

Terms and Conditions

Effective from 14th October 2024

1. Definitions

- 1.1 Argus Tracking Holdings Limited is also referred to as "Argus".
- 1.2 "Asset" means the vehicle, equipment or asset to which the Hardware is installed, fitted or attached.
- 1.3 "Business Hours" means the hours of work between 9.00 am and 5.00 pm Monday to Friday during NZST or NZDT, but excludes New Zealand public holidays.
- 1.4 "Confidential Information" means all information disclosed by or on behalf of Argus in connection with the provision of its Services, whether before or after the date of this agreement.
- 1.5 "Customer" means the customer under the terms of this agreement as set out in the "organisation" box on page 1 of the agreement.
- 1.6 "Data" has the meaning described in clause 15.1.
- 1.7 "Hardware" includes the tracking, communications, accessory devices, or virtual devices displayed within your Argus account, and includes the hardware noted in the "Assets" box on page 2 of the agreement.
- 1.8 "Intellectual Property" means copyright, patents, designs, trademarks, trade names, goodwill rights, trade secrets, data, confidential information and any other intellectual proprietary right or form of intellectual property.
- 1.9 "Late Payment Administration Fee" means the then applicable late payment administration fee charged by Argus as notified by Argus to the Customer from time to time which, as at the date of this agreement, is \$18 plus GST.
- 1.10 "Paid Services" means access to websites and apps including but not limited to geo.argustracking.com, Argus Tracking AT Manager app, and Argus Tracking Check Sheet app.
- 1.11 "Personal Information" has the meaning defined in s7 Privacy Act 2020.
- 1.12 "Public Services" includes but not limited to access to the argustracking.com website.
- 1.13 "Rest API" means an application programming interface (API) that follows the design principles of the REST architectural style.
- 1.14 "Service Fees" means the fees payable by the Customer under this agreement for the Services, including those fees set out on page 2 of the agreement.
- 1.15 "Services" means telematics services supplied by Argus to enable the Customer to monitor Assets.
- 1.16 "Service Provider" means any person, persons or company contracted by Argus to provide services on behalf of Argus.
- 1.17 "Site" means the Customer's offices, depots or storage facilities or Asset dealers' site at which the Hardware is to be installed and includes any additional sites agreed upon by the parties in writing.
- 1.18 "Smart Renew" is an automatic feature/tool in purchasing paper-based registrations & RUC licences.
- 1.19 "Software" means any firmware or software installed on or in connection with the Hardware particularly pertaining to online customer accessible software.

- 1.20 "Term" means the term of this agreement as set out in clause 5.
- 1.21 "Tracking AVL Hardware" is a GPS device installed in a vehicle for automatically determining and transmitting the geographic location and various other data of a vehicle excluding asset trackers.
- 1.22 "Asset Trackers" are portable battery-powered GPS devices which are not hard-wired to any asset.

2. Argus's Obligations

- 2.1 Argus will use its commercial endeavours to provide the Services, repair or replace the Hardware or correct any defect in the Hardware during the relevant Hardware warranty period, but will not be liable for an impairment, outage or fault in relation to the Services and/or Hardware:
- a. that does not adversely affect the Services received;
 - b. due to atmospheric conditions, physical obstructions, other radio interference or other interfering services provided by other third parties;
 - c. due to Argus being unable to access the Asset or Site;
 - d. resulting from any act or omission by the Customer or anyone in the Customer's control, unless that act or omission was on Argus's instruction and in writing;
 - e. due to circumstances beyond Argus's reasonable control including but not limited to any failure on the part of Service Providers or other third parties who provide the Services (or any part of the Services) to Argus (such as inaccuracies in location information provided to Argus by third party suppliers).
- 2.2 For the avoidance of doubt, Argus may interrupt or suspend the Service, provided that Argus shall use reasonable endeavours to keep all suspensions to as short a period as practicable.
- 2.3 Argus will have no obligation under this clause if the Customer is in arrears with any payment due under this agreement or is otherwise in default under this agreement.

