

TERMS AND CONDITIONS V 1.0

1. INTERPRETATION

In these conditions:

- a)'Seller' means mogo GPS Tracking Pty Ltd ACN 142 071 565.
- b)'Buyer' means a person who accesses or uses the Website and/or purchases any of the Goods, as applicable.
- c)'Goods' means the goods and services offered for sale by the Seller to the Buyer as described on the Website or in any Quotation.
- d)'Quotation' means the written or electronic quotation provided by the Seller to the Buyer.
- e)'Website' means the Seller's website located at www.mogogps.com.au.
- f)'Privacy Policy' means the Seller's privacy policy (as amended from time to time) available on the Website.
- g)'Trade Practices Act' means the *Trade Practices Act 1974* (Cth).
- h)'Statutory Rights' means any non-excludable terms, conditions or warranties implied into the contract between the Buyer and the Seller, or non-excludable remedies granted to the Buyer against the Seller, under the Trade Practices Act or similar legislation.

2. USE OF THE WEBSITE

2.1 The Buyer's use of the Website, including to access any services purchased by the Buyer that are provided on the Website, is governed by these terms and conditions. By accessing and using the Website, the Buyer agrees to be bound by and abide by these terms and conditions.

2.2 The materials displayed on the Website, including without limitation all editorial materials, information, photography, illustrations, artwork, other graphic materials, names, logos and trade marks are the property of the Seller or its licensors. The Buyer agrees not to reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or communicate any such material to any third party without the express prior written consent of the Seller.

2.3 The Seller does not represent or warrant that the Website or any linked website (or any content on the Website or any linked website) is free from computer viruses or any other defect or error which may affect the Buyer's software or systems. The Buyer is responsible for protecting its own software and systems by installing and implementing appropriate security and system checks.

2.4 The Buyer must not use the Website or any of the services provided on the Website:

- a) for any purpose that is unlawful, breaches any applicable code of conduct, infringes a third party's rights or is prohibited by these terms and conditions; or
- b) to breach or circumvent or attempt to breach or circumvent the security of the Website (including 'hacking') or engage in any other malicious, illegal or damaging behaviour in relation to the Website.

2.5 If the Buyer purchases any services from the Seller that are provided via the Website, the Buyer may be issued with a user name and password. The Buyer is responsible for maintaining the confidentiality of that user name and password, and is fully responsible for all conduct carried out under the provided user name and account.

2.6 The Seller reserves the right to revise and update these terms and conditions and the Privacy Policy as follows:

- a) if the Seller considers that the change is likely to benefit the Buyer or have a neutral or minor detrimental impact on the Buyer, the Seller may make any changes immediately without notifying the Buyer except by publishing the amended terms and conditions or Privacy Policy (as applicable) on the Website; and
- b) if the Seller considers that the change is likely to have a significant detrimental impact on the Buyer, the Seller will make the change 7 days after it has notified the Buyer of the change (solely by using the email address that the Buyer has provided) and the Seller will display a notice on the website describing the change. The Buyer may object to the change and terminate the provision of any ongoing services provided by the Seller with immediate effect during that 7 day period.

The Buyer's continued use of the Website will mean that the Buyer accepts those changes.

3. TERMS OF SALE

3.1 The Goods and all other products sold by the Seller are sold on these terms and conditions.

3.2 On payment of an invoice in respect of any Goods, the Buyer agrees to be bound by these terms and conditions and any other terms, conditions and policies notified by the Seller (including the Privacy Policy and any other terms, conditions and policies made available on the Website) in respect of the sale and supply of those Goods.

4. QUOTATIONS AND ORDERS

4.1 The price specified in a Quotation is only valid for the period stated in the Quotation (or, if no period is stated, for 30 days from the date of the Quotation).

4.2 A Quotation issued by the Seller constitutes an invitation to treat and not an offer.

4.3 By placing an order for Goods on the basis of the pricing and payment terms set out in a valid Quotation, the Buyer is making an offer for the relevant Goods on those terms and on these terms and conditions.

