

## **Uniqco Terms and Conditions**

These terms and conditions apply to all customers of Uniqco WA Pty Ltd, ABN 51 108 029 241 and its related entities Uniqco International Pty Ltd, ABN 56 009 458 824, Andrews Family Nominees Pty Ltd ABN 11 459 973 748 and AWD Pty Ltd 69 058 699 620 hereinafter collectively referred to as "Uniqco".

### **1. Application**

- 1.1 These Conditions apply to, and from the date of a request by, a Customer for the Services and are incorporated in any agreement between Uniqco and a Customer for Services.
- 1.2 The Unifleet application, also known as "SaaS" (Software as a Service) (herein collectively referred to as "Unifleet") is a customer accessible, on-line plant and fleet management system offered by Uniqco, a specialist supplier of plant and vehicle management consultancy and support services.
- 1.3 These Conditions apply to the use by the Customer of any Unifleet or Uniqco application, associated software or web site whether or not Uniqco charges for such use.
- 1.4 Uniqco makes available Unifleet and the Services to the Customer for the Customer's own use and benefit and not for the use or benefit of any other person whether or not that person is disclosed to Uniqco.
- 1.5 Unifleet includes intellectual property rights belonging to Uniqco and to third parties and is hosted, maintained, upgraded and supported by third parties under contracts with Uniqco (and the intellectual and contractual rights of the third parties are referred to as "Intellectual Proprietary Rights").

### **2. The Services**

- 2.1 The Customer is aware that the Services are made available by Uniqco as an online and/or web-based system to which the Customer is granted access by Uniqco.
- 2.2 Uniqco shall provide such Services as are agreed with the Customer pursuant to the Customer Requirements. Uniqco may supply the Services in such form or manner as it reasonably considers appropriate.
- 2.3 To enable Uniqco, on a good faith basis, to protect the interests of its Customers, Uniqco has entered into an escrow agreement such that Unifleet and upgrades thereto (excluding Customer Data) are held by an independent escrow holder unconnected with Uniqco to maintain the separate integrity of Unifleet.

### **3. The Services**

- 3.1. Where a Service attracts a fee, Uniqco shall issue an invoice to the Customer which shall be paid in advance or otherwise as agreed between the parties in relation to each Service. Uniqco may require provision of security for future invoices. The Customer shall pay the invoice totals without deduction, set off or counterclaim whatsoever within and upon the terms set out in the invoice or under these Conditions.
- 3.2. A Customer may terminate the Services for convenience by giving Uniqco a minimum of 90 days' written notice of such termination for convenience. The Customer acknowledges that Uniqco has long term support agreements in place for the hosting, development and support of the Services and that Uniqco will be entitled to charge the Customer a fee for termination for convenience. The Customer will be liable to pay the termination for convenience claim within 7 days of the date of the invoice issued by Uniqco.
- 3.3. Without prejudice to Uniqco's right to withhold the provision of any Service, all outstanding and unpaid invoices shall incur interest on the amount outstanding, from time to time, at the current

bank overdraft interest rate.

- 3.4. In the event of a dispute as to the amount payable by a Customer, a written certification by an authorised officer of Uniqco as to the amount due shall, in the absence of fraud, be prima facie evidence of the amount due and payable.
- 3.5. The Customer shall be liable for and shall pay tax under the A New Tax System (Goods & Services Tax) Act 1999 (Commonwealth)

#### **4. Breach and Duration of Services**

- 4.1. If the Customer fails to comply with the full terms of these Conditions including in respect of payments, Uniqco may, without prejudice to any other legal rights:
  - 4.1.1. suspend the provision of any Service or the availability of Unifleet to the Customer;
  - 4.1.2. withhold the provision of any Service or the availability of Unifleet until payment is made or the breach rectified to the satisfaction of Uniqco;
  - 4.1.3. terminate the agreement for the provision of the Service.

#### **5. Services Warranty**

- 5.1. The Customer declares that it is aware of the general unreliability of the provision of “on-line” and internet-based services and, consequently, shall implement its own online software protections and its own risk management services including ‘back ups’.
- 5.2. If a Force Majeure Event occurs preventing, disrupting, hindering or corrupting the provision by the Customer of the Customer Data, the Services shall be suspended until the earlier of the ending of the Force Majeure Event or the receipt by Unifleet of the Customer Data.
- 5.3. If a Force Majeure Event occurs, then:
  - 5.3.1. Uniqco shall take such reasonable steps as it, in its absolute discretion, considers appropriate to respond to the Force Majeure Event;
  - 5.3.2. Uniqco may suspend the provision of a Service until the ending of the Force Majeure Event.
- 5.4. If the parties agree that a Force Majeure Event is not likely to end within a reasonable time acceptable to both parties or, in the absence of such agreement, the Force Majeure Event continues to persist for a period of 10 Business Days, the agreement between the parties may be terminated by one party giving to the other notice of such termination.
- 5.5. Uniqco may at its option, charge for all Services provided to the Customer up to termination of the agreement or the occurrence of a Force Majeure Event, whichever is later.

