

mogo GPS Tracking Pty Ltd

Terms & Conditions v2.0

1. Interpretation

1.1 In these terms and conditions:

Australian Consumer Law means the law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in Melbourne, Australia.
Business Hours means from 9.00am to 5.00pm on a Business Day.
Contract is defined in clause 3.4.
Critical Fault means a significant error or failure in the Licensed Software which results in a major or total failure of operation of the Licensed Software to perform in substantial conformity with the Documentation, so as to give rise to a major or total interruption to the functioning of the business of the Customer.
Customer means a person who procures (or wishes to procure) any of the Goods.
Documentation means operator and user manuals, training materials, guides, specifications and other materials created or owned by Mogo in relation to the use of the Goods.
External Factors is defined in clause 17.2.
Goods means the hardware (including, without limitation, GPS tracking units, sensors and other hardware), software and/or services offered by Mogo to the Customer, as described in a Quotation (and includes any services provided via the Website), and includes any and all accessories, tools, parts, manuals, and substitute and replacement goods.
Licensed Software means any software supplied by Mogo under this Contract, including any Updates or New Releases to that software provided to the Customer from time to time.
Mogo means mogo GPS Tracking Pty Ltd ACN 142 071 565.
New Release means a new version of Licensed Software which adds new functionality or performance and for which Mogo typically charges its customers.
Non-Critical Fault means any error or failure in the operation of the Licensed Software which results in a failure of the Licensed Software to perform in substantial conformity with the Documentation and that is not a Critical Fault.
Non-Excludable Condition is defined in clause 18.1.
PPSA means the *Personal Property Securities Act 2009* (Cth).
Privacy Policy means Mogo's privacy policy available on the Website (as may be amended from time to time).
Purchased Goods means the hardware Goods that the Customer purchases from Mogo.
Quotation means the written or electronic quotation provided by Mogo to the Customer.
Rented Goods means the hardware Goods that the Customer rents from Mogo.
Update means each update of Licensed Software supplied by Mogo the purpose of which is to correct an error or defect in the Licensed Software (but excluding New Releases).
Website means Mogo's website located at www.mogogps.com.au.

2. Terms of supply

2.1 The Goods are supplied by Mogo on these terms and conditions.

2.2 The Customer agrees to be bound by and abide by these terms and conditions and any other terms, conditions and policies notified by Mogo (including the Privacy Policy) in writing in respect of the provision of the Goods.

3. Quotations and orders

3.1 The price specified in a Quotation is only valid for the period stated in the Quotation (or, if no period is stated, for 30 days from the date of the Quotation).

3.2 A Quotation issued by Mogo constitutes an invitation to treat and is not an offer.

3.3 By placing an order for Goods on the basis of the pricing and payment terms set out in a valid Quotation, the Customer is making an offer to procure the relevant Goods on those terms and on these terms and conditions.

3.4 A contract in respect of the provision of Goods (**Contract**) is only formed when an order placed by the Customer in accordance with clause 3.3 is received and accepted in writing by Mogo (including by the issue of an invoice). The Contract comprises the terms of the Quotation, these terms and conditions, the Privacy Policy, and any other terms notified to the Customer by Mogo in writing in accordance with clause 2.2.

3.5 On payment of an invoice in respect of any Goods, the Buyer agrees to be bound by these terms and conditions and any other terms, conditions and policies notified by the Seller (including the Privacy Policy and any other terms, conditions and policies made available on the Website) in respect of the sale and supply of those Goods.

4. Prices

4.1 All prices and fees displayed on the Website or provided by Mogo are subject to change without notice and all orders are accepted by Mogo on condition that they will be invoiced at the prices set out in the Quotation, provided that Mogo 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, Mogo reserves the right to issue a new Quotation in respect of those Goods with updated pricing.

4.2 Unless otherwise stated, prices specified in a Quotation do not include freight, installation, configuration or commissioning charges or the costs of any special packing and packing materials. The Customer must pay all costs incurred by Mogo in freight, commissioning, configuring and/or specially packing the Goods at the request of the Customer.

4.3 Any consideration to be paid or provided for a supply made under or in connection with these terms and conditions, unless specifically described as GST inclusive, does not include an amount on account of GST. Despite any other provision in this Contract, if a party (**Supplier**) makes a supply under or in connection with 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 4.3 (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply, and the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided. The Supplier will provide a tax invoice prior to seeking payment of GST. Words or expressions used in this clause 4.3 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

4.4 Unless otherwise stated, and subject to clause 4.3, the prices quoted by Mogo 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 Mogo.

