

FERRYHAWK TERMS & CONDITIONS

1. FERRYHAWK TERMS & CONDITIONS

- 1.1 These terms & conditions (**Ferryhawk Terms & Conditions**) apply to all Order Forms and Contracts, the Platform and all Services supplied by Ferry Hawk Pty Ltd ACN 656 469 386 (**Ferryhawk, we, us, our**) to you (**Customer, you**). The Customer will be bound by and agrees to accept these Ferryhawk Terms & Conditions which apply at date of the Order Form.
- 1.2 Under the Contract (being these Ferryhawk Terms & Conditions, the SAAS Terms and the relevant Order Form):
- (a) **"Administration User"** means a User who is employed or contracted with the Customer, who is trained to use the Ferryhawk Platform and has the relevant permissions to access and use the administrative "backend" area of the Ferryhawk Platform that we give the Customer access to.
 - (b) **"Contract"** means the Order Form prepared by us and accepted by you binding the parties for the supply of relevant Ferryhawk Platform in that Order Form (and includes these Ferryhawk Terms & Conditions and the SAAS Terms).
 - (c) **"Contract Term"** means the contract term set out in the Order Form. However if not expressly stated there, the contract term will be 12 months commencing on the earlier of first download, implementation or use of the Platform.
 - (d) **"Deployment"** means the first configuration or implementation of the Ferryhawk App with the Customer.
 - (e) **"Ferryhawk Platform"** or **"Platform"** means the automated booking and ticketing "software-as-a-service" software application supplied by Ferryhawk. A reference to the Ferryhawk Platform is also a reference to the software in it.
 - (f) **"Order Form"** means the order form that is prepared and sent by us to the Customer for approval, which is issued subject to these Standard Terms & Conditions and the SAAS Terms, and which, amongst other things, describes the Customer name and details, the requirements and specifications required for the Ferryhawk App to be supplied and the Services to be delivered (including any attached SOW), and their respective fees, prices and payment terms.
 - (g) **"Operating Procedures"** means the operating procedures for the Platform including:
 - (i) the relevant training package/s;
 - (ii) the Customer's standard operating procedures; and
 - (iii) standard operating procedures enforced by the harbour master or relevant authority.
 - (h) **"Permitted Use"** means the stated intended use of the Ferryhawk Platform as described in the Order Form, the Product Guide and Operating Procedures.
 - (i) **"Portal"** means Ferryhawk's online portal with which Customers can access their accounts and view information provided by us, which may be accessed through www.ferryhawk.com.au/library or any other webpage we specify from time to time.
 - (j) **"Product Guide"** means the Ferryhawk Product Guide document which includes descriptions about the Ferryhawk Platform.
 - (k) **"Renewal Term"** has the meaning given in clause 14.2.
 - (l) **"Retail User"** means a client or consumer of the Customer's goods or services who accesses or uses the Ferryhawk Platform to book transport with the Customer.
 - (m) **"Services"** means the services to be supplied by Ferryhawk that are expressly set out in the Order Form which may include but are not limited to Deployment Services and additional training and support, documentation, database and delivery costs and similar.
 - (n) **"SOW"** means statement of work.
 - (o) **"User"** means an individual who uses the Ferryhawk Platform and may include an Administrative User or a Retail User or both (depending on the context).

2. OPERATION OF TERMS

- 2.1 Except as otherwise expressly provided, these Ferryhawk Terms & Conditions applies to the supply of the Ferryhawk Platform. When the Order Form is accepted by the Customer, these Ferryhawk Terms & Conditions and the SAAS Terms bind the Customer and together with the Order Form will make up a standalone Contract (which constitutes the entire agreement and supersedes all previous agreements and understandings relating to our supply of the Ferryhawk Platform as specified in the Contract to you).
- 2.2 You agree that you have not relied on any statement, representation, assurance or warranty that is not explicitly set out in the terms of the Contract.
- 2.3 The Customer agrees that it must procure that, and is liable for, giving to or making available all Users being given a copy of, being bound to and strictly complying with the SAAS Terms (which may be updated from time to time).

3. BINDING ORDERS

- 3.1 You may accept an Order Form by executing it, or by otherwise agreeing or confirming it in writing (including by email). Once an Order Form is accepted, it forms part of a binding Contract as described in clause 2.1 above.

3.2 We will supply and deliver the Ferryhawk Platform and Services that you have ordered as described in the Contract. No Contract may be reduced or cancelled, or the Ferryhawk Platform or Services refunded without consultation and first receiving our approval.

3.3 We do not accept returns or cancellations for any reason other than where the Ferryhawk Platform, or a Service delivered, is materially defective at our fault with reference to our Product Guide and we cannot remedy it. We do not refund on the basis that you have found a cheaper price, product or service elsewhere, that you have misused or damaged the Ferryhawk Platform or Service, or that another solution better suits. If you wish to return or cancel a supplied Ferryhawk Platform or Service on the basis of a material defect at our fault you must do so within 30 days of first use and after we have had a 30 day period to provide a remedy.

3.4 Where a supplied Ferryhawk Platform or Service is materially defective at our fault, you have not contributed to the defect (including through misuse or damage) our response and rectification commitments are set out in clause 3.5 below.

