

EMESENT MINIMUM TERMS (FORM 5B)

Background

- A This schedule sets out the minimum terms that You must agree with Your Customers in relation to the sale of the Products and/or Services.
- B As outlined in the Reseller Agreement, You are liable for ensuring that Your Customer complies with all relevant provisions of the Agreement.
- C You may use these Emesent Minimum Customer Terms directly with Your Customer or insert them into Your commercial agreement.
- D Your Customer may also agree with the Emesent Standard Terms – Software, End-User Licence Agreement and other Emesent terms and policies. This in no way removes or reduces Your obligations under the Reseller Agreement.
- E In these Emesent Minimum Customer Terms:
 - (1) “You” and “Your” means Your Customer; and
 - (2) “Authorised Reseller”, “Us” and “Our” means you (being the Reseller).

1. GENERAL

- 1.1 Emesent Goods and Services refers to the products, services or software developed and sold by Emesent and supplied by Us.
- 1.2 These terms (Customer Terms) apply to Your use of Goods and Services purchased from the Authorised Reseller and, if applicable, will take precedence over any conflicting terms in the agreement to which they are attached.
- 1.3 You agree that nothing in these Customer Terms creates a supply relationship between You and Emesent, including in relation to the Emesent Goods and Services.

2. EMESENT WARRANTY

- 2.1 Emesent warrants the performance of the Products on the terms set out in the Standard Warranty (Form 2) available on the Emesent website or on request from Your Authorised Reseller (Standard Warranty).
- 2.2 Subject to clause 2.1, to the maximum extent permitted by law, Emesent excludes all representations, warranties, and conditions, whether express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose, and non-infringement.

- 2.3 You acknowledge and agree that Your claims against Emesent are strictly limited by the terms of the Standard Warranty.

3. CUSTOMER OBLIGATIONS

- 3.1 Training: Prior to using the Emesent Goods and Services, and to the extent applicable, You, and Your Authorised Users must successfully complete any provided training by Emesent and Us.

3.2 Maintenance servicing and repairs:

- (a) If You experience any issues using a Product, You must contact Your authorised Emesent reseller (Authorised Reseller).
- (b) You agree that to the extent any support, replacement, servicing or repairs are required in relation to a Product, You will ensure that this work is done by Emesent or Your Authorised Reseller, unless otherwise instructed or permitted by Emesent in writing. You acknowledge that failure to do so may result in any warranty being void and not applying to the Product.
- (c) Emesent recommends that You get the Product serviced approximately once every 12 to 18 months, depending on the level and type of use. You acknowledge and agree that failure to have the Product properly serviced may result in any warranty being void and not applying to the Product.
- (d) To the extent permitted by law, You acknowledge and agree that You are responsible for the costs associated with any repair or replacement to, or of, the Product, including return delivery costs, where this is required and is not as a result of Our default of this Agreement. Repair work, other than to fix a Defect is out of scope and additional fees may apply.

3.3 General: You agree:

- (a) to provide and warrant that all information provided or otherwise submitted via the Emesent Goods and Services is true, accurate and complete;
- (b) that You have reviewed and understand the Emesent Standard Terms (Software) (if applicable) and the Emesent Privacy Policy, and will use the Emesent Goods and Services in accordance with them;
- (c) You will report any accident or infringement which occurs while using a Product, to Emesent or Your Authorised Reseller, immediately after it occurs using the Report an Incident section on the Emesent website.
- (d) You will only use the Emesent Goods and Services for its intended purpose.
- (e) You will not modify the Product in any way (including by retrofitting any item to the Product or attaching the Product to any vehicle using parts that are not supplied by Emesent or Your Authorised Reseller and which You have not completed the Training for);

- (f) You are responsible for all users using the Emesent Goods and Services, including Your Personnel (and any Authorised Users), and You must ensure that no person uses any part of the Emesent Goods and Services in a way that is in breach of any Laws or to infringe any person's rights (including Intellectual Property Rights and privacy rights);
- (g) You and each of Your Users uses the Services at their own risk;
- (h) that Emesent may use third party service providers to integrate software with the Emesent Goods and Services. If the providers of third-party applications or services cease to make their services or programs available on reasonable terms, Emesent may cease providing any affected features without liability or entitling You to any refund, credit, or other compensation;
- (i) the Emesent Goods and Services may use third-party products, facilities, or services (for example, drones). To the maximum extent permitted by law, Emesent is not responsible for, nor does it make any warranty or representation regarding, the third-party products, facilities, or services;
- (j) Emesent and Your Authorised Reseller do not guarantee that any file or program available for download and/or execution from or via the Equipment, Software or Services is free from viruses or other conditions which could damage or interfere with data, hardware or software with which it might be used;
- (k) Emesent and Your Authorised Reseller are not responsible for the integrity or existence of any data on the Computing Environment, network or any device controlled by You, Your Authorised Users or Your Personnel; and
- (l) the Emesent Goods and Services are provided to You solely for Your benefit and You will not (or You will not attempt to) disclose or provide access to the Emesent Goods and Services to third parties without Emesent's prior written consent.