3. Customer Obligations

- 3.1 The Customer will:
- a. Comply with any and all reasonable directions, requirements or specifications issued by Argus (including such directions and requirements relating to Site access and Hardware installation);
 - b. Manage its own IT solutions and systems such that it meets the IT requirements published by Argus from time to time. Those requirements are available on the Argus Help Centre at:
<https://argustracking.zendesk.com/hc/en-us/articles/333757037736>;
 - c. report any maintenance and repairs required in respect of the Hardware to Argus as soon as reasonably possible and allow the maintenance and repairs to be carried out by Argus or its approved Service Providers.
 - d. immediately report to Argus any loss of or damage to the Hardware. Argus will in its sole discretion determine to replace or repair the Hardware. Where the damage was due to an action or omission of the Customer, the Customer agrees it will pay on invoice any costs incurred by Argus to repair or replace such Hardware.

- 3.2 The Customer and such representatives of the Customer must undertake from time to time upskilling in respect of the use of the Software, Hardware and/or the Services as Argus reasonably considers necessary.

4. Hardware and Software

- 4.1 From time to time Argus may deem it reasonably necessary for the Hardware to be upgraded. Argus will notify Customer in writing (including via email) setting out the cost if any to the Customer for the upgrade and, if the upgrade is not undertaken, any alteration to the Service Fees applicable to the Hardware and/or any modification, limit or extinguishment of warranties applicable to the Hardware.
- 4.2 If the Customer does not wish to meet the cost in clause 4.1, it may notify Argus in writing prior within 60 days' of receipt of the upgrade notice and may, by such notice, terminate this agreement, and clause 5.3 shall not apply.
- 4.3 Customer acknowledges that if it does not make reasonable efforts to make Assets available for upgrade and does not wish to terminate under clause 4.2:
- a. all warranties applicable to the Hardware will be extinguished; and
 - b. Argus may give written notice requiring Assets to be made available for upgrade of Hardware within 10 Business Days or the agreement may be terminated.
- 4.4 Argus is continually releasing new features and system and/or Software updates, it does not however guarantee the Hardware and Software will be compatible with each other; Argus has no obligation to supply the Customer with the latest version of the Argus Software or Hardware to make new features compatible with one another.
- 4.5 Argus may at its discretion discontinue a feature or Hardware type and has no obligation to replace, rebuild or reimburse the Customer due to the discontinuation of a feature or Hardware type.
- 4.6 Where Argus supplies the Customer with third-party Hardware or Software, the Customer shall use such third-party Software strictly in terms of the licence under which it is supplied.
- 4.7 The Customer shall not:
- a. alter the Hardware or its installation.
 - b. install or fit Argus Hardware and/or Services to any assets the Customer does not own, lease or rent, unless the Customer has the owner's permission to do so.

5. Term

- 5.1 The term of this agreement commences on the date of installation of the Hardware (or, should there be more than one piece of Hardware the subject of this agreement, the date of installation any piece of Hardware the subject of this agreement) and continues for the period of the initial term set out on page 1 of the agreement (Initial Term).
- 5.2 After the Initial Term this agreement shall automatically renew for successive 24-month periods (each a Renewal Term), unless:
- a. either party provides the other party notice in writing (which may be given by email to support@argustracking.com) no sooner than 4 months and no later than 60 days before the expiry of the Initial or Renewal Term of expiry of this agreement with such expiration being effective as of the end of the then current term; or
 - b. this agreement is terminated earlier pursuant to any other express provision of this agreement.

- 5.3 The Customer may at any time during the Initial Term or any Renewal Term request in writing (which may be given by email to support@argustracking.com) an early release from this agreement. If an early release is requested, the Customer will pay to Argus on the date of such release (or such other date as may be agreed), an amount equal to the aggregate Service Fees and any other amounts payable by the Customer under this agreement calculated to the expiry of the then current term (being either the Initial Term or the Renewal Term) and advised by Argus in writing, which may be via email (Early Release Charge)
- 5.4 Without limiting the generality of the application of clause 5.3, the parties acknowledge and agree that, should the Customer sell its entire business and therefore no longer requires the Services, and this agreement is not assigned to the purchaser of the business (subject to clause 14.1 below), the Customer will be required to make (and is deemed to make) a request under clause 5.3 to Argus, whom shall be entitled to charge the Customer the Early Release Charge.
- 5.5 The Customer acknowledges and agrees that the Early Release Charge is not a penalty; it is intended to protect the legitimate commercial interest of Argus; and is commensurate with the interest protected, and the Customer shall pay the Early Release Charge without limiting any other right Argus may hold under this agreement.

