



TRAFFTRAK TERMS AND CONDITIONS

This Terms and Conditions ("Agreement") is entered into on the date the last Party executes this Agreement ("Effective Date") by and between:

1. The Parties

DAVWELL TECHNOLOGY PTY LTD

ACN: 654 384 791

U 12 24-26 Hancock Way, Baringa QLD 4551 Australia

Email: hello@trafftrak.com

Phone Number: 1300 454 405

("The Contractor")

And

The Client Entity recorded within the Client Intake Form.

("The Client")

Collectively "The Parties".

2. BACKGROUND

- I. The Contractor is a technology and software product and services provider and wishes to provide its services and products to the Client for payment in accordance with the terms of this Agreement.
- II. The Client and Contractor agree to enter into this Agreement on the below terms and conditions.

3. SERVICES

The Client engages the Contractor to provide software products as selected by the Client using the Intake Form URL completed and submitted by the Client (clause 22) and support services (collectively, the "Services").

4. TERM OF AGREEMENT

This Agreement begins on the Effective Date and continues indefinitely until terminated in accordance with the terms of this Agreement.

5. CONTRACTOR WARRANTY

The Contractor warrants that it is capable and authorised to enter into this Agreement; and

- I. It has the expertise, suitably qualified resources and capability to deliver its obligations under this Agreement; and
- II. It shall deliver and or perform the Services in accordance with the scope of the Services requested by the Client under this Agreement.
- III. It shall perform its obligations in accordance with relevant laws.

6. CLIENT WARRANTY

The Client warrants that it is capable and authorised to enter into this Agreement; and

- I. all information, data, and documents provided to the Contractor under this contract are accurate, complete, and not misleading. The Client shall promptly notify the Contractor of any changes or updates to this information.
- II. It will make timely payment of all fees, expenses, or charges specified in this contract. Any late payments shall be subject to the terms and conditions outlined in this Agreement.
- III. It will cooperate fully with the Contractor, providing access to necessary resources, information, and personnel as required to facilitate the successful completion of the services outlined in this Agreement.

7. RIGHT OF SUBSTITUTION

- I. The Contractor may engage a third-party sub-contractor to perform its obligations under this Agreement at its discretion.
- II. The Client may review the suitability of the proposed sub-contractor by providing a written request to the Contractor.
- III. The Contractor remains responsible for payment and any sub-contractor is considered an agent of the Contractor for indemnification purposes.

8. AGREEMENT TYPE

- I. The Contractor operates as an independent contractor, not an employee of the Client.
- II. This Agreement establishes a contract for service, not a partnership or joint venture.

9. TERM OF AGREEMENT

This Agreement begins on the Effective Date and continues indefinitely until terminated in accordance with the terms of this Agreement.

10. CONTRACTOR AUTONOMY

- I. The Contractor exercises full control over working methods, time, and decision-making concerning the Services.
- II. The Contractor operates autonomously but shall be responsive to the Client's reasonable needs and concerns.

11. EQUIPMENT

The Contractor shall provide the necessary equipment, supplies and items, at its expense, to deliver the Services.

12. PAYMENTS

- I. The Client agrees to pay for the Services in accordance with the schedule set out in the Trafftrak Fee Schedule (<https://www.trafftrak.com/pricing/>) or by quoted estimation.
- II. The Contractor may issue invoices for payment to the Client either monthly for a minimum of 12 monthly payments or annually.
- III. Invoices are due within 30 calendar days after the date of issue.
- IV. Where an Invoice is disputed any dispute must be notified to the Contractor in writing within 2 business days of the date of issue of the Invoice.
- V. Payment does not include sales tax;
- VI. Any additional statutory charges shall be applied as required and relevant.
- VII. All monetary amounts are in AUD, converted to the Client's currency at current exchange rates as appropriate.
- VIII. Interest on overdue amounts is 5.00% per annum or the maximum enforceable rate under the applicable law, whichever is lower.

