

1. TERM AND ACCEPTANCE

- 1.1 This Agreement commences on the Effective Date and will remain in full force and effect until the expiry or termination of this Agreement in accordance with these Terms.
- 1.2 By placing an order for Equipment with the Supplier, you acknowledge that you have read, understood and agree to be bound by these Terms.
- 1.3 No trial period will be made available or offered under this Agreement (or in relation to the Equipment) in any circumstances.

2. CONNECTIONS TO BE SUPPLIED BY THE CUSTOMER

At all times during the Term, the Customer must supply, manage and maintain (at the Customer's own cost):

- (a) a working internet connection at the property where the Equipment is located;
- (b) 2 LAN ports for each point of sale location;
- (c) 1 LAN port for each printer location; and
- (d) 1 LAN port for each access point location.

3. FEES

- 3.1 The Customer will pay the Fees and any Purchase Price for the Equipment in accordance with this Agreement.
- 3.2 The Purchase Price becomes payable from the date of delivery of the Equipment to the Customer.
- 3.3 The Supplier reserves the right to modify the Fees (or any minimum transaction volumes associated with the Fees) by giving thirty (30) days written notice to the Customer (but recognising that the Customer has a right to terminate this Agreement under clause 21.5 in these circumstances). If the Customer has signed up to the Online Deal, the EFTPOS Deal or any other deal package offered by the Supplier that has a minimum term (Deal Minimum Term), the Supplier will not modify the Fees associated with that deal package during the minimum term that applies to that deal package.
- 3.4 The Customer also agrees to pay:
 - (a) repayments for any Equipment purchased under the Rent-to-Buy option (described below);
 - (b) other charges specified in accordance with this Agreement, including but not limited to charges for optional services (if any);
 - (c) for any loss of, damage to, or costs of repair to the Equipment arising from the Customer's acts or omissions;
 - (d) for any loss of use of the Equipment, or diminution of the Equipment value, caused by the Customer's acts or omissions; and
 - (e) all expenses the Supplier incurs due to the Customer's failure to return the Equipment when required to do so under this Agreement, including but not limited to:
 - (i) costs in locating and recovering the Equipment;
 - (ii) all costs incurred to collect unpaid monies due; and
 - (iii) any applicable taxes.
- 3.5 The Customer is not entitled to a refund by the Supplier for any Equipment not used during the Term of this Agreement.
- 3.6 The Customer acknowledges and agrees that in the event that three (3) payments are missed by the Customer (whether concurrently or not), when they fall due and payable, the Customer will be in default under this Agreement, the Supplier reserves the right to terminate this Agreement immediately and the Customer will be liable for any remaining payments that would have been due and payable under the relevant minimum term.
- 3.7 All monetary amounts referred to in this Agreement are in Australian dollars.
- 3.8 Ongoing fees commence on the date the Customer first begins using the Equipment and/or Software, or 1 month

after this Agreement is signed, whichever comes first.

- 3.9 If the equipment and/or software is supplied under Deal conditions detailed in the sections below, the Customer acknowledges that should they wish to sell or close their business before any Deal Minimum Term has expired, this will be deemed a termination and the Customer will be liable for all minimum weekly payments which would otherwise have been payable to the Supplier during the balance of the Deal Minimum Term, unless the Customer successfully causes a new operator of the business to enter into an Agreement with the Supplier with a minimum term at least equal to the balance of the Deal Minimum Term.

