

# STANDARD TERMS AND CONDITIONS

## 1. DEFINITIONS & INTERPRETATION

### 1.1 Definitions

The following definitions apply in this agreement unless the context requires otherwise:

- 1.1.1 **"Alarm Receiving Centre"** means the firm or corporation which monitors the Permaconn System;
- 1.1.2 **"Atlas Web Platform"** means the web based platform that enables the retrieval of status information, control and management of Permaconn Units;
- 1.1.3 **"Business Day"** means a day that is not a Saturday, Sunday or public holiday in Sydney, Australia.
- 1.1.4 **"Customer"** means the entity who:
- markets, distributes or installs the Permaconn System; or
  - monitors the Permaconn System at the Alarm Receiving Centre, or
  - provides both services referred to in clause 1.1.4(a) and (b) above;
- 1.1.5 **"Commencement Date"** means the date on which the Permaconn System is activated;
- 1.1.6 **"CSRU"** means the Central Station Receiver Unit which is installed at the Alarm Receiving Centre and receives transmissions from the Permaconn Unit;
- 1.1.7 **"End User"** means the person, entity or corporation who either purchases the Permaconn Unit from the Customer or who contracts the Alarm Receiving Centre to monitor its premises utilising the Permaconn System;
- 1.1.8 **"Initial Term"** means 90 days calculated with effect from the Commencement Date;
- 1.1.9 **"Keyholder"** means a person, agency or authority which is authorised by the End User to be contacted in the event of the alarm at the End User's premises being set off;
- 1.1.10 **"Non-Excludable Condition"** means any condition or warranty the exclusion of which could be void or otherwise contravene the Competition and Consumer Act 2010 (Cth) or any other applicable law;
- 1.1.11 **"Permaconn Air Time"** means the monthly charge to access the Permaconn System;
- 1.1.12 **"Permaconn System"** means the alarm monitoring system provided by RDC in terms of this agreement, including the Permaconn Unit, the Atlas Web Platform, the SIM Card, the CSRU (which utilises the GPRS, 3G or 4G mobile telecommunication network and wired networks to link the End User's premises to the Alarm Receiving Centre);
- 1.1.13 **"Permaconn Unit"** means the device that is installed at the End User's premises;
- 1.1.14 **"Pocket Secure"** means the application that enables the End User to arm and disarm their alarm panel.
- 1.1.15 **"PPSA"** means the Personal Property Securities Act 2009 (Cth);
- 1.1.16 **"PPS Security Interest"** means a security interest under the PPSA;
- 1.1.17 **"RDC"** means Spectrum Electronic Systems Pty Ltd in its capacity as trustee of the Radio Data Means Trust (ABN 89 228 094 879) of 5/20-30 Stubbs Street Silverwater NSW 2128;
- 1.1.18 **"Services"** means the alarm monitoring services provided by RDC utilising the Permaconn System;
- 1.1.19 **"SIM Card"** means the detachable smart cards contained in the Permaconn unit and the CSRU

### 1.2 Interpretation

Unless a contrary intention clearly appears-

#### 1.2.1 words importing;

- the singular include the plural and vice versa; and
  - natural persons include created entities (corporated or unincorporated) and the government and vice versa;
- 1.2.2 When any number of days is prescribed in this agreement, same shall be calendar days;
- 1.2.3 Any headings used herein are for convenience in reference only and are not a part of this agreement, nor shall they in any way affect the interpretation hereof;
- 1.2.4 the word "including" or "includes" means "including but not limited to" or "including without limitation"; and
- 1.2.5 The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.