3.5 Where a supplied Ferryhawk Platform or Service is materially defective at our fault and you have not contributed to the defect (including through misuse or damage), with the effect that the Ferryhawk Platform is inoperable, and we cannot provide a remedy within 30 days of being notified of such defect, we will provide a refund for the period that you have paid that the Ferryhawk Platform is inoperable. However if the fault is directly or indirectly as a result of the Customer or User not using it for the Permitted Use, not adhering to the SAAS Terms, Product Guide or Operating Procedures, or as a result of their misuse of or damage to the Ferryhawk Platform, or due to out-of-date, erroneous or malicious data inputs by the User, we are not liable to refund, fix or replace the supplied Ferryhawk Platform or Service.

4. PRICE AND PAYMENT

- 4.1 The prices for the Ferryhawk Platform and Services are set out in the Order Form and, unless stated otherwise in the Order Form:
- (a) our pricing includes fees and costs for Hosting Services for expected traffic based on numbers provided by the customer. We reserve the right to charge for additional hosting services should your traffic be significantly higher than originally expected.
 - (b) all prices, fees and costs are in the currency stated in the Order Form and exclude taxes, duties and excises.

4.2 Unless we enter into a multi year Contract with you with fixed pricing, each 12 months we may update the pricing for our Ferryhawk Platform, and any other goods and services that we offer that are subject of these Standard Terms & Conditions, with such increase not exceeding 5% of the annual software fee.

4.3 You are liable for the fees and costs set out in the accepted Order Form.

4.4 Unless we expressly provide otherwise in the Order Form, we will issue an invoice for your Contract prior to or on date of first delivery of the Ferryhawk Platform or any Services to you and, where we charge:

- (a) for Services, we will invoice you prior to the supply of the relevant Services; and
- (b) for the Ferryhawk Platform we will invoice you at the start of each month for the month ahead.

4.5 Unless we expressly provide otherwise in the Order Form, payment of the total invoiced amount is due and payable within 7 days after the date of the invoice. Payment must be in full by way of electronic funds transfer to our bank account as set out in the invoice and be net of any transfer or bank fees.

4.6 All prices, fees and charges stated in the Order Form exclude GST, taxes, duties, and excises levied by government (including value added taxes, state and withholding taxes) and these are to be paid by you. Where a withholding tax is applied, the price will be grossed up so that we receive the full amount of the price listed on the relevant tax invoice as if the withholding tax was not applied.

4.7 If you have not made any payment on time and payment remains outstanding, we may immediately suspend or cancel the Contract or the delivery of (or access to) the Ferryhawk Platform or Services under the Contract, without refund to you.

4.8 If payment of any money you owe us is overdue, it incurs interest daily at the Default Interest Rate of 2% above CBA's Corporate Overdraft Reference Rate.

5. DEPLOYMENT

5.1 Following the execution of the Contract, we will Deploy the Ferryhawk Platform as provided for in the SOW attached the Order Form.

5.2 The Customer agrees to provide all reasonable assistance and information to Ferryhawk for the purposes of the Deployment.

5.3 Acceptance testing of the Deployment and Ferryhawk Platform to be used by the Customer will be conducted by Ferryhawk.

