

Terms of Trade



TERMS AND CONDITIONS OF TRADE

1 Acceptance

1.1 These are the terms between Fleetpin Limited (“us”, “we”, “our”), and you, the Customer (“you”, “your”). If you accept a Quote from us, or otherwise engage us to carry out Services, you accept that these Terms apply to those Services, and to all other services we provide you from time to time (unless we otherwise agree in writing).

2 Quotes

2.1 Quotes given are valid for one calendar month provided that we may withdraw a Quote at any time before you accept it in writing.
2.2 Unless stated otherwise, all amounts stated in Quotes are exclusive of GST and any credit card merchant fees.
2.3 The fact that a Quote has been given, and the contents of that Quote, are commercially sensitive and confidential to us, and may not be disclosed to any person without our prior written consent.

3 Equipment and Services

3.1 We will supply the Equipment and can provide details for preferred installers who are able to carry out installations in accordance with New Zealand Standards, all relevant regulatory requirements and the manufacturer's instructions.
3.2 You must engage a suitably qualified installer to install the Equipment into the vehicle/machine/asset, at your cost.
3.3 Our telco provider(s) owns and has sole rights over any Sim card installed into the Equipment and we have the license to operate and manage the SIM card to provide Services.
3.4 Our telco provider(s) reserves the right to send updates or upgrades to the SIM card by any means (such updates or upgrades may be required for functionality, for intellectual property issues or to comply with national regulations), and you consent to the same.
3.5 We will provide you with secure access to a web based GPS Tracking platform to:
3.5.1 monitor your assets to the best ability of the device and telco coverage.
3.5.2 obtain stored GPS data records of assets backdating two years. Data will be held in accordance with normal business records (seven years). Following this it will be deleted.
3.5.3 receive alerts as selected by you via SMS, phone calls and email. You are responsible for inserting correct information to receive these alerts.

4 Our responsibilities

4.1 We will carry out the Services with reasonable skill, care and diligence.
4.2 We will use reasonable efforts to complete the Services in the timeframe set out in the Quote. You agree to help us do this by complying with your obligation under term 5.
4.3 We are not liable for any delay in carrying out the Services due directly or indirectly to circumstances reasonably outside of our control, including force majeure, accidents, variations of the Services, or any acts of any government, territorial authority or similar body.

5 Your responsibilities

5.1 We may request information from you in order to carry out the Services, and you will provide this information, free of cost, as soon as practicable following the request. You are responsible for the accuracy and completeness of information supplied to us verbally or in writing in connection with the performance of the Services. In providing the information, you shall ensure compliance with all intellectual property laws and indemnify us against any breach of intellectual property rights in providing the information to us, or our use of that information in providing the Services.

5.2 You must ensure that the SIM card is not damaged in any way or removed from the Equipment (except on termination).

5.3 You will advise us as soon as reasonably possible of the following:

- 5.3.1 when any of your information (contact information, sale of business) changes;
- 5.3.2 prior to selling the vehicle/machine/asset the Equipment is attached to;
- 5.3.3 prior to moving/installing equipment into a different vehicle/machine/asset
- 5.3.4 prior to changing your bank; or financial institution where that affects your selected payment option.

6 Your acknowledgements

6.1 We give no guarantee against asset theft, of asset recovery or incidents occurring.
6.2 The provision of the Services and Equipment is an aid to security and vehicle fleet management and risk management.
6.3 The Terms are not intended as a policy of insurance nor a substitute for an insurance policy. Nothing in these Terms shall constitute us as an insurer;
6.4 The Services are provided in accordance with your expressed wishes;
6.5 We may vary these terms and conditions (including the charges) from time to time after providing one calendar months written notice to you of any such change;
6.6 We may engage subcontractors to provide the Services;
6.7 We may record telephone conversations with you, any contact nominated by you. You consent to the disclosure by us of those recordings to any Emergency Service or other law enforcement body or any other Government investigatory body and the use by us of those records in legal proceedings; and,
6.8 if the Equipment is not decommissioned on termination of these Terms, any use of the telephone services by the Equipment for outgoing data, SMS texting or telephone calls will be your responsibility, and we are not responsible for any failure to provide the Services or breach of these Terms if that failure or breach arises as a result of interference to the operation of the Equipment.
6.9 Customers must monitor their Equipment and Services received, and notify us of any faults immediately

7 Charges and payment

7.1 The charges for the Equipment and Services (Tier 1, 2, 3, add-ons) shall be as agreed between us or set out in the Quote. Unless otherwise stated, prices stated do not include GST, other taxes or levies. The charges are subject to change at our discretion on one calendar month's written notice to you.
7.2 The billing cycle will commence on the Effective Date. We will issue invoices on a monthly basis.
7.3 We will issue an invoice to you for any additional equipment or services purchased during the term, which will be charged at our then current rates.
7.4 Invoices are payable by direct debit (whereby your nominated account is debited monthly in advance) on the due date indicated on the invoice. We may agree (in our sole discretion) to electronic payments on or prior to the due date indicated on the invoice.
7.5 If you do not need your vehicle/machine/asset tracked (e.g. seasonal machinery) we may agree (in our sole discretion) to a monthly suspension rate to retain the 'Active' status of your SIM Card and avoid paying SIM termination fees.
7.6 You agree to make all payments due to us in full without deduction of any nature whatsoever whether by way of set-off, counterclaim or other

equitable or lawful claim and without deduction of any taxes or other government charges.

