



QTRS QUALITY TRANSPORT Mitsi-TRACK REFRIGERATION SERVICES

52 Buys Court, Derrimut Vic 3026

Phone: 1800 811 913

Web: www.qtrs.com.au

AU27448

MITSI-TRACK TERMS AND CONDITIONS

1 DEFINITIONS

In this Agreement and unless the context otherwise requires, expressions defined in the Commercial Details have the meaning given in the Commercial Details and, in addition, the following expressions have the following meanings:

Agreement means the agreement between QTRS and the Customer constituted by the Commercial Details and these terms and conditions.

Access Credentials, in relation to a particular Authorised User, means the login name, password and/or other access code allocated to that Authorised User under clause 3.2 and includes any password change under clause 3.3

Authorised Users means persons who are allocated a login name, password and/or other access code in the manner contemplated by clause 3.2

Commercial Details means the document entitled "Commercial Details – Mitsi-TRACK Supply Agreement" attached to these terms and conditions.

Business Day means a day which is not a Saturday, Sunday or public holiday in Melbourne, Australia.

GST means the tax imposed on supplies of goods and services under the GST Act, or any replacement thereof.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Loss means any and all costs or expenses (including legal costs and expenses on a full indemnity basis), fees, expenses, losses (including pure economic loss), damages, taxes, outgoing, claims, liabilities, causes of action, proceedings, awards and judgements howsoever arising, whether direct, indirect, consequential or otherwise.

Mitsi-TRACK Device means a device supplied by QTRS to the Customer for the purposes of remotely tracking and monitoring a Vehicle Mounted Refrigeration Unit for the purposes of the supply of the Services and which is to be installed on such a unit.

Mitsi-TRACK Functional Description means the description accessible from <http://mitsitrack.com.au/>.

Mitsi-TRACK System means QTRS' cloud based telematics tracking software which provides automated, real time information on return air temperature, supply air temperature, evaporator coil temperature, engine RPM, engine operational hours, fault codes and operation modes in respect of vehicle-mounted refrigeration units installed with a Mitsi-TRACK Device and which is delivered by QTRS as a cloud hosted software-as-a-service, the features and functionality of which are more particularly described in the Mitsi-Track Functional Description.

Services means the supply by QTRS of the Mitsi-TRACK System as software-as-a-service and includes all necessary user access rights to the Mitsi-TRACK System in order for the Customer to enjoy the benefit of that software-as-a-service.

Tax Invoice has the same meaning as in the GST Act.

Term means the period commencing on the Commencement Date and ending on the date of termination of this Agreement in accordance with clause 12.

2 PROVISION OF THE SERVICES

2.1 In respect of each Vehicle Mounted Refrigeration Unit, QTRS shall, in accordance with the terms of this Agreement:

(a) Supply and install a Mitsi-TRACK Device; and

(b) Supply the Services.

2.2 QTRS may subcontract or use authorised agents to perform the installation contemplated by clause 2.1(a).

2.3 The Customer acknowledges that the provision of the Services involves sending automated notifications to the Customer's nominated email address and/or mobile telephone number (via SMS and where the Customer subscribes for this notification service). The Customer is at all times responsible for monitoring such email addresses and/or mobile telephone numbers, including so as to ensure that they are at all times available to receive notifications. QTRS may provide other related services such as contacting service providers on the Customer's behalf (**Additional Services**) where agreed in writing by QTRS and the Customer. QTRS's provision of the Related Services will be charged at the **Additional Services Rate**.

3 AUTHORISED USERS

3.1 The Customer shall have rights to access the Mitsi-TRACK System as it relates to the Vehicle Mounted Refrigeration Units and to remotely manage such Mitsi-TRACK System and/or the Vehicle Mounted Refrigeration Units in a manner more particularly described in the Mitsi-TRACK Functional Description. Such access shall be browser based and the Customer shall be responsible for arranging its own internet access.

3.2 The Customer shall, acting reasonably, notify QTRS details (including names and email addresses) of the members of its staff who need access to the Mitsi-TRACK System for the purposes of exercising the rights under clause 3.1 and QTRS shall allocate a login name, password and/or other access code enabling the persons so notified to access the Mitsi-TRACK System.

