

# TERMS OF TRADE AND USE

## 1. DEFINITIONS

### 1.1 In these Terms:

**"App"** means Arrowhead Alarm Products Limited's "Elite Control" and "EliteCloud" software applications and includes:

- (a) the services made available to you through the App, including but not limited to remote alarm monitoring and control services; and
- (b) our cloud infrastructure "EliteCloud",

including any modifications, improvements or upgrades made available by us from time to time, which are used to connect and control the Equipment to the extent that the App allows you to.

**"Business Days"** means a day (other than a Saturday, Sunday, Public Holiday or any day after 22 December or before 6 January in any year) on which major banks are open for business in Auckland.

**"Confidential Information"** includes the content, information, data and source code in relation to the App, Equipment, and any information relating to our business or financial affairs, trade secrets, specialised know-how or practices or our clients or customers. It does not include any information which is already in the public domain at the time it is disclosed to you, or becomes available to the public domain other than via breach of these Terms, or was received by a third party who had the legal right to disclose the information, or was already in the recipient's possession prior to being disclosed to the recipient by you.

**"Consents"** means all licencing, statutory or regulatory consents, approvals and compliance certificates (for example, building consent or resource consent) required for the purposes of the installation of the Equipment, and all matters pertaining to the Equipment and App.

**"Data"** means any data or information entered or uploaded to the App by you or otherwise entered or uploaded with your express authority or using your Username and Password.

**"Equipment"** means any of the equipment we supply to you including but not limited to alarm systems, sirens and probes, detectors, closed circuit television (CCTV), wireless enabling equipment, medical and emergency equipment, gate automation equipment, intercoms, access controls, power supplies, fire accessories, batteries and any other equipment as supplied by us from time to time, some of which can be linked and controlled by our App, including any modifications, improvements or upgrades made available by us from time to time.

**"Force Majeure Event"** means an exceptional event or circumstance:

- (c) Which is beyond our control;
- (d) Which we could not have reasonably provided against before providing a quote and/or sales order to you;
- (e) Which, having arisen, we could not reasonably avoid or overcome; and
- (f) Which is not substantially attributable to you.

A Force Majeure Event may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as the conditions listed in (a) to (d) above are satisfied:

- (g) War, hostilities (whether war be declared or not), invasion, act of foreign enemies;

- (h) Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
- (i) Riot, commotion, disorder, strike or lockout by persons other than where we have caused or contributed;
- (j) Munitions of war, explosive materials, ionising radiation or contamination by radio-activity;
- (k) Unavailability of raw materials, manufacturers closing, service providers cancelling on us (not due to our fault);
- (l) Logistical issues beyond the norm;
- (m) Pandemic or epidemic;
- (n) Governmental interference;
- (o) Fire;
- (p) Hacking breaches, communication line failures, equipment failures; and
- (q) Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

**"Intellectual Property Rights"** means any patent, trademark, service mark, copyright, moral right, design, know-how and any other intellectual or industrial property rights anywhere in the world whether or not registered.

**"Privacy Policy"** means our privacy policy contained on the App and our Website, as updated by us from time to time.

**"Service Fees"** means the monthly subscription fees payable by you as displayed on the App.

**"Software"** means any and all software that is available through the App or otherwise provided by us.

**"Terms"** means all of these terms of trade and use as may be varied by us from time to time.

**"Username"** and **"Password"** means as is commonly known, that being a method of verifying your identity when accessing our App.

**"We", "us" and "our"** means Arrowhead Alarm Products Limited and any of our agents or employees.

**"Website"** means all or any of our websites as applicable and updated from time to time.

**"You" and "your"** means the person or entity accessing and using the App, our Website, and utilising any of the Equipment.

## 2. ACCEPTANCE

2.1 By engaging with us and:

- (a) Ordering or purchasing the Equipment from us;
- (b) Using any part of the App and the Equipment,

you accept and agree:

- (c) To be bound by the Terms together with our Privacy Policy and any other operating rules, policies or procedures published on the App or Website by us, and all relevant legislation; and
- (d) That we will charge Service Fees for your continued use of the App.

- 2.2 If you do not agree to the Terms, you are not permitted to use the App and must cease using the App immediately.
- 2.3 If you are under the age of 18, you must only use the App with parental or caregiver consent, provided that your parent or legal guardian is over the age of 18 and has accepted these Terms on your behalf.
- 2.4 We may vary the Terms in any manner and at any time and will notify you of any amendments to the Terms by uploading the amended terms to the App. By continuing to use the App after any such amendment, you are deemed to have agreed to the amendments to the Terms.
- 2.5 No variation, modification or substitution for these Terms is binding on us unless specifically accepted by us in writing.

