

OmniTRACK Fax Back Form



A. **OmniTRACK Order No:** _____ **Your PO Number:** _____

B. **Order Date:** _____

C. **Dealer Details:** OmniSTAR Pty Ltd
18 Prowse St, West Perth WA 6005

(This is not an invoice)

Phone: +61 8 9322 5295 **Fax:** +61 8 9322 4164

D. **Customer Details:** _____

Phone: _____ **Fax:** _____

E. **Dispatch Date:** _____

F. **Commencement Date:** (Enter date this sheet faxed back or OmniSTAR received date will be assumed)

G. **Expiry Date:** _____

H. **Products:**

E.g. [5] x [MT2000]
Serial Numbers;

I. **Customer Data:**

J. **Upfront Charge (ex GST);** (i.e. MT2000 terminal and first monthly payment in advance) \$

K. **Other Charges (ex GST):** (i.e. Freight, miscellaneous items etc) \$

L. **GST:** \$

M. **Total Price for Products:** (for J, K and L above) \$

Monthly Payment:

Description; (1 hourly)

Unit Price: \$

GST: \$

Quantity:

Total (Inc GST): \$

N. (I.e. commencing after initial airtime included in item J) NB: Excludes GST \$

I have read and accepted all of the terms and conditions attached to this fax back form (in appendix A), and I am authorised to sign the agreement on behalf of the customer.

Name: _____ **Position in Company:** _____

Signature: _____ **Date:** _____

Please fax back this completed page to OmniSTAR: 08 9322 4164
Once received, OmniSTAR will enable the transmission service for the terminal/s on the Communications System and airtime charging will commence.

Appendix A

TERMS AND CONDITIONS OF SALE

This Agreement is entered into by OmniSTAR Pty Ltd
ACN 009 300 761 ("OmniSTAR") and the Customer.

1. Interpretation

In this document:

Aggregated Information means all information related to services provided using the Software that is combined across a number of buyers serviced by OmniSTAR rather than information that is specific to the Customer;

Agreement means this agreement, which comprises the Order Form, and these terms and conditions;

Customer Data means data supplied by the Customer, or data which is generated, compiled, arranged or developed by the Software as a result of data supplied by the Customer, or data which is transmitted using the Products, as specified in I of Table 1 on the Order Form;

Commencement Date means the date set out at F of Table 1 on the Order Form;

Customer means the customer specified at Item D of Table 1 on the Order Form

Early Termination Amount means, for any given day, the net present value as at that day of each Monthly Payment payable under this Agreement for the remainder of the Term that is not yet due for payment;

Equipment means the hardware comprised in the Products;

Expiry Date means the expiry date set out at Item G of Table 1 on the Order Form;

GST has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)

Loss means all loss, liability, damage and claims, and all related costs and expenses (including legal fees, judgment and penalties);

Monthly Payment means the monthly payment specified at Item N of Table 1 on the Order Form;

OmniTRACK means the product normally sold by OmniSTAR as "OmniTRACK";

Order Form means the order form attached to these terms and conditions;

Products means the products specified at Item H of Table 1 on the Order Form, and includes the Equipment, the Software and the Transmission Service;

Service Line means a dedicated phone number provided by OmniSTAR for the Customer to call;

Software means software, firmware or other computer programs or data residing in the Products;

Transmission Service means the transmission of Customer Data under clause 7(a);

Upfront Charge means the upfront charge specified at Item J of Table 1 on the Order Form;

Warranty Period means the period of one year from the Commencement Date.

In clauses 7(b), (c) and (d), 11 and 13(c), references to OmniSTAR includes a reference to all of OmniSTAR's affiliated companies and their officers, employees, agents, successors and assigns.

2. Duration of Agreement

(a) This Agreement commences on the Commencement Date and expires on the Expiry Date, unless earlier terminated by OmniSTAR in accordance with this clause.