6. Provisioning of Assets, Hardware, Services and Swap Out

- 6.1 Argus sells or as the case may be rents to the Customer the Hardware and the Customer purchases or as the case may be rents from Argus the Hardware.
- 6.2 Asset(s) must be made available on Argus' request during Business Hours for the installation of Hardware and Services during the 90 days following the signing of this agreement, or (in respect of a piece of Hardware added to the scope of this agreement following signing of this agreement) 90 days following Argus' confirmation that it will supply the Hardware.
- 6.3 The Customer shall become liable to pay the rental and/or price and/or Service Fees applicable to each piece of Hardware (and the associated Services), as set out on page 2 of the agreement or as otherwise notified to the Customer by Argus from time to time, on the earlier of the day it is installed or (where no installation is required) dispatched by Argus, or the day that is 90 days after the date of signing of this agreement.
- 6.4 Where the Customer purchases or as the case may be rents further Hardware and/or Services from Argus, such Hardware and/or Services shall also be subject to the terms of this agreement. The Customer shall become liable to pay for such Hardware (and associated Services) on the date such Hardware is installed or (where no installation is required) dispatched by Argus, or the day that is 90 days after the date the Customer requests that further Hardware and/or Services.
- 6.5 All Assets of the same type (e.g. road registered Assets) in a Customer's account must all be on the same Service plan.
- 6.6 Argus reserves the right to charge further Service Fees for non-standard install services at an hourly rate. Where this applies, Argus will notify the Customer as soon as it becomes aware of the requirement for such services. Argus's hourly rate can be found here <https://geo.argustracking.nz/labourrates>.
- 6.7 For the avoidance of doubt, all installations shall be undertaken at the Site. Installations will not be undertaken at any third party's premises, including any third party's premises at which the Customer is working or itself providing services.

- 6.8 Argus requires a minimum of 24 hours notification of a cancellation or postponement of installation. If no notification is received the full amount of the Services Fee attributable to such service will be charged to, and payable by, the Customer. Notification shall be given in writing to support@argustracking.com.
- 6.9 Where an Asset is not available at the agreed booked time and the Customer has not given the required notice under clause 6.8, the install amount of the Services Fee attributable to such installation will be charged to, and payable by, the Customer. For the avoidance of doubt, when the installation subsequently occurs, following the initial cancellation, the Customer shall be liable to pay those Service Fees attributable to that installation again in respect of that rescheduled installation.
- 6.10 Where Argus agrees with the Customer, alongside the installation of new Hardware, to remove from Assets hardware or equipment running alternative telematics systems, Argus will (upon such removal) take ownership of that alternative hardware and equipment and, in such circumstances, the customer warrants that it owns outright and, has clear title to, the hardware and equipment.

7. Hardware Warranty, Maintenance, Investigation & Decommissioning

- 7.1 The Tracking AVL Hardware has a limited warranty as outlined above on page one of the agreement, all other Hardware has a one-year warranty - provided that all payments the Customer is required to make under this agreement are fully paid and up to date. Notwithstanding anything else contained in these terms, Argus does not warrant that any third party will continue to operate any cellular network or other telecommunications network or infrastructure needed to operate the Hardware.
- 7.2 Any warranty repairs for Hardware will be carried out at a Site by Argus. Argus will not undertake work at any third party's premises, including any third party's premises at which the Customer is working or itself providing services.
- 7.3 The Hardware warranties do not cover general wear and tear, moisture damage, physical damage, tampering or electrical damage.
- 7.4 Non-Argus supplied Hardware has its own separate warranty as stated by the manufacturer's documentation.
- 7.5 Argus does not guarantee any components of the Asset(s) to which Argus Hardware has been installed or fitted. This includes the Asset's wiring and any batteries.
- 7.6 Argus requires a minimum of 24 hours notification for cancellation or postponement of any Services scheduled or requested by the Customer, other than installation work which shall be governed by the provisions of clause 6. If no notification is received travel time and a minimum 1 hour of Service Provider time will be charged. Notification shall be given in writing to support@argustracking.com.
- 7.7 Where an Asset is not available at the agreed booked time Argus will charge travel and hourly rates as above. Technical issues which are not caused by Argus Hardware, Software or Services may incur a cost to the Customer, as notified by Argus to the Customer from time to time. This includes any potential tampering or deception.
- 7.8 Where a Customer requests that Argus cease to provide Services with respect to a particular Asset, that shall not result in Argus ceasing to be entitled to charge the relevant Service Fees (or ceasing to be obliged to provide the relevant Services in respect of a nominated new Asset). Should such a request be made by the Customer, Argus will charge a decommissioning fee and disable the Hardware in the Asset, and, on the

Customer's nomination of the replacement Asset install replacement Hardware into that replacement Asset (and standard installation fees will apply).