#### **6. Limitation of Liability**

- 6.1. Uniqco shall not be liable for, and any agreement between the parties shall exclude liability for, the conduct of any person (other than Uniqco, its servants, agents, employees and subcontractors), who provides or has provided a service to Uniqco and, in particular, Uniqco is not vicariously liable for the conduct of a person having an interest in the Intellectual Proprietary Rights.
- 6.2. Uniqco shall not in any event be liable whatsoever for any claim of a Customer under any Applicable Laws if:
  - 6.2.1. the Customer’s negligence or failure to act caused or contributed to the loss or damage of which the Customer complains;
  - 6.2.2. the Customer fails to notify Uniqco of the facts giving rise to a potential claim by the Customer from the date the Customer became aware of those facts alternatively from a date from which the Customer ought to have become aware if the Customer had taken reasonable steps to ascertain those facts.

- 6.3. In respect of a liability to a Customer for which Uniqco may be held liable, such liability shall:
  - 6.3.1. exclude any Consequential Loss; and
  - 6.3.2. be limited to a sum representing the lesser of the aggregate of all monies actually received by Uniqco from the Customer in respect of the Service in connection with which the claim arises or the maximum of \$50,000.00.
- 6.4. The parties declare that they have taken into account the nature of the Services and the purposes for which each party utilises Unifleet in reaching agreement as to the limitation of liability in this subclause which they agree and warrant is a genuine attempt to pre-estimate likely future loss and the Customer expressly declares that it accepts to be bound by such limitation of liability.

## 7. Indemnity

- 7.1. The Customer warrants that it shall not use Unifleet or the Services such as to result in a breach of the Applicable Laws or infringe the rights of a person, including, without limitation, contractual rights, Intellectual Proprietary Rights, publicity and privacy rights and the reputation of Uniqco.
- 7.2. The Customer unconditionally warrants and represents that it has the unqualified right to provide to Uniqco any Customer Data of whatsoever nature and that Uniqco has an unconditional unrestricted right to receive or use the Customer Data in connection with the Services.
- 7.3. The Customer warrants that it shall implement and maintain proper procedures for the preservation of the integrity of Unifleet and use properly qualified persons in respect of the access to or the use of Unifleet and the Services.
- 7.4. The Customer warrants and undertakes that it shall apply and maintain all security procedures so as to reasonably ensure that no loss, damage, disruption, interference or unauthorised use occurs of or to Unifleet.
- 7.5. The Customer shall indemnify and keep indemnified Uniqco in respect of any claim arising in connection with the preceding warranties.
- 7.6. If a person makes a claim arising from a Service provided by Uniqco to the Customer and that person's claim involves or results in a claim against Uniqco, the Customer shall indemnify Uniqco in respect of that person's claim.
- 7.7. If the PPSA applies to this agreement:
  - 7.7.1. to the extent permitted thereunder, the Customer contracts out of and waives any rights in relation to or to receive any notifications, verifications, disclosures and reinstatements of this agreement, objections or other documentation referred to under the PPSA;
  - 7.7.2. the Customer shall do all acts necessary to enable Uniqco to perfect any security interest (as defined under that Act) that Uniqco may have under the agreement;
  - 7.7.3. the Customer represents and warrants that any Services under the agreement are acquired and used by the Customer for business purposes.

## 8. Customer Responsibilities

- 8.1. The Customer's responsibilities for access to and use of the Services include but are not limited to those set out in this agreement and shall include all such reasonable steps as the Customer should take or ought to take to protect its own interest.
- 8.2. **Customer Specifications.** It is the responsibility of the Customer to provide Customer Data such as to enable Unifleet to provide the Services and Uniqco shall not be liable for the consequences of any bona fide attempt to comply with or respond to the Customer Data.
- 8.3. **Security.** The Customer is responsible for security related to the Customer's use of or access to the Services and to Unifleet and to ensure that no external or unauthorised interference occurs to Unifleet. The Customer is responsible for keeping any access codes, logins and passwords protected, confidential and secure and accessible only to persons authorised to use the Service.
- 8.4. Upon request, Uniqco may, upon terms to be agreed, assist the Customer with the Customer's efforts to detect and identify breaches of security and unauthorised access in

relation to the Services, but Uniqco shall not be liable in any manner to the Customer for Uniqco's failure or inability to detect or identify such breaches.