### **3. USE OF THE APP**

- 3.1 In consideration of you agreeing to these Terms, we grant you a non-transferable and non-exclusive right to access (using your own Username and Password) and use the App.
- 3.2 To access and use the App, you must:
  - (a) Provide your own mobile or computer system and quality internet connection. You are responsible for using the App over a quality internet connection;
  - (b) Pay the Service Fees; and
  - (c) Update and install the latest version of the App on your mobile or computer system.
- 3.3 We will use our reasonable endeavours to ensure that the App, or an application similar to the App:
  - (a) Remains available to you; and
  - (b) Is capable of connecting and servicing your Equipment.
- 3.4 All updates to the App are intended to be as backward compatible as is reasonably possible, however, you agree that technology is ever evolving, and we cannot be held responsible if the App cannot connect or service your Equipment.
- 3.5 If you do not pay the Service Fee, or do not comply with any of our Terms in relation to the App, you will be able to continue using the Equipment provided you have paid for it in full, however, you agree that its use will be limited and be in the "Restricted Mode" if the Equipment is not used together with the App because many of the App's functions will not be available. The "Restricted Mode" will only allow you to access the basic functions such as arming and disarming your alarms but without any further enhancements.

3.6 Notwithstanding clause 3.3, to the maximum extent permitted by law we accept no responsibility whatsoever for any loss arising due to unavailability of the App and we reserve the right to discontinue the supply of all or any part of the App or restrict your access to parts or all of the App.

#### **4. USE OF THE EQUIPMENT**

4.1 You may use the Equipment in any manner that a reasonable person would. For the avoidance of doubt, using the Equipment for any unlawful purpose is strictly and absolutely prohibited.

4.2 To fully utilise and access the Equipment, you must:

- (a) Have access to the App;
- (b) Provide your own suitable mobile, computer system, modem, network, and connection; and
- (c) Service and upgrade your Equipment on a regular basis to avoid any breakdown or outdated modules remaining in your Equipment (our suggested timeframe, is once every twelve months).

4.3 We will use our reasonable endeavours to ensure:

- (a) That we continue to have sufficient spare parts so that your Equipment can be serviced and maintained; and
- (b) That the Equipment is capable of connecting to the App.

4.4 You are aware and agree that all Equipment is only up to date as at the date you purchased the Equipment. We cannot be held responsible if your Equipment requires updating or maintenance in order to continue connecting to the App.

4.5 Notwithstanding clause 4.3, to the maximum extent permitted by law we accept no responsibility whatsoever for any loss arising due to unavailability of the Equipment and we reserve the right to discontinue the supply of all or any part of the Equipment or restrict your access to parts or all of the Equipment.

#### **5. YOUR OBLIGATIONS**

5.1 You will use the App and Equipment only for the purpose for which it was made available to you and in accordance with any instructions provided by us.

5.2 You must ensure that all Username and Passwords required to access the App are kept secure and confidential by you. You are responsible for notifying us if you become aware of any unauthorised use of your Username and Password or any other breach of security and you agree to be responsible for any act or omission of any person who accesses or uses the App using your Username and Password. Our systems and network are equipped with the necessary levels of protection and this is continually enhanced but if there is any breach due to your action or omission as recorded in this clause, your indemnity will also cover such breaches.