- 7.9 Argus will charge a fee for any callout or repair that is linked to any of the above which includes tampering of the Hardware or Asset. Argus's hourly rate can be found here <https://geo.argustracking.nz/labourrates>.

8. Fees, Credits and Payment Terms

- 8.1 Service Fees are fixed for the Initial Term of this agreement and are listed on page two of the agreement.
- 8.2 The Hardware purchase price or rental rates (as applicable) listed on page two of the agreement are valid for the quantities listed on page two of the agreement and are valid for 90 days from the signing of this agreement.
- 8.3 Argus will provide a credit calculated on the monthly rate of the Service Fees for any Hardware that has been reported to Argus as being faulty and the fault is confirmed by Argus. The credit will start from the date the fault was reported to Argus and will end once the Hardware is operating correctly or a date has been booked for a Service Provider to investigate the fault.
- 8.4 Argus will provide the Customer with valid GST tax invoice(s) for Services and Hardware sales or rental, with the Customer's liability for such sale, rental or Service Fees calculated in accordance with this clause and the provisions of clauses 5.3 and 5.4. Each invoice received by the Customer will be payable to Argus without set-off or deductions of any nature within 20 days following the invoice date.
- 8.5 All amounts due to Argus for the Services, Hardware and other costs shall be paid in accordance with this agreement notwithstanding that the Services may not be operational or available.
- 8.6 Argus may charge its then current Late Payment Administration Fee plus interest on any outstanding amounts, calculated and compounded daily at the rate of 3% per month until payment in full (including GST and other charges) is received (including after as well as before any Court judgment).
- 8.7 The Customer must pay Argus's reasonable costs incurred in enforcing payment of amounts owed by the Customer under this agreement (including legal costs on a solicitor-client basis and debt collection costs).
- 8.8 If any amount due and payable by the Customer to Argus is not paid on the date payment is due, and is not subject to a dispute under clause 16, Argus may suspend provision of the Services until such payment is received. Such action, which Argus may take in its sole discretion in the event such non-payment occurs, shall include the Customer's access to the Software being disabled and deactivated, which shall continue at least until payment is received. For the avoidance of doubt, such suspension shall not impact or limit the Customer's obligation to pay rents, Service Fees or other amounts in respect of the Hardware or Services that would have been provided during such period of suspension but for the Customer's failure to pay.
- 8.9 After the Initial Term as listed on page one of the agreement, Argus may change the Service Fees at any time on 30 days written notice to the Customer (which may be sent to the Customer's nominated accounts email address). Should the fees increase, and the Customer not agree with the proposed changes, the Customer may terminate this agreement at the expiry of the 30 day notice period without penalty, provided that written notice (which may be given by email to support@argustracking.com) is first given

to Argus prior to the expiry of the 30 day notice period. Argus reserves the right to rescind the changes notified in which event this agreement will remain current.

- 8.10 Smart Renew automatic purchasing of Road User Charges (RUC) and Vehicle Licences (Registration) attracts a per transaction fee as notified to the Customer from time to time. The current schedule of transaction fees is available on the Argus Help Centre at: <https://argustracking.zendesk.com/hc/en-us/articles/333757048095>.
- 8.11 Smart Renew purchases are payable immediately by the Customer on demand from Argus and are otherwise not subject to the payment terms set out in clause 7.4
- 8.12 If the Customer chooses to pay their invoices by Credit Card, Argus may pass on all associated processing fees.
- 8.13 Raw Data Requests or Data Analysis including for Official Information Act requests or Court Orders will incur an hourly fee payable by the Customer.