(b) OmniSTAR may terminate this Agreement immediately without notice if: (1) the Customer breaches any term of this Agreement; (2) the Customer does or omits any action set out in clauses 12, 14 or 15; (3) the Customer ceases to function as a going concern, declares bankruptcy, has a receiver appointed for it, or otherwise takes advantage of any insolvency law; or (4) the Customer fails to pay an amount within 30 days of its due date.

(c) If OmniSTAR terminates this Agreement under this clause, or if the Customer wishes to terminate this Agreement before the Expiry Date, the Customer must immediately pay the Early Termination Amount to OmniSTAR.

(d) The Customer acknowledges that the Early Termination Amount is a genuine pre-estimate of the loss and damage OmniSTAR is likely to suffer if this Agreement is terminated prior to the Expiry Date in accordance with this clause.

3. General

(a) These terms and conditions apply to all orders placed with OmniSTAR by the Customer for the purchase of OmniTRACK products and services.

(b) Acceptance by OmniSTAR of any order is conditional upon acceptance by the Customer of this Agreement, which will override all other terms and conditions inconsistent herewith, whether express, implied or otherwise included but not limited to terms, conditions or stipulations contained in the Customer's purchase order (if any).

4. Price

(a) Subject to this clause, the price for the Products is as set out on the Order Form.

(b) OmniSTAR reserves the right to adjust the price by such an amount as may be necessary to cover any increase affecting OmniSTAR after the date of this Agreement attributable to market conditions prevailing during this Agreement. OmniSTAR will give the Customer seven (7) days prior written notice of any such increase. All prices are exclusive of GST and, if applicable, packing, delivery and installation.

(c) All prices are FOB, OmniSTAR Pty Ltd, 18 Prowse Street, West Perth, WA 6005. Costs for ongoing courier or forwarder (ex-Perth) will be charged at the Customer's expense.

5. Payment

(a) All accounts are payable in accordance with OmniSTAR's invoices for the Products, and are payable in Australia in Australian currency, unless the invoice states otherwise.

(b) OmniSTAR may issue the Customer with an invoice for the Upfront Charge immediately; and will issue the Customer with invoices for the Monthly Payments and any other amounts due under this Agreement on a monthly basis.

(c) The Customer must pay OmniSTAR the amount payable on the invoice within 30 days of the date of the invoice.

(d) OmniSTAR may recover from the Customer the GST payable on any taxable supply made under this Agreement, and any other taxes or duties payable in respect of the Products, in the same manner and at the same time as the Customer is obliged to pay other amounts due under this Agreement.

(e) If the Customer fails to make any payment when due under this Agreement or any other contract, OmniSTAR has the right to suspend all further deliveries, installation or services (including without limitation the Transmission Services) until the default is made good (without prejudice to any other rights or remedies available to OmniSTAR).

6. Delivery

(a) Delivery dates are estimates only and unless OmniSTAR agrees in writing to be bound by a delivery date, OmniSTAR is not liable for direct, indirect or consequential loss arising from part, late or non-delivery.

(b) Delivery will be made during normal working hours (excluding public holidays). OmniSTAR may deliver in more than one delivery.

7. Transmission Services

(a) OmniSTAR will: (1) relay the Customer Data to the Customer on an ongoing basis for the duration of this Agreement; and (2) if the relevant product is OmniTRACK, keep a backup copy of the Customer Data for 60 days from the date the Customer Data is received by OmniSTAR.

(b) OmniSTAR is not responsible for any failure or delay in complying with paragraph (a) if that failure is due to: (1) the range, coverage, availability or operation of any telecommunications service; (2) any act or omission of a third party supplier of goods or services; (3) incorrect installation or operation of the Products by the Customer; (4) modification, repair or disassembling of the Products by the Customer; (5) use of the Product by the Customer other than in its normal manner; (6) misuse accident or neglect; (7) the operation of the Products together with any software or hardware not supplied by OmniSTAR; or (8) any other reason not within the reasonable control of OmniSTAR.