## 2. THE PERMACONN SYSTEM

- 2.1 The Permaconn System is designed to reduce the risks of loss or damage to the End User's property or the property of others located on the End User's premises utilising the Permaconn System. However, RDC does not guarantee that the Permaconn System cannot be removed, tampered with or made to stop working by the End User or the Customer or by any unauthorised person, that particular losses or injuries will be prevented by using the Permaconn System, that the Permaconn System will work continuously and without errors, including where interruptions or errors are due to something beyond RDC's reasonable control or that the Permaconn System, like all mechanical and electronic devices will not develop faults.
- 2.2 The Customer and End User agree that use of the Atlas Web Platform and Pocket Secure as part of the Permaconn System is at their own risk. The display of events or actions at the End User's premises on the Atlas Web Platform is indicative only and RDC does not warrant or guarantee the actual occurrence of any events or actions displayed on the Atlas Web Platform.
- 2.3 RDC does not know the value of the End User's personal safety, premises or its contents or the property of others located on the End User's premises and the nature and context of the Customer's liability to the End User. The purpose of this agreement is not to act as an insurer for the Customer in respect of the End User's personal safety, premises or its contents or the property of others located on the End User's premises or for any loss, claim or liability which the Customer may suffer pursuant to providing the Permaconn System to the End User.
- 2.4 The amount paid under this agreement is based upon the services RDC performs and the limited liability RDC assumes under this agreement, and is unrelated to the value of the End User's property or the property of others located on the End User's premises or for any loss, claim or liability which the Customer may suffer pursuant to providing the Permaconn System to the End User. Subject to the provisions of this agreement and to the maximum extent allowed by law, in the event of any loss or injury to any person or property, the Customer agrees to look exclusively to its insurer to recover damages and waives all subrogation and other rights of recovery against RDC that any insurer or other person may have as a result of paying any such claim, loss, liability or injury. Nothing in this clause 2.4 is intended to limit or exclude liability under or arising from any Non-Excludable Condition.

## 3. CUSTOMER'S OBLIGATIONS

The Customer must:

- 3.1 if it is an Alarm Receiving Centre:
- 3.1.1 provide RDC with access to its premises so that RDC may install the CSRU and remove same after this agreement has expired or is terminated;
- 3.1.2 maintain a dedicated power supply to each part of the CSRU;
- 3.2 provide information about the End User, the End User's premises and any other relevant information to enable RDC to provide the Services. The Customer must promptly advise RDC of any changes to this information;
- 3.3 install and operate the Permaconn System according to the relevant Australian Standards and specifications and any instructions and information which RDC provides or advises the Customer of from time to time;
- 3.4 immediately inform RDC:
- of any defect or fault in the Permaconn System;
  - if it is aware of or suspects anyone of tampering with the Permaconn System;
  - if the Permaconn System is damaged or stolen; or
  - if the Permaconn System has been subjected to any unusual operating or environmental conditions;
- 3.5 must not move or interfere with or attempt to repair the Permaconn System or allow others to do so;
- 3.6 must not transfer or assign any of its rights or obligations under this agreement.

### 4. RDC'S OBLIGATIONS

- 4.1 RDC accept that it must make sure that the Permaconn System is of acceptable quality and is suitable for the purpose set out in this agreement.
- 4.2 RDC is not liable for:
- 4.2.1 losses due to the acts or omissions of any other person including the Customer, End User, telecommunications network providers, other authorities or third parties.
- 4.2.2 delays, interruptions or suspensions in providing the Services, which are due to any other person (including the Customer or the telecommunication providers), thing or event which RDC could not reasonably be expected to prevent.
- 4.2.3 losses resulting from:
- the police, fire or other authority or party, including a Keyholder failing to act in accordance with an emergency response or the alarm being set off;

- a signal transmitted from the Permaconn Unit to the Alarm Receiving Centre not being received by the Alarm Receiving Centre for reasons beyond their control;
- a loss of power supply to any part of the Permaconn System; or
- any other cause beyond RDC's reasonable control and not caused by its lack of reasonable care.