9. Ownership

- 9.1 Ownership in the Hardware or any replacement Hardware or replacement component will not pass upon delivery but will remain with Argus until Argus has received total payment in clear funds of all moneys owing by the Customer to Argus (whether relating to the Hardware, or the supply of the Services).
- 9.2 The Customer acknowledges that the Hardware may include a SIM card ("the SIM card") used for the purposes of transmitting data to and from the Asset. The Customer acknowledges that ownership of the SIM card shall remain with Argus at all times. The Customer shall not remove the SIM card from the Hardware nor use the SIM card for any purpose other than the operation of the Argus Hardware. If the Customer breaches this clause, Argus shall be entitled to recoup from the Customer any charges incurred in the misuse of the SIM card and/or have the option to cancel the agreement and repossess the SIM card. The Customer shall remain liable to pay in full any payments payable by the Customer during the duration of this agreement and/or any related rental agreement.
- 9.3 Argus (or its suppliers) is and shall at all times be the sole owner of all Intellectual Property rights in the Hardware and all rights (including Intellectual Property rights) in the Software supplied under this agreement.
- 9.4 The Customer must not, nor may it permit any other person to:
 - a. copy, alter, modify, reproduce, reverse assemble, reverse compile or enhance the Software;
 - b. alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidentiality, proprietary or trade secret, legend or notice, or any numbers, or other means of identification used on or in relation to the Software;
 - c. make any of the Software available to any person other than its authorised person(s) or employee(s) without the prior written consent of Argus; or
 - d. do any act that would or might invalidate or be inconsistent with Argus's Intellectual Property rights.
- 9.5 The Customer acknowledges that any Intellectual Property arising directly or indirectly out of the performance of this agreement is or shall on creation be the property of Argus.
- 9.6 The Customer must notify Argus of any actual, threatened, or suspected infringement of any Intellectual Property right and of any claim by any third party that any use of the Software infringes any rights of any other person, as soon as that infringement or claim comes to the Customer's notice. The Customer shall (at Argus's expense) do all such things as may reasonably be required by Argus to assist Argus in pursuing or defending any proceedings in relation to any such infringement or claim.

- 9.7 The Customer indemnifies Argus against any loss, costs, expenses, demands or liability, whether direct, indirect or consequential or otherwise, and whether arising in agreement, tort (including in each case negligence), or equity or otherwise, arising out of a claim by a third-party alleging infringement of that third party's Intellectual Property rights if such claim arises from infringement, suspected infringement or alleged infringement due to:
- a. use of any of the Software in combination by any means and in any form with software, hardware or Asset not specifically approved by Argus or in a manner or for a purpose not reasonably contemplated or authorised by Argus; and/or
 - b. a breach by the Customer of clause 8.4.
- 9.8 If the Customer is renting Hardware from Argus now or in the future, the Customer agrees that:
- a. This agreement creates a security interest held by Argus under the Personal Property Securities Act 1999 (PPSA) in the Hardware;
 - b. The Customer must do all such things and execute all such documents as Argus may require to ensure that Argus has a perfected first ranking security interest(s) in the Hardware;
 - c. Argus may register a financing statement to protect its interest in the Hardware;
 - d. The Customer will indemnify Argus for any costs Argus incurs in doing any of the above; and
 - e. The Customer waives its right to receive a copy of any verification statement(s) under the PPSA and agrees that as between Argus and the Customer, the Customer will have no rights under (or by reference to) sections 114(1) (a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA; and
 - f. Where Argus has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.
- 9.9 Argus may issue proceedings to recover any amount owing under this agreement, including for any Hardware, notwithstanding that ownership of the Hardware may not have passed to the Customer.
- 9.10 The Customer acknowledges that information (including personal information referred to in clause 15) collected may be stored, used or disclosed by Argus in order to:
- a. determine whether or not it will provide or continue to provide credit to the Customer; and
 - b. enforce any obligations the Customer may have to Argus in respect of that credit (including but not limited to registering a Financing Statement in accordance with Argus's rights under the Personal Properties Securities Act 1999).