(c) OmniSTAR is not liable for transmission of data by any person other than OmniSTAR.

(d) OmniSTAR is not liable for: (1) the content, accuracy, reliability or completeness of any Customer Data; or (2) the interception by any person of any Customer Data, so long as OmniSTAR has taken reasonable steps to ensure the security of its transmission services.

8. Warranty

(a) Subject to paragraph (b) below, OmniSTAR warrants to the Customer that the Equipment and Software will be free of defects in material and workmanship under normal use.

(b) The warranty in paragraph (a) is valid only during the Warranty Period.

(c) Apart from the warranty in paragraph (a), and any statutory implied warranties that may not be excluded by law, OmniSTAR makes no representations or warranties relating to the Products, and expressly excludes all warranties, whether implied, statutory or otherwise, relating to the Products.

9. Warranty services

(a) If the Equipment or Software does not comply with the warranty in clause 8(a), then: (1) the Customer must call the Service Line and report the fault or defect being experienced; (2) with the advice and assistance of OmniSTAR through the Service Line, the Customer must use its best endeavours to correct any fault or defect in the Equipment or Software; and (3) if, despite using its best endeavours,

the Customer is unable to correct the fault or defect, the Customer must, at its own cost, return the Equipment or Software to OmniSTAR's premises, and OmniSTAR will, at its option, either repair or replace the Equipment or Software.

- (b) OmniSTAR is not responsible for any failure of the Equipment or Software to comply with the warranty provided in clause 8(a) during the Warranty Period if the Customer fails to comply with this clause.
- (c) The Customer may call the Service Line to request technical assistance if the failure of the Equipment or Software to perform is not covered by the warranty in clause 8(a), but in that case: (1) the Customer must pay the cost of repairing the Equipment or Software; and (2) OmniSTAR makes no warranties as to the level of technical assistance that will be provided by OmniSTAR, or whether OmniSTAR will be successful in resolving any technical difficulties with the Equipment or Software.

10. Other equipment or services

OmniSTAR has no liability for:

- (a) the performance or function of any devices or equipment not supplied by OmniSTAR;
- (b) the performance or function of the Equipment or Software after the Warranty Period; or
- (c) the failure of Equipment or Software to function for any reason other than a defect in the materials or workmanship of the Equipment or Software.

11. OmniSTAR's liability

- (a) To the extent permitted by law, and subject to clauses 8 and 9, OmniSTAR excludes all liability to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, the Products, the use of the Products or otherwise.
- (b) Without limiting paragraph (a), OmniSTAR is not liable for damage or defects in the Products or parts caused by improper use, abuse, mismanagement or by using the Products outside the specifications detailed in the manuals and documentation relating to the Products or outside the specific application of the Products.
- (c) OmniSTAR expressly excludes liability for consequential loss or damage, including but not limited to loss or damage to data or to other equipment or property, or for loss of profit, business, revenue, goodwill or anticipated savings.
- (d) In the event that any exclusion of liability contained in this Agreement is held to be invalid for any reason, OmniSTAR's liability is limited, at OmniSTAR's option, to the price of the Products specified on the Order Form, or the cost of supplying those Products again.

12. Software & Products

- (a) OmniSTAR grants to the Customer a non-transferable, non-exclusive, license to use the Software for the duration of this Agreement, solely in connection with and for the purpose of using the item(s) of the Products to which that Software relates.
- (b) The Customer must not provide or otherwise make available the Software or any part or copies in any form to any third party. No title to or ownership of the Software or any part of it is transferred to the Customer.
- (c) The Customer must not: (1) develop, translate, adapt, reproduce, reverse engineer, disassemble or decompile any of the Products or any part thereof, or allow others to do so; (2) modify or attempt to modify (by alteration, addition, deletion or otherwise) the Products or any part of them; or (3) make, or authorise the making of any reproduction of the Products or any part of them.
- (d) This clause survives the termination or expiry of this Agreement.

