

# Terms and Conditions of Trade

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Logics Pty. Ltd. ABN 52 075 031 908  
Tiger Fleet Management

## 1. Definitions

- 1.1 "**ACL**" means the Australian Consumer Law contained in schedule 2 of the Competition and Consumer Act 2010 (Cth) as amended, re-enacted or replaced, and includes any subordinate legislation.
- 1.2 "**Customer**" shall mean the customer or any person acting on behalf of and with the authority of the customer. Where more than one customer has entered into this agreement, the customers shall be jointly and severally liable for all obligations.
- 1.3 "**GST**" shall mean Goods and Services Tax as defined in the A New Tax System (Goods and Services) Tax Act 1999 (Cth) or any amendment, re-enactment or replacement Act, and includes any related subordinate legislation.
- 1.4 "**Intellectual Property**" means
  - (a) all Trade Marks, designs, business or trade names and trade secrets owned by, licensed to or developed by the Supplier from time to time in connection with the Service;
  - (b) the Copyright (if any) in and to all material owned by or under licence to the Supplier which is supplied to the Customer in connection with the Service;
  - (c) all Copyright, Trade Marks, designs, business or trade names and trade secrets owned by, licensed to or developed by the Supplier from time to time in connection with the Service;
  - (d) the Software and source codes; and
  - (e) any future rights to any form of the Intellectual Property.
- 1.5 "**Personal Information**" means information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual person whose identity is apparent, or can be reasonably ascertained, from the information or opinion.
- 1.6 "**PPS Register**" means the Personal Property Securities Register established under the PPSA.
- 1.7 "**PPSA**" means the Personal Property Securities Act 2009 (Cth) as amended, re-enacted or replaced, and includes any subordinate legislation.
- 1.8 "**Price**" shall mean the cost of the Service as agreed between the Supplier and the Customer subject to clause 3 of these Terms and Conditions.
- 1.9 "**Privacy Act**" means the Privacy Act 1988 (Cth) as amended, re-enacted or replaced, and includes any subordinate legislation.
- 1.10 "**Service**" means the online fleet management system, service or product called Tiger Fleet Management and as operated through the website [www.tigerfleet.com](http://www.tigerfleet.com), and includes all services offered through the website.
- 1.11 "**Service Level**" means the level of the Service elected by the customer. The different levels of Service can be viewed at [www.tigerfleet.com](http://www.tigerfleet.com)

- 1.12 "**Software**" means the computer software (if any) which may be developed by or under exclusive licence to the Supplier and licensed to the Customer pursuant to these Terms and Conditions for use solely in connection with the Service.
- 1.13 "**Subscription**" means the agreement between the Supplier and Customer whereby the Customer agrees to sign up for the Service for a specific Subscription Period.
- 1.14 "**Subscription Period**" means in respect of the Service, the period of time (being monthly, quarterly or yearly) and continuing for so long as the Customer has a current Subscription for the Service, subject to the provisions for early termination.
- 1.15 "**Supplier**" shall mean Logics Pty. Ltd. and its successors and assigns.

## **2 Acceptance**

- 2.1 Any instructions received by the Supplier from the Customer for the supply of the Service and/or the Customer's acceptance of Service supplied by the Supplier shall constitute acceptance of the Terms and Conditions contained herein.
- 2.2 Upon acceptance of these Terms and Conditions by the Customer, the Terms and Conditions are irrevocable and can only be amended in accordance with these Terms and Conditions or with written consent of the manager of the Supplier.
- 2.3 None of the Supplier's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Supplier in writing, nor is the Supplier bound by any unauthorised statements.

## **3 Price and Payments**

- 3.1 The Price shall be as indicated on the invoice provided by the Supplier to the Customer.
- 3.2 The Price will vary depending on the Service Level and Subscription Period selected by the Customer.
- 3.3 Unless credit terms have been expressly agreed by the Supplier, payment for the Service for a Subscription Period must be made in full before the commencement of that Subscription Period.
- 3.4 If the Supplier has agreed to credit terms, at the Supplier's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of Service and shall become immediately due and payable.
- 3.5 Time for payment for the Service shall be of the essence and will be stated on the invoice, quotation or any other order form. If no time is stated then payment shall be on signing up to the Service.
- 3.6 Unless stipulated otherwise, payment will be made by credit card (plus any charges that may be applicable) or by any other method as agreed to between the Customer and the Supplier.
- 3.7 The Price shall be increased by the amount of GST and other taxes and duties which may be applicable, except to the extent that the such tax is expressly included in any quotation given by the Supplier.

