



QikID PTY LTD ABN 14 154 042 761
PO Box A2626, SYDNEY SOUTH NSW 1235
PHONE 1300 553 256
WEB <https://qikid.com> EMAIL service@qikid.com
MASTER SECURITY LICENCE (NSW) 000100799

Last Updated April 2017

QikID PTY LTD TERMS AND CONDITIONS OF SALE

1. MODIFICATION / ENTIRE AGREEMENT

- 1.1 The Application for Service signed by the Client (**purchase order**) together with these terms and conditions of sale constitute the entire agreement between QikID Pty Ltd (**QikID**) and the Client (**the agreement**). No modification of the terms of the agreement shall be effective unless made in writing and signed by both parties. Insofar as these terms and conditions of sale contain terms and conditions additional to and or different from Client's purchase order, these terms and conditions of sale shall supersede all terms of the Client's purchase order which are in conflict with these terms and conditions of sale.
- 1.2 There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this agreement. Any brochures and marketing material that may have been provided to the Client does not form part of this agreement.
- 1.3 For the purposes of this agreement, the term **equipment** includes hardware and software.
- 1.4 For the purposes of this agreement, the term **Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions, and other products of intellectual activity, whether registered or unregistered, in the industrial, commercial, scientific, literary or artistic fields.

2. PRICES & GST

- 2.1 All invoiced prices are inclusive of GST unless stated otherwise.
- 2.2 For the purpose of this agreement, the following words have the attributed meanings:
- 2.2.1 "**GST**" means any tax on goods, services and other supplies, including any value-added tax, broad-based consumption tax or other similar tax introduced in Australia.
- 2.2.2 "**GST Exclusive Value**" means the GST exclusive value as calculated in accordance with the GST Law.
- 2.2.3 "**GST Law**" includes any Act, order, ruling or regulation that imposes or otherwise deals with the administration or imposition of a GST in Australia, including A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 2.3 Where a GST is payable in connection with any supply made by either party to the other under this agreement:
- 2.3.1 the party making the supply is or will be registered under GST Law at the time the supply is made by that party; and
- 2.3.2 a tax invoice (as that term is defined in the GST Law) in connection with the supply has been rendered by the supplier to the recipient of the supply.
- 2.4 The consideration payable or to be provided for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply.

3. STANDARD TERMS OF PAYMENT

Payment is to be made in full by Direct Debit by the due dates stated on the invoice unless otherwise agreed in writing by QikID. Where applicable all freighted orders, where QikID is not providing on-site installation of the equipment require payment in full before the equipment is dispatched. The Client agrees that it is unconditionally bound to pay all amounts due under this agreement in full without set-off or counterclaim, and without any deduction in respect of taxes, unless prohibited by law, on any account whatsoever.



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4. CLIENT'S CREDIT

If in the opinion of QikID, the capacity of the Client to meet its financial obligations under this agreement has become impaired or is otherwise considered by QikID to be unsatisfactory, or should the Client be in default under this agreement or any other agreement with QikID, then advance cash payment or satisfactory security shall be given by the Client upon demand by QikID, until such time when the impaired financial capacity or contractual default has been remedied by the Client.

The Client represents that it is solvent and can and will pay for the equipment sold to the Client in accordance with the terms of the purchase order. If the Client fails to comply with any provision of this agreement or to make required payments in accordance with the terms of this agreement or any other agreement between the Client and QikID, QikID may at its option, without waiving any other rights it may have, terminate this agreement and deactivate any and all equipment related to or reflected on an invoice purchase order or existing agreement. QikID in such an event is also authorised by the Client to enter upon the Client's premises and recover possession of the equipment.

5. DELIVERIES

The Client shall furnish QikID with delivery instructions for the equipment. QikID shall not be liable to the Client for any damages claimed resulting from delay in delivery of the equipment after the date of delivery specified. The risk of loss of the equipment shall pass to the Client upon QikID's delivery to the carrier. Delivery dates are approximate. Upon delivery of the equipment, it is the obligation of the Client to inspect the equipment and satisfy itself that it is in good operating order and condition.