5. Terms of payment

5.1 Once Mogo has received an order for Goods in accordance with clause 3.3, Mogo may issue invoices in respect of the Goods on a monthly basis (or such other basis as specified in the relevant Quotation).

5.2 The Customer must pay each invoice issued by Mogo at the time stated in the Quotation or, in the absence of any time stated, within seven (7) days after the date of the invoice.

6. Delivery

6.1 Mogo will not dispatch any Goods to, or make any Goods available for collection by, the Customer until the Customer has paid the deposit, or any other amount that is first due to be paid, under the invoice in respect of the Goods.

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

6.3 Except as required by law (including under any Non-Excludable Condition), Mogo 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 of the Goods.

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

7. Loss or damage in transit

Although Mogo appoints contractors who are instructed to use appropriate care when delivering Goods, Mogo 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 Mogo (however caused and whether or not Mogo is legally responsible for any person who caused or contributed to that loss or damage), except as required by law (including under any Non-Excludable Condition).

8. Shortage

Except as required by law (including under any Non-Excludable Condition), Mogo excludes all liability in relation to any shortage of any Goods delivered if a claim for short delivery has not been lodged with Mogo within seven (7) days after the date of receipt of Goods by the Customer.

9. Rights in relation to the Goods

9.1 Mogo and the Customer agree that:

- title in all Purchased Goods remains with Mogo until Mogo has been paid in full for all Purchased Goods;
- title in all Rented Goods remains with Mogo at all times; and
- (in the case of Purchased Goods) until title in any 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 Mogo, all of the duties and liabilities of a bailee in respect of the Goods.

9.2 In respect of any Goods while they remain the property of Mogo, the Customer must:

- 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;
- not (without Mogo's prior written consent) supply any of the Goods to any person outside of its ordinary or usual course of business;
- 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
- not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.

10. PPSA

10.1 The Customer acknowledges the Contract constitute a security agreement for the purposes of the PPSA. A security interest is taken in all Goods previously supplied by Mogo to the Customer (if any) and all Goods that may be supplied in the future by Mogo to the Customer (whether those Goods are Purchased Goods or Rented Goods) and any proceeds referable thereto, securing the performance by the Customer of its obligations to Mogo under the Contract or otherwise.

10.2 The Customer must not, without Mogo's prior consent, allow:

- the Goods to become mixed or commingled with any other property;
- the Goods to become an accession to any other property; or
- any other property to become an accession to the Goods.

10.3 The Customer consents to Mogo effecting and maintaining registrations in respect of security interests (including purchase money security interests) on the PPSR (as defined in the PPSA) contemplated by these terms and conditions and each Contract. The Customer must pay all costs incurred by Mogo in connection with the registration of a financing statement or financing change statement (each as defined in the PPSA) in respect of a security interest granted by the Customer in favour of Mogo.

10.4 The Customer must immediately notify Mogo if any other person attempts to enforce a security interest in the Goods.

10.5 The Customer must assist Mogo to complete the registration of any financing statement in respect of the Goods, and will do all things and provide all information necessary to enable Mogo to perfect its security interest in the products and complete any financing change statement.

10.6 Unless otherwise agreed, payments received by Mogo from or on behalf of the Customer must be applied in accordance with s14(6)(c)(i) to (iii) of the PPSA.

10.7 To the extent permitted by law, to the extent they otherwise would have applied to the enforcement of a security interest in the Goods, the Customer and Mogo contract out of sections 125, 132(3)(d), 142, 143 and (if permitted by section 115(7)) Part 4.3 (other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2)) of the PPSA. The Customer irrevocably waives any rights under sections 95, 121(4), 130, 132(4) and 135 of the PPSA.

10.8 The Customer agrees that it irrevocably waives any rights it may have to receive a verification statement (as defined in the PPSA) in respect of a security interests in the Goods.

10.9 The Customer and Mogo agree that neither of them will disclose, or authorise the disclosure, to any person of any information of the kind described in section 275(1) of the PPSA, except to the extent (if any) required by law.

11. Licence of Licensed Software

11.1 Where the Quotation provides for the Customer to access Mogo's network for use in conjunction with the Goods, subject to payment by the Customer of the applicable fees as set out in the Quotation, Mogo grants to the Customer a non-exclusive, non-transferable, non-sublicensable licence to use the Licensed Software on Mogo's network, for the term set out in the Quotation (if any), solely for the purpose of operating Goods purchased or rented by the Customer from Mogo.

11.2 Where the Quotation provides for the acquisition by the Customer of a system licence from Mogo, subject to payment by the Customer of the applicable fees as set out in the Quotation, Mogo grants to the Customer a non-exclusive, non-transferable, non-sublicensable licence to use the Licensed Software described in the Quotation, for the term set out in the Quotation (if any), solely for the purpose of operating Goods purchased or rented by the Customer from Mogo.