- 5.3 You are solely responsible for sourcing and engaging your own installers of the Equipment, and you are responsible for communicating with them and ensuring that the Equipment is installed as desired and performs the functions as desired. At your request, we are able to provide you with a list of recommended installers who are familiar with our Equipment, but it still remains your sole obligation to ensure all Equipment are installed correctly and as desired.
- 5.4 You are at all times solely responsible for determining whether the installation of the Equipment and any other matters relating to the App or Equipment will require Consents. If such Consents are required, you are solely responsible for obtaining the Consent prior to the provision of the App and Equipment.
- 5.5 If there is a fault with the Equipment and we will need to send technicians to your premises to diagnose the issue, you must:
- (a) At all times ensure that your premises where installation is required are safe and properly maintained. Your dogs or any other potentially aggressive pet must be secured and kept away from the location of installation;
  - (b) Grant us or our technicians unencumbered and unobstructed access to all areas of your premises where diagnosis is required. You acknowledge we cannot complete with the diagnosis if there are any obstructions;
  - (c) To the extent required by law, comply with your obligations under the Health and Safety at Work Act 2015. You will advise us or our technicians of any hazards and risks which we, or our technicians, may encounter when undertaking the installation; and
  - (d) Provide us and our technicians with all information and reasonable assistance to enable us or our technicians to diagnose the issues with the App or Equipment.
- 5.6 You must not:
- (a) In any way infringe upon, adapt, alter, modify, revise, copy, create derive works from, reverse engineer, decompile or profit from the App, Equipment, or any part of the same;
  - (b) In any way interfere, attempt to interfere or cause or permit interference with the App, Equipment, or its normal operation;
  - (c) Use the App or Equipment to violate any laws or regulations of any kind;
  - (d) Send us or enter into or upload onto the App anything which infringes the rights of others or which contains a virus, malware or other harmful item or which is unlawful, indecent, threatening or offensive or which could in any way create any liability on or loss to us or to our other customers and users;
  - (e) Undermine, or attempt to undermine, the security or integrity of our systems or networks, or where the App is hosted by a third party, that third party's computing systems and networks;
  - (f) Attempt to gain access to any materials other than those which you have been given express permission to access by us;

- (g) Use the App or Equipment to facilitate any type of gambling or gaming; and
- (h) Use the App or Equipment to impersonate any third party.

5.7 If you are allowed to download or use any Software in connection with the App, we grant you a personal, non-transferable, revocable, non-exclusive licence to use the Software solely for your internal use in connection with the App and only in accordance with these Terms and any other written instructions issued to you by us. The Software will be deemed to be part of the App.

5.8 We are not liable for any loss or damage arising directly or indirectly as a result of you failing to comply with this clause 5.

5.9 If in our reasonable opinion, we cannot provide you with the App or Equipment as a direct result of your failure to meet your obligations under this clause 5, then we may charge you all fees, amounts payable, and expenses that we have incurred.

## **6. FEES AND PAYMENT TERMS**

### **App Service Fees**

6.1 You must pay us the Service Fees without delay, set-off or deduction on a monthly basis in accordance with the method of payment specified by us on the App.

6.2 All Service Fees shall be in \$NZD and shall be exclusive of GST (unless otherwise stated). We may correct any clerical errors or omissions in respect of any Service Fees specified on the App or Website at any time.

6.3 We reserve the right to vary the price for the App and will notify you of any variations to the Service Fees specified by updating the App.

### **Equipment Prices**

6.4 The Equipment and its prices are available on our Website (some of which you can access but some of which can only be accessed by having an "Installer Login". Any Equipment shown on our Websites are an invitation to place an order and when you place an order with us, you are making an offer to purchase the Equipment. All final prices and Equipment will be as recorded in our quote and/or sales order to you.

6.5 All prices shall be in \$NZD and shall be exclusive of GST (unless otherwise stated). We may correct any clerical errors or omissions in respect of any prices specified on our Website at any time. If Equipment is listed for sale at a certain price, we will reasonably endeavour to honour the listed price but in no circumstance will there be an obligation on us to do so if we reasonably consider the listed price as onerous on us and will cause us any financial harm.

6.6 We reserve the right to vary the price of the Equipment.

- 6.7 Prices for installation services are determined by the installers and you are solely responsible for ensuring the price quoted for installation is acceptable to you. You are also responsible for reading and familiarising yourself with the installer's terms which are unrelated to these Terms.
- 6.8 You must pay any other taxes and duties that may be applicable in addition to the price of the Equipment except where they are expressly included in our quote and/or sales order to you.
- 6.9 Where we have provided you with a quote:
- (a) Subject to clause 6.10 below, the quote will be valid for 30 calendar days from the date of issue and after that time will be deemed to be withdrawn; and
  - (b) No change to the quote is permitted unless we have agreed in writing to the change.
- 6.10 We reserve the right to withdraw or vary any quote at any time before you accept the quote.
- 6.11 All quotes are limited to the items described in the quote. Unless otherwise specified, the quotes do not include installation costs or any non-specified materials or hardware that may be required for installation.
- 6.12 Any delivery costs in a quote will only cover delivery to the address you have specified. Once a quote has been accepted, any changes to the address will incur additional charges and costs that you must pay for within the time specified by us.

