

TERMS AND CONDITIONS v1.0

1. INTERPRETATION

In these conditions:

EagleTrack means EagleTrack Pty Ltd ACN 129 398 296.

Customer means a person who accesses or uses the Website and/or purchases or rents any of the Goods, as applicable.

Goods means the goods and services offered for sale or rental by EagleTrack to the Customer as described on the Website or in any Quotation.

Non-Excludable Condition is defined in clause 13.1.

Privacy Policy means EagleTrack's privacy policy available on the Website (as may be amended from time to time).

Purchased Goods means the Goods that the Customer purchases from EagleTrack.

Quotation means the written or electronic quotation provided by EagleTrack to the Customer.

Rented Goods means the Goods that the Customer rents from EagleTrack.

Trade Practices Act means the *Trade Practices Act 1974* (Cth).

Website means EagleTrack's website located at www.eagletrack.com.au.

2. USE OF THE WEBSITE

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

2.2 The materials displayed on the Website, including without limitation all text, photographs, illustrations, artwork, graphical content, names, logos and trade marks are the property of EagleTrack or its licensors. The Customer agrees not to reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or communicate any such material to any third party without EagleTrack's prior written consent.

2.3 EagleTrack 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 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.

2.4 The Customer 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 Customer purchases any services from EagleTrack 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.

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

- a) if EagleTrack considers that the change is likely to benefit the Customer or have a neutral or minor detrimental impact on the Customer, EagleTrack 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 EagleTrack considers that the change is likely to have a significant detrimental impact on the Customer, EagleTrack 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 EagleTrack 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 EagleTrack with immediate effect during that 7 day period.

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

3. TERMS OF SALE AND RENTAL

3.1 The Goods and all other products sold or rented by EagleTrack are sold or rented on these terms and conditions.

3.2 The Customer agrees to be bound by and abide by these terms and conditions and any other terms, conditions and policies notified by EagleTrack (including the Privacy Policy and any other terms, conditions and policies made available on the Website) in respect of the provision of the 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 EagleTrack constitutes an invitation to treat and is 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 Customer is making an offer for the relevant Goods on those terms and on these terms and conditions.

4.4 A contract of sale and/or a rental contract (as applicable) is only formed when an order placed by the Customer in

accordance with clause 4.3 is received and accepted in writing by EagleTrack (including by the issue of an invoice).

5. PRICES

5.1 All prices and fees displayed on the Website or provided by EagleTrack are subject to change without notice and all orders are accepted by EagleTrack on condition that they will be invoiced at the prices set out in the Quotation, provided that EagleTrack reserves the right to correct any typographical and clerical errors in the prices or specifications set out in the Quotation. If the Customer places an order for Goods after a Quotation in respect of those Goods has expired, EagleTrack 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 Customer must pay all costs incurred by EagleTrack in freighting, installing, commissioning, configuring and/or specially packing the Goods at the request of the Customer.

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. EagleTrack 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, and subject to clause 5.3, the prices quoted by EagleTrack 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 EagleTrack.

6. TERMS OF PAYMENT

6.1 Once EagleTrack has received an order for Goods in accordance with clause 4.3, EagleTrack may issue invoices in

respect of the Goods on a monthly basis (or such other basis as specified in the Quotation).

6.2 The Customer must pay each invoice issued by EagleTrack 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 EagleTrack will not dispatch any Goods to the Customer, 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.

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

7.3 Except as required by law (including under the Customer's Statutory Rights), EagleTrack 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 Goods.

7.4 EagleTrack may at its option deliver the Goods to the Customer in any number of instalments, unless otherwise agreed in writing between the parties.

8. LOSS OR DAMAGE IN TRANSIT

8.1 Although EagleTrack appoints contractors who are instructed to use appropriate care when delivering Goods, EagleTrack 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 EagleTrack (however caused and whether or not EagleTrack is legally responsible for any person who caused or contributed to that loss or damage), except as required by law (including under the Customer's Statutory Rights).

8.2 EagleTrack must, on request by the Customer, provide the Customer 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 Customer:

- a) has notified EagleTrack 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 Customer's Statutory Rights), EagleTrack excludes all liability in relation to any shortage of any Goods delivered if a claim for short delivery has not been lodged with EagleTrack within seven (7) days from the date of receipt of Goods by the Customer.