4.4 A contract of sale is only formed when an order placed by the Buyer in accordance with clause 4.3 is received and accepted in writing by the Seller (including by the issue of an invoice).

5. PRICES

5.1 All prices and fees displayed on the Website or provided by the Seller are subject to change without notice and all orders are accepted by the Seller on condition that they will be invoiced at the prices set out in the Quotation, provided that the Seller reserves the right to correct any typographical and clerical errors in the prices or specifications set out in the Quotation. If the Buyer places an order for Goods after a Quotation in respect of those Goods has expired, the Seller reserves the right to issue a new Quotation in respect of those Goods with updated pricing.

5.2 Unless otherwise stated, prices on the Website or specified in a Quotation do not include freight, installation, configuration or commissioning charges or the costs of any special packing and packing materials. The Buyer must pay all costs incurred by the Seller in freighting, installing, commissioning, configuring and/or specially packing the Goods at the request of the Buyer.

5.3 Any consideration to be paid or provided for a supply made under or in connection with these terms and conditions, unless specifically described as GST inclusive, does not include an amount on account of GST. Despite any other provision in these terms and conditions, if a party ('Supplier') makes a supply under or in connection with these terms and conditions on which GST is imposed (not being a supply the consideration for which is specifically described in these terms and conditions as GST inclusive), the consideration payable or to be provided for that supply but for the application of this clause 5.3 ('GST exclusive consideration') is increased by, and the recipient of the supply ('Recipient') must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply, and the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided. The Seller will provide a tax invoice prior to seeking payment of GST. Words or expressions used in this clause 5.3 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

5.4 Unless otherwise stated, the prices quoted by the Seller are net of all other taxes, tariffs, duties and levies imposed by any government or statutory authority. All such taxes, tariffs, duties and levies must be paid by the Buyer on demand by the Seller.

6. TERMS OF PAYMENT

6.1 Once the Seller has received an order for Goods in accordance with clause 4.3, the Seller may issue invoices in respect of the Goods on a monthly basis (or such other basis as specified in the Quotation).

6.2 The Buyer must pay each invoice issued by the Seller at the time stated in the Quotation, or in the absence of any time stated, within seven (7) days of date of invoice.

7. DELIVERY

7.1 The Seller will not dispatch any Goods to the Buyer, or make any Goods available for collection by the Buyer, until the Buyer has paid the deposit, or any other amount that is first due to be paid, under the invoice in respect of the Goods.

7.2 Any time for processing of an order or delivery of Goods made known to the Buyer is an estimate only.

7.3 Except as required by law (including under the Buyer's Statutory Rights), the Seller is not liable for any loss, damage or delay occasioned to the Buyer or its employees, contractors or customers arising from late or non-delivery or late installation of Goods.

7.4 The Seller may at its option deliver the Goods to the Buyer in any number of installments unless otherwise agreed in writing between the parties.

8. LOSS OR DAMAGE IN TRANSIT

8.1 Although the Seller appoints contractors who are instructed to use appropriate care when delivering Goods, the Seller is not responsible to the Buyer or any person claiming through the Buyer (including in negligence) for any loss or damage to Goods once those Goods have left the premises of the Seller (however caused and whether or not the Seller is legally responsible for any person who caused or contributed to that loss or damage), except as required by law (including under the Buyer's Statutory Rights).

8.2 The Seller must, on request by the Buyer, provide the Buyer with reasonable assistance to make a claim against any carrier in relation to loss or damage to the Goods caused in transit, provided that the Buyer:

- a) has notified the Seller and the relevant carrier in writing of the loss or damage immediately after the Goods have been received; and
- b) requests compensation from the carrier for the loss or damage within three (3) days after the date of receipt of the Goods.

9. SHORTAGE

Except as required by law (including under the Buyer's Statutory Rights), the Seller excludes all liability in relation to any shortage of any Goods delivered if a claim for short delivery has not been lodged with the Seller within seven (7) days from the date of receipt of Goods by the Buyer.