10. Suspension and Termination

- 10.1 Should any of the following events of default occur, Argus may cancel this agreement immediately;
- a. The Customer fails to make any payment due under this agreement on the due date which includes the dishonour of any direct debit payment to be made by the Customer and fails to remedy such failure within [10] Business Days of receiving written notice requiring the payment to be made; or
 - b. Argus discovers a false statement or omission made by the Customer in this agreement or in any preceding application made by the Customer or any statement or information supplied to Argus by the Customer that is material to this agreement or any obligation or right under the agreement; or

- c. An application is made to adjudicate the Customer bankrupt, or an application is made, or resolution is passed for the Customer's liquidation, or the Customer is otherwise wound up, dissolved or struck off the companies register; or
 - d. A receiver, liquidator, administrator or like person is appointed in respect of the Customer; or
 - e. Any act which the Customer causes or permits threatens the safety, condition or safe keeping of the Hardware; or
 - f. The Customer ceases to carry on business; or
 - g. The Customer fails to upgrade Hardware in accordance with clause 4.3; or
 - h. The Customer breaches its obligations contained in clause 8.4; or
 - i. The Customer breaches any other of their obligations under this agreement and fails to remedy such breach within 10 days of Argus providing written notification to the Customer requiring them to remedy such breach.
- 10.2 Should any of the following events of default occur, the Customer may cancel this agreement immediately:
- a. An application is made to adjudicate Argus bankrupt, or an application is made or resolution is passed for Argus's liquidation or Argus is otherwise wound up, dissolved or struck off the companies register; or
 - b. A receiver, liquidator, administrator or like person is appointed in respect of Argus; or
 - c. Argus ceases to carry on business; or
 - d. The Customer chooses not to upgrade Hardware and gives notice in accordance with clause 4.2; or
 - e. Argus breaches a material term of this agreement, and the breach is incapable of remedy or Argus fails to remedy the breach within 10 Business Days of receiving written notice requiring the breach to be remedied;
- 10.3 In the event of Argus terminating this agreement the Customer will immediately:
- a. Pay any Service Fees payable under this agreement;
 - b. Pay any costs, losses or damages Argus incurs as a result of the Customer's breach of this agreement;
 - c. Pay all other amounts due under this agreement;
- 10.4 If the Customer owns the Hardware, they are required to return the SIM card to Argus. Service Fees will continue to be incurred, charged and payable until such time the SIM card has been returned.
- 10.5 If the Customer is renting the Hardware, a removal must be undertaken by an Argus approved Service Provider and all Hardware shall be returned to Argus. Any costs associated with the removal and the return of the Hardware will be the responsibility of the Customer and the Customer will be charged at the current Argus rates. Argus's hourly rate can be found here <https://geo.argustracking.nz/labourrates>.
- 10.6 Notwithstanding any other provisions of this agreement, Argus may terminate this agreement on three months' written notice to the Customer and Argus shall not be liable in any way whatsoever to compensate the Customer for such termination of this agreement.
- 10.7 Notwithstanding any other provisions of this agreement, Argus may terminate this agreement with immediate effect if, due to circumstances beyond Argus's control, Argus is unable to provide the Services or any Service Provider is unable to provide any part of the Services and in such event, Argus shall not be liable to compensate the Customer in any way whatsoever for such termination.
- 10.8 Upon the termination of this agreement in terms of clause 10.6 and 10.7 the Customer will immediately pay any Service Fee applicable up to the date of termination or any other amounts due under this agreement to Argus.

