



TERMS OF TRADE

1. Definitions and interpretation

- 1.1 **"Application"** means the centrally hosted vehicle tracking application (including but not limited to Crtrack Fleet, Crtrack Driver, Crtrack Vision and Crtrack Asset) utilising the Software and accessible by the Customer via the internet at the Site or via mobile application.
- "Bank Bill Rate"** means the ANZ 30 Days Bank Bill Reference Rate or, if unavailable, a bank bill rate published in The Australian Financial Review as nominated by Crtrack Australia Pty Ltd to the Customer.
- "Charges"** means all One-Off Charges (including the installation and training charges) set out in the Order Form plus the Maintenance fees.
- "Control Command Centre"** means the computer, other hardware and associated software installed by Crtrack Australia Pty Ltd at the Customer's Premises.
- "Crtrack Australia Pty Ltd"** means Crtrack Australia Pty Ltd ABN 24 144 976 125.
- "Customer"** means the customer identified in the Order Form.
- "Customer's Premises"** means the Customer's address as set out in the Order Form or as otherwise agreed between the Customer and Crtrack Australia Pty Ltd.
- "Date of Acceptance"** means the Date of Acceptance as specified in the Order Form.
- "DCU"** means a vehicle satellite recording device installed by Crtrack Australia Pty Ltd in or on the Customer's vehicles.
- "Event of Force Majeure"** means any act of God, civil disturbance, lightning, earthquake, fire, storm, flood, explosion or event which is not reasonably within the control of Crtrack Australia Pty Ltd.
- "Extended Warranty"** means the extended warranty obligations of Crtrack Australia Pty Ltd after the 12 months standard warranty period under clause 6.1 where the Customer has elected to take the Extended Warranty option on the Order Form, comprising full replacement of Hardware if a problem cannot be fixed for the full term of the service agreement.
- "Hardware"** means the DCUs, the Control Command Centre and any additional hardware specified in the Order Form and the Supplementary Order Form (if applicable).
- "Maintenance Services"** and **"Maintenance Fees"** means the services and fees set out in Schedule 1 which may be updated from time to time by written agreement between the parties.
- "Order Form"** means the Order Form (overleaf).
- "Site"** means the site(s) located at the domain name(s) that host(s) the Application notified from time to time by Crtrack Australia Pty Ltd to the Customer.
- "Software"** means the vehicle management and tracking software licensed to the Customer by Crtrack Australia Pty Ltd under the Software License Agreement.
- "Software License Agreement"** means the Software License Agreement as displayed at www.ctrack.com
- "Specification Document"** means the specification document (if any) attached to the Order Form, which sets out the Customer's specific requirements in respect of the System.
- "System"** means Crtrack Australia Pty Ltd vehicle satellite tracking system comprising the Wireless Services, the Hardware, the Application and the Software for communicating, analysing and presenting vehicle information.
- "TCA"** means Transport Certification Australia Limited. ABN 83 113 379 936.
- "Third Party Service Provider"** means any third party approved by Crtrack Australia Pty Ltd to provide services relating to the supply, installation, operation or maintenance of the System to the Customer as contemplated by this document.
- "Wireless Network Provider"** means the third-party network operator approved by Crtrack Australia Pty Ltd to provide Wireless Service to the Customer as contemplated by this document.
- "Wireless Service Charges"** means the charges payable by the Customer to the Wireless Network Provider for Wireless Services.
- "Wireless Services"** means the provision of 3G, 4G, 5G, GPRS, GSM, SMS and/or other wireless airtime services using network capacity and infrastructure procured from the Wireless Network Provider.

- 1.2 Unless expressed to the contrary:
- headings do not affect the interpretation of this document;
 - the singular includes the plural and vice versa;
 - a reference to "S" is a reference to Australian currency;
 - a reference to "including" means including, without limitation; and
 - a reference to Crtrack Australia Pty Ltd or the Customer includes its legal personal representatives, successors and assigns.

