



Euclid Systems Pty Ltd – Terms and Conditions (Service & Purchase)

1. Definitions in these Terms and Conditions:

ACL means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Approved Installer means a person approved by Euclid to install the System or any part thereof.

Agreement means the Sales Order and these Terms and Conditions.
Code of Conduct means Euclid's Code of Conduct made available at Euclid's website from time to time.

Commencement Date means the commencement date as described in the Sales Order.

Documentation means any instruction manuals, user guides and other information relating to the System.

Hardware means any hardware supplied by Euclid to you under the Sales Order or any other agreement to supply hardware.

Intellectual Property Rights means the rights to patents, licenses, trade marks, trade names, inventions, trade secrets, copyrights, and know-how relating to the origin, manufacture, programming, operating and/or servicing of the System and any enhancements or modifications relating to the same.

Monthly Service Fee means the fee charged for the provision of the Services by Euclid as provided in the Sales Order.

PPSA means the *Personal Properties and Securities Act 2009* (Cth).

Sales Order means the Euclid Systems Sales Order in which these Terms and Conditions are referred.

Service Period means the period commencing on the Commencement Date and ending on the expiry or earlier termination of the Sales Order.

Terms and Conditions means these Euclid Systems – Terms and Conditions (Service & Purchase).

Services means the provision of 24 hours per day, 7 days per week services associated with the Tracking Plans Software and any additional services of add-on options chosen by you and provided for in the Sales Order.

Support Services means the support services provided by Euclid during the Service Period to correct faults in the System or to assist you in operating the System.

System means the Tracking Plan Software and any Hardware units provided by Euclid, or purchased by you, including those listed in the Sales Order.

Tracking Plans Software means the location management program offered by Euclid which uses web-based software owned by Euclid together with all data imputed by Euclid or you.

Undefined capitalised terms have the same meaning as in the Sales Order.

2. **Scope of Agreement:** 2.1 Euclid will supply the Services and Hardware to you on the terms and conditions set out in this Agreement. 2.2 The supply of the Services comprises: (a) the supply of Services for the Service Period; (b) the supply of the Documentation; and (c) the supply of the Support Services until the expiry of the Service Period. 2.3 The supply of the Hardware comprises the purchase by you of Hardware as described in the Sales Order.
3. **Installation:** You must ensure that an Approved Installer installs the System in accordance with Euclid's instructions and testing procedures.
4. **Licence:** 4.1 Euclid hereby grants you a limited and non-transferable licence to Tracking Plans Software through the internet solely for the purpose of the System, subject to these Service Terms and Conditions. 4.2 Euclid hereby grants you a limited and non-transferable licence to the firmware which may be contained in each unit supplied to you by Euclid subject to these Service Terms and Conditions. 4.3 You must ensure that any of your officers, employees and agents who use the System or the licence granted to you under this clause 4 complies with these Service Terms and Conditions and the Code of Conduct.
5. **Your obligations:** 5.1 You will not, and will ensure that your officers, employees and agents will not use the System (or any part thereof) for any illegal, unlawful or offensive act/s and will ensure

that it is used in accordance with all applicable laws, regulations, standards and industry codes of conduct. 5.2 You must not use any equipment in connection with the System that has not first been approved in writing by Euclid. 5.3 You will comply with the reasonable directions of Euclid from time to time regarding the use of the System and the Documentation. 5.4 You indemnify Euclid against any claims, loss or damage (on a solicitor and client basis and whether incurred by or awarded against Euclid) that Euclid suffers or incurs, whether directly or indirectly, as a result of any breach of this clause 5.