4. PROPRIETARY RIGHTS

- 4.1 You agree that Emesent owns the Intellectual Property Rights in the Emesent Goods and Services, Improvements and any Feedback and these Intellectual Property Rights will at all times vest, or remain vested, in Emesent (or, if applicable, our third-party service providers). To the extent that ownership of these Intellectual Property Rights does not automatically vest in Emesent, You agree to do all acts necessary or desirable to assure Emesent title to such rights.
- 4.2 You also agree that:
 - (a) Emesent may use Feedback in any manner it sees fit (including to develop new features) and no benefit will be due to You as a result of any use by Emesent of any Feedback;
 - (b) You must not whether directly or indirectly, without Emesent's prior written consent:

- A. copy, modify, adapt, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble or decompile the software (or any part of the Emesent Goods and Services) or otherwise attempt to discover any part of the source code of the software;
- B. use any unauthorised, modified version of the Emesent Goods and Services, including (without limitation) for the purpose of building similar or competitive software or for the purpose of obtaining unauthorised access to the software;
- C. rent the use of the Emesent Goods and Services to any third parties;
- D. take any action that may compromise or jeopardise Emesent's Intellectual Property Rights in the Emesent Goods and Services;
- E. remove or deface any confidentiality, copyright or other proprietary notice placed on the Emesent Goods and Services;
- F. make any representations or warranties to any third parties that could be construed as being representations or warranties from Emesent in relation to the Emesent Goods and Services or any other matter;
- G. unless authorised by Emesent, use the Emesent Goods and Services in any way that involves service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing; or
- H. do any other thing in relation to the Emesent Goods and Services which is specifically prohibited by Emesent or an Emesent Reseller, whether by verbal instruction or direction, or in writing.

- 4.3 You agree that this clause 4 survives termination or expiry of these Customer Terms and any agreement which these Customer Terms are a part of.

5. PRIVACY

- 5.1 You are responsible for the collection, use, storage and otherwise dealing with Personal Information related to Your business and all matters relating to the Customer Data.
- 5.2 Without limiting this clause 5, You may only disclose Personal Information in Your control to Emesent or an Emesent Reseller, if:
- (a) You are authorised to collect the Personal Information and to use or disclose it in the manner you are disclosing; and
 - (b) You have informed the individual to whom the Personal Information relates, that it might be necessary to disclose the Personal Information to third parties.
- 5.3 You agree that this clause 5 survives termination or expiry of these Customer Terms and any agreement which these Customer Terms are a part of.

6. Confidentiality

- 6.1 You agree: (i) not to disclose any Confidential Information to any third party; (ii) to use all reasonable endeavours to protect the Confidential Information; and (iii) to only use the Confidential Information for the purposes for which it was disclosed or provided, and not for any other purpose. The obligations in this clause do not apply to Confidential Information that: (i) is required to be disclosed for the parties to comply with their obligations under these Customer Terms; (ii) is authorised to be disclosed by Emesent; (iii) is in the public domain other than as a result of breach of this clause; or (iv) must be disclosed by law.
- 6.2 For the purposes of these Customer Terms, “**Confidential Information**” means any information that You should have known or reasonably suspected was confidential (and includes Emesent’s prices as may be set out in a quote provided by Your Authorised Reseller).
- 6.3 You agree that this clause 6 survives termination or expiry of these Customer Terms and any agreement which these Customer Terms are a part of.