2. Risk and Title to the Hardware

- 2.1 For units purchased outright, risk of the hardware passes to the customer on delivery and title passes to the customer on payment to Crtrack of the total hardware cost.
- 2.2 For rented units, title remains with Crtrack for the duration of the agreement and beyond unless otherwise stated in writing by Crtrack.

3. Access to the System

- 3.1 The Customer will ensure that Crtrack Australia Pty Ltd and its employees, agents and/or contractors are able to access (in person and remotely) Customer vehicles, the Hardware, the Software and the Customer's Premises on the agreed date(s) and time(s) in order to provide installation, maintenance, adjustment, repair, replacement or removal of the System and the Customer will not unreasonably delay or refuse such access. Neither Crtrack Australia Pty Ltd nor the Third-Party Service Provider will be liable for any damage or loss incurred by the Customer as a result of such delay or refusal.
- 3.2 If for any reason such access is not given on the date(s) or time(s) agreed under clause 3.1 due to the unavailability of the Customer, and/or its personnel and/or facilities, Crtrack Australia Pty Ltd may charge the Customer an additional fee to recover the reasonable costs incurred by Crtrack Australia Pty Ltd as a result of such unavailability.
- 4.1 **Payment of Charges**
- 4.2 Involving on hardware and software charges (including GST) will commence following installation. This is applicable to both hardware purchases and monthly rentals. All invoices are payable 14 days from the date of issue.
- 4.3 The Customer will pay in cleared funds the Charges to Crtrack Australia Pty Ltd to take account(s) as Crtrack Australia Pty Ltd may in writing specify without prior demand and without any right of set-off or to make any deductions or withholdings in respect of any period during which the System is inoperable without first having given Crtrack Australia Pty Ltd notice of claim and reasonable opportunity to remedy the issue. These amounts will become due and payable 14 days from the date of the relevant invoice.
- 4.4 The Customer will pay Crtrack Australia Pty Ltd interest at the rate of 2% per annum plus the Bank Bill Rate from time to time on amounts owing to Crtrack Australia Pty Ltd for each day during which the Customer is in arrears paying such amounts.
- 4.5 Subject to clause 5, the Customer will pay Crtrack Australia Pty Ltd on demand all taxes payable in connection with this document.
- 4.6 Clauses 4.2 and 4.3 will remain in force notwithstanding termination of this document for any reason.
- 4.7 Crtrack Australia Pty Ltd may appropriate any sum received from the Customer under this document to any part of the sums due by the Customer under this document for the time being notwithstanding any contrary allocation by the Customer. Payments sent to Crtrack Australia Pty Ltd will be at the Customer's risk until received by Crtrack Australia Pty Ltd's nominated bank account.
- 4.8 The Customer's obligations to pay to Crtrack Australia Pty Ltd any sums due under this document are absolute and unconditional in all circumstances and the Customer must not withhold, or make a deduction from, those sums for any reason. The Customer must not make or raise any claim, defence, set-off, equity or counterclaim against Crtrack Australia Pty Ltd or in respect of any other person in reduction of the Customer's liability to pay those sums, regardless of whether or not:
- the circumstances which gave rise to the claim, defence, set-off, equity or counterclaim arose or arise on, before or after the date hereof;
 - the System is damaged, does not operate or is not in the Customer's possession; or
 - the Rental Company breaches any of its obligations under the Hardware Rental Agreement
- 4.8 All payments made by credit card will attract a 2% merchant fee. Visa and Mastercard only accepted.

5. Goods and Services Tax

- 5.1 In this clause 5:
- words and expressions which are not defined in this document, but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
 - GST Law has the same meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999.
- 5.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST. If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under this document, the Customer will pay to the supplier an amount equal to the GST payable on the supply.
- 5.3 The recipient will pay the amount referred to in clause 5.3 in addition to and at the same time that the consideration for the supply is to be provided under this document.
- 5.4 Crtrack must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 5.3.
- 5.5 The recipient can withhold any payment until it receives a tax invoice or an adjustment note, as appropriate.
- 5.6 If an adjustment event arises in respect of a taxable supply made by a supplier under this document, the amount payable by the recipient under clause 5.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- 5.7 Where a party is required under this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
 - if the payment or reimbursement is subject to GST, an amount equal to that GST.