6. **Your warranties, acknowledgements and further obligations:** 6.1 You represent and warrant that all credit and financial information submitted to Euclid at any time is true and correct and shall remain so for the term of this Agreement. 6.2 You shall provide Euclid with such corporate resolutions, opinions of counsel, financial statements and other documents as Euclid shall request from time to time. 6.3 You, and in the case you are a corporation or other body corporate, each of your directors, warrant that you are solvent and able to pay debts as they fall due. 6.4 You warrant that to the extent that you collect personal data of any person through the System or any person who inputs personal data into the System, you: (a) shall notify the individual whose personal data of the anticipated use of their personal data by you and Euclid; (b) shall collect and transfer to Euclid any such data in compliance with all applicable data protection, privacy and security laws; and (c) ensure that the individual is provided with a copy of Euclid's Privacy Policy as made available at its website. 6.5 You acknowledge that the Tracking Plans Software and Hardware is of a complicated and technical nature and may have minor or inherent defects. Euclid will provide all reasonable programming and remedial services to correct documented code errors which are caused by a defect in an unaltered version of the Tracking Plans Software accessed on an operating system approved by Euclid as suitable for the Tracking Plans Software.
7. **Support:** 7.1 If you require support for the System, you will call Euclid's customer support number as made available by Euclid on its website, or as provided to you by Euclid from time to time. 7.2 Euclid will use all reasonable efforts to provide Support Services to you for the System during the Service Period. 7.3 Should you wish to receive Support Services after the Service Period, you must enter into a new agreement with Euclid for the Support Services. 7.4 The Support Services do not include services resulting from: (a) misuse of the System; (b) failure to use the System in accordance with the Documentation; or (c) unauthorised attempts to repair, replace, modify or maintain the System by persons other than Euclid or its authorised service providers.
8. **Fees and Payment:** 8.1 You will, unless mutually agreed between the parties: (a) pay to Euclid the Monthly Fee under the Sales Order; and (b) pay to Euclid any Hardware Purchase Fees under the Sales Order. 8.2 If you fail to pay any amount when due, Euclid may without prejudice to its other rights or remedies under these Service Terms and Conditions: (a) charge you interest on the amount owing from the due date until the date of actual payment at the base rate percentage charged by Euclid's banking service providers from time to time plus 10%; and/or (b) suspend any Services provided under these Services Terms and Conditions. 8.3 Euclid may vary any amounts payable by you under these Service Terms and Conditions upon giving you 30 days' written notice. 8.4 Any amounts specified in this Agreement or quoted to you by Euclid exclude GST. If GST is or becomes payable in respect of any supply made by Euclid to you, the payment for that supply shall be increased by an amount equal to the GST payable so that Euclid retains the amount it would have retained but for the imposition of GST. Words or expressions used in this clause have the same meaning as defined in the *A New Tax Act System (Goods and Services Tax) Act 1999* (Cth).
9. **Warranties and Limitation of Liability:** 9.1 Euclid warrants to you that: (a) it has the full power and authority to license the Tracking Plans Software; and (b) to the best of its knowledge and belief the System does not infringe any intellectual property rights of a third



party. 9.2 Except as expressly set out in this clause, and to the maximum extent permitted by law, all representations, conditions and warranties (whether express or implied, statutory or otherwise and including warranties as to the merchantable quality or fitness for any particular purpose of the System or the Documentation) are expressly excluded. 9.3 To the fullest extent permitted by law, Euclidic excludes liability for any loss or injury to any person, or any damage to, or loss or destruction of, property, directly or indirectly arising from the possession, control, operation condition or use of the System. 9.4 Notwithstanding the foregoing, Euclidic's liability in connection with this Agreement or any Hardware (including for breach of a condition or warranty implied into this Agreement by law) shall be limited (at Euclidic's sole discretion) to: (a) in the case of Hardware: (i) the replacement of the Hardware or acquiring equivalent equipment; (ii) paying the cost of replacing the Hardware or acquiring equivalent; (iii) repairing the Hardware; or (iv) paying the cost of having the Hardware repaired; and (b) in the case of services supplied under this Agreement: (i) the supplying of such services again; or (ii) paying the cost of having such services supplied again. (iii) In no circumstances shall Euclidic be liable to you for indirect or consequential loss or damage, or any loss of profits, business or opportunity, or any loss of data. (iv) Notwithstanding anything else in this clause, nothing in this Agreement is intended to exclude, restrict or modify any obligation of Euclidic if such obligation cannot be lawfully excluded. 9.5 As regards any defects in the Hardware, Euclidic's warranty is limited to a period of one year from the date of delivery of the Hardware to you and does not cover damage caused by accidents or unauthorised modifications. 9.6 Euclidic will not be liable whether in contract, tort (including negligence) or otherwise for any indirect or consequential loss or loss of profits suffered or incurred by you arising out of or in connection with the Agreement. 9.67 To the maximum extent permitted by law Euclidic will not be liable for any direct or indirect damage suffered by you in relation to any breach of data provided by You in connection with these Terms and Conditions except where the breach is a direct result of Euclidic's intentional misconduct. 9.8 Euclidic's liability arising out of all claims for damages under these Terms and Conditions will not exceed in aggregate the total amount actually paid by the Customer to Euclidic under these Terms and Conditions in the three months prior to the time such liability arises. 9.9 You agree that any failure or performance or breach on the part of Euclidic in the provision of the Services shall in no way affect your obligations to Euclidic under these Terms and Conditions. 9.10 Notwithstanding anything else in this Agreement, if section 102 of the ACL applies to the provision of the System to you, the System comes with guarantees that cannot be excluded under the ACL. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the System repaired or replaced if the System fails to be of acceptable quality and the failure does not amount to a major failure. The terms "major failure" and "acceptable quality" have the meanings given to them in the ACL.