4. AI-PAY

- 4.1 The Customer acknowledges and agrees that the Supplier uses the services of various third-party payment gateway providers including Stripe, Windcave, TillPayments and Fiserv (**Gateway Providers**) in conjunction with the Software. The Customer agrees that the Gateway Providers will accept payments on the Customer's behalf, deduct any Ai-Pay Fees and other debts that are due and payable by the Customer, and remit the remaining funds to the Customer's elected bank account.
- 4.2 The Customer acknowledges and agrees that transactions will be subject to the terms and conditions of the relevant Gateway Provider, and the Customer agrees to be bound by such terms and conditions to the extent applicable.
- 4.3 The Customer acknowledges and agrees that the Supplier will not be liable for any delays in remittance of funds to the Customer by a Gateway Provider for any reason whatsoever or for any errors made by a Gateway Provider.
- 4.4 The Customer acknowledges and agrees that the Supplier may receive rebates or commissions from a Gateway Provider in relation to transactions processed through the Customer's account with the Gateway Provider.
- 4.5 The Customer acknowledges that, in the event of any payment dispute resulting in a chargeback, the Supplier is authorised to directly debit from the Customer's account, an amount equivalent to the disputed amount together with the Chargeback Fee. If the dispute is successfully resolved in favour of the Customer, the Supplier agrees to release the disputed amount back to the Customer.
- 4.6 The Customer agrees that, in the event the Supplier incurs any fees relating to any third party transactions using the Ai-Pay payment software, the Supplier shall on-charge them to the Customer and the Customer will be liable for such payments, including any payable Ai-Pay Refund Fees.
- 4.7 The Customer acknowledges that the Supplier will use its best endeavours to support Apple Pay and Google Pay, but does not guarantee these services will be available and the Supplier cannot be held liable for any such unavailability.
- 4.8 The Customer acknowledges and agrees that:
 - (a) if EFTPOS machine(s) are provided free of charge to the Customer, a minimum transaction volume of \$5,000 per week (inc GST) must be met through each EFTPOS machine provided. Where that minimum transaction volume is not attained in any week, a \$15 (ex GST) fee will be payable by the Customer for each such EFTPOS machine for the applicable week; and
 - (b) where any Software is provided free of charge to the Customer, a minimum transaction volume of \$10,000 per week (inc GST) must be met through each EFTPOS machine provided. Where that minimum transaction volume is not attained in any week, the standard fees for the relevant Software will be charged to the Customer for the applicable week (as listed in the definition of "Software" in clause 31 (and subject to any changes to those standard fees notified under clause 3.3 from time to time)).

5. EFTPOS DEAL

- 5.1 If the Customer elects to sign up for the “**EFTPOS DEAL**”, then the Customer will be entitled to receive certain hardware as specified in the relevant quotation at a discounted rate.
- 5.2 From receiving the hardware under the EFTPOS Deal, the Customer must use that POS machine for a minimum period of 52 weeks (Deal Minimum Term) unless explicitly specified otherwise, during which time the Supplier will charge the Customer:
- (a) Ai-Pay Fees for transactions processed using that POS machine;
 - (b) 1.5% (ex GST) for EFTPOS transactions processed using that POS machine (or any higher percentage notified to the Customer at the time that they sign up for the EFTPOS Deal) and using a Gateway Provider nominated by the Supplier; and
 - (c) \$30 (ex GST) per week for any week where there is less than \$10,000 (inc GST) of payments transacted through that POS machine (rather than the amount contemplated by clause 4.8(a)).
- 5.3 If this Agreement terminates before the end of the Deal Minimum Term, then the Customer must pay the Supplier:
- (a) \$30 (ex GST) for each remaining week of the Deal Minimum Term;
 - (b) \$10 (ex GST) Ai-Server Fee for each remaining week of the Deal Minimum Term;
 - (c) \$15 (ex GST) per EFTPOS machine for each week between termination of this Agreement and the date when that POS machine is returned by the Customer to the Supplier or a partner nominated by the Supplier.
- 5.4 If the Customer has signed up for the EFTPOS Deal but does not exclusively receive EFTPOS payments through that POS machine at the Customer's premises for the duration of the Deal Minimum Term (other than during the first month of the Deal Minimum Term) using the Gateway Provider nominated by the Supplier, then the Supplier may at any time charge the Customer a fee for the associated hardware and installation costs of \$1,800 (ex GST).

6. ONLINE DEAL

- 6.1 If the Customer elects to sign up for the “**ONLINE DEAL**”, they acknowledge and agree that unless explicitly specified otherwise in the Ai-Dine or Ai-Online product details section of the product list, the deal is for a minimum term of one (1) year, or 52 weekly payments at a minimum of \$30 per week (Deal Minimum Term).
- 6.2 If the Customer wishes to terminate the Online Deal before the Deal Minimum Term has expired, they will remain liable for any outstanding debts that would have been due and payable during the Deal Minimum Term. For the avoidance of doubt, the Customer agrees that they will be liable for all weekly payments which would otherwise have been payable to the Supplier during the balance of the Deal Minimum Term, which shall become payable as a liquidated debt to the Supplier immediately upon termination by the Customer.

7. EQUIPMENT

- 7.1 For each item of Equipment, the Customer may elect to:
- (a) purchase the Equipment outright by paying the Purchase Price at the commencement of the Agreement;
 - (b) rent the Equipment during the Term by the payment of a recurring rental payment as part of the Purchase Price, with an obligation to return the Equipment at the end of the Term; or
 - (c) rent the Equipment during the Term by the payment of a recurring rental payment as part of the Purchase Price, with ownership of that Equipment transferring

from the Supplier to the Customer at the end of the Term (in circumstances where the Customer has paid all debts due and payable to the Supplier).

