;
 - (c) fraud, wilful misconduct, or gross negligence; or
 - (d) any third-party action, claim, demand or proceedings instituted against Keyzee, including by the Manager or the owner's corporation, as a result of your acts or omissions.
- 7.6 In the event that clause 7.4 does not apply, Keyzee's maximum liability to you for any loss or damage however caused that you suffer or incur in connection with these Terms and Conditions is limited to (at Keyzee's sole discretion) a refund or replacement of the Access Products.
- 7.7 Neither party will be liable to the other party (whether in contract, tort, negligence, breach of statutory duty or otherwise) for any Consequential Loss suffered or incurred by the other party in connection with these Terms and Conditions.
- 7.8 Any of the terms of these Terms and Conditions which limit or exclude any term, condition or warranty, express or implied, or the liability of Keyzee will apply to the extent permitted by law and will not be construed as excluding, qualifying or limiting your statutory rights or remedies arising by virtue of the breach of any implied term of these Terms and Conditions where such exclusion, qualification or limitation would be prohibited by legislation.

8 GENERAL

8.1 Force Majeure Event

- (a) A party is not in breach these Terms and Conditions and will not be liable to the other party for a delay or failure to perform an obligation to the extent it results from a Force Majeure Event.
- (b) The party affected by the Force Majeure Event must notify the other party as soon as reasonably practicable and must take all reasonable steps to limit the effects of the Force Majeure.

8.2 **Entire agreement:** These Terms and Conditions encompasses the entire understanding and agreement between the parties as to the subject matter of these Terms and Conditions and supersedes all prior discussions or agreements.

8.3 **Governing Law & Jurisdiction:** These Terms and Conditions is governed by the laws of Victoria, Australia, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, Australia, and their courts of appeal.

8.4 **Assignment & Novation:** The Manager must not assign or novate its rights or obligations under these Terms and Conditions without the prior written consent of Keyzee. Keyzee may assign or novate its rights or obligations under these Terms and Conditions on notice to the Manager.

8.5 **Relationship of the parties:** Unless expressly stated otherwise these Terms and Conditions does not create a relationship of employment, trust, agency or partnership between the parties.

- 8.6 **Severability:** Each provision of these Terms and Conditions is to be read and construed as a separate and severable provision or part of these Terms and Conditions and if any provision is void or unenforceable then that provision will be severed, and the remainder will be read and construed as though the severable provision does not exist or apply.
- 8.7 **Subcontracting:** The Manager acknowledges and agrees that Keyzee may subcontract the performance of all or any part of its obligations under these Terms and Conditions.
- 8.8 **Variation:** An amendment or variation to these Terms and Conditions is not effective unless it is in writing and executed by the parties.
- 8.9 **No Waiver:** A right or obligation under these Terms and Conditions may only be waived in writing by the party granting the waiver and is only effective to the extent set out in the written waiver.
- 8.10 **Survival:** Any indemnity or obligation of confidence or any other term by its nature intended to survive termination under these Terms and Conditions continues after termination or expiry of these Terms and Conditions.

9 DEFINITIONS

Access Products means the goods ordered by you, which may include: keys, fobs, garage remotes.

Affiliates means directors, officers, employees, contractors, successors, and related entities and related body corporate, as defined in the *Corporations Act 2001* (Cth).

Agent means the real estate agent of the Property, authorised to act for the owner of the Property.

Confidential Information means the terms of these Terms and Conditions and all information of a confidential or sensitive nature (including Intellectual Property Rights), whether in writing or otherwise of or concerning a party or its Affiliates under, in contemplation of or in connection with the Services, or these Terms and Conditions. Confidential Information will not include any information that is in the public domain, or is intended to come into the public domain through the performance of these Terms and Conditions (other than through breach of Agreement).

Consequential Loss means any indirect, special or consequential loss (being a loss that does not arise naturally, that is, according to the ordinary course of things, whether or not the parties were aware of the possibility of such loss), or any loss of revenues, loss of reputation, loss of profits, loss of bargain, loss of actual or anticipated savings, theft, loss or corruption of data, cyber security breaches, loss arising out of any business decisions made as a consequence of using the Keyzee Software or lost opportunities (including opportunities to enter into arrangements with third parties).

Delivery Address means the address you have specified in the Order Form for delivery of any Access Products.

Force Majeure Event means an event that is outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps including an act of God, natural disaster or extreme weather event including earthquake, cyclone, fire, flood, landslide, lightning, storm, drought; war (declared or undeclared), invasion, act of a foreign enemy, act of terrorism, hostilities between nations, civil insurrection or militarily usurped power, act of public enemy, sabotage, malicious damage, terrorism or civil unrest, confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority or industrial action, disruption or unavailability of the internet, strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors, failure of any systems or Keyzee's third party service provider to provide services, including hosting services but excluding a state of emergency declaration made by a Government, an act of Governmental Authority, an epidemic; or a global or national pandemic.

GST means goods and services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property Rights means all present and future rights, whether registered or unregistered or recorded or unrecorded, in or in relation to any copyright; design, patent, trademark, semiconductor, or circuit layout rights (whether or not continued, registered, abandoned or withdrawn); trade, business, company or domain name; and know-how, inventions, processes, confidential information (whether in writing or recorded in any form), database rights or software, and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields.

Keyzee Privacy Policy means the privacy policy referred to in the order on the Manager's website.

Manager means the manager of the building in which the Property is located.

Payment Terms means the terms set out in clause 5.3.

Personal Information has the meaning given to it in the Privacy Act.

Price means the price of the Services payable to Keyzee, as set out in the Order.

Privacy Act means the *Privacy Act 1988* (Cth).

Property means the premises to which the Access Products provide access.

Order means an order for the Services by you through the Order Form.

Order Form means the form available on the Manager's website or elsewhere, through which you placed an Order for the Services or Access Products.