- 8.5. **How to use the Service.** The Customer is responsible for undertaking such training as the Customer may require to be acquainted with Unifleet for the purposes of a Service and on how to use Unifleet effectively. Uniqco may assist the Customer in such manner as it deems fit. Uniqco shall be entitled to charge for any special assistance required including in connection with any loss, damage, disruption or interference with Unifleet attributable to the conduct of the Customer or a person for whom the Customer is responsible.
- 8.6. **Intellectual Proprietary Rights.** The Customer shall preserve and shall not breach the Intellectual Proprietary Rights and undertakes not to use Unifleet contrary to the terms of understanding between the parties. All Intellectual Proprietary Rights are confidential and shall not be disclosed by the Customer to any person without the express prior written consent of Uniqco.
- 8.7. **File Content.** The risks in respect of any Service and Customer Requirements and Customer Data shall remain with the Customer and the Customer is solely responsible for all database content and other files contained in its own directory or other storage space on the Unifleet network. Unless otherwise expressly agreed, Uniqco does not review Customer Data at any time before, at the time of or after the provision of the Customer Data and does not check, verify, endorse or otherwise take responsibility for the contents generated or provided by the Customer. However, Uniqco reserves the right to remove any Customer Data which it may reasonably consider is in breach of these Conditions.
- 8.8. **Compliance.** The Customer is solely responsible for complying with all Australian laws and legislation in the use of a Service (including the provision of Customer Data) and before, during, at the time of or after accessing a Service and shall indemnify and keep indemnified Uniqco (and its servants, agents, employees and subcontractors) in respect of all actions, proceedings, costs, demands and claims arising from the Customer's breach of the Applicable Laws.

## 9. Technical Support

- 9.1. **Non-chargeable Technical Support.** At the discretion of Uniqco, Non-chargeable Technical Support and Customer Service are provided as part of the Services, without additional charge, to a Customer. Non-chargeable Technical Support is provided during business hours (AEST). Due to the complex and customer-specific nature of the Services provided by Uniqco and the influence of factors beyond Uniqco's control, the parties agree that it is not possible for Uniqco to specify in advance with particularity the amount, nature or cost of support or to certify before commencing a Non-chargeable Technical Support and Customer Service whether the supply thereof will exceed any limitation of the Non-chargeable Technical Support.
- 9.2. **Chargeable Technical Support.** Uniqco reserves the right to charge service fees for more extensive or specialist Technical Support. Uniqco will advise a Customer at the time the Customer requests a Service or prior to supplying a Service that further Technical Support is or may be chargeable. Chargeable Technical Support may include:
  - 9.2.1. significant (including protracted or time consuming) investigations to determine the source or cause of a problem which is particular to a Service (including whether a Force Majeure Event applies and its effect) and not to the operation of Uniqco's services in general;
  - 9.2.2. custom application modifications or Customer specific service configurations are not part of the original setup of the Service.
- 9.3. **Request to Fix.** A request for 'fixes' (including further assistance, guidance or instruction) to be performed by Uniqco staff to a web site or web application or equipment configuration is Chargeable Technical Support and will be charged for unless other management and maintenance arrangements with Uniqco are in place.
- 9.4. **Authorisation to Proceed.** If a Customer is informed that a Technical Service request is chargeable, Uniqco will charge for the Service if the Customer continues to require the Service to be provided.

9.5. **Other Support Arrangements.** In addition to the agreement to which these Conditions apply and any Technical Support services provided, the parties may enter into specific or general agreements for services other than the Services (including additional support, management and maintenance) and in all such cases, these Conditions apply thereto.