### **Payment terms**

- 6.13 Other than the Service Fee, all payments must be made within the timeframes stipulated in our invoice to you.
- 6.14 Until you have cancelled the subscription to the App, you authorise us to automatically charge the Service Fee to your bank account (as provided by you) by direct credit at the end of each calendar month as payment for the next calendar month.
- 6.15 Unless we have agreed otherwise in writing, all prices, fees, expenses and amounts that you must pay shall be paid by direct credit and in the manner specified in the invoice.
- 6.16 Time for payment of the Goods and Services is of the essence. You must make all payments to us without delay, counter-claim, abatement, deduction or set off.
- 6.17 Without prejudice to our other rights and remedies, if any amounts due to us are not paid by the due date for payment or if you breach any other of these Terms, we may:
- (a) Retain the Equipment until full payment for the Equipment has been received;
  - (b) Suspend or terminate the provision of use and access of the App until full payment of the Service Fees has been received;
  - (c) Suspend or terminate any trade account you may hold with us, at which time all amounts you owe us becomes due and payable;

- (d) Charge you interest, payable on demand, on any overdue amounts at the rate of 18% per annum, calculated daily from the due date for payment and compounding monthly until payment is received in full; and
- (e) Recover from you all costs incurred by us arising from any breach of these Terms including, without limitation, legal fees, service costs, and costs of recovering unpaid amounts.

6.18 Our receipt of any form of payment other than cash or direct credit as agreed shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then our ownership or rights in respect of the Equipment, and this agreement, shall continue.

## **7. RISK AND DELIVERY**

7.1 Risk passes to you on delivery of the Equipment (which can be before installation takes place).

7.2 Delivery shall be deemed complete when we give possession of the Equipment to you. Unless you have selected a delivery method that requires your presence or signature, you do not need to be present at the time for delivery to occur.

7.3 When we have accepted an order, we will use reasonable endeavours to deliver the Equipment in accordance with any timelines or dates we have agreed writing. We are not liable to you for any failure to provide, or any delay in the providing of, the Equipment for anything beyond our reasonable control, including, without limitation, weather conditions or the availability of supplies.

7.4 We are not liable to you for any failure to deliver, or for any delay in the delivery of, the Equipment or App, including, without limitation, in the event of a Force Majeure Event.

7.5 We may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms.

## **8. OWNERSHIP RESERVED**

8.1 We retain ownership of and the legal and equitable title in all Equipment we supplied or agreed to be supplied until you have paid the full price for the Equipment and any delivery costs and all other amounts owing.

8.2 We will always retain ownership of and legal and equitable title in the App. For the avoidance of doubt, ownership in any form is never transferred to you.

## **9. PERSONAL PROPERTY SECURITIES ACT 1999 ('PPSA')**

9.1 You grant us a security interest in the Equipment and their proceeds as security for any amounts due and owing by you to us. The Equipment subject to the security interest will be the Equipment described in any:

- (a) Our quote and/or sales order to you;
- (b) Contract between you and us;



- (c) Purchase order or any other order for the Equipment from you; or
- (d) Dispatch order, invoice, statement or remittance advice given by us to you.

- 9.2 These Terms constitute a security agreement for the purposes of the PPSA and you grant us the authority to register a financing statement in the form required by us. You indemnify us from and against all of our costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising our rights under these Terms.
- 9.3 At our request, you will promptly execute any documents and do anything else required by us to ensure that any security interest created constitutes a perfected security interest over all Equipment supplied by us until all and any amounts owing by you have been paid in full. This obligation extends to providing the information required by us to enable us to complete and register a financing statement or financing change statement. You undertake to give us not less than 10 Business Days' prior written notice of any proposed change to your name or details.
- 9.4 You will not, without our prior written consent, allow any person (including yourself) to file a financing statement over any Equipment supplied by us.
- 9.5 If you sell the Equipment prior to payment in full to us, you undertake to pay the proceeds derived from the sale into a separate bank account for our benefit and as trustee so that those proceeds remain identifiable in connection with that sale of the Equipment.
- 9.6 You waive your right to receive a copy of a verification statement in respect of any financing statement or financing change statement registered by us. Sections 114(1)(a), 133 and 134 of the PPSA will not apply and you waive your rights under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 148 of the PPSA.
- 9.7 If you breach any of these Terms, that breach constitutes a default for the purposes of the PPSA. Without prejudice to our other rights and remedies, you irrevocably grant us the right and licence to enter your premises, without notice and without any liability whatsoever to you or any person or company claiming through you, in order to repossess the Equipment.
- 9.8 In this clause 9, the terms "security interest", "purchase money security interest", "perfect", "proceeds", "financing statement" and "financing change statement" have the meanings given to them in the PPSA.

