

**MOBILE TRACKING & DATA PTY LTD**  
**Terms & Conditions v1.0**

- 1. Interpretation**
  - 1.1 In these terms and conditions:
    - Business Day** means a day that is not a Saturday, Sunday, bank holiday or public holiday in Melbourne, Australia.
    - Business Hours** means from 9.00am to 5.00pm on a Business Day.
    - Contract** is defined in clause 3.4.
    - Critical Fault** means a significant error or failure in the Licensed Software which results in a major or total failure of operation of the Licensed Software to perform in substantial conformity with the Documentation, so as to give rise to a major or total interruption to the functioning of the business of the Customer.
    - Customer** means a person who procures (or wishes to procure) any of the Goods.
    - Documentation** means operator and user manuals, training materials, guides, specifications and other materials created or owned by MTDData in relation to the use of the Goods.
    - External Factors** is defined in clause 17.2.
    - Goods** means the hardware, software and/or services offered by MTDData to the Customer, as described in a Quotation (and includes any services provided via the Website).
    - Licensed Software** means any software supplied by MTDData under this Contract, including any Updates or New Releases to that software provided to the Customer from time to time.
    - MTDData** means Mobile Tracking & Data Pty Ltd ABN 51 104 260 737.
    - New Release** means a new version of Licensed Software which adds new functionality or performance and for which MTDData typically charges its customers.
    - Non-Critical Fault** means any error or failure in the operation of the Licensed Software which results in a failure of the Licensed Software to perform in substantial conformity with the Documentation and that is not a Critical Fault.
    - Non-Excludable Condition** is defined in clause 18.1.
    - Privacy Policy** means MTDData's privacy policy available on the Website (as may be amended from time to time).
    - Purchased Goods** means the hardware Goods that the Customer purchases from MTDData.
    - Quotation** means the written or electronically generated Quotation Terms Sheet provided by MTDData to the Customer.
    - Rented Goods** means the hardware Goods that the Customer rents from MTDData.
    - Trade Practices Act** means the *Trade Practices Act 1974* (Cth).
    - Update** means each update of Licensed Software supplied by MTDData the purpose of which is to correct an error or defect in the Licensed Software (but excluding New Releases).
    - Website** means MTDData's website located at [www.mtdata.com.au](http://www.mtdata.com.au).
- 2. Terms of supply**
  - 2.1 The Goods are supplied by MTDData on these terms and conditions.
  - 2.2 The Customer agrees to be bound by and abide by these terms and conditions and any other terms, conditions and policies notified by MTDData (including the Privacy Policy) in writing in respect of the provision of the Goods.
- 3. Quotations and orders**
  - 3.1 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).
  - 3.2 A Quotation issued by MTDData constitutes an invitation to treat and is not an offer.
  - 3.3 By placing an order for Goods on the basis of the pricing and payment terms set out in a valid Quotation, the Customer is making an offer to procure the relevant Goods on those terms and on these terms and conditions.
  - 3.4 A contract in respect of the provision of Goods (**Contract**) is only formed when an order placed by the Customer in accordance with clause 3.3 is received and accepted in writing by MTDData (including by the issue of an invoice). The Contract comprises the terms of the Quotation, these terms and conditions, the Privacy Policy, and any other terms notified to the Customer by MTDData in writing in accordance with clause 2.2.
- 4. Prices**