## **4 Supply of Service**

- 4.1 The Service will be made available to the Customer for the relevant Subscription Period upon payment being received by the Supplier.
- 4.2 Any date or time specified by the Supplier for supply of the Service is intended as an estimate only and the failure of the Supplier to supply shall not entitle the Customer to treat this agreement as repudiated.
- 4.3 The Supplier shall not be liable for any loss or damage whatever due to failure by Supplier to meet any estimates time for supply of the Service promptly or at all.

## **5 Subscription Periods**

- 5.1 The Customer may elect to subscribe to the Service for the following Subscription Periods:
  - (a) Monthly;
  - (b) Quarterly; or
  - (c) Yearly.

Note the Customer and Supplier may agree to the Customer subscribing to a different Subscription Period to those mentioned in clause 5.1 above. This must be done by way of separate agreement and is solely at the discretion of the Supplier.

- 5.2 At the end of each Subscription Period, the then current Subscription to the Service automatically renews unless the Customer cancels or varies the Subscription in accordance with these Terms and Conditions.

## **6 Trial Period**

- 6.1 The Customer may elect to subscribe to the Service for a trial period of 30 days ("Trial Subscription").
- 6.2 The Customer may cancel the Trial Subscription no later than 7 days before the end of the trial period.
- 6.3 At any time during the Trial Subscription period, the Customer may advise the Supplier that at the end of the Trial Subscription period, it wishes to enter into a Subscription for its desired Subscription Period.
- 6.4 If the Customer fails to cancel the Trial Subscription in accordance with clause 6.2 or advise the Supplier of its elected Subscription Period, the Customer will automatically enter into a monthly Subscription in accordance with clause 5 of these Terms and Conditions.

## **7 Modification to Subscription**

- 7.1 A Customer may elect to upgrade:
  - (a) The Service Level at any time during the Subscription Period and the upgrade will be effective immediately upon the Customer paying the difference in Price for the upgraded Service Level for remainder of the current Subscription Period; and/or
  - (b) The Subscription Period to a longer Subscription Period at any time during the Subscription Period, however the upgrade will not be effective until the end of the current Subscription Period.

- 7.2 A Customer may elect to downgrade:
- (a) The Service Level at any time during the Subscription Period, however the downgrade will not be effective until the end of the current Subscription Period; and/or
  - (b) The Subscription Period to a shorter Subscription Period at any time during the Subscription Period, however the downgrade will not be effective until the end of the current Subscription Period.

## **8 Software Licence**

- 8.1 The Supplier grants the Customer a non-exclusive and non-transferable licence to access and use the Software throughout the Subscription period for the sole purpose of utilizing the Service.

## **9 Intellectual Property**

- 9.1 The Customer acknowledges that the Supplier (or its suppliers) retains all right, title and interest in relation to all Intellectual Property.
- 9.2 The Customer must not use any item of the Intellectual Property except with the consent and licence of the Supplier.
- 9.3 The Customer must not either directly or indirectly seek to impugn or contest the ownership, validity or right to use the Intellectual Property or the Supplier's rights in relation to the Intellectual Property or assist other persons to do so.
- 9.4 The Customer indemnifies the Supplier against any action, losses, costs or claims arising from an infringement of any third party intellectual property rights from the use of any designs or specifications provided by the Customer.

## **10 Privacy, Personal Information and Security**

- 10.1 The Supplier and customer acknowledge that they are bound by the Privacy Act.
- 10.2 The Customer acknowledges and agrees that:
- (a) Any personal information which is collected by the Customer and used in the Service is necessary for the Customer's functions or activities; and
  - (b) Any personal information which is collected by the Customer and used in the Service has been collected through lawful means or the individual has consented to the use or the individual would expect the Customer to collect that personal information; and
  - (c) The Customer must take reasonable steps to destroy or de-identify any personal information it collects for use in the Service if it is no longer required for the Customers use of the Service; and
  - (d) The Supplier may be required to utilize offshore transfers of information for the Service, and that transfer or transfers of information are required for the performance of the Service and this agreement; and
  - (e) The Supplier has taken reasonable steps to protect the security of the data and information provided by the Customer and used in the Service by utilizing authentication security, cross-account access prevention and connection sting protection.

- 10.3 The Supplier acknowledges and agrees that it will not disclose or divulge personal information provided by the Customer to third parties unless required to do so by law or as required by law enforcement or governmental agencies or as a function of the Suppliers necessary business activities, and shall have no liability to the Customer or third party for any actions taken in connection with the completion of these necessary activities.
- 10.4 The Customer acknowledges that the Supplier may provide to the Customer details of promotions, special offers, advertising information relevant to the business of the Customer. The Customer may opt out of receiving these details by contacting the info@tigerfleet.com
- 10.5 The Customer acknowledges and warrants that it will not use the Service to violate system or network security and will not engage, without limitation, in the following activities:
- (a) Attempting to compromise the operation or normal functioning or gain unlawful access to any computer, network, facility, equipment, data or information; and
  - (b) Engaging in any activity which may interfere with the rightful access of others to access or use the Service; and
  - (c) Monitoring or gaining access to information (whether personal information or not) contained within the Service without authorization; and
  - (d) Obtaining or attempting to obtain unauthorized user accounts or passwords or personal information of any other user of the Service or the Supplier; and
  - (e) Attempting to intercept, redirect or otherwise interfere with communications intended for others; and
  - (f) Intentionally transmitting files or messages containing malware or other malicious programs.