6. TITLE OF GOODS

Title to all purchased equipment will remain with QikID until the invoice is paid in full. Title to all rented equipment remains with QikID. The Client shall keep all rented equipment free and clear of any liens or other encumbrances, and shall not permit any act where QikID's title or rights in respect of the equipment may be negatively affected.

7. QIKID SOFTWARE

The Client acknowledges that QikID retains ownership of the software forming part of the equipment at all times whether in its original form or as modified during the currency of this agreement. All Intellectual Property Rights in the software are retained by QikID and nothing in this agreement affects those Intellectual Property Rights. This acknowledgment will not limit QikID's rights granted under the software licensing for any software reflected on the Client's invoice purchase order. The Client shall be bound by and obligated to the duties therein to secure, keep confidential and make reasonable efforts to prevent the unauthorised distribution of all legally protected information granted by QikID under any existing software licence for each item of software listed on the Client's invoice. The Client shall not modify in whole or any part of the software or combine or incorporate the whole or any part of the software in any other program or system and will ensure, at all time during the term of this agreement, that up to date best practice antivirus software is installed and operational upon the Client's computer network or equipment that hosts the Software.

8. TECHNICAL & BUSINESS SUPPORT

Technical & business support will be provided only to the Client if the Client uses QikID software for its intended use as stated. Telephone and e-mail support will be provided pursuant to the Current QikID Support Policy as published on QikID's website.

9. SOFTWARE UPDATES, MODIFICATIONS, UPGRADES AND SUBSCRIPTIONS

Where software forming part of the equipment is purchased on a licence basis, included in the purchase price of each software product, the Client will be automatically enrolled in a 12 month subscription for software updates to the product and may elect to purchase additional subscriptions beyond the expiration of each 12 month subscription. The Client will be responsible for contacting QikID to receive software updates and to arrange for the the implementation of each update. . Where the Client's system comprises multiple software licences, the Client acknowledges that any upgrade to the system would require an upgrade to all software licences in order for the system to function effectively and that a subscription for each licence is therefore required to be current before an upgrade can be performed. QikID does not support partial upgrades under any circumstances. Customisations developed for a Client may require additional upgrade labour which is not included in the upgrade subscription. The Client accepts that updates can remove or modify existing functionality in software and accepts responsibility to ensure updates are suitable for the Client's business.



10. SOFTWARE DEFECTS

While QikID will make every attempt to remedy all software issues as quickly and accurately as possible, it is to the sole discretion of QikID to determine whether a software issue warrants remedial measures. All software issue determinations made by QikID will be final.

11. THIRD PARTY HARDWARE AND SOFTWARE

Third-party hardware and software sold by QikID are sold under the terms of each preferred third-party vendors' end-user licence agreement. All third-party hardware and software are provided to the Client with its respective manufacturer warranty.

12. IMPLEMENTATION AND INSTALLATION SERVICES

All implementation and installation of the equipment will only be completed during the weekday hours of 9am-5pm at a mutually convenient time. Implementation and installations services will be limited to:

- 12.1 installation and configuration of physical hardware (excluding cabling or shop modifications);
- 12.2 installation and configuration of software;
- 12.3 importing relevant data;
- 12.4 database installation and configuration;
- 12.5 user security configuration; and
- 12.6 training.

Additional charges at applicable rates may be billed using a time and material basis for implementation and installation services in excess of the hours detailed in the Client's invoice and the applicable weekday schedule as detailed herein. The Client will be charged a \$500 cancellation fee plus GST in the event that a scheduled implementation or installation is cancelled after work has begun on preparing the installation.

13. TRAINING

All training will only be completed during the weekday hours of 9am-5pm. Where training is included in a quotation that training has to be delivered at the time of the installation unless other written agreement is reached, thus the Client accepts that he/she will be required to attend that training. . Equipment and software training services will be limited to:

- 13.1 training of senior staff in the daily operation of the system;
- 13.2 training of front of house staff in basic operations; and
- 13.3 answering questions asked by the Client's staff.

It is the responsibility of the Client to ensure that all employees who are to be trained are in attendance at the training meeting and are capable of performing all business operations related to each component item of the equipment and software. Unless otherwise provided on the invoice, all training will be conducted at the Client's place of business using the Client's newly acquired equipment.