3.3 Authorised Users shall be able to change their password within the Mitsi-TRACK System.

3.4 The Customer's rights under clause 3.1 shall be exercised through its Authorised Users. The Customer must:

(a) Ensure that no person other than an Authorised User accesses or uses the Mitsi-Track System and that each Authorised User only uses its own Access Credentials;

(b) Ensure that each Authorised User keeps its Access Credentials confidential and secure from access by any other person; and

(c) Immediately notify QTRS of any breach of the preceding requirements of this clause 3.4 or any other unauthorised access to the Mitsi-Track System of which it becomes aware and ensure that the password of any Access Credentials that have been compromised is changed immediately.

3.5 The Customer is responsible for all access to and use of the Mitsi-TRACK System by Authorised Users and/or using any Access Credentials. The Customer acknowledges that persons having access to the Mitsi-TRACK System through the Access Credentials will have access to various functionality in relation to the Mitsi-TRACK System and the Vehicle Mounted Refrigeration Units including the ability to manipulate the temperature of those units and to turn those units off. The Customer agrees that QTRS is not responsible for any use of the Mitsi-TRACK System by Authorised Users and/or any persons who access the Mitsi-TRACK System using the Access Credentials. The Customer indemnifies QTRS against all claims and liabilities that may be made against or suffered or incurred by QTRS and which arise from any access or use referred to in the preceding part of this clause.

3.6 Without limiting any of the foregoing provisions of this clause 3, if QTRS considers that there has been access to the Mitsi-TRACK System