  - 4.1 All prices and fees provided by MTDData are subject to change without notice and all orders are accepted by MTDData on condition that they will be invoiced at the prices set out in the Quotation, provided that MTDData reserves the right to correct any typographical and clerical errors in the prices or specifications set out in the Quotation and to amend the prices set out in the Quotation to reflect any variations in the rates or methods of assessment for any freight costs, insurance costs, agency fees, wharfage and storage charges and customs duty in respect of any Goods that occurs after the date of the Quotation. If the Customer places an order for Goods after a Quotation in respect of those Goods has expired, MTDData reserves the right to issue a new Quotation in respect of those Goods with updated pricing.
  - 4.2 Unless otherwise stated, prices specified in a Quotation do not include freight, installation, configuration or commissioning charges or the costs of any special packing and packing materials. The Customer must pay all costs incurred by MTDData in freighting, installing, commissioning, configuring and/or specially packing the Goods at the request of the Customer.
  - 4.3 Any consideration to be paid or provided for a supply made under or in connection with this Contract, unless specifically described as GST inclusive, does not include an amount on account of GST. Despite any other provision in this Contract, if a party (**Supplier**) makes a supply under or in connection with this Contract on which GST is imposed (not being a supply the consideration for which is specifically described in this Contract as GST inclusive), the consideration payable or to be provided for that supply but for the application of this clause 4.3 (**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 Supplier will provide a tax invoice prior to seeking payment of GST. Words or expressions used in this clause 4.3 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.
  - 4.4 Unless otherwise stated, and subject to clause 4.3, the prices quoted by MTDData are net of all taxes, tariffs, duties and levies imposed by any government or statutory authority. All such taxes, tariffs, duties and levies must be paid by the Customer on demand by MTDData.
- 5. Terms of payment**
  - 5.1 Once MTDData has received an order for Goods in accordance with clause 3.3, MTDData may issue invoices in respect of the Goods on a monthly basis (or such other basis as specified in the relevant Quotation).
  - 5.2 Without limiting clause 5.1:
    - (a) MTDData may issue invoices for equipment progressively as items or instalments of Goods are delivered or are made available for collection;
    - (b) where the Quotation provides for development of software to meet the requirements of the Customer, MTDData may issue invoices progressively as development proceeds; and
    - (c) where any Quotation provides for installation, configuration and/or commissioning or other services, MTDData may issue additional invoices progressively during the course of the provision by MTDData of the services.
  - 5.3 The Customer must pay each invoice issued by MTDData at the time stated in the Quotation or, in the absence of any time stated, within seven (7) days after the date of the invoice.
- 6. Delivery**
  - 6.1 MTDData will not dispatch any Goods to, or make any Goods available for collection by, the Customer until the Customer has paid the deposit, or any other amount that is first due to be paid, under the invoice in respect of the Goods.
  - 6.2 Any time for processing of an order or delivery of the Goods made known to the Customer is an estimate only.
  - 6.3 Except as required by law (including under any Non-Excludable Condition), MTDData is not liable for any loss, damage or delay occasioned to the Customer or its employees, contractors or customers arising from late or non-delivery or late installation of the Goods.
  - 6.4 MTDData may, at its option, deliver the Goods to the Customer in any number of instalments, unless otherwise agreed in writing between the parties.
  - 6.5 If MTDData delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
    - (a) this does not constitute a repudiation of the Contract formed in accordance with these terms and conditions; and
    - (b) the defective instalment is a severable breach that, subject to clause 18, gives rise only to a claim for replacement or repair of the defective instalment.
- 7. Loss or damage in transit**