5.4 The Ferryhawk Platform provided to the Client will be its own individual instance of the Ferryhawk Platform.



FERRYHAWK TERMS & CONDITIONS

- 5.5 This means that, apart from the Customer Data which is unique to the Customer, the Client will access the same version of the Ferryhawk Platform (including any updates which we make to the Ferryhawk Platform from time to time), which is generally provided by Ferryhawk to its other customers. We may provide updates to the Ferryhawk Platform at any time at its sole discretion. Where practicable, we will provide the Customer with 24 hours advance notice of any updates which it intends to apply to the Ferryhawk Platform.
- 6. USA Platform.**
- 6.1 The Customer may only access and use the Ferryhawk Platform via a web browser. The Customer will not be provided with a copy of the Platform at any stage and has no right to reproduce or copy the Platform. For the avoidance of doubt, the Customer will not be entitled to any source code for the Ferryhawk Platform.
- 6.2 At no time do we transfer any title or interest in our Platform, or any software or materials in such to you.
- 6.3 The Customer and each User must provide their own devices, computer hardware and computer software to use and access the Ferryhawk Platform which meets the minimum system requirements as specified by us from time to time.
- 6.4 The Customer must ensure that each person and individual who is a User and who uses the Ferryhawk Platform does so:
- with due care and skill;
 - strictly for the Permitted Use; and
 - in accordance with the Product Guide, the Operating Procedures, the instructions and training we provide, and the instructions of third party suppliers of data and inputs.
- 6.5 The Ferryhawk Platform is dependent on:
- the accuracy, reliability, currency and completeness of the information and data that the Customer and the Users input into it; and
 - how the Customer makes the Platform available to its Users (including the availability of the Customer's website and access to networks).
- 6.6 The Customer acknowledges and agrees that:
- the User is responsible for the accuracy, reliability, currency and completeness of any User inputs, and that the accuracy, completeness, appropriateness or reliability of the outputs may be affected by the provision of inaccurate or incomplete User inputs; and
 - the accuracy, completeness, appropriateness or reliability of output from the Ferryhawk Platform may be affected by inaccurate, incomplete, inappropriate, out-of-date or unreliable data obtained from a third party, or obtained from data sensors owned or operated by or on behalf of the Customer or User.
 - we have neither investigated or verified the accuracy and soundness of the inputs nor is it our responsibility to do so;
 - to the extent permitted by law, and other than as expressly provided for in the Contract, all other express conditions and all implied conditions, warranties or liabilities (including liability as to negligence) regarding the condition, accuracy, suitability, or quality of the Ferryhawk Platform are excluded.
- 6.7 The Customer may permit their employees and third-party agents who provide services to the Customer to be Administration Users. However, the Customer remains responsible at all times for their Users' use of the Ferryhawk Platform and their account by those persons and will indemnify Ferryhawk against all loss, cost, expense or damage caused by the use of the Ferryhawk Platform or their account by such employees or third-party agents, and their failure to comply with the terms of the Contract.
- 6.8 You must notify us in writing, as soon as practicable, if you decide to appoint any individuals to become additional Administration Users. Within a reasonable time of receiving an accepted Order Form for training services, we will commence training services to train with due care and skill the additional Administration Users with in accordance with the Product Guide, Operating Procedures and Permitted Use, and for the fees set out in the Order Form.
- 6.9 The Ferryhawk Platform and related Services are not for resale.
- 6.10 USE OF ANY OF THE FERRYHAWK PLATFORM OR ANY OF OUR SERVICES DOES NOT GIVE ANY INDICATION THAT CUSTOMERS OR USERS OR RELEVANT VESSELS, VEHICLES, PASSENGERS, GOODS OR FACILITIES ARE SAFE OR IN DANGER, OR THAT THE CUSTOMER OR USER IS USING OUR GOODS OR SERVICES CORRECTLY OR IN A MANNER THAT IS SAFE FOR YOUR VESSEL OR FACILITY. NOR DOES IT NECESSARILY RECORD EACH INTERACTION USERS HAVE WITH ANY PERSON, THING OR PLACE THAT THEY ARE NEAR OR IN CONTACT WITH. USE OF OUR FERRYHAWK PLATFORM AND/OR SERVICES DOES NOT MEAN THAT USERS ARE PROTECTED FROM ANY HARM, INJURY, LOSS OR DAMAGE, NOR DOES IT MEAN THAT YOU AND USERS ARE NOT RESPONSIBLE FOR YOUR OWN TRANSIT OF PEOPLE, VEHICLES AND GOODS (INCLUDING THE NATURE, SAFETY AND LEGALITY OF THESE PEOPLE OR THINGS IN TRANSIT), SHIPPING AND SAFETY PROTOCOLS AND/OR THEY ARE NOT RESPONSIBLE FOR THEIR OWN HEALTH AND SAFETY.