## **10. INSPECTION AND RETURNS POLICY**

- 10.1 You will, as soon as reasonably practicable after delivery, inspect the Equipment and will, not later than three Business Days after delivery, notify us of any alleged defect, shortage in quantity, damage or failure to comply with the description of the Equipment in our quote and/or sales order.
- 10.2 You must allow us the opportunity to inspect the Equipment within a reasonable time of your notification to us.

- 10.3 If you do not notify us in writing within three Business Days of receiving the Equipment, then you are deemed to have accepted the Equipment.
- 10.4 Except to the extent required by law or as agreed by us in writing, we will not accept returns of Equipment where we have arranged for the Equipment to be manufactured and supplied to your specifications.
- 10.5 Where we have agreed in writing that you are entitled to reject the Equipment, we will, at our election, repair the Equipment, replace the Equipment with equipment of a similar type, or refund the price you have paid for the Equipment (excluding delivery costs) either, at our election, in the form of account credit or in cash. Our liability is limited to either, at our election, the repair of the Equipment, the replacement of the Equipment or the price you have paid for the Equipment (excluding delivery costs) either, at our election, in the form of account credit or in cash.
- 10.6 Return of Equipment will only be accepted if:
- (a) You have complied with the provisions of clause 10.1 and we have agreed in writing to the return of the Equipment;
  - (b) The Equipment is returned at your cost within 10 Business Days of the inspection of the Equipment;
  - (c) The Equipment is returned with the original invoice/packing slip (if any);
  - (d) The Equipment have not been used; and
  - (e) The Equipment is returned in the condition in which they were delivered and in original packaging, complete with detachable accessories and instruction manuals (if any).
- 10.7 Return of Equipment pursuant to this clause 10 will be to a location within New Zealand, which we shall specify to you in writing at the time of the relevant return.

## **11. MODIFICATIONS AND UPGRADES**

- 11.1 We may from time to time modify, substitute or upgrade the App. We are under no obligation, however, to provide any modification, substitution or upgrade of the App.
- 11.2 Occasionally, an upgrade of your Equipment is necessary in order to continue having access and use of the App. At such times, you may be required to get in touch with our authorised installers to install the upgrades for you.
- 11.3 All modifications and upgrades are at your costs. We will use reasonable endeavours to minimise costs to you.
- 11.4 You do not have any right to claim losses or damages from us for any modification, substitution or upgrade of the App and Equipment.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1 All Intellectual Property Rights in the App and Equipment, any modification or upgrade of the App and Equipment, and any other works provided in any form whatsoever to you by us or accessible to you because of your entry into these Terms are and remain in our ownership or the ownership of such other party as validly had, prior to these Terms , ownership of the same.
- 12.2 Any sale of the Equipment will not operate so as to transfer or vest in you any trade mark, patent, copyright or other intellectual property. All Intellectual Property Rights in respect of the Equipment remain ours or the applicable our manufacturer's property and you may not use, reverse engineer, interfere with or alter the intellectual property in any way.
- 12.3 You acknowledge no Intellectual Property Rights in the App and Equipment will pass to you and agree that you shall not contest or challenge the ownership of the Intellectual Property Rights in the App and Equipment.
- 12.4 Content from the App must not be copied, reproduced, distributed, modified, published, uploaded, posted or transmitted in any way without our prior written consent.
- 12.5 Modification, distribution, or use of the content contained in the App for any purposes other than for your personal use directly violates our Intellectual Property Rights. The content contained within the App is copyrighted and protected by worldwide copyright laws and treaty provisions (even if it is not stated to be so protected) and is provided for lawful purposes only.
- 12.6 All intellectual property on our Website is owned by us or its content suppliers. Unless we agree in writing, no part of our website or images of our Equipment may be distributed or copied for any commercial purpose, nor incorporated in any other work or publication whether in hard copy, electronic or any other form.

## **13. DATA**

- 13.1 Title to, and all Intellectual Property Rights in, the Data remain your property, and you may request a copy of your data from within the App at any time.
- 13.2 You grant to us a perpetual worldwide licence to use, copy, transmit, store, sub-licence and backup the Data for the purposes of enabling you to access and use the App, including allowing us to externally access any alarms connected to the App in accordance with clause 13.7, and for third parties to access your Data where permitted to do so under these Terms and our Privacy Policy.
- 13.3 You warrant that:
- (a) You have the right to grant us the licence under clause 13.2;
  - (b) Your Data does not infringe or conflict with the rights of third parties;
  - (c) Your Data is true and correct; and
  - (d) You are authorised to enter or upload your Data to the App.