Although MTDData appoints contractors who are instructed to use appropriate care when delivering Goods, MTDData is not responsible to the Customer or any person claiming through the Customer (including in negligence) for any loss or damage to Goods once those Goods have left the premises of MTDData (however caused and whether or not MTDData is legally responsible for any person who caused or contributed to that loss or damage), except as required by law (including under any Non-Excludable Condition).
- 8. Shortage**

Except as required by law (including under any Non-Excludable Condition), MTDData excludes all liability in relation to any shortage of any Goods delivered if a claim for short delivery has not been lodged with MTDData within seven (7) days after the date of receipt of Goods by the Customer.
- 9. Rights in relation to the Goods**
  - 9.1 MTDData and the Customer agree that:
    - (a) title in all Purchased Goods remains with MTDData until MTDData has been paid in full for those Purchased Goods;
    - (b) title in all Rented Goods remains with MTDData at all times; and
    - (c) (in the case of Purchased Goods) until title in the Purchased Goods passes to the Customer and (in the case of Rented Goods) at all times, the Customer is the bailee of all Goods and assumes, in favour of MTDData, all of the duties and liabilities of a bailee in respect of the Goods.
  - 9.2 In respect of any Goods while they remain the property of MTDData, the Customer 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 MTDData'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 authorised to conduct the business of insurance in the place where the Customer carries out business; and
    - (d) not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.
- 10. Installation, configuration and commissioning**
  - 10.1 Where the Customer requests that MTDData carry out any installation, configuration or commissioning in respect of the Goods, the date of such work will be agreed between the Customer and MTDData. However, if for any reason (other than neglect or default of MTDData) MTDData cannot proceed with the required work on the agreed date, then the Customer must pay on demand by MTDData any additional costs incurred by MTDData due (directly or indirectly) to the delay.
  - 10.2 The Customer must give MTDData all reasonable assistance, including the provision of personnel, facilities, services (including electricity and communication links) and information, and the granting of access to premises and required security clearances during Business Hours, as MTDData reasonably requires to ensure satisfactory installation, configuration and/or commissioning of the Goods.
  - 10.3 Unless otherwise specified, prices quoted by MTDData for installation, configuration and/or commissioning are quoted on the basis that the work may proceed continuously during Business Hours and that ready access to the installation sites or site is provided by the Customer. MTDData may increase the amount charged for installation, configuration and/or commissioning due to any delays caused by the Customer not complying with its obligations under clause 10.2.
- 11. Licence of Licensed Software**
  - 11.1 Where the Quotation provides for the Customer to access MTDData's network for use in conjunction with the Goods, subject to payment by the Customer of the applicable fees as set out in the Quotation, MTDData grants to the Customer a non-exclusive, non-transferable, non-sublicensable licence to use the Licensed Software on MTDData's network, for the term set out in the Quotation (if any), solely for the purpose of operating Goods purchased or rented by the Customer from MTDData.
  - 11.2 Where the Quotation provides for the acquisition by the Customer of a system licence from MTDData, subject to payment by the Customer of the applicable fees as set out in the Quotation, MTDData grants to the Customer a non-exclusive, non-transferable, non-sublicensable licence to use the Licensed Software described in the Quotation, for the term set out in the Quotation (if any), solely for the purpose of operating Goods purchased or rented by the Customer from MTDData.
  - 11.3 The Customer:
    - (a) must not use the Licensed Software in conjunction with, or for the purpose of operating, any goods acquired from any third party; and
    - (b) must only use the Licensed Software with the in-vehicle equipment approved by MTDData; and
    - (c) (where clause 11.2 applies) must only use the Licensed Software at the site approved by MTDData.
  - 11.4 The Customer must comply with all reasonable directions issued by MTDData regarding use of the Licensed Software, must use the Licensed Software in accordance with the Documentation, and must ensure that all Customer personnel who use, install or support the Licensed Software are properly trained in the operation, installation and support of the Licensed Software.