13. REIMBURSEMENT OF EXPENSES

- I. The Client shall reimburse reasonable and necessary expenses related to the Services; and
- II. Anticipated expenses shall be approved by the Client and the Client shall not unreasonably withhold that approval.

14. INTELLECTUAL PROPERTY

- I. The Client is granted a license to use the software as specified in this Agreement, subject to the terms and conditions herein. Intellectual Property refers to all legal rights, interests, and protections associated with intangible creations developed, produced, or provided by the software development provider, including but not limited to:
 - 1) *Software Source Code*: The original and underlying code, scripts, algorithms, and program logic developed by the software development provider to create the software.
 - 2) *Software Object Code*: The compiled or machine-executable version of the software that is ready for use by the client.
 - 3) *Trade Secrets*: Any confidential and proprietary information, including algorithms, methods, processes, and techniques used in the software development process.
 - 4) *Copyrights*: The exclusive rights to reproduce, distribute, display, and modify the software, including all text, graphics, images, audio, video, and documentation related to the software.

- 5) *Trademarks*: Any registered or unregistered trademarks, service marks, trade names, logos, or branding associated with the software.
 - 6) *Patents*: Any patentable inventions, methods, or processes developed during the software development process.
 - 7) *Design Rights*: The visual and user interface design elements of the software, including layout, graphics, and user experience.
 - 8) *Data and Databases*: Any databases, datasets, data structures, and data schemas created or used in the software, including data generated by the software.
 - 9) *Documentation*: All technical and user documentation, manuals, guides, and specifications related to the software.
 - 10) *Third-party Components*: Any third-party libraries, frameworks, or components incorporated into the software, subject to applicable third-party licenses.
- II. The Contractor retains ownership of all intellectual property rights described herein unless otherwise explicitly stated in this contract.
 - III. Any unauthorised use, reproduction, distribution, or modification of the intellectual property associated with the software without the express written consent of the software development provider is strictly prohibited and may result in legal action.
 - IV. The Client acknowledges that the intellectual property rights associated with the software are valuable assets of the Contractor and those rights shall survive the termination of this Agreement.

15. CONFIDENTIALITY

- I. Confidential Information includes non-public Client data that could harm the Client if disclosed.
- II. The Contractor agrees not to disclose or use Confidential Information, except as authorised or required by law.
- III. All information exchanged under this Agreement is Confidential Information.

16. TERMINATION

- I. This Agreement may be mutually terminated for convenience by giving 30 days' written notice.
- II. Either party may terminate the Agreement immediately by written notice upon the occurrence of one of the following events:
- III. If the other party is in breach of the Agreement and that other party has failed to remedy that breach within 10 days of a written notice to it from the first-mentioned party, specifying the breach and requiring it to be remedied and the Dispute Resolution set out within this Agreement process has been exhausted:
- IV. An Insolvency Event occurs in respect of the other party; or
- V. The other party is in breach of the Agreement and that breach is not capable of remedy;
- VI. an event of Exceptional Circumstances continues for 60 days from the date on which it commenced.

- VII. In the event that either Party' wishes to terminate this Agreement for convenience, that Party must provide 30 days' written notice to the other Party prior to the end of the relevant 12 Month Cycle.
- VIII. In the event the Client terminates this Agreement for convenience and the date of termination exceeds the first 30 days of this Agreement, the Client will not be entitled to any refund
- IX. In the event the Client terminates this Agreement for convenience and the date of termination exceeds the first 30 days of this Agreement, and the Client has issued a written request for a refund to the Contractor within that time period to hello@trafftrak.com, the Contractor will provide a refund to the Client for the Payment fee less setup fees.
- X. In the event the Client is eligible for a refund in accordance with this Agreement, and the Client has elected to make monthly payments on a 12-month subscription (12 Month Cycle), the Contractor will provide a refund to the Client for the Payment fee, less setup fees and the fee for the first month of the Client's subscription.
- XI. Except as otherwise provided in this Agreement, the obligations of the Contractor will end immediately upon the termination of this Agreement.