- 13.4 We may remove your Data at any time if we believe in our sole discretion that it does not comply with these Terms.
- 13.5 We will use our reasonable endeavours to ensure the security of the Data. Regardless of the security measures taken by us, no data transmission over the internet and no security software or other security feature can be guaranteed as totally secure.
- 13.6 You acknowledge that:
- (a) You understand clause 13.5; and
  - (b) Subject to using our reasonable endeavours pursuant to clause 13.5, we do not undertake, warrant or certify the security of the Data, App or our computer system or of any information transmitted by either party or held by us and similarly do not warrant that our computer system or any electronic communication from us to you is free of viruses or other harmful content; and
  - (c) We will not be liable for any loss caused by any unauthorised access to, use of, interference with or damage to the Data or your computer system arising from your use of the App.
- 13.7 You expressly acknowledge and agree that by using the App and connecting any alarm to the App, you authorise us to:
- (a) View and modify the configuration of;
  - (b) Remotely arm and disarm; and
  - (c) View the history of,
- any alarm that is connected to the App.
- 13.8 You acknowledge that the App may utilise third party applications. Such third party applications:
- (a) Are able to be used by you for the purposes of these Terms;
  - (b) Will be subject to the terms and conditions of these Terms and the third party's end user terms and conditions; and
  - (c) Are only licensed to you for use with the App.
- 13.9 If third party applications are used in conjunction with the App, you acknowledge that we may allow the providers of those third party applications to access the Data as required for the operation of their application. To the maximum extent permitted by law, we shall not be liable for any disclosure, modification or deletion of the Data resulting from any access by third party application providers.
- 13.10 We, or third parties authorised by us, may use your Data to compile statistical and analytical reports on the use of the App by all of our customers, which may be disclosed to third parties, provided that such reports do not identify individual users.

## **14. YOUR WARRANTY AND INDEMNITY**

14.1 You warrant to us that:

- (a) You have read, understood, and will abide by these Terms;
- (b) You have full authority to use the App and enter into these Terms;
- (c) You have full authority to submit an order to us and purchase the Equipment; and
- (d) All information you submit to us through or in connection with the App is accurate and truthful.

14.2 You indemnify us and our directors, agents and employees against any and all actions, proceedings, losses, damages, liabilities, claims, costs and expenses including fines, penalties, legal (on a solicitor to own client basis), debt collection and other professional costs on a full indemnity basis that we or any of our directors, agents or employees incurs or suffers as a direct or indirect result of any breach by you of these Terms or your use or misuse of the App or Equipment.

## **15. LIMITATION OF LIABILITY**

15.1 Except as provided in the Consumer Guarantees Act 1993 (if applicable) and under these Terms, we shall not be liable for:

- (a) Any loss of any kind whatsoever suffered by you arising under or in connection with the Terms or the App or Equipment, or in contract, tort (including negligence) or otherwise including without limitation any loss, costs, damages, expenses of any kind and any indirect, special or consequential loss or damage of any kind whatsoever including, without limitation, loss of revenue, loss of profits, loss of any contract, failure to realise expected profits or savings and any other commercial or economic loss of any kind that may be suffered by you;
- (b) Any damages, losses or liabilities that result from the use of, or inability to use, the App or the Equipment, including, but not limited to, any failure of performance, error, omission, interruption, defect, delay in operation of transmission, computer virus or line failure or any special or consequential damages that result from the use of, or the inability to use, the App or Equipment; and
- (c) Any direct, indirect, incidental, special or consequential damages incurred by any third party arising from any access to, reliance on, or use of the App or Equipment.

15.2 To the extent permitted by law, our liability, whether in contract, in tort or otherwise, in respect of all claims for loss, damage, expenses or injury arising under or in connection with these Terms, from any cancellation of these Terms or from any negligence, misrepresentation or other act or omission on our part, our representatives, agents or subcontractors shall not in aggregate exceed:

- (a) Equipment – the price you paid for the Equipment giving rise to the claim or \$2,000, whichever is the lesser amount or

(b) App – the price you paid for the App giving rise to the claim or \$100, whichever is the lesser amount.

15.3 We will not be liable for any loss or damage resulting from any occurrence unless a claim is formally notified within:

(a) Equipment – one month of the delivery of the Equipment; or

(b) App – one month from when the fault in the App first arises.

15.4 If we are found liable to you (whether in contract, tort or otherwise), and you or a third party has contributed to the loss or damage, we shall only be liable to the proportional extent of our contribution.