  - 11.5 The Customer must not use the Licensed Software on equipment other than equipment approved by MTDData, except that the Customer may, at its own risk, use it on alternative equipment if the designated equipment is temporarily inoperable due to malfunction, maintenance or change of installation site, or with the consent of MTDData.
  - 11.6 The Customer must not copy, alter, modify or reproduce the Licensed Software except to the extent otherwise permitted under this Contract.
  - 11.7 The Customer must use all commercially reasonable efforts to safeguard the Licensed Software from misuse, unauthorised use, loss or damage, and will provide an operating environment for the Licensed Software (including computer hardware and software, appropriate cabling, telephone lines and modem access and communications links, and a suitable temperature controlled, dust and smoke free environment) that complies with all specifications and requirements provided to the Customer by MTDData (including stable spike-free electricity supply and a standby generator backed-up UPS (uninterruptible power supply) for all critical computers and associated equipment).
  - 11.8 The Customer must keep accurate records of use, copying, modification and disclosure of the Licensed Software. The Customer must permit MTDData to inspect such records at any time during Business Hours and provide a copy of such records to MTDData on MTDData's request.
  - 11.9 The Customer must keep the Licensed Software and the Documentation confidential, except to the extent that it enters the public domain or the disclosure is required by law, and must take all reasonable steps to ensure that its personnel keep confidential and do not disclose the Licensed Software or Documentation. This clause 11.9 survives the end of the Customer's licence in respect of the Licensed Software.
  - 11.10 Except to the extent expressly permitted under Division 4A of Part III of the *Copyright Act 1968* (Cth), the Customer must not modify, alter, adapt, merge, translate, decode, reverse engineer, decompile or disassemble the Licensed Software or merge all or any part of the Licensed Software with any other software without MTDData's written permission. The Customer assigns to MTDData, including by way of future copyright, all intellectual property rights in any modifications made by the Customer to the Licensed Software. The Customer indemnifies MTDData from and against all claims, suits, actions, demands, costs and expenses incurred by MTDData arising out of or in connection with any modifications made by the Customer to the Licensed Software, including any claim for infringement of third party intellectual property rights.
- 12. Use of the Website**
  - 12.1 The Customer's use of the Website, including to access any services purchased by the Customer that are provided via the Website, is governed by this Contract.
  - 12.2 The materials displayed on the Website, including without limitation text, photographs, illustrations, artwork, graphical content, names, logos and trade marks are the property of MTDData or its licensors. The Customer must not reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or communicate any such materials to any third party without MTDData's prior written consent.
  - 12.3 MTDData 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 defects or errors which may affect the Customer's software or systems. The Customer is responsible for protecting its own software and systems by installing and implementing appropriate security and system checks.
  - 12.4 The Customer must not use the Website or any of the services provided via 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 this Contract; 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.
  - 12.5 If the Customer purchases any services from MTDData that are provided via the Website, the Customer may be issued with a user name and password. The Customer 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.
  - 12.6 MTDData reserves the right to revise and update these terms and conditions and its Privacy Policy, to the extent that they relate to access to and use of the Website, as follows:
    - (a) if MTDData considers that the change is likely to benefit the Customer or have a neutral or minor detrimental impact on the Customer, MTDData may make any changes immediately without notifying the Customer except by publishing the amended terms and conditions or Privacy Policy (as applicable) on the Website; and
    - (b) if MTDData considers that the change is likely to have a significant detrimental impact on the Customer, MTDData will make the change 7 days after it has notified the Customer of the change (solely by using the email address that the Customer has provided) and MTDData will display a notice on the Website describing the change. The Customer may object to the change and terminate the provision of any ongoing services provided by MTDData with immediate effect during that 7 day period.