- 6.11 Our Ferryhawk Platform and related Services are a tool for ticketing purposes only. Our goods and services do not and cannot add to or substitute for traditional and industry standard maritime practices, knowledge, skills and experience. Regardless of the tickets booked for individuals, vehicles or goods to be transited, the Customer remains wholly responsible and liable for its own practices and procedures, forming its own views and using its own judgement as to how to use data, inputs to and outputs from the Ferryhawk Platform, in combination with a multitude of other inputs, outputs and factors for maritime transport, in order make decisions regarding how ticketing can be used for their day to day operations. Due to the Ferryhawk Platform relying on Customer and User inputs and data, the Customer's standard operating practices and procedures, third party data, the nature of maritime transport and changing geographic, climate and weather conditions, inaccuracies may occur. The use of any of our goods and services are not a substitute for proper navigation, shipping, carriage and safety procedures. The Customer accepts that no responsibility for the operations or navigation of any vessel, or the transit of any individuals, vehicles or goods, rests with us.
- 7. SERVICES**
- 7.1 The Order Form will set out the Services that we are to perform in addition to supplying the Ferryhawk Platform.
- 7.2 Following Deployment, any configuration and customisation Services to the Ferryhawk Platform are to be covered in a separate Order Form agreed between the parties.
- 7.3 Where a Service is not expressly included with the supply of the Ferryhawk Platform as expressly set out in the Order Form or Product Guide, you agree that we will charge for the Service at an hourly rate in hourly increments in accordance with our usual rates for such Services (please consult with your salesperson/agent for our current hourly rates). We will only perform such Services once you have approved of them and consented to be subject to our fees and costs.
- 7.4 All Services supplied are supplied subject to the terms and conditions of the Contract.
- 7.5 Our Ferryhawk Platform offering will include 2 hours of remote refresher training and support for Administration Users each 6 months however beyond that, we reserve the right to charge the Customer for extra training and support over and above the allowance which we offer as part of the relevant Ferryhawk Platform.
- 7.6 We have detailed security, privacy and compliance documents available on request, designed specifically for use by your security and compliance teams. Beyond our providing our standard documents in this respect or for any extra specific questions you have, you agree that our time and efforts are a Service and we will charge at an hourly rate in accordance with our usual rates for such Services (please consult with your salesperson/agent for our current hourly rates).
- 8. VERSIONING AND UPDATES**
- 8.1 The Ferryhawk Platform may change over time, however, we will not materially decrease its overall functionality. It is your responsibility to ensure each software application that you intend to use with the Ferryhawk Platform is compatible with it.
- 8.2 At our discretion, we may release updates or versions. Such updates or versions may not include all existing software features or new features that we release for newer or other versions of the Ferryhawk Platform (however we will not materially reduce functionality).
- 8.3 Certain aspects of the Ferryhawk Platform may be sourced from third party suppliers, and you agree to comply with the terms and conditions of each third-party suppliers. Where we do not make or develop the relevant software, we may be required to automatically update the software on behalf of the applicable supplier, and you will update accordingly.
- 8.4 The Customer acknowledges and agrees that any requests for additional functionality for or modifications to the Ferryhawk Platform (other than for error correction), may only be made as a customisation subject to a separate order form.
- 8.5 From time to time, we may make a "beta offering" available to you (eg: a product offering not generally available, a limited release, proof of concept, developer preview, or similar). We may decide to discontinue a beta offering at any time (in our sole discretion). As such offerings are usually during development stages:
- regardless of any feedback, input or contribution, we own all intellectual property in such offerings; and
 - to the full extent permitted at law, we disclaim all warranties and liability in respect of such offering.
- 9. CUSTOMER RESPONSIBILITIES**
- 9.1 The Customer will be responsible for keeping and using the Ferryhawk Platform in the IT system and environmental conditions recommended by us (including that its operating systems meet our requirements as set out in the Product Guide).