15.5 This clause 15 shall survive the termination or expiry of these Terms.

## 16. WARRANTIES AND EXCLUSIONS

16.1 You acknowledge and agree that:

(a) Where you use the App or Equipment for a particular purpose, it is your sole responsibility to ensure that the App and Equipment will be suitable for your purpose, and we will have no liability whatsoever in the event that the App or Equipment are not fit for your purpose;

(b) We make no warranties or representations about the accuracy or completeness of the App and Equipment;

(c) So far as the law permits, all conditions and warranties on our part which might be implied in relation to these Terms or the App or Equipment are excluded;

(d) Except as provided in the Consumer Guarantees Act 1993 (if applicable) or as expressly provided for under these Terms, all other descriptions, representations or conditions as to the fitness or suitability of the App and Equipment for any purpose, are expressly excluded;

(e) Where you are in trade and acquire the App in trade, then you agree to contract out of the provisions of the Consumer Guarantees Act 1993 and accordingly the provisions of the Consumer Guarantees Act 1993 do not apply; and

(f) Except to the extent permitted by law, nothing in the Terms is intended to have the effect of contracting out of provisions of the Consumer Guarantees Act 1993 in respect of a customer that is a consumer (as that term is defined in the Consumer Guarantees Act 1993) where that customer is not in trade and these Terms are amended to the extent necessary to give effect to that intention. In this clause (f), "**in trade**" has the meaning given to it in the Consumer Guarantees Act 1993.

16.2 Where the Equipment have the benefit of a warranty from a third-party manufacturer, we will use reasonable endeavours, to the extent permitted by the third-party manufacturer, pass the benefit of the warranty to you but we will not be liable under such warranty. Manufacturer warranty information relating to the Equipment is available on our Website.

16.3 This clause 16 shall survive the termination or expiry of these Terms.

## **17. FORCE MAJEURE**

17.1 We shall not be liable for any breach of these Terms, failure, or delays resulting from a Force Majeure Event.

17.2 If we consider that a Force Majeure Event has occurred and we are unable to perform our obligations as a result of a Force Majeure Event, we will promptly notify you of that fact and may suspend our obligations under the Terms. Any suspension of performance under these Terms will be limited to the period during which the relevant event continues.

17.3 Where our obligations have been suspended pursuant to clause 17.2 for a period of 20 consecutive Business Days or more, we may elect not to proceed with the supply of Equipment to you and any other of our obligations under these Terms by giving written notice to you.

17.4 If we choose not to proceed pursuant to clause 17.3, we will refund the amount you have actually paid to us for the Equipment as at the date of election, less any amounts as may be required by us to cover our reasonable costs and expenses.

## **18. THIRD PARTY SITES**

18.1 Our App and Website may contain links to third party websites or applications that are not owned or controlled by us.

18.2 We will not be responsible or liable for the accuracy, copyright compliance, legality or contents of any material contained on any third party website or application that may be accessed through the App and we will not be liable for any loss or damage that may arise out of your use or access of any third party website or application.

## **19. CONFIDENTIALITY**

19.1 You agree that any Confidential Information received by you under these Terms shall remain confidential between the parties and shall be used only for the purposes of these Terms.

19.2 Any Confidential Information received by you under these Terms shall not be disclosed to any third party for any reason other than is necessary to fulfil your obligations under these Terms and otherwise as may be required by law.

19.3 This clause 19 shall survive the termination or expiry of these Terms.

## **20. PRIVACY AND USE OF PERSONAL INFORMATION**

20.1 In connection with the use of the App, you will be subject to our Privacy Policy. You acknowledge that you have read and accept our Privacy Policy.

## **21. TERMINATION**

- 21.1 You may terminate your use the App and these Terms by following the process contained in our cancellation policy as communicated to you by us from time to time.
- 21.2 We may terminate your use of the App and these Terms at any time for any reason by giving you 5 Business Days' notice in writing.
- 21.3 You agree that all of your obligations in these Terms are essential terms.
- 21.4 These Terms and your use of the App may be suspended or terminated immediately by us if:
- (a) You breach any of your obligations under these Terms; or
  - (b) You do or permit anything that causes significant and material harm to the App or our reputation and goodwill.
- 21.5 You agree that you will have no right to claim any loss or damages from us following the termination of these Terms or the suspension of your use of the App.
- 21.6 Either party may terminate the agreement for supply of the Equipment or use of the App with immediate effect if the other party:
- (a) Is in material breach of these Terms and does not, or is unable to, remedy the breach within 10 Business Days of receiving notice from the other party of the relevant breach; or
  - (b) Becomes insolvent, cease trading, enter into a compromise or arrangement with your creditors, is placed into receivership, liquidation, bankruptcy or administration or have any of the assets compulsorily disposed of for the benefit of a creditor (in each case other than as part of a solvent reconstruction or amalgamation to which the other party has consented).
- 21.7 We may elect not to supply the Equipment to you. In the event we choose to do so and where the Equipment have not been supplied to you, we will refund to you the amount that you have paid to us for the Equipment as at the date of election, less any amounts as may be required by us to cover our reasonable costs and expenses.