10. RIGHTS IN RELATION TO THE GOODS

10.1 The Seller and Buyer agree that:

- a) title in all Goods remains with the Seller until the Seller has been paid for in full for those Goods; and
- b) until title in any Goods passes to the Buyer, the Buyer is the bailee of those Goods and assumes, in favour of the Seller, all of the duties and liabilities of a bailee in respect of the Goods.

10.2 In respect of any Goods while they remain the property of the Seller, the Buyer must:

- a) not dispose of the Goods or create or allow to be created any mortgage, lien, charge, pledge, claim or other encumbrance or third party interest over or in respect of the Goods, or agree to do any of those things;
- b) not (without the Seller's prior written consent) supply any of the Goods to any person outside of its ordinary or usual course of business;
- c) insure the Goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorized to conduct the business of insurance in the place where the Buyer carries out business; and
- d) not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.

11. PERFORMANCE

11.1 Any information on the Website is supplied without any warranty, condition or other terms and any performance figures provided by the Seller in relation to the Goods are estimates only. Except as required by law (including under the Buyer's Statutory Rights), the Seller excludes all liability in relation to any failure of the Goods to perform in accordance with any such figures except to the extent of any performance guarantee provided by the Seller to the Buyer in writing.

11.2 The Buyer acknowledges that the operation of Goods and its access to and use of services provided via the Website is dependent on and affected by a range of matters outside the control of the Seller, including without limitation, the communication and tracking services and coverage provided by third parties, weather conditions, magnetic and electronic interference, shielding, terrain, radio emissions, interruptions caused by those matters and other factors as notified from time to time by the Seller to Buyer (including notification via the Website and in any promotional material, quotations and specifications) ('External Factors'). The Seller does not warrant that operation of the Goods and the

services provided via the Website will be uninterrupted or error-free, or that any outage notifications will be made in a timely manner, or at all.

11.3 To the fullest extent permitted by the law and subject to the Statutory Rights, the Buyer releases the Seller from all claims, suits, actions and demands which may arise, directly or indirectly, out of or in connection with the External Factors and the effect of any of them on the operation of the Goods or access to and use of the Website.

11.4 Except as required by law (including under the Buyer's Statutory Rights), the Seller gives no warranty or representation of uninterrupted, continuous or error free operation of or communication with the Goods or access to and use of the Website.

11.5 The Buyer indemnifies the Seller from and against all claims, suits, actions, demands, costs and expenses incurred by the Seller arising out of or in connection with the External Factors and the effect of any of them on the operation of the Goods or access to and use of the Website.

12. TERM AND TERMINATION

12.1 The Seller will provide the services included with the Buyer's purchase of hardware for a term of 24 months commencing on the date on which the Buyer's order is accepted by the Seller, unless the agreement for provision of services is terminated earlier in accordance with this clause 12.

12.2 If the Buyer breaches any of these terms and conditions (including, without limitation, by failing to pay any money owed to the Seller by the payment due date), becomes insolvent or ceases to carry on business, the Seller may, at its sole discretion, suspend its obligation to provide services until the breach is rectified, or terminate this agreement for cause with immediate effect, by giving notice in writing to the Buyer.

12.3 The Buyer may terminate the agreement for provision of ongoing services for convenience by giving 30 days written notice to the Seller of that termination, provided that the Buyer must pay to the Seller, within 30 days after giving such notice, an early termination charge equal to 90% of the charges that the Buyer would have been required to pay during the remaining period of the services term, had the agreement not been terminated.

13. LIMITATION OF LIABILITY

13.1 These terms and conditions do not exclude or limit any of the Buyer's Statutory Rights, or exclude or limit the application of any provision of any statute (including the Trade Practices Act) where to do so would contravene that statute or cause any part of these terms and conditions to be void.

13.2 Except as required by law (including under the Buyer's Statutory Rights) and subject to clauses 13.1, 13.3 and 13.5, the Seller's liability (including in negligence) for any defects in any Goods manufactured by it is limited to, at the Seller's option, repairing the defect or replacing the Goods, within a period ending twelve (12) calendar months after the Goods have been dispatched or made available for collection (whichever is earlier), so long as:

- a) the defect has arisen solely from faulty materials or workmanship;
- b) the defect has not been caused or contributed to by installation, configuration or commissioning of the Goods by any person other than the Seller;
- c) the seals of any kind used by the Buyer remain unbroken; and
- d) the defective parts are promptly returned to the Seller at the Buyer's cost.