14. SOFTWARE DEVELOPMENT SERVICES

Additional software customisation and enhancements are available to the Client at the Client's cost, within applicable legislative constraints and approvals

15. HARDWARE REQUIREMENTS

System performance will be dependent upon the existing hardware and/or software (**Environment**) the Client chooses to run the system in. QikID shall in no way be responsible for slow or poor performing systems where the Client chooses to run the system in incompatible or a poor performing Environment. While QikID will advise the Client as to the size of their existing system and provide recommendations for expansion, the Client will be solely responsible for running the system in an incompatible or poor performing Environment.

16. COMPUTER SYSTEMS

The Client accepts that the equipment is based on one or more computer operating systems and is therefore subject to any issues that arise with said operating system.



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17. CABLING

With reference to all quotes, the Client will be responsible for ensuring that all network, power, and other device cabling are available at all points of deployment to a suitable quality standard and certification.

18. INTERNET CONNECTIVITY

QikID requires that all sites have internet access and. the Client accepts the responsibility to pay for and maintain the connection. The Client acknowledges that:

- 18.1 access to the software forming part of the equipment is via the internet;
- 18.2 the ability to use the software is reliant upon the connection speed and availability of the internet, internet service with static IP address and the internet browser used by the Client;
- 18.3 QikID is not responsible for the performance of the software if it is affected by the performance of the internet.

19. CERTIFICATION AND COMPLIANCE WITH GOVERNING LAWS AND REGULATIONS

It is the responsibility of the Client to ensure that all equipment complies with all governing laws and regulations and the relevant certifications are completed.

20. WEBSITE TERMS AND CONDITIONS

The current version of these Terms and Conditions of Sale can also be found on the QikID website under "Terms and Conditions of Sale" at www.qikid.com. Please also take note of the "Terms and Conditions of Use".

21. QUOTED WORK AND ESTIMATIONS

Services itemised in all quotes are provided for estimation purposes only. Adjustments in work estimations will be made according to the work demands in each specific circumstance. The Client must accept these conditions in its entirety and authorise all work QikID deems necessary prior to its commencement.

22. DUE DILIGENCE

The Client accepts that it is the Client's responsibility to ensure that the equipment selected will be suitable for its intended use. Returns will not be accepted where the Client has not conducted thorough due diligence into the equipment prior to selection and purchase.

23. SOFTWARE ACTIVATION

QikID's products may include an activation procedure requiring internet access. If payment has not been received in full at the time of delivery of the hardware, activation will be required within thirty (30) days.

24. PRIVACY INFORMATION AND CREDIT VERIFICATION

In accordance with the Privacy Notice and Privacy Consent accompanying the purchase order, QikID may, at its sole discretion, submit the Client's or the Guarantor's credit information to a credit agency for verification of credit. The Client and Guarantor will be required to supply QikID with identifying information such as Name, Address, Date of Birth, Driver Licence Number, ABN and ACN as part of the credit verification process.

25. RESELLERS AND END USERS

In the event where a Reseller supplies the equipment to the Client, the Reseller will be solely responsible for ensuring that the Client is provided with and aware of all the Terms and Conditions of Sale as stated herein and the Terms and Conditions of Use, Privacy Statement and Privacy Policy as available on our website, as well as provided with and be made aware of the End-User Licence Agreement.



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26. INDEMNITY

Except to the extent solely and directly caused by any breach of QikID's obligations stated in the agreement and to the extent permitted by law, the Client shall defend, indemnify on a continuing basis and hold harmless QikID, and its related entities and affiliates, and their respective representatives and employees, from and against all losses, liabilities, damages, and expenses made against or incurred by QikID (including its related entities and affiliates, and their respective representatives and employees), arising out of any claim, suit or proceeding by any governmental agency or any third parties (including without limitation any employee of the Client) which alleges death, personal or economic injury or damages to any private or public property or resources, caused or contributed to by the use of the equipment.