10. Intellectual Property and Confidentiality: 10.1 You acknowledge that the Intellectual Property Rights in the System and Documentation are owned by Euclidic or its licensors. 10.2 You acknowledge that these Terms and Conditions do not transfer to you any Intellectual Property Rights in the System or any part thereof other than the limited licence granted under these Terms and Conditions. 10.3 You will not reproduce, translate, adapt, reverse engineer, vary or modify the Tracking Plans Software, the System generally or the Documentation other than to enable your employees, officers and agents to use the Tracking Plans Software in accordance with these Terms and Conditions and the Code of Conduct. 10.4 You must: (a) take all reasonable steps to prevent, and will ensure that your officers, employees and agents take all reasonable steps to prevent, any unauthorised access to the Tracking Plans Software and the System and to ensure the non-disclosure and confidentiality of the System and the Documentation; (b) not transfer, assign or otherwise deal with the System or Documentation or your rights under these Terms and Conditions; (c) maintain all copyright notices on the System and Documentation;

and (d) ensure that you and your officers, employees and agents do not disclose any access passwords and will ensure that all passwords; (i) cannot be easily guessed; (ii) are changed regularly and as reasonably as requested by Euclidic; and (iii) if breached or compromised, notify Euclidic in writing immediately of any breach or the existence of any circumstances which may suggest that any person may have unauthorised knowledge, possession or use of the System, Documentation and/or any password. 10.5 Your obligations under this clause will survive the termination of the Agreement and any other agreement between you and Euclidic.

11. Termination: 11.1 In the event of Termination Without Cause, both Parties will provide the other with 90 days' notice of effective date. 11.2 On termination of the Agreement you: (a) will remain liable for payment of any charges that become due for payment before or after termination; and (b) must immediately cease to use the Tracking Plans Software, the System and all Documentation and deliver to Euclidic all copies of the Tracking Plans Software, the System and Documentation in your possession or control, including all copies in the possession or control of your officers, employees and agents. 11.3 On termination of these Terms and Conditions, the licence granted under these Terms and Conditions will automatically cease. 11.4 If Euclidic terminates this Agreement for, or as a result of your default, or if You terminate this Agreement prior to the end of its term, You must pay to Euclidic upon demand: (a) any monies due and payable to Euclidic pursuant to this Agreement; (b) interest on overdue money; (c) any break costs incurred by Euclidic in terminating or replacing any fixed rate funding arrangements that it had entered into in connection with its financial commitment to you under this Agreement; and (d) an amount equal to all Monthly Fees which would have been payable for the remainder of term (or extended term, if the Agreement term has been extended) of this Agreement.