QTRS QUALITY TRANSPORT Mitsi-TRACK REFRIGERATION SERVICES

52 Buys Court, Derrimut Vic 3026

Phone: 1800 811 913

Web: www.qtrs.com.au

AU27448

- contrary to the requirements of this clause, QTRS may suspend access to the Mitsi-TRACK System.
- 3.7 QTRS shall not be available to respond to notifications and requests from the Customer in relation to its use of the Services (including requested changes in respect of Authorised Users) other than during business hours (being 9.00 am – 5.00 pm Monday – Friday, excluding public holidays) and then only in accordance with such procedures as QTRS has in place from time to time. Any such Customer notification or request sent outside of such business hours shall not be deemed received by QTRS until the next business day. QTRS shall use reasonable endeavours to respond to Customer notifications or requests by close of business on the business day immediately following the business day of receipt (or deemed receipt) of the relevant Customer notification or request.
- #### 4 CUSTOMER ACKNOWLEDGMENTS
- 4.1 The Customer acknowledges and agrees that:
- (A) QTRS does not guarantee that the Services or the Mitsi-TRACK System shall be error-free.
- (B) The Services and the Mitsi-TRACK System are reliant on access to an effective and well maintained mobile telecommunications network and there are a variety of matters outside QTRS' control that may affect the availability of the Services and the Mitsi Track System including mobile telecommunications downtime (including as may arise from network maintenance), mobile telecommunications blackspots and damage or deterioration that may occur to equipment comprising the Mitsi-TRACK Device including the vehicle rooftop antenna.
- (C) Once the Mitsi-TRACK Device loses mobile telecommunications coverage, there may be a delay before the Mitsi-TRACK Device again receives a mobile telecommunications signal after it returns to within mobile telecommunications range and, therefore, a delay to the resumption of the Services. During periods of mobile telecommunications downtime data continues to be stored on the Mitsi-TRACK Device until mobile telecommunications access is re-established.
- 4.2 Having regard to the matters referred to in clause 4.1, the Customer agrees that the Services and the Mitsi-TRACK System do not represent a complete and or/error free solution for monitoring and/or operating the relevant Vehicle Mounted Refrigeration Units and that the Customer must employ other safeguards and methodologies for such monitoring and/or operation.
- #### 5 INVOICING AND PAYMENT
- 5.1 In consideration for QTRS providing the Services, the Customer must pay the Fee to QTRS. In consideration for QTRS providing any Additional Services, the Customer must pay fees calculated at the Additional Services Rate (**Additional Services Fee**) to QTRS.
- 5.2 QTRS will provide the Customer with a valid Tax Invoice in accordance with GST Law for the Fee and any Additional Services Fee that the Customer is liable to pay. Fees are to be invoiced monthly in advance. Additional Services Fees are to be invoiced monthly in arrears.
- 5.3 The Customer must pay the Fee and Additional Services Fee within 30 days of receipt of a Tax Invoice issued in accordance with clause 5.2.
- 5.4 QTRS may vary the Fee and the Additional Services Rate effective from an anniversary of the Commencement Date, provided that it gives to the Customer at least 60 days' notice prior to the relevant anniversary of such variation. The variation takes effect on the relevant anniversary of the Commencement Date.
- #### 6 GOODS AND SERVICES TAX (GST)
- 6.1 Terms used in this clause 6 which are defined in the GST Act have the same meaning in this clause as they do in the GST Act.
- 6.2 Unless otherwise expressly stated, all amounts payable to QTRS under this Agreement are exclusive of GST.
- 6.3 If this Agreement requires a party (**First Party**) to pay for, reimburse or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (**Second Party**), the amount required to be paid, reimbursed or contributed by the First Party will be the amount of the Reimbursable Expense net of any Input Tax Credit to which the Second Party is entitled, plus any GST payable by the Second Party.
- #### 7 CUSTOMER'S OBLIGATIONS
- 7.1 During the Term, the Customer will, and will ensure that its employees and agents:
- (a) co-operate with QTRS as QTRS reasonably requires; and
- (b) provide the information, documentation and assistance that QTRS reasonably requires.
- #### 8 LIMITATION OF LIABILITY
- 8.1 QTRS excludes all legislated guarantees, implied conditions and warranties except any legislated guarantee, implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void (**Non-excludable guarantee**).
- 8.2 To the fullest extent permitted by law:
- (a) Except for breach of a Non-excludable guarantee, QTRS shall not be under or in connection with this Agreement (whether in contract, tort (including negligence), for breach of statutory duty or otherwise): (i) for any loss of produce or food or other goods transported in the Vehicle Mounted Refrigeration Units, loss of data, profits, goodwill, revenue, production, anticipated savings, use or contracts or for any wasted expenditure, ex gratia payments made to third parties or for bank charges incurred; or (ii) for any form of special, indirect or consequential losses whatsoever.
- (b) QTRS' liability for any loss or damage incurred by the Customer in relation to breach of a Non-excludable guarantee is limited to (at QTRS' option):
- (i) In the case of goods to which the breach relates:
- (A) The replacement of the goods or supply of equivalent goods; or
- (B) The repair of the goods;
- (ii) In the case of services to which the breach relates:
- (A) the supplying of the services again; or
- (B) the payment of the cost of having the services supplied again.
- (c) Except for breach of a Non-excludable guarantee, the liability of QTRS under or in connection with this agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the Fee and any Additional Service Fee paid by the Customer to QTRS under this Agreement in the period between the date that the event giving rise to the liability occurred and the date that is 12 months before that date (**12 Months Date**) or, where the 12 Months Date is prior to the Commencement Date, the Commencement Date.
- #### 9 NO RELIANCE
- The Customer acknowledges that, in entering into this agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this agreement.
- #### 10 CONFIDENTIAL INFORMATION
- 10.1 Subject to clause 10.2, neither party may disclose information of the other party (**Confidential Information**) without the prior written consent of the other party.