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

**13. Software support**

- 13.1 MTDData will perform the support services that it considers appropriate so that the Licensed Software remains in substantial conformity with the Documentation. This support may, in MTDData's sole discretion, take the form of telephone advice, remote error correction by means of modem, on-site attendance followed by such advice, programming or re-configuration as MTDData considers necessary, or such other services or methods of provision of services as MTDData considers appropriate.
  - 13.2 Non-Critical Faults must be logged by completing a Support Services request form in the form provided to the Customer by MTDData from time to time and either faxing it to +61 3 9545 3867 or emailing it to [support@mtdata.com.au](mailto:support@mtdata.com.au). MTDData will acknowledge receipt of any such request within two Business Days of its receipt.
  - 13.3 Critical Faults can be logged by calling MTDData's support line on 1300 683 282. This number operates during business hours.
  - 13.4 Support services do not include:
    - (a) rectification of defects or errors resulting from any modification of the Licensed Software made by any person other than MTDData;
    - (b) rectification of defects or errors resulting from use of the Licensed Software in combination with hardware other than that approved by MTDData in writing;
    - (c) rectification of defects or errors caused by the failure of hardware not supplied by MTDData;
    - (d) rectification of operating errors;
    - (e) rectification of defects or errors caused by incorrect Customer system configuration changes;
    - (f) rectification of defects or errors caused by third party software or products;
    - (g) rectification of defects or errors that are the subject of a warranty under another agreement with a third party;
    - (h) rectification of defects or errors caused by External Factors;
    - (i) rectification of defects or errors caused by force majeure events (including floods, lightning, fire or any other natural disaster);
    - (j) rectification of defects or errors caused by accidental or deliberate damage;
    - (k) development of new options or features at the Customer's request;
    - (l) investigation of alleged defects or errors where there is insufficient evidence to support the Customer's claim;
    - (m) rectification of defects or errors caused by use of the Licensed Software other than in accordance with any Documentation or the reasonable instructions of MTDData;
    - (n) the Customer's failure to install any Update in accordance with clause 13.10; or
    - (o) the provision of New Releases.
  - 13.5 Despite any other provision of this Contract, MTDData does not guarantee that the provision of support services will be within the times set out in this Contract or otherwise agreed between the parties. To the maximum extent permitted by law, MTDData will have no liability whatsoever if provision of the support services is delayed for any reason (including due to circumstances beyond MTDData's control).
  - 13.6 If MTDData provides support services and, in doing so, determines that the alleged defect was not a Critical Fault or Non-Critical Fault in the Licensed Software, or was caused by one or more of the matters referred to in clause 13.4(a) to 13.4(n) (inclusive), MTDData may charge the Customer, and the Customer must pay, for the work expended by MTDData in providing those services, at MTDData's then-current time and materials rates. Any such assistance or support that is provided outside Business Hours will be charged at double MTDData's then-current time and materials rates, with a minimum chargeable time of three hours.
  - 13.7 The Customer must co-operate fully with MTDData's personnel in the diagnosis of any alleged non-conformity of the Licensed Software and must provide all such information that MTDData determines necessary for it to perform the support services.
  - 13.8 The Customer must:
    - (a) at its own cost, provide such telecommunication, hardware, software, information and other facilities as required by MTDData to enable it to conduct remote testing and diagnosis of the Licensed Software; and
    - (b) permit MTDData to access any hardware on which the Licensed Software is installed to the extent necessary to enable MTDData to provide the support services.
  - 13.9 MTDData may provide Updates or New Releases to the Customer in its sole discretion during the term of the support services. The development, content and delivery schedule of (and, in the case of New Releases, applicable fees for) those Updates and New Releases will be at MTDData's sole discretion.
  - 13.10 The Customer must install any Update that MTDData has released to correct any defects or errors in the Licensed Software as soon as reasonably practicable after the receipt of such Update (at a date and time mutually agreed by the parties, such agreement not to be unreasonably withheld or delayed).