- 7.2 The Customer must make an election from the above 7.1(a) - 7.1(c) for each item of Equipment on the relevant Registration Form.
- 7.3 If the Customer signs up for the Online Deal or the Eftpos Deal, then no election will be required under clause 7.2. Ownership of any Equipment supplied under the Online Deal or the Eftpos Deal will transfer to the Customer once the Customer has paid all required amounts that become due and payable to the Supplier during the Deal Minimum Term (as applicable) or, in relation to the EFTPOS Deal, the Customer makes the payment contemplated by clause 5.4.

8. SOFTWARE

- 8.1 The Supplier grants the Customer the Software Licence for the Term. The Software must be used only on the Equipment provided by the Supplier. The Software Licence will terminate at the end of the Term.
- 8.2 The Customer acknowledges and agrees that all title and interest in the Software (including any modifications, customizations, configurations and derivative works) and all Software Documentation is the exclusive property of the Supplier. The Software Licence does not grant the Customer any ownership rights in the Software and/or Software Documentation. Nothing in this Agreement affects the ownership of moral rights in the Software and/or the Software Documentation.
- 8.3 Without seeking to exclude or limit the application of sections 47B(3), 47C, 47D, 47E or 47F of the Copyright Act in any way, the Customer must not reproduce, reverse assemble or reverse compile the Software or any part of the Software, in whole or in part.
- 8.4 The Customer must maintain records of all copies or installations of the Software made by it or made on its behalf and record the place at which those copies or installations are located. If requested by the Supplier, such records must be provided to the Supplier. The Customer must notify the Supplier immediately on becoming aware of any unauthorised use, copy or installation of the whole or any part of the Software.
- 8.5 Immediately upon expiry of the Term, the Customer must, at the Supplier's option, deliver up to the Supplier or destroy the Software (including all copies, authorised or otherwise), and the Software Documentation and delete the Software from any Equipment on which the Software has been installed.
- 8.6 The Customer must not copy the Software Documentation except where it is absolutely necessary to enable the proper use of the Software in the manner reasonably contemplated by the parties.
- 8.7 The Customer acknowledges that if, after entering into this Agreement, the Customer commences using any new or additional Software, then the Customer's use of that Software will also be subject to these Terms and the Customer will be liable for further fees as applicable to that Software, as set out in the relevant definition in clause 31.
- 8.8 Should the Customer wish to use the Ai-Connect Software to connect to third-party systems, such connection will be subject to the Supplier's absolute discretion and the Supplier may refuse or discontinue such connection at any time whatsoever without notice or explanation to the Customer.
- 8.9 Should the Customer wish to connect the Software to any third-party online, QR or app based dining ordering platforms, this shall be subject to the Supplier's prior written consent. Such consent may be withheld or revoked at any time whatsoever at the Supplier's discretion.

9. UPGRADES AND MODIFICATIONS

- 9.1 The Supplier may, in its absolute discretion, provide the Customer with upgrades to the Software from time to time.
- 9.2 If the Customer requires any modification of the Software, that proposed modifications must only be made if first approved by the Supplier in writing. The Customer must fully indemnify and hold harmless the Supplier against any liability incurred if any such modifications infringe the intellectual property rights of a third person. All intellectual property rights in the Software as modified will automatically vest in the Supplier.
- 9.3 The Supplier will make every effort to ensure that the Customer's menu is set up according to instructions, however the Customer acknowledges that the Supplier does not guarantee that the menu set up service will be exactly as the Customer would desire but rather that it will be set up to a reasonable standard.

10. INSTALLATION.

- 10.1 The Supplier will provide to the Customer any services or support reasonably required in respect of the initial configuration of the Equipment. Any modifications to the Software (including configuration) after the Installation Date are the sole responsibility of the Customer. The Customer may request that the Supplier attend the Customer's premises for the purpose of implementing changes to the Software configuration. Any such work performed by the Supplier will be billed at the Supplier's then prevailing call out rate, and any travel time will be billed at the rate of \$50.00 per hour (ex GST).

11. TECHNICAL SUPPORT

- 11.1 During the Term of this Agreement, if requested by the Customer, the Supplier will provide reasonable levels of technical support in relation to the Software and Equipment. The Supplier will provide technical support in a manner it deems most appropriate. If the Customer requires a physical callout, the Supplier will endeavour to send a technician to the Customer's registered address within a reasonable time period and will charge the Customer a call out rate of \$100.00 / hour (ex GST) with an additional hourly charge rate of \$50.00 per travel hour (ex GST).