11.3 The Customer:

- must not use the Licensed Software in conjunction with, or for the purpose of operating, any goods acquired from any third party; and
- must only use the Licensed Software with the in-vehicle equipment approved by Mogo; and
- (where clause 11.2 applies) must only use the Licensed Software at the site approved by Mogo.

11.4 The Customer must comply with all reasonable directions issued by Mogo regarding use of the Licensed Software, must use the Licensed Software in accordance with the Documentation, and must ensure that all Customer personnel who use, install or support the Licensed Software are properly trained in the operation, installation and support of the Licensed Software.

11.5 The Customer must not use the Licensed Software on equipment other than equipment approved by Mogo, except that the Customer may, at its own risk, use it on alternative equipment if the designated equipment is temporarily inoperable due to malfunction, maintenance or change of installation site, or with the consent of Mogo.

11.6 The Customer must not copy, alter, modify or reproduce the Licensed Software except to the extent otherwise permitted under this Contract.

11.7 The Customer must use all commercially reasonable efforts to safeguard the Licensed Software from misuse, unauthorised use, loss or damage, and will provide an operating environment for the Licensed Software (including computer hardware and software, appropriate cabling, telephone lines and modem access and communications links, and a suitable temperature controlled, dust and smoke free environment) that complies with all specifications and requirements provided to the Customer by Mogo (including stable spike-free electricity supply and a standby generator backed-up UPS (uninterruptible power supply) for all critical computers and associated equipment).

11.8 The Customer must keep accurate records of use, copying, modification and disclosure of the Licensed Software. The Customer must permit Mogo to inspect such records at any time during Business Hours and provide a copy of such records to Mogo on Mogo's request.

11.9 The Customer must keep the Licensed Software and the Documentation confidential, except to the extent that it enters the public domain or the disclosure is required by law, and must take all reasonable steps to ensure that its personnel keep confidential and do not disclose the Licensed Software or Documentation. This clause 11.9 survives the end of the Customer's licence in respect of the Licensed Software.

11.10 Except to the extent expressly permitted under Division 4A of Part III of the *Copyright Act 1968* (Cth), the Customer must not modify, alter, adapt, merge, translate, decode, reverse engineer, decompile or disassemble the Licensed Software or merge all or any part of the Licensed Software with any other software without Mogo's written permission. The Customer assigns to Mogo, including by way of future copyright, all intellectual property rights in any modifications made by the Customer to the Licensed Software. The Customer indemnifies Mogo from and against all claims, suits, actions, demands, costs and expenses incurred by Mogo arising out of or in connection with any modifications made by the Customer to the Licensed Software, including any claim for infringement of third party intellectual property rights.

12. Use of the Website

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

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

12.3 Mogo does not represent or warrant that the Website or any linked website (or any content on the Website or any linked website) is free from computer viruses or any other defects or errors which may affect the Customer's software or systems. The Customer is responsible for protecting its own software and systems by installing and implementing appropriate security and system checks.

12.4 The Customer must not use the Website or any of the services provided via the Website:

- for any purpose that is unlawful, breaches any applicable code of conduct, infringes a third party's rights or is prohibited by this Contract; or
- to breach or circumvent or attempt to breach or circumvent the security of the Website (including 'hacking') or engage in any other malicious, illegal or damaging behaviour in relation to the Website.

12.5 If the Customer purchases any services from Mogo that are provided via the Website, the Customer may be issued with a user name and password. The Customer is responsible for maintaining the confidentiality of that user name and password, and is fully responsible for all conduct carried out under the provided user name and account.

12.6 Mogo reserves the right to revise and update these terms and conditions and its Privacy Policy, to the extent that they relate to access to and use of the Website, as follows:

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

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

13. Software support

13.1 Mogo will perform the support services that it considers appropriate so that the Licensed Software remains in substantial conformity with the Documentation. This support may, in Mogo's sole discretion, take the form of telephone advice, programming or re-configuration as Mogo considers necessary, or such other services or methods of provision of services as Mogo considers appropriate.

13.2 The Customer must co-operate fully with Mogo's personnel in the diagnosis of any alleged non-conformity of the Licensed Software and must provide all such information that Mogo determines necessary for it to perform the support services.

13.3 The customer must permit Mogo to access any hardware on which the Licensed Software is installed to the extent necessary to enable Mogo to provide the support services.

14. Documentation

14.1 The Customer must not copy or reproduce any Documentation provided except to the extent otherwise authorised under this Contract.