7.7 If you consider there is a mistake in the calculation of any charges, you should notify us as soon as possible after receiving notification of the charges and within 10 Working Days. We will promptly investigate the matter and report to you. You must pay the charges including any disputed part by the due date for payment regardless of any mistake. If there is a mistake, we will use reasonable endeavours to correct the invoice before the due date, in the event that this does not happen, we will adjust a later invoice or reverse the electronic transaction as the case may be.

7.8 Any amount which is not paid when due will incur interest at the rate of 2.5% above the prime lending rate of our principal bank (published at the beginning of the month of that date) compounding daily on the outstanding balance (both before or after any judgement, and in addition to any other rights and remedies). We also reserve the right to claim the costs of recovering any debt (including debt collection and legal costs on a solicitor-client basis).

8 Ownership of intellectual property

8.1 Intellectual property owned by us prior to the commencement of the Services shall remain our property ("Existing Intellectual Property").

8.2 Intellectual property prepared or created by us in carrying out the Services ("New Intellectual Property") will be owned by us.

8.3 We grant you a non-exclusive, non-transferable licence for the Term to use the Existing Intellectual Property and to copy or use the New Intellectual Property to the extent required for the Services.

8.4 We do not warrant the suitability of the Existing Intellectual Property or the New Intellectual Property for any purpose other than the Services or any other use stated in the Contract Documentation.

9 Title and Risk

9.1 Title in all Equipment remains vested in us until all amounts owing to us for the Equipment have been paid in full.

9.2 For the purposes of the Personal Property Securities Act 1999 (PPSA), you agree that a security interest is granted to us in the Equipment (and all proceeds of the Equipment) to secure all amounts owing to us. We may apply all payments in such a manner as is desirable to preserve any purchase money security interest in the Equipment. Nothing in sections 116, 120(2), 121, 125 to 127, 129, 131, 133 and 134 of the PPSA applies to the security interest, and you waive the right to receive a verification statement in respect of any security interest.

9.3 Risk in the Equipment shall pass to you upon delivery as set out in term 9.4.

9.4 Delivery of the Equipment shall be deemed to occur:

9.4.1 when the Equipment arrives at the address specified by you (whether or not you are present to acknowledge receipt), or

9.4.2 when you take possession of the Equipment, whichever occurs first.

10 Warranty

10.1 The Equipment is covered by a warranty for 12 months (unless specified) from the Effective Date which covers hardware defects in materials or workmanship with some exceptions.

10.2 The warranty does not cover cosmetic damage or any other damage or defect caused by abuse, misuse, neglect, used in violation of instructions, repairs by an unauthorised third party, or an act of God. The warranty does not cover altered or defaced Equipment, or Equipment which has had its product label removed. Further, consequential and incidental damages are not coverable under this warranty

11 Liability

11.1 These Terms are subject to any provisions of statute which apply to these Terms and which cannot be excluded.

11.2 To the maximum extent permitted by law, and other than as expressly set out in these Terms, we:

11.2.1 exclude all express or implied terms, conditions, warranties, representations, undertakings and inducements by statute or otherwise relating to the provision of Services to you; and

11.2.2 exclude our liability (and that of our Related Companies) to you for any loss, damage, liability, expense, cost, charge, injury or death sustained or incurred by you or any other party resulting directly or indirectly out of:

(a) the supply, performance or use of any Equipment or Services; or
(b) any breach by us under these Terms including as a result of any act of God, governmental or other administration act or omission, industrial disputes, or any other matter beyond our control ("force majeure");

(c) our negligence or that of our employees or contractors;

(d) any failure or delay in any Services or Emergency Services; and
11.2.3 subject to the proviso set out at term 11.3 below, limit our liability, and that of our related Corporations (including liability for negligence) at our option to:

(a) in the case of the supply of Equipment;

A the repair of Equipment;

B the payment of the cost of replacing the Equipment or acquiring equivalent Equipment; or

C the payment of the cost of having the Equipment repaired or the repair of the Equipment; and

(b) in the case of Services

A the supply of the Services again; or

B the payment of the cost of having the Services performed again.