11. Limitation of Liability

- 11.1 The Customer acknowledges that it is acquiring the Hardware or Services for business purposes, and that the guarantees under the Consumer Guarantees Act 1993 (“the Act”) do not apply. Except as otherwise required or prevented by law or except as expressly provided under these terms all representations, guarantees, warranties and terms of whatever nature express or implied (including without limitation implied warranties as to merchantability and fitness for a particular purpose) are completely excluded. Whilst Argus will use its commercial endeavours to provide the Services, Argus makes no warranty whatsoever regarding availability of Services or that Services will be uninterrupted.
- 11.2 The Customer acknowledges that sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply to this agreement.
- 11.3 Argus and its employees and agents shall not be liable to the Customer for any claim for breach of agreement (except as provided in clause 11.4 below) or statute or breach of duty in tort (including negligence) or for any claim in equity or otherwise at law. Argus and its employees and agents are not liable to compensate the Customer in any way whatsoever if Argus or Service Provider is at any time unable to provide the Services.
- 11.4 The Customer’s sole remedy against Argus shall be limited to breach of agreement and Argus’s sole and total liability for any such claim shall be limited, at the option of Argus to any one or more of the following:
- a. If the breach relates to the Hardware or Software:
 - i. replacement of the Hardware or Software or supply of equivalent Hardware or Software;
 - ii. repair of such Hardware or Software;
 - iii. payment of the cost of replacing the Hardware or Software or acquiring equivalent Hardware or software; or
 - iv. payment of the cost of having the Software repaired; and
 - b. if the breach relates to Services:
 - i. supplying the Services again; or
 - ii. payment of the cost of having the Services supplied again,
- and in any event Argus’s maximum aggregate liability to the Customer shall never exceed the net amount of the cost of the Hardware as listed on page 2 of the agreement.
- 11.5 Argus will not, in any case, be liable for any other losses or damages whether general, exemplary, punitive, direct, indirect or consequential, including loss of business profits.
- 11.6 No action may be brought against Argus unless notice of such claim is given to Argus within two weeks of installation of the relevant Hardware or provision of the relevant Services. In addition, even if such notice is given within the relevant timeframe above, Argus shall be released from all or any liability unless proceedings are brought in a Court of competent jurisdiction within one year of the date of installation of the relevant Hardware or provision of the relevant Services.

12. Technical Clauses

- 12.1 Argus's Public and Paid Services websites and apps use cookies. By using the Services, the Customer consents to the use of cookies. The current Argus' Cookies Policy is available on the Argus Help Centre at:
<https://argustracking.zendesk.com/hc/en-us/articles/360000407875>
- 12.2 Argus has available a REST API, for which Argus supplies limited no cost support to direct questions.
- 12.3 The Argus REST API has a fair use policy, Customers using this service may only undertake a maximum of 10 requests per second. This limit may be updated at any time and without prior notice.
- 12.4 Administrator users of Argus Services are responsible for inviting and maintaining their own users on the Argus Service. All users that are setup must have a real email address that is capable of receiving email messages.
- 12.5 RUC Collect claims are the responsibility of the Customer to check, verify and authorise the claim. Argus has no responsibility for false claims.

13. Health and Safety

- 13.1 Where Site inductions, certification(s), Health and Safety training, or any other unexpected/non-scoped attendances are required for access, Argus reserves the right to charge an hourly rate for this time. Argus's hourly rate can be found here
<https://geo.argustracking.nz/labourrates>.
- 13.2 Customer acknowledges that when Argus employees visit a Site, the Customer and/or Asset dealer (as applicable) is the PCBU (as that term is defined in the Health and Safety at Work Act 2017. Customer or Asset dealer (as applicable) will;
 - a. ensure that Argus is made aware of health and safety requirements for the Site; and
 - b. liaise with Argus regarding any required Site inductions,Argus employees will:
 - c. comply with Site health and safety requirements advised to them; and
 - d. subject to clause 13.1, attend inductions reasonably notified to them in accordance with clause 13.2b.

14. General Conditions

- 14.1 The Customer may not assign or transfer their rights or obligations under this agreement without the prior written consent of Argus. Argus may assign, novate or subcontract any part of its rights, obligations or the provision of any or all Services under this agreement.
- 14.2 Argus may from time to time update or amend the terms & conditions of this agreement. The updated/most recent terms & conditions are available on the Argus Help Centre at:
<https://argustracking.zendesk.com/hc/en-us/articles/360000391996>
- 14.3 All prices listed exclude New Zealand Goods and Services Tax (GST).
- 14.4 These terms apply to all transactions where Argus supplies Hardware, Software or Services to the Customer. If there is any inconsistency between these terms and any order submitted by the Customer or any other arrangement with Argus, these terms prevail unless otherwise agreed by Argus in writing.