QTRS QUALITY TRANSPORT MITSUBISHI TRACK REFRIGERATION SERVICES

52 Buys Court, Derrimut Vic 3026

Phone: 1800 811 913

Web: www.qtrs.com.au

AU27448

- 10.2 Either party may disclose Confidential Information of the other party which:
- at the time of disclosure is in the public domain, but not as result of a breach of any legal or equitable obligation of confidentiality;
 - is required to be disclosed for the purposes of performing its obligations under this Agreement (but then only to the extent so required);
 - is required to be disclosed to its professional advisers, bankers or financial advisers, subject to each such recipient of Confidential Information giving equivalent confidentiality undertakings; or
 - is required to be disclosed by law.
- 11 ASSIGNMENT**
- 11.1 QTRS may assign, or transfer or otherwise dispose of any of its rights, title or interest in or under this Agreement without obtaining the consent of the Customer to any such assignment, transfer or other disposal.
- 11.2 The Customer may not assign, transfer, or sub-contract any of its rights or obligations under this Agreement.
- 12 TERMINATION**
- 12.1 Either Party may terminate this Agreement effective on the day immediately before an anniversary of the Commencement Date by giving not less than 30 days' notice prior to the relevant anniversary to the other party.
- 12.2 QTRS may terminate this agreement by notice in writing to the Customer if:
- the Customer fails to remedy, to the reasonable satisfaction of QTRS, any breach of this Agreement (which in the opinion of QTRS is able to be remedied) within 7 days after the date on which QTRS issues the Customer a written notice seeking rectification of the breach;
 - the Customer breaches any provision of this Agreement and, in the opinion of QTRS, such breach cannot be remedied; or
 - the Customer becomes subject to any form of insolvency administration or otherwise becomes unable to pay its debts as and when they fall due.
- 12.3 Termination of this agreement will not:
- affect the enforceability of any of QTRS' rights or obligations accrued under this Agreement which survive termination; and
 - prejudice QTRS' right to claim and recover damages or money under this Agreement or at law.
- 12.4 Upon termination of this agreement, any Fee or other amount payable to QTRS in accordance with this Agreement must be paid within 14 days of the date of termination.
- 12.5 Clauses 1, 4, 5.1, 7, 8, 10, 12, 13, and 14 shall survive the termination of this Agreement.
- 12.6 Without limiting clause 12.5, any clause which, by its nature, is expressly or impliedly intended to survive termination, shall survive the termination of this agreement.
- 13 DEFAULT**
- 13.1 Interest on any money overdue shall accrue daily from the day on which such payment becomes due, until the date of payment, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- 13.2 Without limiting any of the rights of QTRS, if the Customer fails to make any payment required under this Agreement, including clause 5.3, QTRS may refuse to perform any further Services, or any part of the Services, until such time as the Customer has paid all outstanding amounts, inclusive of interest.
- 13.3 If the Customer owes QTRS any money the Customer shall indemnify QTRS from and against all Losses incurred by QTRS in recovering the debt (including internal administration fees, legal costs on a solicitor-own client basis, QTRS's contract default fee, and bank dishonour fees).
- 14 GENERAL**
- 14.1 Warranty**
- The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 14.2 No waiver**
- The failure by any party at any time to enforce any of its powers, remedies or rights under this Agreement will not constitute a waiver of those powers, remedies or rights or affect the party's rights to enforce those powers, remedies or rights at any time.
 - Any single or partial exercise of any power, remedy or right does not preclude any other or further exercise of it or the exercise of any other power, remedy or right under this Agreement.
- 14.3 Notices**
- Any notices relating to the Services or this Agreement may be sent by pre-paid post, courier, or electronic mail to:
- For notices to QTRS: at the address at the head of this Agreement; and
 - For notices to the Customer: at the address listed in the Commercial Details, or to the Customer's registered business address.
- 14.4 Force majeure**
- Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or any other event beyond its reasonable control.
- 14.5 Authority**
- The Customer warrants that it has the power to enter into this Agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this Agreement creates binding and valid legal obligations on it.
- 14.6 Entire Agreement**
- This Agreement constitutes the entire agreement between the parties in relation to its subject matter. No understanding, arrangement or provision not expressly set out in this Agreement binds the parties. Accordingly, all correspondence, negotiations and other communications between the parties in relation to the subject matter of this Agreement or the Services, which precede this Agreement are superseded by and merged in this Agreement.
- 14.7 No set-off**
- The Customer shall not be entitled to set off against, or deduct from any amounts payable to QTRS under this Agreement, any sums owed or claimed to be owed to the Customer by QTRS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 14.8 Severance**
- If any provision of this Agreement is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.
- 14.9 Applicable law and jurisdiction**
- This Agreement is governed by the law in force in Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria and all courts competent to hear appeals from the courts of Victoria in respect of all proceedings arising in connection with this Agreement.