15. Term and termination

15.1 Mogo will provide the services included with the Customer's purchase of hardware for a term of 24 or 36 months commencing on the date on which the Customer's Order is accepted by Mogo unless the agreement for provision of services is terminated earlier in accordance with this clause rent the Rented Goods to the Customer, and provide the services included with the Customer's purchase or rental of hardware, commencing on the date on which the Customer's order is accepted by Mogo, until this Contract is terminated in accordance with this clause 15.

15.2 If the Customer breaches any provision of these terms and conditions (including, without limitation, by failing to pay any amounts owed to Mogo by the applicable payment due date), becomes insolvent or ceases to carry on business, Mogo may, in its sole discretion, either suspend its obligation to provide services (including suspending the Customer's access to the Licensed Software) until the breach is rectified, or terminate this Contract for cause with immediate effect, by giving notice in writing to the Customer.

15.3 The Customer may terminate the agreement for provision of ongoing services, the licence of the Licensed Software and/or the ongoing rental of the Rented Goods under this Contract, or this Contract as a whole, for convenience, by giving Mogo not less than 60 days written notice that termination, provided that the Customer must pay to Mogo, 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 services term, had the agreement not been terminated. After the expiry of the minimum term specified in the Quotation (if any), Mogo may terminate the provision of ongoing services,

the licence of the Licensed Software and/or the ongoing rental of the Rented Goods under these terms and conditions, for convenience, by giving the Customer not less than 90 days written notice of that termination.