13.3 Except as required by law (including under the Buyer's Statutory Rights), the Seller is not liable (including in negligence) for any cost, loss, liability or expense arising from death, personal injury or damage to property, any loss of profits, loss of revenue, loss of data, loss of use of data, or any direct, indirect or consequential loss or damage incurred by the Buyer or any other person arising out of the supply, layout, assembly, installation or operation of the Goods or from the Buyer's access to and use of the Website.

13.4 To the extent permitted by law, the Seller's total aggregate liability (including in negligence) for any cost, loss, liability or expense arising, directly or indirectly, from the Buyer's access to or use of the Website is limited to AU\$10,000.

13.5 To the extent permitted by law, the Seller's liability for breach of any condition or warranty implied into these terms and conditions by the Trade Practices Act (other than an implied undertaking relating to title under s 69) is limited to:

- a) in the case of goods, any one or more of the following at the Seller's option:
 - i) the replacement of the goods or the supply of equivalent goods;
 - ii) the repair of the goods;
 - iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - iv) the payment of the cost of having the goods repaired; or
- b) in the case of services, any one or more of the following at the Seller's option:
 - i) the supplying of the services again; or
 - ii) the payment of the cost of having the services supplied again.

14. RETURN AND REFUND – 21 DAY POLICY

14.1 The Seller values its relationship with its customers and thus offers the Buyer the option to return and obtain a refund for Goods purchased directly from the Seller in accordance with this clause 14.

14.2 In addition to the Buyer's Statutory Rights, the Buyer may return Goods for refund of purchase price paid, less postage and restocking fees, provided that:

- a) the Seller must give its prior authorisation for the return;
- b) the Buyer must, at its expense, de-install and ship the Goods to the address notified by the Seller. This shipment should be insured or Buyer should accept the risk of loss or damage to the Goods during transit;
- c) the Goods must be returned within 21 calendar days after the date on which the Buyer paid the deposit, or any other amount that is first due to be paid, under the invoice in respect of the Goods; and
- d) the Buyer must supply with the returned Goods a notice specifying the name of the Buyer, the date on which the Goods were purchased and the reference (RMA) number specified by the Seller upon authorising the return.

14.3 Subject to clause 14.4, if the Buyer returns any Goods in accordance with clause 14.2, the Seller will issue to the Buyer a credit note or refund of the purchase price, less the following amounts that the Seller may deduct from the amount of the credit note or refund:

- a) any shipping and handling costs incurred by the Seller;
 - b) unless the Goods are agreed to be faulty or DOA (dead on arrival), a restocking fee of up to 20% of the purchase price paid, plus any applicable sales tax, at the Seller's discretion;
- and

c) if the returned Goods are found to be damaged or incomplete in any way, any repair or replacement costs incurred by the Seller.

14.4 Before returning any Goods, the Buyer should download any data and save it on its own storage device or hard drive as any data provided with the Goods will be inaccessible after the credit note or refund is issued.

14.5 Any goods returned to the Seller other than in accordance with clause 14.2 (or as permitted pursuant to the Buyer's Statutory Rights) will be considered an unauthorised return. In this case the Buyer will not receive a credit note or refund for the Goods and the Seller will not ship the Goods back to the Buyer unless the Buyer pays all handling, shipping and administrative costs incurred by the Seller in doing so.

15. GENERAL

15.1 The laws of the State of Victoria, Australia, govern these terms and conditions, and the Buyer and the Seller irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that State.

15.2 These terms and conditions, the Privacy Policy and any other terms, conditions and policies notified by the Seller (including any other terms, conditions and policies made available on the Website) are the entire agreement between the parties as to their subject matter, and supersede all prior or inconsistent statements or representations (including any conditions set out in the Buyer's order or request for Goods) as to that subject matter.

15.3 These terms and conditions may only be waived in writing signed by the Seller.