27. WARRANTY

All equipment including software (unless covered by the original manufacturer's warranty) is sold "as is", except that the equipment shall be of the quality as specified herein. Quality shall be in accordance with QikID's specifications. No waiver, alteration or modification of the foregoing conditions shall be valid unless made in writing and signed by a director of QikID. No warranties are given by QikID to the Client in relation to the equipment or any services other than those set out in this agreement or as may be implied by law. The Client must rely upon its own judgment both as to the quality and condition of the equipment and its fitness and suitability for any particular purpose as well as the performance of services provided by third parties.

28. END USE

The Client acknowledges that the equipment is an identification system and its primary function is to return a probability of match, with all other functions being ancillary to this primary function. Final determination of the suitability of the equipment for any other use contemplated by the Client is the sole responsibility of the Client, and QikID shall in no way be responsible for the suitability of the equipment for any particular end use other than that which is stated herein.

29. FITNESS FOR A PARTICULAR PURPOSE

Fitness for a particular purpose

QikID warrants the equipment only as an identification system. As such the equipment is fit only for that particular purpose, being to return a probability of match of individuals. The Client and QikID agree that the agreed merchantable quality indicator is the ability to return a probability of match of a single person. The Client and QikID agree that occasional problems in the identification process do not, as a consequence, constitute overall failure to meet standards of merchantable quality. QikID shall in no way be responsible for the fitness of the equipment for any particular purpose other than that which is stated herein.

30. RETURNS UNDER MERCHANTABLE QUALITY

In the event that a Director of QikID agrees to accept a return of a software licence or hardware item, only the component cost associated with the returned licence or hardware item will be refunded.

31. FORBEARANCE

Forbearance or failure of QikID to enforce any of these conditions, or to exercise any right accruing from any default of the Client, shall not affect, impair or waive QikID's rights in case such default continues, or in case any subsequent default of the Client occurs.



32. LIMITATIONS OF LIABILITY

32.1 Notice of Claims

For the purpose of this agreement, **Claim** includes any allegation, debt, cause of action, Liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise, **Liability** includes all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatsoever nature or description irrespective of when the acts, events or things giving rise to the liability occurred and **Loss** includes any damage, loss, cost, Claim, Liability or expense (including legal costs and expenses).

If the Client becomes aware of any matter or circumstance that may give rise to a Claim under or in relation to or arising out of this agreement, including a breach of a warranty:

- (a) the Client must as soon as practicable give notice of the Claim to QikID; and
- (b) the notice must contain:
 - (i) the facts, matters or circumstances that may give rise to the Claim;
 - (ii) if it is alleged that the facts, matters or circumstances referred to in sub-clause (i) constitute a breach of this agreement, including a breach of a warranty, the basis for that allegation; and
 - (iii) an estimate of the amount of the Loss, if any, arising out of or resulting from the Claim or the facts, matters or circumstances that may give rise to the Claim.

32.2 QikID not liable

QikID is not liable to the Client (or any person deriving title from the Client) for any Claim under or in relation to or arising out of this agreement including a breach of a warranty:

- (a) if the Client has failed to comply strictly with clause 32.1 (**Notice of Claims**) as the case may be;
- (b) if the Claim is as a result of or in consequence of any voluntary act, omission, transaction or arrangement of or on behalf of the Client after the date of this agreement;
- (c) if the Claim is as a result of or in respect of any legislation not in force at the date of this agreement (including legislation which takes effect retrospectively); and
- (d) if the Claim arises or is increased as a result of action taken or not taken by QikID after consultation with and the prior written approval of the Client.

32.3 Recovery

Where the Client is or may be entitled to recover from some other person any sum in respect of any matter or event which could give rise to a Claim, the Client will:

- (a) use its best endeavours to recover that sum before making the Claim;
- (b) keep QikID at all times fully and promptly informed of the conduct of such recovery; and
- (c) reduce the amount of the Claim by the amount of the recovered sum.
- (d) If the recovery is delayed until after the Claim has been paid by QikID to the Client the recovered sum will be paid to QikID.



32.4 Time limit on Claim

The Client may not make any Claim under this agreement including for a breach of warranty unless full details of the Claim have been notified to QikID in accordance with clause 32.1 (**Notice of Claims**) within 1 year from the date of the claimed loss. A Claim will not be enforceable against QikID and is to be taken for all purposes to have been withdrawn unless any legal proceedings in connection with the Claim are commenced within six months after written notice of the Claim is served on the Seller in accordance with clause 32.1 (**Notice of Claims**).