12. RISK AND TITLE

- 12.1 The risk of loss or damage to the Software, Software Documentation, and/or Equipment, passes to the Customer upon delivery to the Customer.
- 12.2 Title in Purchased Equipment passes from the Supplier to the Customer once the Supplier has received the full Purchase Price for that Equipment.
- 12.3 Title in Rent-to-Buy Equipment passes from the Supplier to the Customer once the Supplier has received all required payments for the Purchase Price payable for the Term and title to any Equipment supplied as part of the Online Deal or the EFTPOS Deal passes to the Customer in accordance with clause 7.3.
- 12.4 Title in Rental Equipment remains with the Supplier at all times.

13. LOCATION OF RENTED EQUIPMENT

- 13.1 During the Term, the Customer must ensure that any Rented Equipment is kept at the Customer's business address as specified in the Registration Form.

14. CARE OF RENTED EQUIPMENT

- 14.1 All Rented Equipment must be used in a careful and proper manner and in strict accordance with the instructions or manuals provided by the Supplier. Maintenance of all Equipment is the sole responsibility of the Customer.

15. RETENTION OF TITLE AND PPSR

- 15.1 The Equipment supplied to the Customer will remain the Supplier's property and will not pass to the Customer until the Purchase Price for that Equipment (and any other money owing by the Customer to the Supplier) has been

fully paid (other than in relation to Rental Equipment, which will remain the property of the Supplier at all times).

- 15.2 The Customer shall, at the Supplier's request, assist in taking any measures necessary to protect the Supplier's title in the Equipment supplied.
- 15.3 The Customer shall immediately notify the Supplier in the event the Equipment is levied, has a lien attached or is threatened with seizure.
- 15.4 Until the Equipment has been paid for in full (or in the case of Rental Equipment, at all times during the Term):
- (a) the Customer has possession of the Equipment as bailee only; and
 - (b) the Customer must properly store, protect and insure the Equipment, including storing the Equipment in a manner that shows clearly that the Equipment is the Supplier's property.
- 15.5 The Customer has no authority to bind the Supplier to any liability by contract or otherwise and must not purport to do so.
- 15.6 The Customer must, if requested by the Supplier to do so, deliver the Equipment to the Supplier, failing which, the Supplier is irrevocably authorised to enter the place where the Equipment is being stored and repossess the Equipment, if the Customer:
- (a) fails to pay a due amount following demand by the Supplier;
 - (b) commits an act of bankruptcy;
 - (c) has a receiver appointed;
 - (d) goes into liquidation, administration or some other form of insolvency administration;
 - (e) ceases to carry on business; or
 - (f) enters into a scheme or compromise with its creditors.
- 15.7 The Supplier's property in the Equipment is not affected if the Equipment becomes a fixture attached to the Customer's or a third party's premises.
- 15.8 The Customer irrevocably agrees and consents to the Supplier registering its interest in the Equipment on the PPS Register in accordance with the *Personal Property Securities Act 2009* (Cth).

16. INSURANCE

- 16.1 The Customer must carry insurance satisfactory to the Supplier equal to the value of the Equipment to ensure its full replacement, unless agreed otherwise in writing by Supplier.

17. RESTRICTIONS ON USE

- 17.1 The Customer shall not:
- (a) permit the Equipment to be used by any person who is not an officer or employee of the Customer;
 - (b) operate or use the Equipment (or permit it to be operated or used) in violation of law;
 - (c) operate or use the Equipment (or permit it to be operated or used) to commit a violation of law; and/or
 - (d) operate, use, maintain or store the Equipment in a manner likely to cause damage to the Equipment.

18. LOSS OR DAMAGE

- 18.1 The Customer shall alert the Supplier to any damage that occurs to the Equipment.
- 18.2 Unless covered by the term of the warranty in clause 19, the Customer shall be responsible for any loss or damage to the Equipment and any loss of use or diminution of the Equipment's value caused by damage to it or repair to it.

19. LIMITED WARRANTY

- 19.1 Equipment: Subject to this clause 19 and clause 22, the Supplier warrants that:
- (a) the Equipment will conform to the description set out in the Registration Form; and
 - (b) the Equipment will be free from defects for a period of 12 months from the date of delivery.
- 19.2 As a result of the warranty against defects given under

clause 19.1(b), the Supplier gives note that (subject to this clause 19 and clause 22):

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 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.