### 5. PRICE AND PAYMENT

- 5.1 RDC will invoice the Customer for the fees and services as specified in any proposal or quotation or as provided under this agreement. All amounts referred to in this agreement or any proposal or quotation are exclusive of any taxes unless indicated otherwise.
- 5.2 Fees for Permaconn Air Time are invoiced monthly in advance.
- 5.3 All invoices, including for fees for Permaconn Air Time, are due and payable by the Customer to RDC within 30 days of the invoice date, without set-off, deduction or deferment on account of any claim or counterclaim.
- 5.4 All amounts not paid within 30 days of the invoice date will bear interest at the lesser of the maximum amount allowed by law or one and one-half percent (1.5%) per month. If any amount becomes overdue, then all amounts recorded on the Customer's account are deemed to be immediately due and payable. The Customer must pay all costs and expenses (including all legal costs) which may be incurred by RDC in recovering overdue amounts.
- 5.5 In the event the Customer disputes (by notice to RDC) an invoice relating to fees for Permaconn Air Time, the Customer agrees it can only claim, and if agreed by RDC, recover disputed amounts from invoices dated within the 3 month period prior to the date of the dispute notice.
- 5.6 After the Initial Term, RDC can increase the charges, including Permaconn Air Time charges, to cover any increase in the cost of providing the Services. RDC will advise the Customer in writing, 14 days prior to such increase being effective.
- 5.7 If the Customer does not agree to such increase in the charges, the Customer must within 7 days after receipt of the notice referred to in clause 5.6 terminate this agreement by giving 90 days notice in writing to RDC. Until the end of that 90 day notice period, the Customer will still have to pay the charges for the Services without the increase, including fees for Permaconn Air Time, and RDC will continue to provide the Services.
- 5.8 The Customer must also pay RDC extra charges at its current rates for labour and materials, where the following apply:
- 5.8.1 faults to the Permaconn System have been caused by the Customer or any other person, thing or event which RDC could not reasonably be expected to prevent;
- 5.8.2 any replacements, repairs or modifications to the Permaconn System not covered by the warranty or are needed as a result of a change in a relevant standard or regulations governing the Permaconn System or the Services;
- 5.8.3 The Permaconn System needs inspecting, resetting, reprogramming, repairing or replacing in circumstances where:
- the Customer or any other person has failed to follow operating instructions or has interfered with the Permaconn System;
  - the Customer, or equipment or devices which RDC has not supplied have caused a false alarm or a failure of the Permaconn System;
  - the Customer's actions or failures, or those of any other person other than RDC, require RDC to inspect or make repairs or replace any part of the Permaconn System;
  - adverse weather conditions cause damage to or activation of the Permaconn System.

### 6. TERMINATION OR SUSPENSION

- 6.1 Except as otherwise provided for in this agreement, either party may terminate this agreement by giving the other party at least 90 days notice in writing at any time. Until the end of that 90 day notice period, the Customer will still have to pay all of the charges for the Services, including fees for Permaconn Air Time, and RDC will continue to provide the Services.
- 6.2 Either party may terminate this agreement immediately on notice in writing to the other if RDC cannot arrange or keep the telecommunications facilities needed to transmit the signals between End User's premises and the Alarm Receiving Centre.
- 6.3 If the Customer fails to make payment in accordance with clause 5, RDC may immediately terminate this agreement or suspend the Services provided under this agreement, on notice in writing to the Customer and in respect of a suspension, for a period RDC considers appropriate. RDC will have no responsibility during the period of suspension. If this agreement is suspended, RDC will inform the Customer in writing upon the lifting of such suspension.
- 6.4 Except as otherwise provided for in this agreement, either party (**"Aggrieved Party"**) may terminate or suspend this agreement if the other party:
- commits any material breach of this agreement which is not remedied within 30 days of notice from the Aggrieved Party;
  - commits an act which is or would be an act of insolvency, or if a receiver, receiver and a manager, liquidator, administrator, trustee or similar official is appointed over its assets or business; or
  - enters into or proposes to enter into an arrangement, composition, or compromise with its creditors or any class of them, or there is declared by a competent court or authority, a moratorium on the payment of indebtedness by either party or other suspension of payment generally; or
  - ceases to carry on business;
- 6.5 RDC's responsibility and liability under this agreement immediately ceases if this agreement expires or terminates or if the Services are suspended under clause 6.3.
- 6.6 If this agreement expires or is terminated:
- 6.6.1 RDC will cease providing the Services;
- 6.6.2 The Customer must immediately deliver or procure the delivery of the Permaconn System, or any part of the Permaconn System to RDC;
- 6.6.3 all amounts owing to RDC will become immediately due and payable.