6. Warranties

- 6.1 Crtrack Australia Pty Ltd warrants that the Hardware is of merchantable quality and fit for the purpose (if any) outlined in the Specification Document. If Crtrack Australia Pty Ltd receives written notice from the Customer of a breach of this warranty not later than the expiry of 12 months after the Date of Acceptance (time in this regard being of the essence), Crtrack Australia Pty Ltd will at its own expense and in a reasonable time after receiving such notice remedy the defect or error specified in such notice. Further, this warranty will be subject to the Customer complying with its obligations under this document and:
- where the replacement Hardware is provided, the replaced Hardware becomes the property of Crtrack Australia Pty Ltd;
 - Crtrack Australia Pty Ltd may replace Hardware with refurbished Hardware;
 - the replacement of Hardware does not extend the above time limit;
 - Crtrack Australia Pty Ltd may claim re-imbursement of its costs if any alleged defective Hardware is found to be free of the alleged defect or error;
 - Crtrack Australia Pty Ltd will not be liable to replace consumables (e.g. batteries and cables) or lost parts and accessories;
 - Crtrack Australia Pty Ltd will not be obliged to service Hardware outside Australia or New Zealand;
 - the warranty will not apply to a defect or error in the Hardware resulting from any alteration to the Hardware by any person other than as authorised by Crtrack Australia Pty Ltd, accident, misuse, fire, liquid spillage, incorrect voltage, tampering, thunderstorm activity or other act of God, computer virus, exposure to corrosion, or entry by vermin, insect or foreign body. Any liability of Crtrack Australia Pty Ltd for failure to comply with its obligations under this clause will be limited to a sum equal to the Charges already paid by the Customer to Crtrack Australia Pty Ltd under this document.
- 6.2 Crtrack Australia Pty Ltd may make recommendations in respect of use of third party services. However, for the avoidance of doubt Crtrack Australia Pty Ltd will not be responsible for the performance of any Third-Party Service Provider notwithstanding any such recommendations and/or approvals.

7. Exclusion of Warranties

- 7.1 All express and implied terms, conditions and warranties which otherwise might apply to, or arise out of, this document are excluded other than:
- as provided in this document; and
 - those which by law cannot lawfully be excluded or modified by agreement.
- 7.2 If Crtrack Australia Pty Ltd is liable for a breach of a term, condition or warranty described in clause 7.1, Crtrack Australia Pty Ltd's liability is, to the fullest extent permitted by law, limited to any one or more of the following as reasonably determined by Crtrack Australia Pty Ltd, namely replacing or repairing the Hardware, supplying the equivalent Hardware, paying the cost of replacing or repairing the Hardware, or paying the cost of acquiring or licensing the equivalent Hardware.
- 7.3 Crtrack Australia Pty Ltd may not be able to rely on this clause 7 if it is not fair and reasonable under any law which cannot lawfully be excluded or modified by agreement.