19.3 To the maximum extent permitted by law, the warranties given in relation to the Equipment (**Equipment Warranties**) do not cover defects, failures, non-performance, damage or other issues which the Supplier determines to have been caused by:

- (a) improper use;
- (b) improper storage;
- (c) faulty power supply;
- (d) general wear and tear;
- (e) inadvertent damage to the Equipment, including (but not limited to) damage caused by fire, lightning, frost, water or ocean spray;
- (f) tablet case wear or breakage;
- (g) tablet screen cracking or scratching;
- (h) tablet charging port breakage;
- (i) any alteration, repair, modification, adjustment or other technical manipulation (without the Supplier's consent) by the Customer or any other person not acting under the direction or control of the Supplier; or
- (j) the fitting or use of parts or accessories not approved by the Supplier.

19.4 The Equipment Warranties are return-to-base warranties, meaning the Equipment must be delivered prepaid by the Customer to the Supplier's nominated repair centre.

19.5 If the Customer considers that it is entitled to make a claim under the Equipment Warranties (**Warranty Claim**), then the Customer must (at its cost):

- (a) notify the Supplier by email (support@ai-menu.com) or phone (+61 1300 246 368) before the end of the relevant warranty period.
- (b) as part of that notification, provide the Supplier with:
 - (i) details of the alleged defect that relates to the Equipment;
 - (ii) the Customer's full name, address and telephone number;
 - (iii) a copy of the Registration Form relating to that Equipment; and
 - (iv) any other information required by the Supplier; and
- (c) cause the allegedly defective Equipment to be returned to the Supplier for inspection at the address notified by the Supplier, at the Customer's cost. If the Supplier is satisfied that the Equipment is defective, then it will reimburse the Customer for the reasonable cost of returning the Equipment to the Supplier.

19.6 If the Supplier is satisfied that the Customer has the right to make a Warranty Claim and that the relevant Equipment is defective, then the Supplier will take any relevant action contemplated by clause 22.8 and, to the extent permitted by law, this will be the Customer's sole remedy.

19.7 To the maximum extent permitted by law, the following additional terms and conditions will apply in respect of any Warranty Claim:

- (a) to the extent that this clause 19 (or any applicable law) places a repair or replacement obligation on the Supplier, the relevant Equipment or any other consumables or materials used in relation to that repair or replacement may (where possible) instead be

replaced by second hand or refurbished products, consumables or other materials (as the case may be) of the same or similar type (and being in the same or better condition as the original item would have been at that time if it did not have the relevant defect or other issue); and

(b) without limiting any other provisions in this Agreement, the Supplier will not be liable under any Warranty Claim relating to any Equipment if:

- (i) any moneys are owing by the Customer to the Supplier in relation to any of the Equipment provided under this Agreement; or
- (ii) the Customer is in breach of this Agreement.

19.8 **Software:**

(a) Subject to clauses 19.8(b) and 19.8(c), the Supplier warrants that the Software will conform to the description set out in the Registration Form.

(b) The Supplier does not warrant any third-party software and accepts no liability for any failure of such software even if the Supplier supplied such software to the Customer.

(c) To the maximum extent permitted by law, the Supplier does not warrant or otherwise represent that the Software and/or Equipment will be fit for the purpose for which the Customer requires the Software and/or Equipment.

19.9 **Conditions:** The warranties given under this clause 19 are subject to the following conditions:

- (a) the Customer must have fully complied with its obligations under this Agreement;
- (b) the Customer must install and operate the Equipment in accordance with the directions provided by the Supplier;
- (c) all warranties are void if the Customer operates the Equipment in conjunction with any other equipment, materials or software not supplied or otherwise approved by the Supplier.

19.10 **Exclusions:** For the avoidance of doubt:

- (a) the Supplier does not warrant that the results obtained from the Customer's use of Software and/or Equipment will be in accordance with the Customer's expectations; and
- (b) the Supplier does not warrant against general wear and tear.

20. RETURN OF EQUIPMENT

20.1 Unless title to Equipment has passed to the Customer under this Agreement, the Customer shall return the Equipment to the Supplier upon termination of the Term in the same condition as the Customer received it, except for normal wear and tear. The Customer shall return that Equipment to the return location agreed between the parties. If that Equipment is not returned at the end of the Term, the Supplier reserves the right to take any action necessary to regain possession of that Equipment.

21. DEFAULT AND TERMINATION

21.1 If the Customer fails to pay to the Supplier any amount when due under this Agreement, then the Supplier may (at its sole discretion and without limiting its other rights and remedies) suspend performance of its obligations under or in connection with this Agreement until the amount outstanding is paid in full.