FERRYHAWK TERMS & CONDITIONS

- 9.2 The Customer will ensure that the Ferryhawk Platform is only used by properly trained Administration Users in accordance with our instructions (which may be updated from time to time).
- 9.3 From time to time, the Customer will provide us with such information and assistance concerning the Customer's use of the Ferryhawk Platform, including its application, use, location and environment as we may reasonably require so that we can provide our Ferryhawk Platform and Services.
- 9.4 The Customer will immediately notify us if there is any failure of the Ferryhawk Platform, and will allow us full and free access to such items and all documentation, software, materials and services (including its environment) for the purpose of support. The Customer will ensure that relevant trained, qualified and experienced staff are available when required by us to provide us with information required to diagnose and/or repair issues.
- 9.5 Unless we expressly agree to engage a third party supplier for the Customer (where the Customer will be subject to the third party supplier's terms and conditions), it is the Customer's sole responsibility to maintain up-to-date data and information streams and inputs for the use with the Ferryhawk Platform.
- 9.6 The Customer undertakes to keep in place adequate and up-to-date security measures and practices to protect the Platform from any improper or unauthorised access or uploading of any viruses, malicious code or harmful code. We shall not be responsible for, and you covenant that you will not undertake, any unauthorised access to the Platform by means of reverse engineering, copying, hacking, jailbreaking or any unauthorised access with intent to commit or facilitate the commission of any excessive use, offence or any unauthorised modification or infringement of the intellectual property of the Platform, software or Services by the Customer, any User, any personnel of the Customer or by a third party.
- 9.7 The Customer is responsible for ensuring that their login and password to the Products (and those of the Users) remain secure and confidential. The Customer should update their passwords regularly (including requiring it of their Administrative Users) and 'remember me' type functions should not be used on publicly available or shared computers.
- 9.8 Unless the Order Form or a subsequent agreed SOW expressly provides that we will backup data for you for your use of the Ferryhawk Platform, the Customer acknowledges that:
- it and its Users are solely responsible for creating an independent backup of any of the User inputs and outputs, together with any information or data processed or otherwise inputted into the Ferryhawk Platform;
 - inputs, outputs or information or data relevant to your use of the Ferryhawk Platform may not be retained by us and may be permanently deleted.
- 10. TRANSPORT BOOKINGS**
- 10.1 Ferryhawk provides the Ferryhawk Platform only. To the full extent permitted at law, we have no responsibility for these any other services (such as any travel, transport or carrier services) nor do we make or give any warranty or representation regarding the standard of any other service. All bookings made via the Ferryhawk Platform are made subject to the Customer's terms and conditions including conditions of carriage and limitations of liability imposed by Customers.
- 10.2 All transport bookings are subject to the Customer's booking terms and conditions available which must not assign or allocate to Ferryhawk any:
- responsibility for dealing with Retail User, passenger or end client of the Customer in any manner (whether for ticketing or any other client service matters); or
 - liability in respect of any loss, damage, claim, cost or expense suffered by the Retail User, passenger or end client of the Customer (or the Customer in respect of those persons) arising from or in connection with the supply, non-supply, use or failure to use the Ferryhawk Platform.
- 10.3 If for any reason, any transport, shipping or carrier service provider is unable to provide the services for which a Retail User, passenger or end client of the Customer has contracted with the Customer, then the Retail User, passenger or end client's (as relevant) legal recourse and remedies lay against the Customer and not Ferryhawk.
- 10.4 The Customer indemnifies Ferryhawk against all loss, damage, claim, cost or expense suffered by the Ferryhawk arising from or in connection with:
- Retail User, passenger or end client of the Customer (or the Customer in respect of those persons) arising from or in connection with the supply, non-supply, use or failure to use the Ferryhawk Platform
 - any fraud, wilful misconduct or dishonesty by the Customer or an Administration User.
- 10.5 To the full extent permitted by law, our liability under the Contract to any Retail User, passenger or end client of the Customer is excluded. In any event, we are not liable for any default, cancellation, postponement or delay of transport or carriage goods or services procured by the Retail User, passenger or end client of the Customer, or to be supplied or performed by the Customer. Where a condition, warranty, remedy or similar required by law cannot be excluded by way of contract, our liability for a Retail User, passenger or end client of the Customer booking is limited to the amount of fees paid to us for the use of the Ferryhawk Platform for that booking.
- 11. PRIVACY & PERSONAL INFORMATION**
- 11.1 This clause 11 applies to personal information belonging to the Customer (and its Users) and personal information provided by the Customers (and its Users).
- 11.2 Each party will comply with all applicable privacy laws and data protection laws in relation to the storage, use and transfer of personal information which the party obtains in the course of providing or using the Ferryhawk Platform.
- 11.3 Subject to the terms of this clause 11, if the Customer or a User transmits personal information to Ferryhawk, we will access, store, transmit and use that personal information:
- to the extent necessary to provide the Ferryhawk Platform to the Customer;
 - with, and with the support of, the Hosting Provider; and
 - in accordance with:
 - the Privacy Act; and
 - our privacy policy in place from time to time.
- 11.4 The Customer acknowledges and agrees that we may transfer personal information to our service providers (including the Hosting Provider) which has servers located in Australia. When the Customer's or User's personal information is transmitted under clause 11.3, it will be stored and used pursuant to the Hosting Provider's privacy policy, which is available at www.ferryhawk.com/privacypolicy.
- 11.5 Where we disclose personal information to a third party under this Contract, the Customer agrees that we will not be required to ensure that person's compliance with the Privacy Act or otherwise be accountable or liable for how they handle the Customer's or any User's personal information.
- 11.6 The Customer represents and warrants it has obtained all consents, permissions and authorities required to disclose to us and the Hosting Provider all personal Information that it discloses and for Ferryhawk and the Hosting Provider to use such personal information as contemplated under this Contract.
- 11.7 Where we substantially conform to an instruction or direction given by the Customer or an Administration User to use or not use personal information in a particular, the Customer indemnifies and holds harmless Ferryhawk in respect of any claims, damage, loss, cost, expense or penalty arising from the access, storage or use of the personal information as contemplated by this Contract or instructed or directed by the Customer or an Administrative User.
- 11.8 You agree that we can access, aggregate and use non-personally identifiable data that has been collected via our system or Platform. Aggregated data can include analytical data, often arranged to provide statistical or demographic information about passenger and cargo patterns, traffic patterns and fleet management trends we see. Aggregated data will not be considered personal information when it does not directly or indirectly reveal a person's identity.
- 11.9 We may use this aggregated non-personally identifiable data to assist us to better understand how our customers are using the Platform or any related maritime or transport system, provide our customers with further information regarding the uses and benefits of our Platform, and, otherwise to improve the Platform or Service.
- 12. HOSTING SERVICES**
- 12.1 If the Order Form expressly provides for Hosting Service to be provided, this will entail:
- the procurement by us, on the Customer's behalf, of a third-party provider ("Hosting Provider") to host, on the Hosting Provider's servers, the Ferryhawk Platform and the Customer Data;
 - for the Hosting Provider to make available the Ferryhawk Platform and the Customer Data for use by the Customer via the internet; and
 - for the Hosting Provider to securely backup the Customer Data, in accordance with requirements specified on the Order Form.
- 12.2 The Customer acknowledges that its usage of the Hosting Services and its access and use of the Ferryhawk Platform may be constrained by us or the Hosting Provider from time to time (for instance, we will do it to reflect similar constraints imposed on us by the Hosting Provider, or to ensure the proper performance of the Platform for all its customers and users).
- 12.3 If the Customer detects an error or failure in the Hosting Services, it must lodge a support request with us in respect of the same. The Customer acknowledges that the Hosting Services are procured by Ferryhawk from a Hosting Provider. The Customer acknowledges and agrees that:
- Ferryhawk has no control over the Hosting Provider's performance of the Hosting Services; and
 - we will not be held liable or responsible for any failure in the Hosting Services and/or any lost Customer Data which results from:
 - the Hosting Provider failing to provide, or properly provide, the Hosting Services; and/or
 - any other act, omission, or negligence of the Hosting Provider.