  - 13.11 The costs associated with deploying any Update or New Release (including all labour and travel costs) are not covered by this Contract and will be invoiced separately to the Customer.
- 14. Documentation**
- 14.1 MTDData will provide the Customer with the number of copies of the Documentation specified in the Quotation or as otherwise agreed in writing between the Customer and MTDData.
  - 14.2 The Customer must not copy or reproduce any Documentation except to the extent otherwise authorised under this Contract.
- 15. Term and termination**
- 15.1 MTDData will rent the Rented Goods to the Customer, and provide the services included with the Customer's purchase or rental of hardware, commencing on the date on which the Customer's order is accepted by MTDData, until this Contract is terminated in accordance with this clause 15.
  - 15.2 If the Customer breaches any provision of this Contract (including, without limitation, by failing to pay any amounts owed to MTDData by the applicable payment due date), becomes insolvent or ceases to carry on business, MTDData may, in its sole discretion, either suspend its obligation to provide services (including suspending the Customer's access to the Licensed Software) until the breach is rectified, or terminate this Contract for cause with immediate effect, by giving notice in writing to the Customer.
  - 15.3 The Customer may terminate the provision of ongoing services, the licence of the Licensed Software and/or the ongoing rental of the Rented Goods under this Contract, or this Contract as a whole, for convenience, by giving MTDData not less than 60 days written notice of that termination. After the expiry of the minimum term specified in the Quotation (if any), MTDData may terminate the provision of ongoing services, the licence of the Licensed Software and/or the ongoing rental of the Rented Goods under this Contract, or this Contract as a whole, for convenience, by giving the Customer not less than 90 days written notice of that termination.
  - 15.4 If the Customer gives a notice of termination for convenience under clause 15.3 before the expiry of a minimum term specified in the Quotation, then the Customer must pay to MTDData, within 7 days after giving that notice, in addition to any other amounts that may be owing to MTDData under this Contract, an early termination charge equal to 90% of the charges that the Customer would have been required to pay during the remaining period of the minimum services term, licence term and/or rental term (as applicable) had the termination not occurred.
  - 15.5 Immediately upon the termination of the rental or this Contract, the Customer must, at its expense, de-install and ship the Rented Goods, in good working order, to the address notified by MTDData. This shipment should be insured, as the Customer will bear the risk of loss or damage to the Rented Goods during transit. MTDData may invoice the Customer for any Rented Goods that are not returned to MTDData in accordance MTDData, must certify in writing its return or destruction; and
    - (a) the Customer must pay to MTDData any fees and charges that are payable and outstanding as at the termination date.
- 16. Specifications**
- 16.1 All specifications, drawings and particulars of weights and dimensions provided by MTDData to the Customer are approximate only and, except as required by law (including under any Non-Excludable Condition), MTDData excludes all liability in relation to any deviation from any of those specifications, drawings, weights or dimensions in the Goods (including the Licensed Software).
  - 16.2 The descriptions and illustrations contained in catalogues, price lists, the Website and other advertising matter are provided by MTDData for information only and, except as required by law (including under any Non-Excludable Condition), do not form part of this Contract.
  - 16.3 All Goods to be supplied by MTDData to the Customer are as described on the Quotation. The description of the Goods in the Quotation prevails over all other descriptions of the Goods, including the description in any specification or enquiry of the Customer and in any material provided by MTDData.
  - 16.4 Where specifications, drawings or other particulars are supplied by the Customer, the price specified in the Quotation is based on MTDData's estimates of quantities of Goods required by the Customer. If there are any adjustments in quantities above or below the quantities set out in a Quotation, the price specified in the Quotation will be increased or decreased accordingly on the basis of the unit prices set out in the Quotation.
- 17. Performance**
- 17.1 Any information contained in catalogues, price lists, the Website and other advertising matter is supplied without warranty, condition or other terms and any performance figures provided by MTDData in relation to the Goods are estimates only. Except as required by law (including under any Non-Excludable Condition), MTDData excludes all liability in relation to any failure of the Goods to perform in accordance with any such information or figures except to the extent of any performance guarantee