21.2 Without limiting its other rights and remedies, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer, if the Customer:

- (a) breaches any obligation of the Customer under this Agreement (including the obligation of the Customer to pay any amounts when due under this Agreement) and if the breach is capable of remedy, the Customer does

not remedy the breach within seven (7) days after being notified in writing by the Supplier; or

(b) has a receiver, receiver and manager, liquidator, provisional liquidator, trustee, mortgagee in possession, administrator, controller or inspector appointed under any law (or any similar official is appointed in respect of the Customer or any of its assets) or the Customer is unable to pay its debts when due or otherwise is, becomes or is deemed to be insolvent or bankrupt.

21.3 Either the Customer or the Supplier may terminate this Agreement at any time by giving twenty (20) Business Days written notice to the other.

21.4 After receiving a termination notice under either clause 21.2 or 21.3, the Customer must return the Equipment and Software to the Supplier within five (5) Business Days (except where the Equipment is Purchased Equipment or the Equipment forms part of the EFTPOS Deal and the Customer has made the payments contemplated by clause 5.4).

21.5 If the Customer terminates the Agreement under clause 21.3, the Customer acknowledges and agrees that they will be liable for any outstanding payments, that would have been payable, to discharge the minimum term, except in circumstances where:

(a) the Agreement is being terminated by the Customer under clause 21.3 as a result of the Supplier being in breach of its obligations under this Agreement and not rectifying the relevant breach within seven (7) days of receiving written notice of that breach from the Customer; or

(b) the Supplier has given notice modifying the Fees (or any minimum transaction volumes associated with the Fees) under clause 3.3 and the Customer's notice of termination is given within the thirty (30) day period contemplated by clause 3.3.

22. LIABILITY AND INDEMNIFICATION

22.1 The Customer shall indemnify, defend and hold harmless the Supplier from and against any claim, demand, cause of action, loss or liability (including attorney's fees and expenses of litigation) for any property damage or personal injury arising from the Customer's use of the Equipment and/or the Software by any cause, except to the extent caused by Supplier's gross negligence or wilful misconduct.

22.2 In no event shall the Supplier be liable for any indirect, special or consequential loss or damages arising from the Customer's use of the Equipment and/or the Software, including but not limited to, loss of profits and loss of revenue, even if informed of the possibility of such damages.

22.3 The Customer must indemnify the Supplier on a full indemnity basis (including legal costs and outlays) against any loss, damage or injury from any cause to property (including intellectual property) or persons caused, or contributed to by, any act or omission of the Customer (whether negligent or otherwise), and/or any personal injury or death sustained by any person by the act or omission of the Customer.

22.4 Any warranty, guarantee, condition, representation, undertaking or other right that would be implied in or otherwise required in connection with this Agreement by legislation, common law, equity, trade, custom or usage, is excluded to the maximum extent permitted by law.

22.5 Any advice, recommendation, information or assistance provided by the Supplier in relation to Equipment or its use or application (except to the extent that the Supplier expressly agrees in writing to provide such advice or information) is given in good faith and, to the maximum extent permitted by law, the Supplier does not accept any responsibility or liability in relation to any loss or damage

arising in respect of any such advice, recommendations, information or assistance.

22.6 Notwithstanding the other provisions of this clause 22 and anything else in these Terms, the Supplier does not exclude, restrict or modify any warranty, guarantee, condition, representation, undertaking or other right under any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene that statute or cause any part of this Agreement to be void (**Non-excludable Condition**).

22.7 Subject to the other provisions of this clause 22, the maximum aggregate liability of the Supplier for all proven losses, damages and claims arising out of this Agreement, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Customer to the Supplier under this Agreement.

22.8 To the maximum extent permitted by law, the liability of the Supplier for a breach of any Non-excludable Condition in respect of any Equipment (or other goods) or Software (or other services) delivered or supplied under this Agreement is limited, at the Supplier's option to:

(a) In the case of Equipment (or other goods):

(i) the replacement of the Equipment (or other goods) or the supply of equivalent Equipment (or other goods);

(ii) the repair of the Equipment (or other goods);

(iii) the payment of the cost of replacing the Equipment (or other goods) or of acquiring equivalent Equipment (or other goods); or

(iv) the payment of the cost of having the Equipment (or other goods) repaired; or

(b) In the case of Software (or other services):

(i) the supplying of the Software (or other services) again; or

(ii) the payment of the cost of having the Software (or other services) supplied again.