17. STEPS FOLLOWING TERMINATION

- I. Upon termination each Party shall return any property and Confidential Information of the other.
- II. The License to use the Contractor's Intellectual Property ceases.
- III. All outstanding fees and charges owed to the Contractor by the Client shall become due and payable.
- IV. The Parties shall return or destroy any confidential information or materials provided by the other Party.
- V. During the term of this Agreement and for a period of 12 months after its termination, neither Party shall solicit, hire, or engage the other Party's employees or clients without prior written consent, or circumvent this Agreement to engage in any business transactions directly with clients or partners introduced by the other Party during the term of this Agreement.

18. DISPUTE RESOLUTION

- I. *Notice of Dispute:* In the event of a dispute arising under or in connection with this Agreement, the Party raising the dispute ("Disputing Party") shall provide written notice of the dispute to the other Party ("Non-Disputing Party").
- II. *Attempt to Resolve:* The Parties shall attempt to genuinely resolve the dispute in good faith within ten (10) business days of receiving the notice of dispute. If a resolution is not achieved, the Parties may pursue further dispute resolution methods as jointly agreed.
- III. If the Dispute has not been resolved within ten (10) Business Days (or such other time as mutually agreed between the parties) of receipt of the Notice of Dispute in accordance

with this Agreement, the Parties agree to refer the dispute to mediation administered by a mediator recommended and accredited by the Resolution Institute in accordance with the Resolution institute's professional mediation rules.

- IV. If the Dispute has not been resolved within twenty (20) Business Days of receipt of the Notice of Dispute in accordance with this Agreement, then (on the basis that the exhaustion of the dispute resolution process set out in this Agreement is a condition precedent to the right of either party to commence court proceedings in relation to the Dispute) the party who first served the Notice of Dispute may commence litigation.
- V. *Obligations continue*: Despite the existence of a Dispute, each party will at all times continue to fulfill all obligations under the Agreement, including in respect of confidentiality.

19. URGENT RELIEF

Both parties may seek injunctive or declaratory relief for urgent matters, including protection of Confidential Information without first applying and exhausting the dispute resolution requirements of this Agreement.

20. LIMITED LIABILITY

- I. The Client's access to and use of the Services are at the Client's own risk.
- II. The Client agrees that the Services provided by the Contractor are provided on an "As Is" and "As Available" basis.
- III. The Contractor, its parents, affiliates, related entities, officers, directors, employees, agents, representatives, partners and licensors exclude and disclaim all representations and warranties, express or implied, with the sole exception of clause 4 (Contractor Warranty), related to the Services. For the avoidance of doubt, with the exception of clause 4, to the maximum extent permitted at law, the Contractor disclaims all warranties and conditions, whether express or implied of merchantability, fitness for a particular purpose, or non-infringement.
- IV. The Contractor does not make or offer any warranty or representation whatsoever and disclaims all responsibility and liability for the completeness, accuracy, availability, timeliness, security or reliability of The Services or any content; and any harm to the Client's (or any other party's) computer system, loss of data, or other harm that results from the Client's access to or use of the Services or any content whatsoever; and the deletion of or the failure to store or to transmit any content and other communications maintained by The Services; and whether the Services will meet the Client's requirements or be available on an uninterrupted, secure, or error-free basis; and no advice or information, whether oral or written, obtained from the Contractor or through The Services, creates, or is intended to create, any warranty or representation whatsoever that is not expressly set out within this Agreement.

21. CONSEQUENTIAL LOSS

To the extent permitted by Law, in no event will a Party be Liable to the other Party for Consequential Loss, even if that Party has been made aware of the possibility of such Consequential Loss prior to entering into or during this Agreement.