8. Crtrack Australia Pty Ltd liability

- 8.1 The entire liability of Crtrack Australia Pty Ltd in respect of loss or damage in connection with its obligations under this document will not exceed the total amount paid by the Customer to Crtrack Australia Pty Ltd under this document.
- 8.2 Notwithstanding anything else contained in this document Crtrack Australia Pty Ltd will not be liable to the Customer for loss of profits or contracts or other indirect or consequential loss including out of pocket expenses incurred as a result of the Hardware being inoperable or otherwise unavailable.
- 8.3 Crtrack Australia Pty Ltd accepts no liability for any damage to the Hardware or loss of data resulting from the Customer having moved or tampered with the Hardware following its installation and/or reinstallation by Crtrack Australia Pty Ltd.
- 8.4 Each provision of this document limiting or excluding liability operates separately. If any part is held by a Court of competent jurisdiction to be unreasonable or inapplicable, the other parts will continue to apply.
9. **Control Command Centre**
- 9.1 The Customer, for the purpose of installing and operating the System, will provide a suitable computer specification as defined in the minimum requirements (if any) notified by Crtrack Australia Pty Ltd. This computer specification will be maintained in good working order and will be updated as necessary to accommodate any System changes and updates which may be issued by Crtrack Australia Pty Ltd from time to time. Upgrading of the computer specification may include upgrading all or any of the System's capabilities including storage capacity, processing speed, internal memory, communications and printing facilities.
- 9.2 The Customer will make available a suitably qualified member of its staff to ensure efficient operation of the Control Command Centre and to act as a point of contact for Crtrack Australia Pty Ltd.
10. **Customer Indemnity**
- 10.1 The Customer indemnifies Crtrack Australia Pty Ltd against, and will pay to Crtrack Australia Pty Ltd the amount of, any liability, loss, cost or expense which Crtrack Australia Pty Ltd may suffer or incur in relation to:
- the enforcement by Crtrack Australia Pty Ltd of its rights under this document;
 - any kind of property damage, economic loss or the death of, or any kind of injury to, a person caused directly or indirectly by the Hardware;
 - any claim made against Crtrack Australia Pty Ltd in respect of the Hardware, its condition, operation, maintenance or use;
 - Crtrack Australia Pty Ltd having to restore the Hardware to the same operating condition and configuration as originally delivered to the Customer; and
 - a breach of this document by the Customer.

- to the extent such liability, loss, cost or expense is caused or contributed to by any wilful or negligent act or omission of the Customer, its employees or agents in connection with this document. This indemnity does not cover anything to the extent that, if this indemnity did cover it, this indemnity would be void. Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the Customer and survives the termination of this document. The Customer must pay any sums owing under this clause 10 on demand.

11. General

- 11.1 No relaxation or indulgence extended by Crtrack Australia Pty Ltd to the Customer will in any way prejudice or waiver Crtrack Australia Pty Ltd's strict rights under this document.
- 11.2 Any notice or demand to be given under this document by either party to the other will be in writing and will be deemed to have been properly served if left at or sent by express pre-paid post to or facsimile or e-mail to the current number or e-mail address for that party's address as set out in the Order Form or last known to the party sending the notice or demand and of so posted will be deemed to have been received on the day following the date of posting and if sent by facsimile will be deemed to have been received one hour after the time of transmission or, if transmitted out of normal business hours, one hour after the subsequent opening of business.
- 11.3 No servant or agent of Crtrack Australia Pty Ltd has any authority to make, agree or to give any representation, condition or warranty in respect of the System or to agree to any variation of or addition to this document, unless expressed in writing and signed by a duly authorised representative of Crtrack Australia Pty Ltd.
- 11.4 The Customer hereby warrants to Crtrack Australia Pty Ltd that the Customer has not been induced to enter into this document by any prior representations or warranties, whether oral or in writing, except as specifically contained in this document and the Customer hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in this document or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently) and/or to rescind this document.
- 11.5 Nothing in this document will constitute the Customer acting as an agent of Crtrack Australia Pty Ltd, and the Customer will have no implied authority on behalf of Crtrack Australia Pty Ltd to do any act, incur any liability or pledge or purport to pledge the credit of Crtrack Australia Pty Ltd.
- 11.6 Any present or future legislation which operates to lessen or vary in favour of the Customer any of its obligations in connection with this document, is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.
- 11.7 The Customer must not assign or encumber any right under this document without the prior written consent of Crtrack Australia Pty Ltd.
- 11.8 Neither party shall assign or encumber its rights or obligations under this document except with the prior written consent of the other party which shall not be unreasonably withheld.
- 11.9 This document is governed by and is to be construed in accordance with the laws applicable in New South Wales. Crtrack Australia Pty Ltd and the Customer submit to the non-exclusive jurisdiction of the Courts of that State.
- 11.10 If any term of this document is held to be invalid, that term (to the extent that it is invalid) will be deleted from this document and the remainder of the document will not be affected.
- 11.11 If Crtrack Australia Pty Ltd is unable to perform any of its obligations in respect of this document because of an Event of Force Majeure, that obligation will be suspended for so long as that event renders Crtrack Australia Pty Ltd unable to perform that obligation.
- 11.12 No terms or conditions endorsed on, delivered with or contained in the Customer's information and/or documentation will form part of the agreement between Crtrack Australia Pty Ltd and the Customer.
- 11.13 The Customer acknowledges that the purpose of the System is to provide vehicle tracking information. The Customer accepts responsibility for notifying relevant employees and for the installation and operation of the System and for complying with applicable privacy, data protection and human rights regulations.
- 11.14 The parties will comply with all statutory requirements from time to time in force in relation to the operation of this document.
- 11.15 If Crtrack does not receive written notice advising cancellation of the service 30 days prior to the contract termination date, then the contract will continue at the prevailing rate on a month to month arrangement.