- 14.5 To the maximum extent permitted by law, this agreement constitutes the entire understanding and agreement of the parties relating to the matters contemplated by this agreement and supersedes and cancels anything discussed, exchanged or agreed prior to the start of the agreement. The parties have not relied on any representation, warranty or agreement relating to the subject matter of this agreement that is not expressly set out in this agreement, and no such representation, warranty or agreement has any effect from the agreement's start.
- 14.6 If, at any time, Argus does not enforce any term of this agreement or grant the Customer time or other indulgence to comply with their obligations, Argus will not be construed as having waived that term or Argus' rights to later enforce that term or any other term. Any waiver of Argus' rights under the agreement must be in writing and signed by Argus.
- 14.7 If any provision of these terms and conditions is held by any court to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining provisions.
- 14.8 This agreement and its terms are governed by, and shall be construed in accordance with, the laws of New Zealand. Both parties submit to the exclusive jurisdiction of the New Zealand Courts.
- 14.9 The agreement may be signed in counterparts, each of which constitutes an original and all of which constitute the same agreement. A party may enter the agreement by signing and sending (including by email) a counterpart copy to the other party.

15. Data and Privacy

- 15.1 The Customer acknowledges that information (including personal information and the information collected in this form) collected may be stored, used or disclosed by Argus in order to determine whether or not it will provide or continue to provide credit to the Customer, enforce any obligations the Customer may have to Argus in respect of that credit (including but not limited to registering a Financing Statement in accordance with Argus's rights under the Personal Properties Securities Act 1999), and in the provision of the Services. The Customer acknowledges and agrees that the personal information will be held by Argus in cloud storage, and that the Customer if a sole trader, partnership, trustee, or the Customer's shareholders and director(s) in the case of a company, may obtain access to and request correction of any personal information provided in accordance with the Privacy Act 2020. The Customer (and as the case may be, its shareholders and directors) authorises Argus to obtain any personal information concerning the Customer and its shareholders and directors that Argus considers is necessary to perform the above purposes from any person or organisation. The Customer also authorises any person from whom Argus requests information (including personal information) concerning the Customer, to release that information to Argus. The Customer also authorises Argus to release any such information to any person for the purposes of determining creditworthiness, for communicating promotional activities and product information and for debt collection purposes. In the course of using Argus Hardware and Services, the Customer and Customer's employees will create and/or upload information, including Personal Information (Data). As between the Customer and Argus, this Data is owned by Argus.
- 15.2 Argus will store and retain the telematics data pertaining to the Customer for a period time, the period depends on the Plan displayed on page two of the agreement, and the Customer shall be entitled to access and take a copy of that data during that period. The data retention period may be updated at any time without prior notice. Argus may

remove the Customer's tracking data from its databases after this period or if the account is closed. The Customer shall have a perpetual licence and right to use its data copied from Argus' systems in accordance with this clause.

- 15.3 The Customer acknowledges and agrees that:
- a. The Customer indemnifies Argus against any claim or loss as a result of actual or alleged claim by a third party that Data collected or stored breaches the rights of that third party, including intellectual property or privacy rights;
 - b. any Personal Information collected by, disclosed to, stored or used by Argus will be in accordance with our Privacy Policy which can be found here; <https://geo.argustracking.nz/privacypolicy> ;
 - c. Argus is not liable to the Customer for any loss of Data however arising;
 - d. The Customer (and as the case may be, its shareholders and directors) authorises Argus to obtain any personal information concerning the Customer and its shareholders and directors that is reasonably necessary for Argus to perform the purposes described in clause 9.10 from any person or organisation. The Customer also authorises any person from whom Argus requests information (including personal information) concerning the Customer, to release that information to Argus for those purposes.

16. Dispute Resolution

- 16.1 If any dispute arises between the parties in connection with the interpretation or application of the provisions of this agreement, its breach or termination, the validity of any documents provided by either party pursuant to the provisions of this agreement, or any other matter arising out of or in connection with this agreement (Dispute), then the following will apply:
- a. either party may, by written notice (Dispute Notice), require the other party to meet and attempt to resolve the Dispute;
 - b. the Dispute Notice will state the nature and subject matter of the Dispute and set a time and date (not to be later than ten working days from the date of the Dispute Notice) for the parties to meet (whether by telephone, videoconference or physical meeting) to attempt to resolve the Dispute; and
 - c. the parties will use all reasonable endeavours to resolve the Dispute.
- 16.2 Each party must, to the extent possible, continue to perform its obligations under the agreement even if there is a dispute.
- 16.3 This clause 16 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

17. Confidentiality

- 17.1 The Customer acknowledges that the Confidential Information has been provided to it in strict confidence and undertakes not to disclose that Confidential Information to a third party or use it for any purpose other than the receipt of Service.