## **11 The Competition and Consumer Act 2010 and Fair Trading Act**

- 11.1 Nothing in this agreement is intended to have the affect of contracting out any applicable provisions of the Competition and Consumer Act 2010 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## **12 Warranties and Liabilities**

- 12.1 The Supplier provides does not warrant that the Service will meet the Customer's requirements or expectations, that the Service will be timely, uninterrupted or error-free, that the Service will operate in combination with any other hardware, software, system or data, or that any bugs or errors will be corrected.
- 12.2 The Customer acknowledges that it enters into a Subscription for the Service relying solely upon its own skill and judgment and that all conditions, representations and warranties, whether express, implied, statutory or otherwise, including without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law.
- 12.3 The Customer hereby disclaims any right to rescind, or cancel this agreement or to sue for damage or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Supplier.

- 12.4 The Customer acknowledges and agrees that the Supplier shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if the Supplier has been advised of the possibility of such damages), resulting from the Customer's usage of the Service.

### **13 Indemnification**

- 13.1 The Customer agrees to hold harmless and indemnify the Supplier, and its affiliates, officers, agents, and employees from and against any third party claim arising out from or in any way related to the Customer's use of the Service, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and solicitor's fees, of every kind and nature.

### **14 Default and Consequences of Default**

- 14.1 If the Customer defaults in payment of any invoice when due, the Supplier may suspend the Customer's use of the Service until the Customer is able to pay the Supplier the relevant charge.
- 14.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Supplier from any and against all the Supplier's costs and disbursements (on a full indemnity basis) and in addition all of the Supplier's agents costs of collection.
- 14.3 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Supplier may suspend or terminate the supply of the Service to the Customer and any of its other obligations under these Terms and Conditions. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier exercises its rights under this clause.
- 14.4 In the event that:
- (a) any money payable to the Supplier becomes overdue, or in the Suppliers opinion the Customer will be unable to meet its payments as they fall due; or
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any assets of the Customer,
  - (d) then without prejudice to the Supplier's other remedies at law:
  - (e) the Supplier shall be entitled to cancel any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
  - (f) all amounts owing to Supplier shall, whether or not due for payment, immediately become payable.

## 15 Personal Property Securities

15.1 In this clause 'financing statement', 'financing change statement', 'security agreement' and 'security interest' have the meanings given to those terms by the PPSA.

15.2 The Customer acknowledges and agrees that these terms and conditions:

- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in:
  - (i) all products previously supplied by the Supplier to the Customer (if any);
  - (ii) all products that will be supplied in the future by the Supplier to the Customer;
  - (iii) the proceeds of sale of all products previously supplied or to be supplied; and
  - (iv) all present and after acquired personal property of the Customer,

to secure payment of all monies (including but not limited to the Price and any interest) owing by the Customer to the Supplier from time to time under these terms and conditions and under any other agreement or arrangement between the Customer and the Supplier.

15.3 The Customer undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
  - (i) register a financing statement or financing change statement in relation to a security interest on the PPS Register and otherwise do all things necessary and required by the Supplier to ensure that any security interest registered by the Supplier is a perfected security interest under the PPSA;
  - (ii) register any document on any register reasonably necessary to secure the Supplier's interest under these terms and conditions;
  - (iii) register any other document required to be registered under the PPSA; or
  - (iv) correct a defect in a statement referred to in clauses 15.3(a)(i), (ii) or (iii);
- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPS Register or releasing any products that are the subject of a security interest;
- (c) not make an amendment demand in respect of a security interest, apply to the Registrar to register a financing change statement in respect of a security interest, without the prior written consent of the Supplier; and
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the products in favour of a third party without the prior written consent of the Supplier; and
- (e) immediately advise the Supplier of any material change in its business practices of selling the products which may result in a change in the use of the products by the Customer or in the nature of proceeds derived from the sale of the products.

15.4 The Supplier and the Customer agree that sections 96 and 125 of the PPSA do not apply to the security interest created by these terms and conditions.