## 10. System Environment Changes & Service Continuity

- 10.1. **System Environment Changes.** Uniqco may from time to time perform maintenance and upgrades in connection with its system. The parties acknowledge that over time system environments change in response to emerging issues with third party software, security alerts, service patches, and so on. Upgrading web applications or web sites to handle these necessary changes is the responsibility of Uniqco. Uniqco does not warrant that its technical systems will remain unchanged and will not affect a Customer's Service.
- 10.2. **Migration to New Platforms.** Uniqco may migrate a Service to new equipment or platform or software, at Uniqco's discretion and for any reason whatsoever including alterations in the supply of any underlying operating systems. Uniqco will use reasonable endeavors to notify a Customer in such event and to give such reasonable notice as is practicable in the circumstances.
- 10.3. **Scheduled Maintenance.** Uniqco will attempt to perform all Maintenance, whether scheduled or otherwise, at times of least inconvenience to its Customers. Uniqco may at its discretion allocate specific times for scheduled outages to enable maintenance of the Services. At these times the Service may not be available. Arrangements for such an outage may change and are obtainable on request from Uniqco.
- 10.4. **Standard Maintenance Periods.** The following times are our standard maintenance periods which may occur without additional prior notice:
- 10.4.1. Tuesdays from 4.00 am till 8.30 am AEST
  - 10.4.2. Sundays
- 10.5. **Notice of Scheduled Maintenance.** If scheduled maintenance requires the Service to be unavailable or inaccessible for a continuous period of 30 minutes, Uniqco will endeavour to advise a Customer approximately 48 hours beforehand by email to the Customer.
- 10.6. **Emergency Maintenance.** Uniqco shall be entitled to respond to any emergency event including a Force Majeure Event for the maintenance of the integrity of Unifleet (including by terminating a supply) and may do so without prior notice to the Customer.

## 11. Privacy

Uniqco is committed to protecting a Customer's privacy. **Uniqco's Privacy Policy is available on its website.** It is a Customer's responsibility to become familiar with the Privacy Policy in connection with a Service, from time to time.

## 12. Variations & Amendments

- 12.1. The parties declare and agree that the nature of their contractual relationship is closely connected with and dependent upon internet and online services and consequently the Customer accepts responsibility for keeping abreast of variations and changes to these Conditions on Uniqco's website at [www.uniqco.com.au](http://www.uniqco.com.au).
- 12.2. The Customer declares that it is 'IT' literate and agrees that all contractual arrangements and variations thereto in electronic form are accepted by the Customer. The Customer agrees that Uniqco shall be entitled to change these Conditions, including pricing information, from time to time without prior notice and in addition to posting any changes on Uniqco's said website, Uniqco may at its discretion notify the Customer of any material changes.
- 12.3. Without prejudice to the foregoing, it is the policy of Uniqco to keep its Customers informed of any material changes in terms including as to pricing.
- 12.4. These Conditions, as varied from time to time, shall apply to each Service requested, from time to time, by a Customer.

- 12.5. If these Conditions are varied after a Customer has requested a Service and prior to completion thereof, the Customer may terminate its request for the provision or continued provision of the Service upon giving three (3) Business Days' notice to Uniqco from the date these Conditions are varied.
- 12.6. If a Customer purports to terminate a Service under the preceding subclause and thereafter continues to access the Service, that termination will be of no effect and Uniqco will be entitled to charge for the Service under the varied or amended conditions.

### 13. General Provisions

- 13.1. **Dispute Resolution.** In the event of a dispute between the parties, each party shall appoint its most senior authorised person with authority to negotiate and bind each party to the terms of a resolution of the dispute.
- 13.2. **Amendment.** Except as otherwise provided in these Conditions, these Conditions cannot be altered except by the prior written consent of both parties and such consent cannot and shall not be provided by or by exchange of electronic communications (for example emails).
- 13.3. **Failure to Exercise Power.** A party's failure or delay in exercising a power or right does not operate as a waiver of that power or right and an indulgence by one party shall not be deemed to have altered the terms of this agreement or the right of the party to exercise a right or power under this agreement.
- 13.4. **Legal Jurisdiction.** The laws for the time being of the State of Western Australia apply to these Conditions and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia and appeals there from.
- 13.5. **Relationship.** Nothing in these Conditions shall be construed as resulting in a relationship of principal or agent, employment, partnership or joint venture between the parties.
- 13.6. **Applicability.** The parties agree that no clause in these Conditions will be interpreted contra proferentem. If there is any discrepancy or inconsistency between these Conditions or any additional agreements between the parties or a formal quotation provided by Uniqco, the terms of the other agreement or the formal quotation (as the case may be) shall prevail provided always that each such agreement is signed by both parties and a formal quotation is issued in writing by Uniqco.

### 14. Acceptance

- 14.1. The Customer accepts these Conditions and any amendments or variations thereto if:
  - 14.1.1. the Customer signs a document containing these Conditions; or
  - 14.1.2. the Customer communicates to Uniqco its acceptance of these Conditions or any variations or amendments thereto in any manner (including for example orally, electronically or by letter);
  - 14.1.3. the Customer requests a Service; or
  - 14.1.4. the Customer does not object to a variation or amendment to these Conditions;
  - 14.1.5. the Customer conducts itself (for example by continuing to provide Customer Data or to access Unifleet) in such a manner as to reasonably lead Uniqco to believe that it is entitled to continue to provide the Services under these Conditions or any variations or amendments thereto.