32.5 Maximum Liability

To the extent permitted by law, QikID's total liability for loss or damage of any kind not excluded by clause 32.6 (**Exclusion of consequential liability**) however caused, in contract, tort, (including negligence), under any statute or otherwise from or relating in any way to this agreement or its subject matter, shall be limited to the total of the amount actually paid to QikID at the date the Claim arose.

32.6 Exclusion of consequential liability

QikID excludes all liability for indirect and consequential loss or damage (including for loss of profit (whether direct, indirect, anticipated or otherwise), loss of expected savings, opportunity costs, loss of business (including loss or reduction of goodwill), damage to reputation and loss or corruption of data regardless of whether any or all of these things are considered to be indirect or consequential losses or damage) in contract, tort (including negligence), under any statute or otherwise arising from or related in any way to this agreement or its subject matter.

32.7 Act or omission after agreement

QikID's liability to the Client for loss or damage of any kind in contract, tort (including negligence), under any statute or in relation to or arising out of this agreement including a breach of a warranty will be reduced to the extent that the Claim arises as a result of or in connection with any act or omission after the date of this agreement by the Client.

32.8 Later recoveries

If, after QikID has made a payment to the Client pursuant to a Claim under or in relation to or arising out of this agreement, including a breach of a warranty, the Client receives a payment or benefit in relation to the fact, matter or circumstance to which the Claim related, then the Client must repay to QikID the amount received from QikID or, if less, the amount of the payment or benefit which was received by the Client.

32.9 Obligation to mitigate

Nothing in this clause 32 ("Limitations of Liability") in any way restricts or limits the general obligation at Law of the Client to mitigate any Loss or damage which it may incur in consequence of any breach by QikID of the terms of this agreement including a breach of a warranty.

33. FORCE MAJEURE

QikID shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance which is (i) due to any act of God, the prior performance of any government order, any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law, local labour shortage, fire, flood, or other casualty, government regulation or requirement, shortage, or failure of raw material, supply, fuel, power or transportation, breakdown of equipment, or any cause beyond QikID's reasonable control, whether or similar or dissimilar nature to those above enumerated, or (ii) due to any strike, labour dispute, or difference with workers, regardless of whether or not QikID is capable of settling any such labour problem.

34. DEFAULT OR BANKRUPTCY

Upon failure of the Client to make any payment required, without deduction, set-off, or counterclaim, within ten (10) days after the same becomes due, or if the Client defaults in the performance of any other obligation, term or condition of this agreement, or if the Client shall make an assignment for the benefit of creditors, or in the event of a commencement of proceedings by or against the Client involving bankruptcy, insolvency, reorganisation or arrangement, QikID, without demand or notice of any kind and without prejudice to any other remedy of QikID, may cancel this and any other agreement with the Client (Client remaining liable for damages) or QikID may defer further deliveries until the default is remedied (in which event, if QikID elects, this agreement shall be deemed extended for a period of time equal to that during which deliveries are deferred).



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35. GENERAL PROVISIONS

- 35.1** The failure of either party to enforce any provisions of this agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this agreement. The acceptance of payment by QikID does not waive QikID's right to enforce any provisions of this agreement.
- 35.2** QikID's and the Client's rights under this agreement are cumulative, and shall not be construed as exclusive of each other unless otherwise required by law.
- 35.3** If any part or parts of this agreement shall be held unenforceable for any reason, the remainder of this agreement shall continue in full force and effect. If any provision of this agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.
- 35.4** Neither this agreement nor the Client's rights hereunder are assignable, except with QikID's prior, written consent. The Client may apply to assign this agreement but the Client acknowledges that QikID is not obliged to agree. QikID may charge a fee to credit assess the proposed assignee even if the proposed assignee is declined.
- 35.5** This agreement shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia and any action relating to this agreement shall be taken in the appropriate Court in that State.
- 35.6** The covenants and conditions contained in this agreement shall apply to and bind the parties and the heirs, legal representatives, successors and permitted assigns of the parties.
- 35.7** If there is more than one person comprising the Client, the Client" means each party separately and all parties jointly.