22. FORCE MAJEURE

- I. The obligations of the Contractor are suspended for the duration of the event of Exceptional Circumstance if the Contractor is prevented from, or delayed in performing an obligation under this Agreement by an event of Exceptional Circumstance; and
- II. The Contractor, as soon as possible after the event of Exceptional Circumstance notifies the Client providing particulars of: the event of Exceptional Circumstance; and the anticipated delay; and the action (if any action is reasonably possible by the Contractor) the Contractor intends to take to mitigate the effect of the delay.

GENERAL

23. Execution

This Agreement is executed by the Client including its name and relevant identification information within the Trafftrak Intake Form presented to the Client and accessible via Trafftrak website (<https://www.trafftrak.com/intake-form/>) and/or via the HubSpot website (<https://share.hsforms.com/1SPdjQT09TQWfYhz7qjZUQ4zl6r>) within which this entire Agreement is presented to the Client for acceptance. For the avoidance of any doubt, the Client executes this agreement and expressly agrees to the terms and conditions of this Agreement by completing the Trafftrak Intake Form and selecting the check-box to confirm the Client has read, understands and agrees to the terms and conditions of this Agreement without exception.

24. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

25. Notices

All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties at the following email addresses:

Contractor Email Address: hello@trafftrak.com or to such other email address as advised by the Contractor; and the Client's email address recorded within the relevant Intake Form.

26. Amendment

Amendments require written and signed consent of both Parties.

27. Assignment

The Contractor may assign, novate or otherwise transfer its obligations under this Agreement in circumstances where the Client consents (consent is not to be unreasonably withheld).

28. Enurement

This Agreement will ensure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.

29. Time of the Essence

Time is essential in the performance of the obligations of each Party to this Agreement.

30. No Waiver

The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions

31. Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, and agreements, whether written or oral.

32. Severance

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect. The Parties shall replace the invalid or unenforceable provision with a valid and enforceable provision that most closely achieves the intended economic effect of the invalid or unenforceable provision.

33. Indemnification

Both Parties shall indemnify and hold each other harmless from any claims, liabilities, or damages arising out of the Services provided under this Agreement.

34. Insurance

The Parties shall maintain appropriate insurance coverage, if required, for the services provided under this Agreement.

35. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Queensland, Australia.

36. Jurisdiction

Any legal disputes arising from this Agreement shall be resolved in the appropriate courts of the State of Queensland, Australia.

37. Interpretation

- I. *Titles/Headings*: Headings are for convenience only.
- II. *Gender*: Singular includes plural, masculine includes feminine.

38. Definitions

Consequential Loss means any of the following:- loss of revenue; loss of profits; loss of opportunity to make profits; loss of business; loss of business opportunity; loss of use or amenity, or loss of anticipated savings; special, exemplary or punitive damages, and any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the Parties at the time of the execution of this Agreement, including any of the above types of loss arising from an interruption to a business or activity.

Exceptional Circumstance means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under the Agreement. Such circumstances include:- adverse changes in government regulations; any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any natural disaster; acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, cyber-attacks, viruses or malware, data loss as a result of the actions of a third party; strikes or industrial disputes; materials or labour shortage; and acts or omissions of any third-party network providers (such as internet, telephony or power provider).

12 Month Cycle means the 12-month period of time from the date this Agreement is executed.

As Is means the product or services that comprise The Services are provided to the Client in the form and in the condition of The Services immediately prior to the Client executing this Agreement, without modification and without any express or implied warranties.

As Available means the basis on which any product or service that comprise The Services is, or are available to the Contractor to enable the Contractor satisfy its obligations under this Agreement.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the

_____ day of _____, 20_____.

THE CONTRACTOR

DAVWELL TECHNOLOGY PTY LTD

ACN: 654 384 791

Pursuant to section 127 of the
Corporations Act 2001 (Cth).

Signature: [.....] [Date.....]

Director: [.....]

Signature: [.....] [Date.....]

THE CLIENT

Pursuant to section 127 of the
Corporations Act 2001 (Cth).

Signature: [.....] [Date.....]

Director: [.....]

Signature: [.....] [Date.....]

Director: [.....]