### 7. RETENTION OF OWNERSHIP

- 7.1 Unless otherwise agreed in writing by RDC, no legal or equitable title to the Permaconn System passes to the Customer.
- 7.2 The Customer:
- 7.2.1 holds the Permaconn System as bailee of RDC returnable at the will of RDC and without prior demand of RDC;
- 7.2.2 without limiting clause 7.2.1, on demand by RDC, must immediately deliver or procure the delivery of the Permaconn System, or any part of the Permaconn System to RDC;
- 7.2.3 authorises RDC to enter the premises where the Permaconn System are stored for the purposes of taking possession of them; and
- 7.2.4 hereby indemnifies RDC for any costs, loss, damages, liability, expenses or other damage arising in connection with the recovery of possession by RDC of the Permaconn System or any part of the Permaconn System.
- 7.3 For the purposes of section 20(2)(b)(i) of the PPSA, the collateral (as defined in the PPSA) that is subject to the PPS Security Interest in the Permaconn Unit under this agreement is goods.
- 7.4 The Customer acknowledges that RDC may register one or more financing statements in relation to any PPS Security Interest provided for by this agreement. If permitted by the PPSA, the Customer waives its right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.
- 7.5 To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by RDC of any PPS Security Interest provided for by this agreement, RDC and the Customer agree that the following provisions of the PPSA do not apply:
- 7.5.1 to the extent that section 115(1) of the PPSA allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
- 7.5.2 in addition, to the extent that section 115(7) of the PPSA allows them to be excluded: sections 127, 129(2) and (3), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.

### 8. WARRANTIES

- 8.1 RDC warrants that the Permaconn System supplied are free of defects in materials and workmanship for a period of 24 months from the Commencement Date. RDC shall be relieved of all obligations in terms of this clause 8.1, if:
- 8.1.1 repairs or modifications to the Permaconn System have been made by persons other than RDC, unless such repairs or modifications are made with the prior written consent of RDC;
- 8.1.2 the Permaconn System has not been operated or maintained in accordance with RDC's instruction, or under normal use; or the Permaconn System was not properly installed.
- 8.1.3 incorrect adjustments by the Customer or others have been made to any part of the Permaconn System;

- 6.1.4 consumable items of all kinds have failed (where consumable items are items with a finite life such as batteries, communication chips);
- 6.1.5 defects in the Permaconn System have been caused by or contributed to by work carried out by any telecommunications agency or other party; or
- 6.1.6 The Customer is not in compliance with its obligations under this agreement.

8.2 Except as expressly provided in this agreement and except for any Non-Excludable Condition, RDC makes no warranty or representation, either express or implied, with respect to the Permaconn System or any other goods or services it supplies under this agreement. Where legislation implies into this agreement a Non Excludable Condition, RDC's liability for breach of such Non Excludable Condition is limited in accordance with the provisions of clause 8.3.

8.3 Neither party shall be liable to the other for loss of profit, income or saving or for any indirect, consequential or special damages regardless of whether the liability is based on a claim for negligence, indemnity, breach of contract, tort, misrepresentation or any other basis. In no event shall RDC's liability under this agreement or any transaction contemplated by this agreement exceed the total amount paid to RDC by the Customer under this agreement during the previous six months. The Customer hereby irrevocably and unconditionally releases RDC from all obligations, liability, claims or demands in excess of the limitation. Nothing in this clause 8.3 is intended to limit or exclude liability under or arising from any Non-Excludable Condition.