## **22. CONSEQUENCES FOLLOWING TERMINATION**

- 22.1 Following termination these Terms:
- (a) You will immediately cease use of the App and where applicable shall return all Confidential Information in your possession to us; and
  - (b) All money due to us under these Terms will become immediately due and payable.



## **23. LOCAL LAWS**

- 23.1 The App is controlled and operated by us from New Zealand. We make no representation or warranty that the App's content complies with any laws, rules, regulations, procedures codes or governmental directives outside of the jurisdiction of New Zealand.
- 23.2 If you access the App from outside of New Zealand, you are solely responsible for compliance with applicable local laws and you agree to indemnify us absolutely in respect of any liability arising for us as a result of your non-compliance with any laws, rules, regulations, procedures codes or governmental directives outside of the jurisdiction of New Zealand.

## **24. DISPUTE RESOLUTION**

- 24.1 If any dispute arises in connection with these Terms, the parties shall within 5 Business Days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 24.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation. To initiate the mediation a party must give notice in writing ("**ADR notice**") to the other party to the dispute requesting mediation. The mediation will start not later than 20 Business Days after the date of the ADR notice.
- 24.3 No party may commence any court proceedings in relation to any dispute arising out of these Terms until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation.
- 24.4 Nothing in this clause will prevent a party from obtaining urgent interlocutory relief in respect of a breach or suspected breach of these Terms.

## **25. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**

- 25.1 If you are a company or trust, then in consideration of us agreeing to supply the Equipment or App, and (if applicable) grant credit to you, the director(s) or trustee(s) of the company or trust (each a "Guarantor") shall be deemed on acceptance by the company or trust of a quote and/or sales order to be bound by these Terms in their personal capacity and jointly and severally personally undertake as principal debtors to us for the payment of any and all money now or in the future owed by you to us and indemnify us against your non-payment. Any personal liability of a signatory shall not exclude you in any way from the liabilities and obligations contained in these Terms. Where there is more than one Guarantor, then the Guarantor's liability is joint and several.
- 25.2 The Guarantor's obligation in clause 25.1 shall continue and remain for so long as you have any obligations or liability under the agreement pursuant to these Terms.

## **26. GENERAL**

- 26.1 The termination, revocation, expiry or repudiation of these Terms shall not in any way restrict any right to relief or damages to which we may be entitled under these Terms.

- 26.2 Your rights under these Terms are personal to you and you shall not assign, convey, subcontract, sub-licence or delegate any of your rights, duties or obligations under these Terms without our express prior written consent.
- 26.3 We may in our sole discretion assign or novate all or any of our rights, duties and obligations under these Terms without your consent. You will, if so required by us, execute all documentation necessary to give full effect to any such assignment or novation.
- 26.4 These Terms shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts.
- 26.5 Except where otherwise agreed in writing, these Terms, together with our Privacy Policy and any other operating rules, policies or procedures published on the App by us sets out the entire agreement and understanding between the parties in relation to the subject matter of these Terms and merges all prior discussions between us and neither party will be bound by any conditions, warranties or representations regarding the subject matter of these Terms other than as expressly provided in these Terms.
- 26.6 Notices in writing must be addressed to the other party and delivered by hand or by email.
- 26.7 Any waiver or failure to execute any rights by us shall not be deemed to be a waiver of any further or other right we may have. No waiver is effective unless it is in writing.
- 26.8 The headings to the clauses of these Terms are for ease of reference only and will not affect the interpretation or construction of these Terms.
- 26.9 Each and every covenant, obligation or restriction in these Terms and each part of them is deemed a severable and independent covenant, obligation and restriction. In the event of the invalidity of any covenant, obligation and restriction of these Terms such invalidity will not affect the enforceability of any other covenant, obligation and restriction of these Terms.