12. Provisions applicable only to the Crtrack System

- 12.1 Where this document relates to the Crtrack System:
- the Customer acknowledges that the performance of the System is dependent upon its Hardware, Software and networks operating properly and if Crtrack Australia Pty Ltd incurs reasonable costs in relation to the Customer's failure to ensure that this happens, Crtrack Australia Pty Ltd will be entitled to invoice, and recover such invoiced costs from the Customer.
 - the Customer acknowledges that the System relies on third party networks and technologies that may require a SIM card in each DCU and internet connectivity for the System to function. The Customer will enter into, and duly and punctually perform its obligations under separate agreements with a Third-Party Service Provider in respect of such internet and Wireless Services. The Customer will be liable for all costs under such agreements.
 - the Customer undertakes that it will not use the Wireless Services or internet services for an improper, immoral or unlawful purpose and further will not do anything that Crtrack Australia Pty Ltd's or the Third-Party Service Provider's reasonable opinion could damage or impair any third-party network or system.
 - the Customer acknowledges its awareness of digital and wireless networks, their characteristics and their limits. It particularly acknowledges:
 - the Site is publicly available, and contents can be reproduced, copied, represented and more generally circulated without any geographic limit, as they are accessible to any user of the network wherever it may be;
 - data circulating on the Internet is not protected against possible diversion and therefore generally any information of a sensitive nature will be communicated by the Customer at its own risk; and
 - the Site, despite the security measures taken by Crtrack Australia Pty Ltd, can be interfered with by unauthorised third parties and consequently may be corrupted.
- Notwithstanding this acknowledgment nothing in this clause will derogate from Crtrack Australia Pty Ltd obligations under this Agreement to take such reasonable security measures with regard to the Site as meets current industry practice from time to time.
- (e) The Customer will ensure that during the Term:
- it provides SIM cards for each DCU or appropriate registered GPRS, 3GTM, 4GTM or 5GTM devices and maintains the Wireless Services;
 - it provides an ADSL internet connection and maintains internet connectivity;
 - its computer network and computers (if any) are capable of securely accessing the Application (and it will use its best endeavours to maintain the security and integrity of the Application);
 - the information provided by the Customer for the proper performance of the System is correct and up to date at all times.
- (f) The Customer will be responsible for all reasonable data charges and Wireless Service Charges incurred by the Customer relating to maintenance and servicing of the System. The Customer must notify Crtrack Australia Pty Ltd of any cancellations to scheduled on site visits at least 24 hours in advance otherwise Crtrack Australia Pty Ltd reserves the right to invoice the Customer a site visit fee as per its Standard Charges.
- (g) Crtrack Australia Pty Ltd may where reasonable, from time to time and without notice, suspend or disconnect the Crtrack System if the Customer breaches the terms of this document or of the Software License Agreement. To allow Crtrack Australia Pty Ltd to carry out these services diligently and in a workmanlike manner the Customer agrees that it will promptly comply with any reasonable requests made by Crtrack Australia Pty Ltd.
- (h) Crtrack Australia Pty Ltd expects to meet an Application availability percentage target for the Services of 99.0% of the available service time (except for weekends, public holidays and planned maintenance) ("Application Availability Target"), calculated over a sliding 90-day average and excludes failures outside of Crtrack Australia Pty Ltd's control, e.g. network failures, carrier failures and Events of Force Majeure. Crtrack Australia Pty Ltd will inform the Customer of downtime such as scheduled planned maintenance in advance.
- (i) Crtrack Australia Pty Ltd will carry out all planned maintenance at times that will cause least disruption to the Customer. In most instances, this maintenance has no effect on Application Availability. However, if planned maintenance will potentially cause outages, the Customer will be notified in advance. Except in the case of an emergency, Crtrack Australia Pty Ltd will provide at least 2 days notification of maintenance that will potentially cause service outages. Service levels will be suspended for the duration of any notified planned maintenance.
- (j) emergency maintenance to a Crtrack Australia Pty Ltd hosted application will only ever be necessary to counter immediate security threats or to resolve occurring or imminent system failures.