### 9. FORCE MAJEURE

9.1 Neither party shall be in default under this agreement by reason of any failure or delay in the performance of any obligation under this agreement where such failure or delay arises out of any cause beyond the reasonable control of such party. Such causes include, without limitation, storms, floods, other acts of nature, fires, explosions, riots, war of civil disturbance, strikes or other labour unrests, embargoes and governmental actions or regulations that would prohibit either party from providing the Services or from performing any other aspects of the obligations under this agreement.

### 10. GST

- 10.1 A party must pay GST on a Taxable Supply made to it under this agreement to any consideration (excluding GST) that is payable for that Taxable Supply. It must do so at the time and in the same way as it is required to pay consideration for the Taxable Supply.
- 10.2 A party making a Taxable Supply to another party under this agreement must issue a Tax Invoice to the other party, setting out the amount of the GST payable by that other party.
- 10.3 For the purposes of clause 10 "GST", "Input Tax Credit", "Taxable Supply" and "Tax Invoice" have the meanings attributed to those terms in A New Tax System (Goods and Services Tax) Act 1999.

### 11. REPRESENTATIONS

- 11.1 The parties represent and warrant to each other that at any time during the continuance of this agreement:
- 11.1.1 each party has full power to perform any business activity contemplated by this agreement;
- 11.1.2 each party has procured any consent for the execution and performance of this agreement;
- 11.1.3 the execution or performance of this agreement by any party does not and will not contravene any provision of the constitution of that party or any law or agreement binding on that party.
12. NOTICES
- 12.1 A notice, demand, consent, approval or communication under this agreement (Notice) must be:
- 12.1.1 in writing and signed by a person duly authorised by the sender; and
- 12.1.2 hand delivered or sent by post to the recipient's registered address or principal place of business, as varied by any Notice given by the recipient to the sender.
- 12.1.3A Notice given in accordance with clause 12.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- 12.1.4 if hand delivered, on delivery;
- 12.1.5 if sent by post, 2 Business Days after the date of posting;
- but if the delivery is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

### 13. GENERAL

- 13.1 It is agreed and understood that the basis upon which RDC does business with the Customer is that, notwithstanding anything contained to the contrary in any other documentation or discussion, including any invoice, delivery note or Customer enquiry, the terms and conditions contained in this agreement shall operate in respect of any and all business between the Customer and RDC.
- 13.2 RDC may amend the terms and conditions contained in this agreement at any time by notifying the Customer in writing 14 days prior to the amended terms and conditions taking effect. If the Customer does not agree to the amended terms and conditions, the Customer must within 7 days after receipt of the notice terminate this agreement by giving 90 days notice in writing to RDC. For the avoidance of any doubt, until the end of that 90 day notice period, the Customer will still have to pay all of the charges for the Services, including fees for Permaconn Air Time, and RDC will continue to provide the Services.
- 13.3 The Customer is an independent contractor and nothing in this agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.
- 13.4 If a provision of this agreement is invalid or unenforceable in a jurisdiction it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability and it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.
- 13.5 A waiver by a party of a provision or of a right under this agreement is binding on the party granting the waiver only if it is given in writing and is signed by the party or an officer of the party granting the waiver. A waiver is effective only in the specific instance and for the specific purpose for which it is given. A single or partial exercise of a right by a party does not preclude another or further exercise or attempted exercise of that right or the exercise of another right. Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver
- 13.6 The termination of this agreement will not release either party from its obligations under clauses 2, 4, 6.6, 7, 8 and 9 or which by its nature must survive termination or in respect of any accrued rights.
- 13.7 Except as otherwise provided for under this agreement, this agreement may be amended only by a document signed by all parties.
- 13.8 This agreement together with any documents referred to in this agreement or executed in connection with this agreement is the entire agreement of the parties about the subject matter of this agreement.
- 13.9 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any claim or objection based on absence of jurisdiction or inconvenient forum.
- 13.10 This agreement is governed by the laws of New South Wales.