## 15. Definitions

- 15.1. **“Agreement (agreement)”** means these Conditions and any other agreement between Uniqco and a Customer, unless the context requires otherwise (for example excludes separate agreements for Chargeable Technical Support or specific or general arrangements for additional support, management and maintenance).
- 15.2. **“Applicable Laws”** means:
- 15.2.1. principles of law or equity established by the decisions of the Courts of Australia or a State or Territory of Australia;
  - 15.2.2. terms of agreement between the parties from time to time including these Conditions and any specific agreements between the parties;
  - 15.2.3. statutes, regulations and bylaws of the Commonwealth of Australia, a State, Territory or a government agency thereof;
  - 15.2.4. requirements, approvals, consents and licences of the Commonwealth of Australia, a State, Territory or a government agency thereof.
- 15.3. **“Business Day”** means a day that is not a Saturday, Sunday or gazetted public holiday in the State of Western Australia.
- 15.4. **“Customer”** means a person who requests a Service and includes a person on whose behalf the request has been made and includes associated and related persons of a Customer.
- 15.5. **“Customer Data”** means all information however supplied or inputted by a Customer and all content and files contained or maintained in the Customer’s directory or other storage space in Unifleet and includes any content whatsoever existing therein, from time to time, including records, pages, images, emails and files (however generated). **“Customer Requirements”** means the requirements and needs of the Customer in respect of which the Customer requests a Service.
- 15.6. **“Consequential Loss”** means any indirect or special or purely financial or consequential loss or loss of revenue or potential revenue or loss of profit or potential loss of profit or loss of business opportunity or incidental loss or loss of capital or loss of production or loss of goodwill or damage to property or damage to property of a person to whom a party may be liable or economic loss of any nature or character whatsoever and howsoever arising including under any Applicable Laws regardless of whether that loss or damage was expressly notified by one party to the other or was in the reasonable contemplation of the parties at the time a Service was requested or provided or supplied.
- 15.7. **“Force Majeure Event”** means an event (or a series of events) outside the reasonable control of a party including but not limited to unreliability of, difficulties with and unauthorised access to the internet and connections to and from it, hardware and software failures, loss, interruption, disruption or corruption to Unifleet or Customer Data due to external interference or interception or security breaches (including “hacking”) or virus activity, failure by any person to supply, maintain or make available or continue to make available the Intellectual Proprietary Rights or the supply thereof or access thereto, acts of God, lightning or other electrical disturbances, fire (including the effects of bush fires), storm, explosion, flood, landslide, perils of the sea or air or earthquakes or disruptions or damage to facilities and supplies in connection with internet equipment or software (including access thereto), industrial action, power shortages or outages, incidents in connection with provision of utilities and services outside the control of a party (including in the supply or attempted supply of the National Broadband Network).
- 15.8. **“Intellectual Proprietary Rights”** means all rights, titles, interests in and to designs, specifications, plans, knowhow, techniques, technology, trademarks, patents, copyrights, inventions, discoveries or formulations (together with all upgrades, modifications, improvements, refinements or developments thereto) and all contractual rights in connection with Unifleet entered into between Uniqco and a third party.

- 15.9. **“Interest Rate”** shall be the rate of 8.5% on the total amount outstanding of all amounts owing to Uniqco or such other rate as may be communicated by Uniqco to the Customer by way of notice or amendment to these Conditions on Uniqco’s website.
- 15.10. **“PPSA”** means the Personal Properties Securities Act 2009 (Commonwealth of Australia).
- 15.11. **“Services”** means the supply to a Customer of Unifleet as an online plant and fleet management system together with such other and additional services as may be agreed between Unifleet and the Customer, from time to time and includes a part of a Service.
- 15.12. **“Supply”** means a supply or availability or the granting of access, unless the context otherwise requires and includes grammatical variations of ‘supply’ (such as ‘supplies’ and ‘supplied’).

## **16. Interpretation**

- 16.1. A reference to a party means a party to this agreement and includes that party’s employees, successors, permitted assigns and substitutes.
- 16.2. A reference to a person (including a party) includes natural persons, body corporate, trustees, firms, partnerships, companies, corporations, associations, organisations, governments, States, foundations (in each case whether or not having a separate legal personality) and includes a related person.