13. Provisions applicable where there is a TCA agreement

- 13.1 Where an IAP (Intelligent Access Programme), TMA (Telematics Monitoring Application) or RIM (Road Infrastructure Control Management) agreement into which Crtrack, the customer and TCA are parties entered:
- both this document and the IAP, TMA or RIM agreement will operate but not withstanding any express or implied to the contrary in this document, to the extent of any inconsistency the IAP, TMA or RIM agreement will prevail.
 - This services to be provided by Crtrack under this document are not:
 - IAP, TMA and/or RIM Services or provided in connection with TCA;
 - provided in accordance with the terms of the IAP, TMA and/or RIM agreement;
 - provided in accordance with the applicable IAP, TMA and/or RIM Law and accordingly any information or data generated in connection with the provision of services under this document by Crtrack does not necessarily constitute evidence for the purpose of the IAP, TMA and/or RIM Law;
 - Protected under the IAP, TMA or RIM Law in terms of the manner in which Crtrack collects, uses, stores and discloses any information obtained in the performance of the services under this document; and
 - permitted to adversely affect the functionality of the IAP, TMA and/or RIM
- (c) the parties must ensure that before a TCA agreement is entered into the relevant IAC's have been established with the relevant jurisdictions as required by the certification agreement.
- (d) The customer acknowledges that under the certification agreement Crtrack has agreed with the TCA in relation to the noncompliance with an IAC, neither Crtrack nor Crtrack will appear as an expert witness called by the customer but may be required by the TCA to appear as an expert witness called by the TCA.

14. Return of Rental Equipment

- 14.1 At the expiry of the Term or the earlier termination of this Agreement you will at your expense (including transport) deliver up the equipment in good working order and condition (fair wear and tear excepted) to such place as we may reasonably direct in writing, including but not limited to our office or representative that we nominate. Alternatively, you will make the equipment available (in good working order and condition, fair wear and tear excepted) for collection by such person as we may nominate.

15. Data Protection

- 15.1 The Customer acknowledges and agrees to Crtrack's data protection policies, as amended from time to time, which are incorporated by reference into this Agreement. The Customer agrees to comply with all applicable data protection laws and regulations. The Customer shall ensure that any personal data processed by Crtrack is lawfully collected, stored, used, disclosed and destroyed lawfully. The Customer warrants that it has obtained the necessary consent or authorisation from any individual whose personal data, including postional data, will be collected through the use of the services. The Customer consents to the processing of their personal data by Crtrack in accordance with Crtrack's data protection policies and applicable data protection laws. The Customer acknowledges that such processing is necessary for the performance of this Agreement. The Customer shall promptly notify Crtrack of any changes to their personal data.
- 15.2 The Customer agrees to indemnify, defend, and hold Crtrack and its affiliates and their respective officers, directors, employees, and agents harmless from and against any and all losses, damages, liabilities, costs, and expenses (including reasonable legal fees) incurred by Crtrack as a result of or in connection with any breach by the Customer of its obligations under this Agreement or applicable legislation and regulations.