11.3 In no circumstances will we be liable under these Terms in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, revenues, use, production, contracts, corruption or destruction of any computer or data (stored electronically or otherwise) or software or for any indirect, special or consequential loss or damage whatsoever.

11.4 You also hereby acknowledge that Connected Networks do not have guaranteed uninterrupted service availability. You agree to indemnify and hold harmless us and our Telco supplier(s), their subsidiaries, affiliates, directors, officers and employees, from and against any and all claims, suits, damages or expenses asserted against or incurred directly resulting from use of the Services provided under these Terms in a way that requires uninterrupted availability of the Connected Networks and where interruption of a Connected Network causes death, personal injury, physical injury or property damages.

11.5 We do not accept responsibility for any loss or damage to any vehicle/machine/asset in connection with the installation, use or removal of the Equipment.

12 Privacy

12.1 We respect your privacy and are committed to protecting your personal information. The Privacy Act (2020) requires us to tell you when we collect personal information and how we will use it.

12.2 We collect and use personal information (including but not limited to name, contact details, vehicle/machine/asset details) in order to provide the Services, to complete business transactions with you and provide you with ongoing customer support in regard to our Services. Our privacy statement is available to view on our website www.fleetpin.co.nz. If at any time your details change please contact us at info@fleetpin.co.nz

12.3 Unless you notify us otherwise, you consent to receiving marketing, promotional and other material by way of electronic messages from us. We may also use your contact information to send you publications (newsletters/updates). These publications will include an unsubscribe option should you wish to discontinue receiving our publications.

12.4 At times we may need to disclose information (including GPS tracking information) to the following:

12.4.1 service providers (e.g. businesses to which we contract GPS equipment service, maintenance work etc with your consent)

12.4.2 Telcos, GPS manufacturers etc, who by providing some of the services/hardware/software are able to see some data that we have no control over.

12.4.3 government authorities under statutory obligation.

12.5 You have the right to access most personal information that we hold about you. Sometimes that will not be possible but if that is the case you will be told why.

13 Transfer of Equipment

13.1 You may transfer the Equipment to another vehicle/machine/asset provided:

13.1.1 we agree to the transfer and you get our prior written consent,

13.1.2 you engage a suitable qualified installer to remove, reinstall and recommission the Equipment in accordance with industry standards,

13.1.3 you shall pay all costs connected with the transfer,

13.1.4 our agreement will be varied as appropriate to take into account requirements of the new vehicle/machine/asset.

14 Suspension and termination

14.1 Without prejudice to any of our other rights or remedies, we may (partially or wholly) suspend the Services (including the provision of documentation) at any time if you default in any of your obligations under