FERRYHAWK TERMS & CONDITIONS

- 12.5 Notwithstanding clause 12.4, we will use our best endeavours to remedy the situation to restore services to the Customer.
- 13. INTERNET/NETWORK REQUIREMENTS**
- 13.1 The Ferryhawk Platform requires a reliable and robust connection to the internet (on third-party telecommunication and data networks) for it to be accessed and for you to take advantage of all of the online features and benefits. It is the Customer's responsibility to ensure that it has an appropriate internet (or VPN) connection in place for use of the Ferryhawk Platform at all times (including at sea, in coastal areas and other remotes regions) and includes up-to-date security practices to protect against improper, illegitimate or malicious access or use of the Ferryhawk Platform at the Customer's end or via the Customer's environment.
- 13.2 The Customer is solely responsible and liable for the setup, configuration and management of the local network, internet, telecommunications and/or wifi infrastructure for use with the Ferryhawk Platform (including speed and capacity).
- 13.3 Access to and use of the Ferryhawk Platform relies and depends on third-party telecommunication and data networks, satellite signals (typically not available indoors) and network coverage which are dependent on a number of factors not within our control including weather, topographical changes, changes to and support of network cellular technologies, the functionality of various satellites, cell towers and clouds, and you agree we are not liable for any issues in this respect. We provide no warranty as to uptime and availability of the Ferryhawk Platform.
- 13.4 Our representatives may provide advice and an indication of the suitability of the Customer's internet, telecommunications or local network connections, it remains the Customer's sole responsibility to ensure it has a suitable internet, telecommunications and local network connections during the use of our Products and at all times during our engagement. We are not responsible for any slow or delayed responses to the Customer's own systems.
- 14. TERM OF FERRYHAWK PLATFORM**
- 14.1 The Ferryhawk Platform, and any other Services we supply, may only be accessed and used by the Customer and its Users:
- whilst all fees and costs owing to us are up-to-date;
 - for the Permitted Use and for the Contract Term described in the Order Form;
 - in accordance with the Product Guide and Operating Procedures; and
 - subject to these Ferryhawk Terms & Conditions, the SAAS Terms and Privacy Policy.
- 14.2 Unless terminated earlier pursuant to an express provision of the Contract, in the 30 day period prior to the expiration of the then-current Contract Term, the Contract will automatically renew on a monthly basis.
- 14.3 On expiry, the Customer's and Users' use and access to the Ferryhawk Platform will expire.
- 14.4 Where you use the Ferryhawk Platform after the expiry of the Contract, notwithstanding any term in this clause 11 it is deemed that you have agreed to extend the Contract for a term and you will be charged fees for the use of the Ferryhawk Platform at our standard pricing for the Ferryhawk Platform which applies at the time of the renewal and not as set out in the original Order Form (unless the Order Form expressly provides otherwise).
- 15. TERMINATION AND SUSPENSION**
- 15.1 We may immediately suspend or terminate a Contract, part of it, or the access or use of the Ferryhawk Platform (or Portal) for the Customer, any User or group of Users if the Customer, a User or group of Users:
- breaches a provision of the Contract;
 - the Customer is using the Ferryhawk Platform for illegal means or in non-compliant manner (especially for OHS); or
 - in our reasonable opinion, the provision of the Services to the Client is resulting in an unreasonable load on our or any other party's servers or services.
- 15.2 Where we suspend, we may so where in compliance with the Contract or where you are in breach of the Contract, and we will suspend for as long as reasonably necessary and without refund or credit. Where we terminate, we will give 7 days written notice and, if the breach can be remedied we will give the Customer the opportunity to remedy the breach within the notice period (such matters at our reasonable discretion). Termination in such instances will be without refund or credit.
- 15.3 Where we can show that an act or omission by you has contributed to the termination of the Contract, we may retain amounts for actual loss and expenses that we incur (including third party costs and expenses whether paid or unpaid).
- 16. PRODUCT WARRANTY**
- 16.1 Except as expressly stated in these Standard Terms & Conditions, the SAAS Terms, or the Product Guide, and except where the law does not permit a warranty to be excluded or requires that a warranty is implied on mandatory basis, the Ferryhawk Platform and Services are supplied "as is" and we do not give any representation, warranties or undertakings in relation to the Ferryhawk Platform. Any representation, condition or warranty which might be implied or incorporated into these Standard Terms & Conditions or the Contract more generally by statute, common law or otherwise is excluded to the fullest extent permitted by law. All warranties and conditions that are capable of exclusion (other than those expressly contained in this document) are expressly excluded.
- 16.2 Your use of the Ferryhawk Platform at your sole responsibility and risk, and we provide no representation, warranty or undertaking of any kind that the Platform will meet your requirements be compatible or work with any other software or systems, operate without interruption, meet any performance or reliability standards or be error free.
- 16.3 During the term of the Contract, we warrant that:
- we are authorised to market, distribute, license and supply the Ferryhawk Platform;
 - our intellectual property in the Ferryhawk Platform will not infringe any third party rights;
 - the Ferryhawk Platform will be supplied in conformance with its relevant specifications and descriptions set out in the Product Guide;
 - the Product will be compatible and interoperable with the IT system requirements defined in the Product Guide;
 - where support for an issue is required, we will use our best endeavours to respond to you and rectify the issue as soon as possible.
- 16.4 You acknowledge that certain goods and services we supply may be sourced from third-party suppliers, and you agree to comply with the terms and conditions of each third party supplier (where required).
- 16.5 Except to the extent the law does not permit a warranty to be excluded by contract or requires that a warranty is implied on mandatory basis, we will not be liable to the Customer or a User for damage or defects to any part of the Ferryhawk Platform or Service, in circumstances where:
- the Ferryhawk Platform has been used inconsistently with instructions or used outside of its Permitted Use or specific operating parameters;
 - there is evidence that the defect or damage was caused by incompatible content or data, misuse, loss of network connectivity or caused by environmental conditions, whether arising from your use or by a third-party; or
 - the Ferryhawk Platform has been modified, damaged or rendered defective by human activity, regardless of whether the activity was malicious or unintentional.
- 16.6 Where the Platform does not meet agreed upon specifications law requires a warranty to be implied into these Ferryhawk Terms & Conditions or the Contract more generally and we are in breach of such warranty, then your sole remedy (at our discretion) is:
- we may resupply the affected good or service again (at our cost);
 - we may pay a third party to supply the affected good or service again; or
 - we may refund you for the amount paid for the affected good or service.
- 17. LIABILITY AND INDEMNITY**
- 17.1 This clause sets out our liability under a Contract, and all warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 17.2 Due to the nature of the Ferryhawk Platform, and our Services, the use of these items by the Customer and Users, and knowing that third parties will rely on the Customer's use of such items, where we have supplied the Ferryhawk Platform in conformance with the Contract (including Product Guide) and done so without a material defect being in issue, the Customer is responsible for using the Ferryhawk Platform in accordance with the Product Guide and Operating Procedures, and the Customer will release us from liability for the use, acts and omissions in respect of the Ferryhawk Platform and Services otherwise.
- 17.3 We will not be responsible for or liable for inaccurate results produced by the Ferryhawk Platform due to inaccurate, incomplete, inappropriate, unreliable, lacking or not up-to-date data or information supplied or inputted by the Customer, a User, any third party supplier, or by or on behalf of a shipper or a ship's crew, harbour master, dockworker, any relevant authority or similar.
- 17.4 Except to the extent that clause 17.6 applies, to the full extent permitted at law, the Customer shall be liable for and indemnify and keep indemnified us and our directors, officers, agents, employees and contractors (the "Indemnified") against all actual, direct, indirect or alleged claims, damages, demands, losses, costs, liabilities, suits, actions, expenses or proceedings of whatsoever nature whether arising under any statute, equity or at common law arising out of or in connection with:
- your use of the Platform or Services, or any claim (including any third party claim) in respect of the use of the Ferryhawk Platform or Services (or any software or documentation in respect of such), that is in any way in breach of the Contract (including the Order Form and any SOW attached), Operating Procedures or the Product Guide, or is in breach of or