10. RIGHTS IN RELATION TO THE GOODS

10.1 EagleTrack and Customer agree that:

- a) title in all Purchased Goods remains with EagleTrack until EagleTrack has been paid for in full for those Purchased Goods;
- b) title in all Rented Goods remains with EagleTrack 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 EagleTrack, 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 EagleTrack, 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 EagleTrack'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.

11. PERFORMANCE

11.1 Any information on the Website is supplied without any warranty, condition or other terms and any performance figures provided by EagleTrack in relation to the Goods are estimates only. Except as required by law (including under the Customer's Statutory Rights), EagleTrack 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 EagleTrack to the Customer in writing.

11.2 The Customer 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 EagleTrack, 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 EagleTrack to Customer (including notification via the Website and in any promotional material, quotations and specifications) (**External Factors**). EagleTrack 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 Customer releases EagleTrack 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 Customer's Statutory Rights), EagleTrack 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 Customer indemnifies EagleTrack from and against all claims, suits, actions, demands, costs and expenses incurred by EagleTrack 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 EagleTrack will rent the Rented Goods to the Customer and provide the services included with the Customer's purchase or rental of hardware for a term of 24 months (or such other period as may be specified in the Quotation) commencing on the date on which the Customer's order is accepted by EagleTrack, subject to earlier termination in accordance with this clause 12.

12.2 If the Customer breaches any of these terms and conditions (including, without limitation, by failing to pay any money owed to EagleTrack by the payment due date), becomes insolvent or ceases to carry on business, EagleTrack 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 Customer.

12.3 The Customer may terminate the provision of ongoing services and/or ongoing rental of the Rented Goods for convenience by giving 30 days written notice to EagleTrack of that termination, provided that the Customer must pay to EagleTrack, within 30 days after giving such notice, 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 term of the services and/or rental (as applicable), had the services and/or rental not been terminated.

12.4 Immediately after the end of the rental period or the earlier termination of the rental or this agreement, the Customer must, at its expense, de-install and ship the Rented Goods to the address notified by EagleTrack. This shipment should be insured, as the Customer will bear the risk of loss or damage to the Rented Goods during transit.

13. LIMITATION OF LIABILITY

13.1 EagleTrack 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 EagleTrack of goods or services

under this contract which cannot be excluded, restricted or modified by agreement. This clause 13 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).**

13.2 EagleTrack excludes all implied conditions, warranties and guarantees except any Non-Excludable Condition.

13.3 Except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, EagleTrack'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.

13.4 Subject to clause 13.1, EagleTrack's liability (including in negligence) for any defect in any Goods (including in any Licensed Software) is limited to, at EagleTrack'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 EagleTrack;
- 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 EagleTrack;
- e) the seals of any kind on the Goods remain unbroken; and
- f) the defective parts are promptly returned to EagleTrack at the Customer's cost.

13.5 Subject to clause 13.1, but despite any other provision of this contract, EagleTrack 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 or operation of the Goods (including the Customer's access to or use of the Website or the provision of any other services by EagleTrack).

13.6 Subject to clauses 13.1 and 13.5, but despite any other provision of this contract, EagleTrack'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 or operation of the Goods (including the Customer's access to and use of the Website or the provision of any other services by EagleTrack), is limited to AUD\$10,000.

14. RETURN AND REFUND – 21 DAY POLICY

14.1 EagleTrack values its relationship with its customers and thus offers the Customer the option to return and obtain a refund for Goods purchased or rented directly from EagleTrack in accordance with this clause 14.

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

- a) EagleTrack must give its prior authorisation for the return;
- b) the Customer must, at its expense, de-install and ship the Goods to the address notified by EagleTrack. This shipment should be insured, as the Customer will bear 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 Customer 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 Customer must supply with the returned Goods a notice specifying the name of the Customer, the date on which the Goods were purchased or rented and the reference (RMA) number specified by EagleTrack upon authorising the return.

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

- a) any shipping and handling costs incurred by EagleTrack;
- b) unless the Goods are agreed to be faulty or DOA (dead on arrival), a restocking fee of up to 20% of the purchase or rental price paid or payable, plus any applicable GST, sales and other applicable taxes, at EagleTrack'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 EagleTrack.

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

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

15. GENERAL

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

15.2 The quotation, these terms and conditions, the Privacy Policy and any other terms, conditions and policies notified by EagleTrack (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 Customer'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 EagleTrack.