7. DISCLAIMERS

- 7.1 You acknowledge and agree that:
- (a) Your use of the Emesent Goods and Services and all information, products or content that is provided to You is in good faith and on an “as is” and “as available” basis. To the fullest extent permitted by law, all warranties of any kind as to the Emesent Goods and Services (including as to fitness for purpose) and all information, products and other content (including that of third parties) included in or accessible from the Emesent Goods and Services are disclaimed;
 - (b) You are responsible for determining the suitability of any Emesent Goods and Services and rely on any Content or other information provided via the Emesent Goods and Services at Your own risk;
 - (c) use of the Emesent Goods and Services, Content and other information provided through or in connection with the Emesent Goods and Services is at Your own risk;
 - (d) Emesent makes no warranty that:
 - (1) the Emesent Goods and Services will meet Your requirements;
 - (2) the quality of the Emesent Goods and Services will meet Your expectations;
 - (3) the Emesent Goods and Services will be uninterrupted or error-free;
 - (4) any information, product or content obtained via the Emesent Goods and Services will be accurate or reliable; and
 - (5) any errors in the software or technology, or Emesent Goods and Services will be corrected.

- (e) You will be solely responsible for any infections, contaminations or damage to Your computer, system or network; and
- (f) Emesent are not responsible or liable for delays, inaccuracies, errors or omissions arising out of any use of the Emesent Goods and Services, any third party software, services or operating system.

7.2 You agree that this clause 7 survives termination or expiry of these Customer Terms and any agreement which these Customer Terms are a part of.

8. LIMITED WARRANTIES

8.1 You warrant that:

- (a) You have the power, right, authority and entitlement to execute these terms and perform its obligations under these Customer Terms;
- (b) You have full corporate power to execute, deliver and perform Your obligations under these Customer Terms;
- (c) these terms constitute a legal, valid and binding obligation of it enforceable in accordance its terms by appropriate legal remedy; and
- (d) in entering into and performing its obligation under these terms You have not and will not be in breach of any relevant law or any obligation owed to another person.

9. LIMITATION ON LIABILITY AND INDEMNITY

9.1 Despite anything to the contrary, to the maximum extent permitted by law, Emesent's aggregate liability for any claim arising from or in connection with these Customer Terms will be limited to the amount received by Emesent for the specific Product, Service, or Software in question.

9.2 You agree to be liable for and to indemnify, defend and hold Emesent harmless from and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:

- (a) any violation of any intellectual property or other right by You or one of Your Users; and
- (b) any breach of law or these Customer Terms by You or one of Your Users.

9.3 You agree that Emesent is a third party beneficiary to the above provisions, with all rights to enforce such provisions as if Emesent was a party to these terms.

9.4 You agree that this clause 9 survives termination or expiry of these Customer Terms and any agreement which these Customer Terms are a part of.

10. DEFINITIONS

“You” means the Customer of the Emesent Reseller.

Accident means any collision or contact between the Product and any other object, including but not limited to another vehicle, the ground, an animal or person, or any incident or occurrence that results in the Product being damaged, lost or destroyed or any other vehicle, property, thing, animal or person being injured, killed, damaged, lost or destroyed (as applicable).

Authorised Users means those users that You and the Emesent Reseller agree are authorised to use the Emesent Goods and Services.

Computing Environment means Your computing environment including all hardware, software, information technology and telecommunications services and systems.

Content means the information, documents and other data provided by You to Emesent or inputted by, into the Emesent Goods and Services or stored by the Emesent Goods and Services or, generated by the Emesent Goods and Services as a result of Your use of the Services.

Covered Product has the meaning given in the Standard Warranty.

Emesent means Emesent Pty Ltd.

Emesent Goods and Services means any goods and services (including software) provided by an Emesent Reseller, which the Emesent Reseller has purchased from Emesent for the purposes of resale to You.

Emesent Privacy Policy means Emesent’s privacy policy available at <https://www.emesent.io/privacy-policy/>.

Feedback means any idea, suggestion, recommendation or request by You (or any of Your Personnel or Authorised Users or customers), whether made verbally, in writing, directly or indirectly, in connection with the Emesent Goods and Services.

Improvements means any development, modification, adaptation or improvement of the Emesent Goods and Services made by or on behalf of either You, Emesent or a third party (or any of their respective Personnel), or in respect of which Intellectual Property Rights are acquired.

Intellectual Property means any domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

Intellectual Property Rights means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity,

tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to these Customer Terms or otherwise.

Personal Information has the meaning given in the Privacy Act 1988 (Cth) or any other similarly applicable privacy legislation.

Personnel means, in respect of a party, any of its employees, consultants, suppliers, distributors, partners, subcontractors or agents.

Users means a user of the Software Licence.