- 15.4 Immediately upon the termination of the rental or this Contract, the Customer must, at its expense, de-install and ship the Rented Goods, in good working order, to the address notified by Mogo. This shipment should be insured, as the Customer will bear the risk of loss or damage to the Rented Goods during transit. Mogo may invoice the Customer for any Rented Goods that are not returned to Mogo in accordance with this clause 15.4, and the Customer will be liable for the replacement costs of the Rented Goods.
- 15.5 The Customer must pay to Mogo any fees and charges that are payable and outstanding as at the termination date of this Contract.
- 15.6 The Customer authorises Mogo to enter the Customer's premises to enable Mogo to repossess any Rented Goods. The Customer indemnifies Mogo from all costs, claims, actions and liabilities Mogo suffers or incurs as a consequence of termination of the rental or this Contract, including legal costs on an indemnity basis.
- 16. Mogo Specifications**
- 16.1 The descriptions and illustrations contained in catalogues, price lists, the Website and other advertising matter are provided by Mogo for information only and, except as required by law (including under any Non-Excludable Condition), do not form part of this Contract.
- 16.2 All Goods to be supplied by Mogo to the Customer are as described on the Quotation. The description of the Goods in the Quotation prevails over all other descriptions of the Goods, including the description in any specification or enquiry of the Customer and in any material provided by Mogo.
- 16.3 Where specifications, drawings or other particulars are supplied by the Customer, the price specified in the Quotation is based on Mogo's estimates of quantities of Goods required by the Customer. If there are any adjustments in quantities above or below the quantities set out in a Quotation, the price specified in the Quotation will be increased or decreased accordingly on the basis of the hardware prices set out in the Quotation.
- 17. Performance**
- 17.1 Any information contained in catalogues, price lists, the Website and other advertising matter is supplied without warranty, condition or other terms and any performance figures provided by Mogo in relation to the Goods are estimates only. Except as required by law (including under any Non-Excludable Condition), Mogo excludes all liability in relation to any failure of the Goods to perform in accordance with any such information or figures except to the extent of any performance guarantee provided by Mogo to the Customer in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.
- 17.2 The Customer acknowledges that the operation of the Goods (including the Customer's access to the Website and its use of any services provided via the Website) is dependent on and affected by a range of matters outside the control of Mogo, including without limitation, mains power disruptions, the communication and tracking services and coverage provided by third parties, communications infrastructure (such as mobile GSM/GPRS/3G networks, ISP outages, leased line/ISDN circuit failure, PMR channel or network failure), weather conditions, magnetic and electronic interference, shielding, terrain, radio emissions, interruptions caused by those matters and other factors as notified from time to time by Mogo to Customer including notification via the Website, promotional material, Quotations and specifications (**External Factors**). Mogo does not warrant that operation of the Goods will be continuous, uninterrupted or error-free, or that any outage notifications will be made in a timely manner, or at all.
- 17.3 To the maximum extent permitted by the law, and subject to clause 18.1, the Customer releases Mogo from all claims, suits, actions and demands which may arise, directly or indirectly, out of or in connection with the External Factors and the effect of any of them on the operation of the Goods.
- 17.4 Except as required by law (including under any Non-Excludable Condition), Mogo gives no warranty or representation of uninterrupted, continuous or error free operation of, or communication with the Goods.
- 17.5 The Customer must hold Mogo harmless, from and against all claims, suits, actions, demands, costs and expenses incurred by Mogo arising out of or in connection with the External Factors and the effect of any of them on the operation of the Goods.
- 18. Limitation of liability**
- 18.1 Mogo acknowledges that the Australian Consumer Law may confer certain rights and remedies on the Customer in relation to the provision by Mogo of goods or services under this Contract. This Contract does not exclude, restrict or modify the application of any condition, warranty, guarantee, right or remedy conferred by or implied under any provision of the Australian Consumer Law or any other statute, where to do so would:
- (a) contravene the relevant statute; or
 - (b) cause any part of this agreement to be void and/or unenforceable.
- (**Non-Excludable Obligations**).
- 18.2 Except in relation to Non-Excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by statute, custom, or the general law that impose any liability or obligation on Mogo are expressly excluded under this Contract.
- 18.3 In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which Mogo's liability is not so limited under this Contract), Mogo's liability to the Customer for a failure to comply with any Non-excludable Obligation is limited to:
- (a) in the case of services, the lowest of the cost of supplying the services again and payment of the cost of having the services supplied again; and
 - (b) in the case of goods, the lowest of the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.
- 18.4 Except in relation to Non-Excludable Obligations, Mogo's liability (including in negligence) for any defect in any Goods (including in any Licensed Software) is limited to, at Mogo'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;
 - (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 Mogo;
 - (e) the seals of any kind on the Goods remain unbroken; and
 - (f) the defective parts are promptly returned to Mogo at the Customer's cost.
- 18.5 Except in relation to Non-Excludable Obligations, but despite any other provision of this Contract, Mogo is not liable (including in negligence) for any cost, loss, liability or expense arising from death, personal injury or damage to property (unless the death, personal injury, or damage to property is caused by the negligence or default of Mogo), any loss of profits, loss of revenue, loss of goodwill, loss of customers, loss of or damage to reputation, loss of capital, downtime costs, loss under or in relation to any other contract, loss of data, loss of use of data or any indirect, consequential or special loss or damage incurred by the Customer or any other person arising under or in connection with this Contract or the supply, layout, assembly, installation, provision or operation of the Goods (including the Customer's access to or use of the Website or the provision of any other services by Mogo).
- 18.6 Subject to clauses 18.1 and 18.5, but despite any other provision of these terms and conditions, Mogo's total aggregate liability (including in negligence) for any cost, loss, liability or expense arising, directly or indirectly, under or in connection with this Contract or the supply, layout, assembly, installation, provision or operation of the Goods (including the Customer's access to and use of the Website or the provision of any other services by Mogo), is limited to AUD\$10,000.
- 19. Customer's property**
Any property of the Customer under Mogo's possession, custody or control is completely at the Customer's risk as regards loss or damage caused to the property or by it.
- 20. Return and Refund**
- 20.1 Subject to clause 18, Mogo will not accept any Goods returned by the Customer except on terms agreed in writing with the Customer at Mogo's sole discretion.
- 20.2 Any Goods returned by the Customer in accordance with this Contract must be returned at the Customer's expense to the address notified to the Customer by Mogo.
- 20.3 Mogo offers the Customer the option to return and obtain a refund for Goods purchased directly from the Seller in accordance with this clause 20.
- 20.4 In addition to the Buyer's Statutory Rights, the Buyer may return Goods for refund of purchase price paid, less postage and restocking fees, provided that:
- a) Mogo 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 Mogo. This shipment should be insured or the Customer should accept 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 and the reference (RMA) number specified by Mogo upon authorising the return.
- 20.5 If the Customer returns any Goods in accordance with these terms and conditions, Mogo will issue to the Customer a credit note or refund of the purchase price, less the following amounts that Mogo may deduct from the amount of the credit note or refund:
- e) any shipping and handling costs incurred by Mogo;
 - f) unless the Goods are agreed to be faulty or DOA (dead on arrival), a restocking fee of up to 20% of the purchase price paid, plus any applicable sales tax, at Mogo's discretion; and
 - g) if the returned Goods are found to be damaged or incomplete in any way, any repair or replacement costs incurred by Mogo.
- 20.6 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 inaccessible after the credit note or refund is issued.
- 20.7 Any goods returned to the Customer other than in accordance with these terms and conditions (or as permitted pursuant to the Buyer'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 Mogo will not ship the Goods back to the Customer unless the Customer pays all handling, shipping and administrative costs incurred by Mogo in doing so.

21. Notices

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

22. General

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