FERRYHAWK TERMS & CONDITIONS

- inconsistent with the Permitted Use (including for damage to property, injury to person, or death of any person (including the Indemnified));
- (b) the Customer's or a User's erroneous use, data input, wilful misuse or misconduct in connection with the Ferryhawk Platform or software we supply;
- (c) the Customer's or a User's actual or alleged use of the Ferryhawk Platform or any of our software in violation of applicable law;
- (d) any actual or alleged infringement or misappropriation of third party intellectual property rights or breach of privacy obligations arising from data provided to us by the Customer, a User or other person using the Ferryhawk Platform (this indemnity does not apply to the extent that a third party makes a claim for the infringement of its intellectual property rights by us);
- (e) if the Customer or a User makes any adaptation, development or modification to the Ferryhawk Platform without our written consent;
- (f) any use, misuse or lack of use of Ferryhawk that follows or contravenes any of the Customer's policies, practices, or procedures, or any traditional or industry standard maritime practices;
- (g) any claims made against you in respect of a ticket or booking with an end client or customer;
- (h) any act or omission by you or decision made by you, in respect of the relevant booking or travel for the Retail User (including your failure to honour any booking made or ticket issued).
- 17.5 Except where the Customer or a User breaches:
- (a) the Permitted Use or any limitation on the use of the Ferryhawk Platform under the Contract (eg: clause 2 of the SAAS Terms);
- (b) any confidentiality obligation under the Contract; or
- (c) infringes any intellectual property right in the Ferryhawk Platform or Service, in any other event, the Customer's total liability under the Contract (made up of its parts) under any theory of liability, whether by statute, in an equitable, legal, or common law action, whether for contract, strict liability, indemnity, tort (including negligence), for legal fees and/or costs, or otherwise, for damages which, in the aggregate, will not exceed the amount paid and due to be paid by Customer under the Contract for the Contract Term.
- 17.6 To the maximum extent permitted at law, our liability is limited as follows:
- (a) IN ANY EVENT, OUR TOTAL LIABILITY UNDER A CONTRACT (MADE UP OF ITS PARTS) UNDER ANY THEORY OF LIABILITY, WHETHER BY STATUTE, IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION, WHETHER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), FOR LEGAL FEES AND/OR COSTS, OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER UNDER THE CONTRACT FOR THE GOODS AND SERVICES WHICH GAVE RISE TO SUCH DAMAGES AND EXPENSES;
- (b) IN NO EVENT WILL WE BE LIABLE TO THE CUSTOMER IN RESPECT OF THE FERRYHAWK PLATFORM OR SERVICES THAT HAVE NOT BEEN PAID FOR;
- (c) IN NO EVENT WILL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING DAMAGES WHICH DO NOT NATURALLY ARISE) AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OR CORRUPTION OF DATA OR INFORMATION, BUSINESS INTERRUPTION OR LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITIES, GOODWILL OR DAMAGE TO THE HEALTH OR SAFETY OF ANY PERSON OR INDIVIDUAL; AND
- (d) THESE LIMITATIONS APPLY EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.
- 17.7 Any of the terms and conditions of the Contract which limit or exclude any term, condition, or warranty, express or implied, or the liability of Ferryhawk will apply to the extent permitted by law and will not be construed as excluding, qualifying, or limiting the Customer's statutory rights or remedies arising by virtue of the breach of any implied term of this Contract where such exclusion, qualification or limitation would be prohibited by legislation.
- 18. LICENCES, PASSENGER SAFETY & DANGEROUS GOODS**
- 18.1 Ferryhawk is a software Platform. We are not common carriers, and the Customer indemnifies and holds us harmless in respect of or in connection with any responsibility or liability associated with it being a common carrier.
- 18.2 The Customer is solely responsible and liable for ensuring that all passengers, vehicles, goods and any other items it transports or carries on its vessels:
- (a) are transported or carried in a safe and secure manner;
- (b) are covered by all required licences and insurances;
- (c) do not involve dangerous, hazardous or illegal items or activity; and
- (d) that all duties, excises, taxes and custom have been paid.
- 18.3 The Customer acknowledges that we do not have control over, nor does we take any responsibility for, the legality, safety, or appropriateness of any passenger conduct, vehicles, items or goods transported or carried. It is the Customer's responsibility to ascertain and obey all applicable local, state, federal, and international laws (including minimum age requirements) regarding the transportation, carriage, or possession of any passenger, vehicles, items or goods.
- 18.4 The Customer will indemnify and hold harmless Ferryhawk all loss, damage, claim, cost or expense suffered by the Ferryhawk arising from or in connection with the Customer's breach of this clause or the Customer's violation of any law or the rights of a third party regarding their carriage, or the transportation or possession of dangerous or illegal vehicles, items or goods.
- 19. CONFIDENTIALITY**
- 19.1 A party (**Receiving Party**) will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed (either orally, in writing or by demonstration) to the Receiving Party by the other party (**Disclosing Party**) or its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain (**Confidential Information**).