22.9 The provisions in this clause shall survive the termination of this Agreement.

23. DIRECT DEBIT

23.1 This clause sets out the terms on which the Customer authorises the Supplier to arrange for payment of amounts that become payable on the Customer's account to be made by deductions from the Customer's bank account at, or (subject to the Supplier's approval) by charging the Customer's credit card with, the Customer's financial institution. Please note that direct debiting of the Customer's credit card will attract a 2.5% surcharge. Direct debiting through the Bulk Electronic Clearing System may not be available on all bank accounts. Before the Customer completes the Direct Debit Request, the Customer must ensure that its bank account details are correct.

23.2 The Customer's Direct Debit Request authorises the Supplier to arrange for payment of the amounts due to the Supplier under this Agreement, at the due date of the Customer's bill(s) or another date as agreed between us. This authorisation also enables any changes in those amounts and payment times, to occur automatically – the Customer will not need to complete a new form. Any new Equipment or other services added to the Customer's Ai-Menu account will be subject to the existing Direct Debit Request arrangements.

23.3 Invoicing will be done on a weekly basis each Thursday. Any new Equipment or other services that were provisioned during the previous period will be charged from the date of delivery of the Equipment to the Customer, or the date on which the Supplier commence performance of the other services. The Customer will receive its tax invoice receipt via email, as soon as possible after the debit is processed.

The total value on the invoice will be the amount processed in the Direct Debit transaction.

- 23.4 If the Customer cancels, varies, defers or suspends its direct debit arrangements, or stops or suspends an individual debit from taking place under it, the Customer must arrange with the Supplier a suitable alternative payment method for all outstanding fees due, and ongoing contractual obligations.
- 23.5 The Customer acknowledges that there may be a delay in processing the Customer's direct debit where:
- (a) a due date for a debit falls on a weekend or a holiday;
 - (b) a payment request is received after the designated cut off time nominated by the Supplier's payment gateway provider then the debit will be processed on the next Business Day.
- 23.6 The Customer must ensure that it has sufficient clear funds available in the nominated bank account (if the Customer is paying by direct debit from its bank account) or that the Customer has sufficient credit available on its nominated credit card (if the Customer is paying by credit card) until the direct debit has been processed.
- 23.7 If a debit from the Customer's nominated bank account or a charge to the Customer's nominated credit card is unsuccessful, then the Supplier will attempt to debit again on the next scheduled invoicing date. A Dishonour Fee will be included in the next scheduled payment.
- 23.8 The Customer must notify the Supplier if the nominated bank account is transferred or closed.
- 23.9 If the Customer is paying by direct debit from a bank account, please ensure that the Customer's financial institution allows direct debits the nominated account.
- 23.10 If any bank fees are incurred by the Supplier from a dishonoured direct debit, these fees may be passed on to the Customer.
- 23.11 Upon cancellation of the Customer's contract with the Supplier, all Direct Debit Requests will also be deemed cancelled.
- 23.12 Where the Customer considers that a debit has been initiated incorrectly, the Customer can contact the Supplier's accounts department on 1300 246 368 or send an email with details of the dispute to accounts@ai-menu.com.
- 23.13 The Supplier employs the policy of treating all records and account details relating to this Direct Debit Request as confidential. The Supplier will keep information about the Customer's bank account confidential, except to the extent necessary to administer the Customer's direct debit arrangements. If a claim is made on the Supplier's financial institution in relation to an alleged incorrect or wrongful debit, the Supplier may be required to disclose this information to the Supplier's financial institution.

24. WAIVER

- 24.1 No failure or delay of the Supplier to exercise or enforce any of its rights under this Agreement shall act as a waiver of subsequent breaches; and the waiver of any breach shall not act as a waiver of subsequent breaches. The Supplier's acceptance of payment with knowledge of a default by Customer shall not constitute a waiver of any breach.

25. SEVERABILITY

- 25.1 In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law, and the other provisions of this Agreement will remain in full force and effect. The parties further agree that in the event such provision is an essential part of this Agreement, they will begin negotiations for a suitable replacement provision.

26. ENTIRE AGREEMENT

- 26.1 This Agreement represents the entire understanding relating to the subject matter hereof and prevails over any prior or contemporaneous, conflicting or additional communications.

27. VARIATION

- 27.1 The Supplier reserves the right to modify these Terms upon thirty (30) days written notice to the Customer (including notice provided via the Supplier's Software or Equipment).
- 27.2 The Customer is deemed to have agreed to any variation to these Terms under clause 27.1 unless the Customer provides the Supplier with written notice of its objection within 30 days (**Variation Objection**) of receiving notice of the relevant variation.
- 27.3 Where the Customer provides the Supplier with a Variation Objection, no modifications to these Terms will apply unless the Customer consents.