15.5 The Customer hereby waives its rights to receive notices, information or statements (as the case may be) under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

- 15.6 The Customer waives its rights as a grantor and/or a customer under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Customer unconditionally ratifies any actions taken by the Supplier under clauses 15.3 to 15.5.
- 15.9 The Customer irrevocably appoints the Supplier to be its attorney to do such acts and execute such documents as the Customer could personally do or execute (including the appointment of a substitute attorney) which in the opinion of the Supplier (acting reasonably) is necessary or expedient to give effect to any right, power or remedy conferred on the Supplier by these terms and conditions or the PPSA and to give effect to the matters contemplated by these terms and conditions.
- 15.10 The provisions of this clause 15 will survive termination of these terms and conditions or any other agreement between the Supplier and the Customer for the sale of products, for whatever reason.

## **16 Termination/Cancellation**

- 16.1 The Customer may terminate or cancel its Subscription at any time during the Subscription Period, however the Supplier will not refund any payment already made to the Supplier, including the Price or any other payment.
- 16.2 The Supplier may, at any time and for any reason, terminate this agreement, cancel the Customer's Subscription or cancel the Service on the provision of at least 30 days notice to the Customer.
- 16.3 In the event of termination or cancellation, the Customer's account may be disabled and the Customer may not be granted access to the Customer's account or any files or other content contained in the Customer's account although residual copies of information may remain in the Supplier's system.
- 16.4 In the event of termination or cancellation, at the Customer's request, the Supplier may agree to export the Customer's data contained in the Supplier's system. The Customer may charge a fee to be determined by the Customer for such a service.

## **17 Force Majeure**

- 17.1 Neither party will be liable for a failure to perform its obligations under these Terms and Conditions or at law (excluding any obligation to pay money) if the failure arises from or is in connection with any force majeure event including any act of God, any government act, fire, explosion, accident, industrial dispute, impossibility of obtaining materials, or anything beyond the relevant party's control ("Force Majeure Event").
- 17.2 The Customer acknowledges and agrees that the Supplier will not be liable for a failure arising from or in connection with any failure by a network or service provider, or a Force Majeure Event applicable to its employees, agents, subcontractors or agents.



## **18 Maintenance**

- 18.1 The Supplier will be required to undertake maintenance on various aspects of the Software from time to time. During these maintenance periods the Service may be unavailable to the Customer. The Supplier will attempt to carry out any maintenance in non-peak times and outside standard work hours; however the Supplier will not be liable for any delay, disruption or loss caused to the Customer through the Service not being available during any maintenance periods.
- 18.2 The Customer acknowledges and agrees that third party networks or service providers may also be required to undertake maintenance to their systems, which may result in disruptions to the Service. The Supplier will not be liable for any disruptions to the Service as a result of third party maintenance requirements.

## **19 Consumer**

Where the Customer is a consumer, as that term is defined in the ACL, the Service comes with consumer guarantees that cannot be excluded under the ACL.

If the Customer is a consumer, then the Customer is entitled to a replacement or refund for a 'major failure' and for compensation of any other reasonably foreseeable loss or damage. The consumer is also entitled to have the Service repaired or replaced if the Service fails to be of an acceptable quality and the failure does not amount to a major failure. What constitutes a 'major failure' is set out in the ACL.

## **20 Legislation**

- 20.1 If as a result of:
- (a) any legislation becoming applicable to the subject matter of this agreement; or
  - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration,

the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay the Supplier these additional amounts on demand.

## **21 General**

- 21.1 This agreement constitutes the entire agreement between the parties relating in any way to the subject matter. All previous negotiations, understandings, representations, warranties or commitments about the subject matter are merged in this agreement and are of no further effect.
- 21.2 If any provisions of this agreement shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.3 Failure by the Supplier to enforce any of the Terms and Conditions shall not be construed as a waiver of any of the Supplier's rights hereunder or a waiver of continuing breach.

- 21.4 The Service supplied by the Supplier is subject to, and these Terms and Conditions shall be governed by, the laws of the State in which the obligations of the Supplier are performed and the Customer submits to the jurisdiction of the courts of that State.
- 21.5 The Supplier shall be under no liability whatever to the Customer for any indirect loss or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these Terms and Conditions.
- 21.6 In the event of any breach of this agreement by the Supplier, the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Supplier exceed the Price in relation to the Service.
- 21.7 All payments required to be made by the Customer under this agreement must be made free of any set-off or counterclaim and without deduction or withholding whatsoever.
- 21.8 The credit facilities provided by the Supplier are not transferable by the Customer without the prior written consent of the Supplier. The Supplier may assign, license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 21.9 The Supplier reserves the right to review these Terms and Conditions at any time from time to time. If, following any such review, there is to be any change, it will take effect from the date on which the Supplier notifies the Customer of such change.