12. Customer Information: 12.1 You acknowledge that Euclidic, its officers, employees, agents and any third party providing the Services to You on behalf of Euclidic (collectively, **Agents**) may generate, and/or require use of existing information or data about you, your contractors or employees (**Customer Information**). You grant Euclidic and its Agents the right to use, copy, modify, store and disclose the Customer Information to the extent necessary so that Euclidic and its Agents can supply the Services and any enhancements or modifications to the same (**Information Licence**). 12.2 You will to the extent that the Customer Information contains personal information and/or sensitive personal information (as defined in the *Privacy Act 1988* (Cth)) about an individual (including your employee or contractor), procure from that individual all necessary consents required by law to enable that information to be used by Euclidic and its Agents in accordance with the Information Licence. 12.3 You acknowledge that Euclidic may be required to disclose Customer Information to government bodies, regulators, law enforcement, agencies and any other parties where disclosure is authorised or required by law. 12.4 You indemnify Euclidic and its Agents (and will continue to indemnify Euclidic and its Agents notwithstanding termination or expiration of these Terms and Conditions) for all loss (including losses, liabilities, penalties, damages, costs, charges and expenses) which Euclidic and/or its Agents may suffer or incur (whether in relation to the *Privacy Act 1988* (Cth) or otherwise) by reason of your failure to comply with this clause.

13. Service Information: 13.1 You acknowledge that Euclidic and its Agents may retain data in relation to the provision of the Services to You (**Service Information**) for research and development purposes in relation to Euclidic's services and equipment. 13.2 Euclidic may use the Service Information for the purposes of benchmarking and research. In this event, Euclidic will de-identify the relevant Service Information used.

14. Credit Reporting: 14.1 Euclidic may request a credit report about You from a credit reporting body which may contain information about your credit history. Euclidic will provide information to the credit reporting body that identifies You, as well as information relevant to the Sales Order. 14.2 Euclidic may also collect



information relating to your credit history during the tenure of the Sales Order. Euclidic may disclose information relating to your credit history to credit reporting bodies so it may be included in your credit report.