provided by MTDData to the Customer in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

- 17.2 The Customer acknowledges that the operation of the Goods (including the Customer's access to the Website and its use of any services provided via the Website) is dependent on and affected by a range of matters outside the control of MTDData, including without limitation, mains power disruptions, the communication and tracking services and coverage provided by third parties, communications infrastructure (such as mobile GSM/GPRS/3G networks, ISP outages, leased line/ISDN circuit failure, PMR channel or network failure), 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 MTDData to Customer including notification via the Website, promotional material, Quotations and specifications (**External Factors**). MTDData does not warrant that operation of the Goods will be continuous, uninterrupted or error-free, or that any outage notifications will be made in a timely manner, or at all.
- 17.3 To the maximum extent permitted by the law, and subject to clause 18.1, the Customer releases MTDData 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.
- 17.4 Except as required by law (including under any Non-Excludable Condition), MTDData gives no warranty or representation of uninterrupted, continuous or error free operation of, or communication with the Goods.
- 17.5 The Customer indemnifies MTDData, and must hold it harmless, from and against all claims, suits, actions, demands, costs and expenses incurred by MTDData arising out of or in connection with the External Factors and the effect of any of them on the operation of the Goods.

**18. Limitation of liability**

- 18.1 MTDData acknowledges that the Trade Practices Act, State and Territory fair trading legislation and other statutes, may confer certain rights and remedies on the Customer in relation to the provision by MTDData of goods or services under this Contract which cannot be excluded, restricted or modified by agreement. This clause 18 does not exclude, restrict or modify the application of any provision of any statute (including the Trade Practices Act) where to do so would:
  - (a) contravene that statute; or
  - (b) cause any part of this clause to be void,**(Non-Excludable Condition).**
- 18.2 MTDData excludes all implied conditions, warranties and guarantees except any Non-Excludable Condition.
- 18.3 Except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, MTDData's liability to the Customer for breach of any Non-Excludable Condition (other than an implied warranty or guarantee as to title, encumbrances or quiet possession) is limited to:
  - (a) in the case of services, the lowest of the cost of supplying the services again and payment of the cost of having the services supplied again; and
  - (b) in the case of goods, the lowest of the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.
- 18.4 Subject to clause 18.1, MTDData's liability (including in negligence) for any defect in any Goods (including in any Licensed Software) is limited to, at MTDData'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 MTDData;
  - (c) the defect has not been caused or contributed to by the Goods having received maltreatment, inattention or interference;
  - (d) the defect has not been caused or contributed to by accessories of any kind being used by the Customer with the Goods that were not manufactured or approved by MTDData;
  - (e) the seals of any kind on the Goods remain unbroken; and
  - (f) the defective parts are promptly returned to MTDData at the Customer's cost.
- 18.5 Subject to clause 18.1, but despite any other provision of this Contract, MTDData 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 goodwill, loss of customers, loss of or damage to reputation, loss of capital, downtime costs, loss under or in relation to any other contract, loss of data, loss of use of data or any indirect, consequential or special loss or damage incurred by the Customer or any other person arising under or in connection with this Contract or the supply, layout, assembly, installation, provision or operation of the Goods (including the Customer's access to or use of the Website or the provision of any other services by MTDData).
- 18.6 Subject to clauses 18.1 and 18.5, but despite any other provision of this Contract, MTDData's total aggregate liability (including in negligence) for any cost, loss, liability or expense arising, directly or indirectly, under or in connection with this Contract or the supply, layout, assembly, installation, provision or operation of the Goods (including the Customer's access to and use of the Website or the provision of any other services by MTDData), is limited to AUD\$10,000.

**19. Customer's property**

Any property of the Customer under MTDData's possession, custody or control is completely at the Customer's risk as regards loss or damage caused to the property or by it.

**20. Returned Goods**

- 20.1 Subject to clause 18, MTDData will not accept any Goods returned by the Customer except:
  - (a) pursuant to clause 1.1; or
  - (b) on terms agreed in writing with the Customer at MTDData's sole discretion.
- 20.2 Any Goods returned by the Customer in accordance with this Contract must be returned at the Customer's expense to the address notified to the Customer by MTDData.

**21. Notices**

- 21.1 Any notice required or authorised to be given or served on a party under this Contract must be in writing and delivered personally, by pre-paid registered letter, by facsimile or by electronic mail addressed to the relevant party as set out in the Quotation.
- 21.2 Notice will be deemed given on the date of personal delivery, within the three (3) days of mailing, if by facsimile transmission on receipt by the sender's facsimile machine of notification from the receiver's machine that all pages were successfully transmitted, or if by e-mail upon receipt of a successful delivery notification to the sender's inbox.

**22. General**

- 22.1 In these terms and conditions:
  - (a) the singular includes the plural and vice versa, and a gender includes other genders;
  - (b) another grammatical form of a defined word or expression has a corresponding meaning;
  - (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
  - (d) a reference to AUD, AUD or AU dollar or \$ is to Australian currency;
  - (e) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
  - (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
  - (g) the meaning of general words is not limited by specific examples introduced by **including**, **for example** or similar expressions.
- 22.2 The laws of the State of Victoria, Australia, govern this Contract, and the Customer and MTDData irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that State.
- 22.3 The Contract constitutes the entire agreement between the parties as to its subject matter, and supersedes all prior or inconsistent statements or representations (including any conditions set out in the Customer's order or request for Goods) as to that subject matter.
- 22.4 This Contract may only be waived in writing signed by MTDData.