- 19.2 In relation to any Confidential Information received from the Disclosing Party or from a third party on behalf of the Disclosing Party, the Disclosing Party and the Receiving Party agree:
- (a) to treat the Confidential Information in confidence and to use it only for the purpose of discharging the Receiving Party's obligations under the Contract;
- (b) not to disclose the Confidential Information to any third party without the express written permission of the Disclosing Party.
- 19.3 The Receiving Party may disclose any Confidential Information which:
- (a) is in or comes into the public domain in any way without breach of the Contract by the Receiving Party (or any person or entity to whom it makes disclosure), or was in the possession of the Receiving Party before disclosure of it by the Disclosing Party;
- (b) is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
- (c) is required by law to be released (e.g. by a court order), provided that, when permitted by the applicable law, the Disclosing Party is given clear and timely prior written notice of such request.
- 20. MISCELLANEOUS**
- 20.1 We reserve the right to periodically audit the Customer to ensure that it and its Users are not using the Ferryhawk Platform in violation of any term of the Contract. The Customer will give full access to its systems, records and personnel to the extent required to conduct the audit in respect of the use of our Ferryhawk Platform. If the audit discovers that a User is not using the Ferryhawk Platform or the software in our Ferryhawk Platform in accordance with the Contract, the Customer shall pay the costs of the audit.
- 20.2 The parties each agree to comply with all applicable laws, regulations, and ordinances relating to such party's performance and obligations under these Ferryhawk Terms & Conditions.
- 20.3 No amount owing by you to us may be set off against any liability by us to you (in each case whether present, future, actual, contingent or prospective).
- 20.4 A consent, approval, commitment, waiver or similar to be given by us only binds us if given by way of a written document signed by a director of Ferryhawk.
- 20.5 All terms and conditions in respect of liability, indemnities, confidentiality, product warranties and disclaimers, the use of the Ferryhawk Platform or Services and any intellectual property rights shall survive termination of the relevant Contract (however arising).
- 20.6 The law of Queensland, Australia is the proper law of the Contract and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland, Australia. The parties agree that the *Sale of Goods Act 1896* (Qld) and the *United Nations Convention on Contracts for the International Sale of Goods* (CISG) do not apply to these Standard Terms & Conditions. English is the language of the Contract and any dispute.
- 20.7 If either party is unable wholly or in part, by reason of a Force Majeure Event to carry out any obligation under the Contract it shall promptly give notice to the other party specifying the Force Majeure Event and the likely duration of its inability to perform and that obligation shall be suspended so long as the Force Majeure Event continues. This does not apply to the obligation to make a payment. ("Force Majeure Event" means any matter outside the control of a party, or industrial action, blockade or embargo or any other form of civil disturbance (whether lawful or not), pandemic, pestilence, industry wide material shortages or component shortages, a major natural weather event, earthquake or any other natural disaster).
- 20.8 An amendment to a Contract or a waiver only binds us to the extent that it is in writing and signed by a director of Ferryhawk. Failure to exercise or any delay in exercising any right, power or remedy does not operate as a waiver.
- 20.9 These Ferryhawk Terms & Conditions shall prevail over all other terms and conditions including any terms and conditions added to an Order Form by the Customer, any Customer purchase order terms (which will not apply), or other document of the Customer concerning the Ferryhawk Platform and Services (which will not apply).



FERRYHAWK TERMS & CONDITIONS

- 20.10 If any provision of these Ferryhawk Terms & Conditions is or becomes invalid, illegal or unenforceable, in whole or in part, then the provision will apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the parties. To the extent that it is not possible to delete or modify the provision, in whole or in part, under this clause 23.10, then such provision or part of it will, to the extent that it is illegal, invalid or unenforceable, be deemed to not form part of this document.
- 20.11 The Customer may not assign any part of a Contract or otherwise transfer any licence whether by operation of law, change of control, or in any other manner, without our prior written consent. Any purported assignment of such in violation of this clause will be deemed void. We may assign, in whole or in part, our rights, interests, and obligations without limitation.
- 20.12 Unless the context otherwise requires, words importing the singular shall include the plural and vice versa. Headings are for convenience only and must be ignored in construing this document. References to any person include references to any individual, company, body corporate, association, partnership, firm, joint venture, trust and government. References to any party include references to its respective successors and permitted assigns. The word "include" in any form is not a word of limitation.