- 15. Security and Title:** 15.1 You hereby charge in favour of Euclidic all property (real or personal) owned by you to secure the payment of monies and performance of other obligations by you under this Agreement and Euclidic may do all thing necessary to perfect such charge, including (without limitation): (a) registering a caveat or other notice or charge upon the title of any registered property owned by you; and (b) registration of Euclidic's charge over your current, and acquired, personal property on the Personal Properties and Securities Register. 15.2 You acknowledge that the Sales Order and these Terms and Conditions creates a security interest in the Hardware supplied by Euclidic to you on credit terms as security for your payment obligations to Euclidic for Hardware supplied under this Agreement. 15.3 For the sole purpose of allowing Euclidic to perfect its retention of title in the Hardware, you grant a "purchase money security interest" (as defined in the PPSA) in all Hardware supplied by Euclidic to you.
- 16. Guarantee:** 16.1 Euclidic may require you to provide a guarantor of your obligations under this Agreement, in which case this clause will apply. 16.2 In consideration of Euclidic agreeing to enter into this Agreement, the guarantor(s) named in this Agreement (each a **Guarantor**), hereby guarantee to Euclidic the due and punctual performance of your obligations under this Agreement. 16.3 As a separate and independent obligation the Guarantor agrees to indemnify Euclidic against all losses or damage which Euclidic may suffer or sustain as a result of the non-payment of any monies or the non-performance of any of your obligations under this Agreement whenever and as often as such event occurs. 16.4 The obligations of the Guarantor under this guarantee and indemnity are principal obligations imposed upon the Guarantor as principal debtor. Accordingly, the Guarantor acknowledges that Euclidic has the right to make a claim or demand against the Guarantor pursuant to this guarantee and indemnity without having first taken any proceedings or recovery action against you or any other person. 16.5 This guarantee and indemnity is not to be considered as wholly or partly discharged unless and until all of the guaranteed monies have been paid in full. 16.6 This guarantee and indemnity is not impaired or discharged by: (a) any variation (with or without the consent of the Guarantor) whenever made to this Agreement; (b) any breach, wilful or otherwise, of any of your obligations under this Agreement with or without your, any Guarantor's, or Euclidic's consent or knowledge; (c) the granting of time, credit, forbearance, indulgence, or concession to you or to any other Guarantor; (d) any compromise, abandonment, waiver, release, variation, or redemption or compounding by Euclidic of any of its rights under this Agreement or against any other Guarantor; (e) the unenforceability in whole or in part of this guarantee and indemnity against any other Guarantor or any other Guarantor that has not executed this agreement; (f) the fact that all or any part of the moneys owing by you may not or may cease to be recoverable from you or any other person liable for any reason (other than the same has been fully paid or satisfied); (g) the liquidation, death, insolvency or bankruptcy (as the case may be) of you or any Guarantor; (h) the avoidance for any reason by statute or otherwise of any payment by or on behalf of you or any Guarantor; (i) the transfer or assignment of the benefit of the Agreement to any person or company; (j) you being under any legal disability; or (k) any other matter or thing which but for this provision could or might operate to abrogate the effect of provisions of this guarantee and indemnity. 16.7 If there are two or more Guarantors then the obligations under this guarantee and indemnity binds them jointly and each of them severally. A reference to Guarantor means all Guarantors, any two or more and each of them. 16.8 Each Guarantor charges in favour of Euclidic to secure the payment of all monies that become owing by them to Euclidic all interests in any land which they now own or of which they may become the owners. 16.9 Euclidic may assign, absolutely or by way of security, its rights under this guarantee.
- 17. Waiver:** Euclidic may elect at any time to waive its rights in respect to any breach or repudiation by you but no such waiver in respect of any breach of act of repudiation shall affect Euclidic's rights in respect of any further, other, continuing, or recurring breach of act of repudiation.
- 18. Variation:** 18.1 Any variation of this Agreement must be in writing signed by all parties to it. 18.2 In the event of any inconsistencies between this Agreement and any variation, the variation shall prevail.
- 19. Notice:** Any notice to be given by Euclidic or its agent shall, without prejudice to any other method of giving the same, be deemed to have been given if posted to your address as specified in this Agreement (or at such other address notified in writing by you) on the second business day following such posting.
- 20. Severable:** In the event that any provision contained in this Agreement is rendered void, invalid, or unenforceable then such provision shall be deemed severed from this Agreement without affecting the remaining provisions.
- 21. Assignment:** 21.1 Euclidic may, without prior notice to you, sell or assign, either absolutely or by way of security, its rights or interests in this Agreement. 21.2 You shall not assign this Agreement without the consent of Euclidic. For the purposes of this clause, if you are a company or other body corporate, a transfer of the majority of shares or a change in your managerial control shall be deemed to be an assignment by you requiring Euclidic's consent.
- 22. Time of the essence:** In respect of your obligations under this Agreement time is of the essence.
- 23. Force majeure:** Neither party will be liable for any delay or failure in the performance of its obligations under these Terms and Conditions if such delay or failure is due to a force majeure event, being any cause outside its reasonable control including but not limited to acts of God, natural disaster, riot, malicious damage, fire or acts of any governmental authority. This clause does not apply to any obligation to pay money for liabilities incurred prior to the force majeure event.
- 24. Governing law:** This Agreement is governed by the law in force in the State or Territory where Euclidic's office shown on this Agreement is located and the parties submit to the non-exclusive jurisdiction of the court that exercise jurisdiction in the State or Territory in relation to any proceedings about or in connection with this Agreement.
- 25. Miscellaneous:** 25.1 This Agreement shall bind you, your successors, executors, and assigns and shall ensure the benefit of Euclidic, its successors and assigns. 25.2 If more than one person/company is named in this Agreement, the liability of each shall be joint and several. 25.3 Euclidic's rights under this Agreement may be exercised by its nominees.
- 26. Interpretation:** 26.1 Any reference in this Agreement to the singular shall include the plural and vice versa. 26.2 Any reference to a person includes a corporation and any other legal entity. 26.3 Any reference to "include", "includes", "including" or similar words does not imply limitation.
- 27. Blanks and corrections:** You irrevocably authorise Euclidic to complete any blank spaces appearing in this Agreement and in particular to insert the Commencement Date, and the serial numbers and other identification data.