- these Terms, including failing or refusing to pay any invoiced amount in full by the due date for its payment.
- 14.2 These Terms will continue for the period of time that Services are provided by us to you. The Term for a trial of our Services is 14 days or longer as agreed by us in writing.
- 14.3 You may terminate at any time by providing us with one calendar month notice in writing of your request to cease receiving Services (for the avoidance of doubt, you must terminate with us if you sell the Equipment or the vehicle/machine/asset the Equipment is attached to).
- 14.4 We may terminate our obligations under these Terms if at any time in our opinion you breach any of these Terms, or become bankrupt, have a liquidator, receiver or statutory manager appointed or default in your obligations under these Terms and do not remedy that default within 5 Working Days of receiving a notice requiring remedy.
- 14.5 Without limitation, you will be in breach of these Terms if you:
- 14.5.1 do not pay any amount owing within 7 days of the date which the amount becomes payable; or
- 14.5.2 damage or misuse leased, purchased or trial Equipment and/or SIM cards leading to the inability of us to perform our service.
- 14.6 On termination:
- 14.6.1 subject to term 14.6.2 below, you must return to us the SIM card undamaged and in working condition within one calendar month of either party giving written notice to terminate or you will incur a SIM termination fee of \$60 +GST;
- 14.6.2 In circumstances where you terminate due to sale of the Equipment or the vehicle/machine/asset the Equipment is attached to, you can provide the new owner with details of our services. The new owner must contact us if they wish to continue services and we will have sole discretion whether or not to take on the new owner as a customer. If the new owner has not set up services with us and you have not returned to us the SIM card undamaged and in working condition within one calendar month of notice to terminate, you will incur a SIM termination fee of \$60 +GST and our then current rates for decommissioning the Equipment.
- 14.6.3 if you have trailed any devices and you do not continue with our services, you must remove all Equipment with SIM cards intact and return to us undamaged within one calendar month or you will incur the full purchase price plus a SIM termination fee of \$60 +GST;
- 14.6.4 you must pay us any outstanding fees for Services and Equipment provided including fees for the one calendar month notice period;
- 14.6.5 if you have leased any devices the lease agreement shall date precedence in regard to fees payable for the full term of the lease agreement.
- 15 Business transactions**
- 15.1 If the Services are to be carried out or the Equipment acquired for the purposes of a business in trade, to the maximum extent permitted by the law, all guarantees, warranties, rights, conditions or remedies implied by the Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other guarantees, warranties, or provisions that would otherwise be implied by statute or rule of law are expressly excluded.
- 16 Customer information**
- 16.1 Each person signing the Contract Documentation agrees that we may obtain information about your creditworthiness for the purposes of deciding whether to provide (or to continue to provide) services to you. You consent to any person providing us with such information, and irrevocably authorise us to complete a credit check on you and/or disclose information to any person for any purpose relating to your credit or debt collection, including loading and checking details with any credit reporting agency.
- 17 Health and safety**
- 17.1 We both acknowledge that we are aware of, and will comply with, any relevant obligations imposed on us under the Health and Safety at Work Act 2015. We have not, and will not, assume any duty imposed on you from time to time pursuant to the Health and Safety at Work Act 2015 arising out of the Services.
- 18 Notices**
- 18.1 All notices are to be in writing and emailed to the addresses set out in the Contract Documentation. A notice is deemed to be received when the email leaves the sender's communications system, provided that the sender does not receive any error message relating to the sending of the email.
- 18.2 Despite term 18.1, any notice received after 5pm, or received on a day that is not a Working Day, is deemed not to have been received until 9am on the next Working Day.
- 19 Dispute resolution**
- 19.1 If there is any dispute relating to these Terms or the Services, the party raising the dispute must give the other party written notice detailing the dispute. If negotiations between the parties do not resolve the dispute, either party may refer a dispute to mediation or arbitration under the Arbitration Act 1996 (without limiting any other remedy). For the purposes of Schedule 2 of the Arbitration Act 1996, the appointing body shall be the Arbitrators' and Mediators' Institute of New Zealand.
- 20 Governing law**
- 20.1 These Terms are governed by New Zealand law and the New Zealand courts have exclusive jurisdiction in respect of these Terms and our commercial relationship.
- 21 Assignment**
- 21.1 You may not assign or transfer any of your rights or obligations under these Terms, except with our prior written consent.
- 21.2 You acknowledge that we may transfer all our rights and obligations under these Terms to a third party without your consent.
- 22 Binding effect**
- 22.1 These Terms will be binding on the successors, substitutes, permitted assigns, executors and administrators of the parties to these Terms. Where there is more than one Customer, the liability of each shall be joint and several.
- 23 Entire agreement**
- 23.1 The Contract Documentation constitutes the entire agreement between us with respect to the Services and it replaces all earlier negotiations, representations, warranties, understandings and agreements, whether verbal or written, between us with respect to the Services.
- 24 Severance**
- 24.1 Should any part of these Terms be unenforceable such part shall be severed and the remainder of these Terms shall remain binding.
- 24.2 If any provision (or part of it) contained in these Terms are rendered void, invalid or unenforceable in any jurisdiction, then such provision (or part of it) will be severed from these Terms without affecting the validity of the provision in other jurisdictions.
- 25 No waiver/repudiation**
- 25.1 No right under these Terms shall be deemed waived except by notice in writing signed by the relevant party. Any failure to enforce any term of these Terms, or any delay or indulgence granted by one of us to the other will not be construed as a waiver.
- 25.2 If we do not accept a repudiation of Terms by you, this will not affect our rights in respect of further or continuing default or breach or any subsequent repudiation by you.
- 26 Definitions**
- 26.1 In these Terms:
- Connected Networks** means the various mobile data and satellite networks that the Equipment uses to transmit and receive data and could include mobile carrier networks, satellite network providers and/or the GPS network.
- Contract Documentation** means all documentation between us forming the contractual arrangement for the Services, including the Quote and Terms.
- Effective Date** means the date the Equipment is provided to you and capable of providing services, regardless of completion of installation, unless by prior arrangement with us.
- Emergency Services** includes but is not limited to Police, Ambulance, Fire and Emergency and/or Land Search and Rescue as appropriate in the circumstance.
- Equipment** means any equipment provided by Fleetpin as set out in the Contract Documentation.
- Including** does not imply limitation.
- Quote** means a quote, quotation, letter, email, scope of work or other documentation given by us to you describing the Equipment and Services to be carried out.
- Terms** means these terms of trade.
- Related Companies** means any Related Company as defined by the Companies Act 1993.
- Services** means the services to be performed by Fleetpin as stated in the Contract Documentation (subject to variations).

Working Day means Mondays to Fridays, with the exception of statutory public holidays and the provincial anniversary holiday pertaining to the Christchurch region.