28. ASSIGNMENT

- 28.1 The Customer may not, without the prior written consent of the Supplier, transfer or assign this Agreement or any part thereof. Any attempt to do so shall be a material default of this Agreement and shall be void. The Supplier may assign this Agreement on written notice to the Customer.

29. GOVERNING LAW AND JURISDICTION

- 29.1 This Agreement will be governed by the laws of Queensland, Australia. Each party submits to the non-exclusive jurisdiction of the courts of Queensland and the Commonwealth of Australia.

30. HEADINGS

- 30.1 Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

31. DEFINITIONS

Agreement means the contract comprising of these terms and conditions and the relevant Registration Form.

Ai-Pay Fees means:

- a. in respect of transactions occurring in Australia, 1.5% (ex GST) + \$0.30 transaction fee for Visa and Mastercard transactions, 2% (ex GST) + \$0.30 transaction fee for American Express transactions, and 2.9% (ex GST) + \$0.30 transaction fee on all other transaction types; and
- b. in respect of transactions occurring in New Zealand, 2.5% + \$0.30 transaction fee for Visa and Mastercard transactions and 2.9% + \$0.30 transaction fee on all other transaction types.

Ai-Pay Refund Fee means the \$0.30 transaction charge, charged by the Supplier to the Customer for any refund.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Business Day means any day excluding Saturday, Sunday or a public holiday in Queensland and/or a Commonwealth public holiday.

Chargeback Fee means the amount of \$25.00 payable to the Supplier in the event of a payment dispute.

Customer means the customer specified in the Registration Form.

Claim means any demand, action or proceeding arising under these Terms.

Direct Debit Request means an approved request for the Supplier to arrange payment of any amounts that become payable on the Customer's account.

Dishonour Fee means the fee of \$15 payable by the Customer in the event that a direct debit payment is unsuccessful due to insufficient funds in the nominated account.

Effective Date means the date that the Customer first

agrees to these Terms.

Equipment means the hardware listed on the Customer Registration Form.

Fees means the fees for the Software referred to in the definition of "Software", Ai-Pay Fees, Ai-Pay Refund Fees, Chargeback Fees, Dishonour Fees and any other amounts payable under this Agreement (other than a Purchase Price).

Gateway Provider has the meaning given in clause 4.1.

Installation Date means the date in which the Equipment is installed for the Customer.

Major Failure has the meaning given in the Australian Consumer Law.

Purchase Price means the total Purchase Price payable for the Equipment and Software under this Agreement.

Purchased Equipment means Equipment purchased outright by paying the purchase price at the commencement of the Agreement.

Registration Form means the Registration Form that the Customer completes online when ordering Equipment or Software.

Rental Equipment means Equipment that is rented during the term of the Agreement, by the payment of a recurring rental payment as part of the Purchase Price, with an obligation to return the equipment at the end of the Term.

Rent-to-Buy Equipment means Equipment rented during the Term by the payment of a recurring rental payment as part of the Purchase Price with ownership in the Equipment transferring from the Supplier to the Customer at the end of the Term.

Rented Equipment means Rental Equipment, Rent-to-Buy Equipment and Equipment supplied as part of the Online Deal or the EFTPOS Deal.

Software means both individual and online software, including the following:

- a. Ai-Server: charged at \$10.60 ex GST per week;
- b. Ai-Lite: charged at \$5 ex GST per week;
- c. Ai-Connect: charged at \$10.60 ex GST per week/ per terminal;
- d. Ai-Stock: charged at \$10.60 ex GST per week/ per terminal;
- e. Ai-POS: charged at \$15.90 ex GST per week/ per terminal;
- f. Ai-Menu: charged at \$4.10 ex GST per week/ per tablet;
- g. Ai-Bump: charged at \$7.40 ex GST per week/ per terminal;
- h. Ai-Dine (QR code ordering): charged at 3% commission on orders; or
- i. Ai-Online (Website takeaway): charged at 3% commission on orders; or
- j. Ai-Booking: charged at \$26.50 ex GST per week.

Software Documentation means specifications, design documents, user manuals, installation guides, tutorials, and the other instructional materials relating to the Software.

Software Licence means the non-exclusive, non-transferable licence the Supplier is granting to the Customer.

Supplier means Ai Menu Systems Pty Ltd.

Term means the term of this Agreement commencing on the Effective Date until the expiry or termination of the Agreement.

Terms means the terms and conditions in this Agreement.