13. Customer Data

- (a) OmniSTAR acknowledges that it obtains no right, title or interest in the Customer Data, except for the right to include the Customer Data in the Aggregate Information.
- (b) The Customer acknowledges that OmniSTAR owns and will retain all rights, title and interest in and to the Aggregate Information
- (c) OmniSTAR has no responsibility for, and no liability in respect of, the content of the Customer Data, and the Customer indemnifies OmniSTAR against all liability, costs (including legal costs on a full indemnity basis), expenses, loss and damage suffered or incurred (or agreed to be paid by way of settlement or compromise) by OmniSTAR arising from the content of the Customer Data.

14. Confidentiality

If any information not in the public domain (**Confidential Information**) relating to one party (**Discloser**) or its business or products is released by or on behalf of that party to the other party (**Recipient**), then the Recipient must:

- (a) not directly or indirectly disclose the Confidential Information in whole or in part to any third party, without the Discloser's prior written consent, except in fulfilling its obligations under this Agreement or as required by law;
- (b) not use the Confidential Information in whole or in part, without the Discloser's prior written consent, except in fulfilling its obligations under this Agreement;

- (c) not copy, duplicate or otherwise reproduce any documents containing the Confidential Information, without the prior written consent of the Discloser, except as is necessary in fulfilling its obligations under this Agreement;
- (d) on termination of this Agreement, or on demand by the Discloser, return or destroy all documents containing Confidential Information (including any documents created by the Recipient containing Confidential Information);
- (e) use reasonable endeavours to protect the confidentiality of the Confidential Information, including without limitation keeping all documents containing Confidential Information in a secure place; and
- (f) comply with all reasonable instructions given to it by the Discloser regarding the protection of the Discloser's Confidential Information.

This clause survives the termination or expiry of this Agreement.

15. Intellectual property rights

- (a) The Customer acknowledges that any and all of the trade marks, copyright, patents and other intellectual property rights used or subsisting in or in connection with the Products including software, hardware and other parts thereof in which OmniSTAR or the respective manufacturer, developer or third party has an interest are and shall remain the sole property of OmniSTAR or such manufacturer, developer or third party.
- (b) The Customer will not do anything inconsistent with OmniSTAR's ownership of intellectual property rights as set out in paragraph (a), and indemnifies OmniSTAR fully against all liabilities, costs and expenses which OmniSTAR may incur as a result of a breach by the Customer of OmniSTAR's intellectual property rights in the Products.

16. Title to the Equipment

- (a) Notwithstanding delivery, installation, acceptance and passing of risk, title to the Equipment does not pass to the Customer and is retained by OmniSTAR until full payment for the Equipment has been received by OmniSTAR from the Customer.
- (b) Until such time as title in the Equipment has passed to the Customer, OmniSTAR is entitled to repossess at any time any of the Equipment in which title remains vested in OmniSTAR, even if the Equipment has been delivered to the Customer.

17. Passing of Risk

Notwithstanding clause 16, risk in the Equipment passes to the Customer upon leaving OmniSTAR's premises, and OmniSTAR is not liable for any loss or damage to the Equipment from that time.

18. Indemnity

The Customer must indemnify and keep indemnified OmniSTAR and its affiliated companies and their officers, employees and agents (those indemnified) from or against all Loss suffered or incurred by any of those indemnified arising from any claim against those indemnified where the Loss was caused by:

- (a) a breach by the Customer of its obligations under this Agreement;
- (b) any action or omission by the Customer which would constitute a breach of clause 12, 14 or 15 of this Agreement; or
- (c) any willful, unlawful or negligent act or omission of the Customer.

This clause survives the termination or expiry of this Agreement.

19. General

- (a) OmniSTAR may complete any blanks on the Order Form and correct any errors.
- (b) The laws of Western Australia govern this Agreement and the parties submit to the exclusive jurisdiction of the courts of Western Australia (and any courts of appeal therefrom).

The Customer must not assign its rights or obligations under this Agreement without OmniSTAR's prior written consent.