

WEIGHTRAX

The following terms and conditions for the use of Weightrax Software and the website explain our obligations as your Weightrax Software and Website service provider and your obligations as a customer. By using the Weightrax Software and accessing the website you agree to be bound by these terms and conditions

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2 Parties to this agreement

The parties to this agreement are the Customer named in the Proposal Schedule A.

and

Atrax Group New Zealand Ltd, a company incorporated in Auckland, New Zealand (Atrax)

3 Term of agreement

This agreement commences from the Date in the Proposal Schedule A and may be terminated at any time by either party giving one month's prior notice in writing.

4 Definitions

"Proposal" means the sales proposal presented by Atrax to the customer setting out the offer for the use of Weightrax software and website.

"Commencement Date" means the date described in the Proposal Schedule A.

"Confidential Information" includes all information exchanged between the parties to this agreement, whether in writing, electronically or orally, including the Weightrax Software and Website but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

"Data" means any data inputted by you into the Weightrax Software or the Website.

"Intellectual Property Right" means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered, including all proprietary rights to Weightrax Software and Website.

"License Fee" means the monthly fee (excluding any taxes and duties) payable by You as specified in the Proposal or as varied pursuant to clause 5.3 of the agreement.

"Premises" means the Customer's place of business described in Proposal Schedule A.

"Terms" means the terms and conditions of this agreement expressed or implied.

"Website" means the Internet site at the domain www.weightrax.com or any other site operated by Atrax and its subsidiaries.

"Weightrax Software" is the software application providing data collection, synchronisation and reporting functionality and other integrated onsite functions including but not limited to cameras and vehicle identification.

"You" means you the Customer and includes your employees, consultants, representatives and agents.

5 Use Of Weightrax Software and the Website

In consideration of your payment of the Licence Fee:

- 5.1** Atrax grants to You a non-exclusive and non transferable licence to use the Weightrax Software in accordance with the terms and conditions of this agreement, to be installed at the Premises.

- 5.2** Atrax grants to You the right to access and use the Weightrax Software and the Website in accordance with the terms and conditions of this agreement. This right is non-exclusive and non-transferable and limited by these Terms.
- 5.3** Atrax may vary the Licence Fee from time to time upon written notice to You.
- 5.4** You will in your use of the Weightrax Software and Website perform and observe all the Terms.

6 Your Obligations

6.1 Payment obligations:

You are to continue to pay the License Fee each and every month in advance on the date specified in the Proposal, by automatic payment, until this agreement is terminated in accordance with clause 3.

You are responsible for payment of all taxes and duties in addition to the License Fee.

6.2 General obligations:

You must only use the Weightrax Software and Website for your own lawful internal business purposes, in accordance with these Terms or any other condition advised by Atrax on the Website.

6.3 Access conditions:

You will ensure that all usernames and passwords required to access the Weightrax Software and Website are kept secure and confidential. You will immediately notify Atrax of any unauthorised use of your passwords or any other breach of security and Atrax will reset your password

When accessing and using the Weightrax Software and Website, You must:

- Not attempt to undermine the security or integrity of Atrax's computing systems or networks
- Not use, or misuse, the Weightrax Software and Website in any way which may impair the functionality of the Weightrax Software or Website, or impair the ability of any other user to use the Weightrax Software or Website;
- Not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Weightrax Software or Website are hosted;
- Not transmit, or input into the Weightrax Software or the Website, any files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use); and
- Not modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer the Weightrax Software or the Website except as is strictly necessary to use either of them for normal operation.
- Notify Atrax immediately You have knowledge of any circumstances which may suggest that any unauthorised person may have knowledge, possession or use of the Weightrax Software or Website.

6.4 Indemnity:

You indemnify Atrax against all direct claims, costs, damage and loss arising directly from your breach of any of these terms or any obligations You may have to Atrax, including (but not limited to) any costs relating to the recovery of any License Fees that have not been paid by You.

7 Confidentiality

7.1 Confidentiality:

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

- Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.
- Each party's obligations under this clause will survive termination of these Terms.

The provisions of this clause shall not apply to any information which:

- Is or becomes public knowledge other than by a breach of this clause;
- Is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- Is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
- Is independently developed without access to the Confidential Information.

8 Intellectual Property

8.1 General:

Title to, and all Intellectual Property rights in the Weightrax Software, the Website and any documentation relating to the Weightrax Software remain the property of Atrax (or its licensors).

8.2 Data:

Title to, and all Intellectual Property rights in, the Data remain your property. However, your access to the Data is conditional on full payment of the License Fee. You are responsible for maintaining copies of all Data inputted into the Weightrax Software and Website. Atrax adheres to its best practice policies and procedures to prevent data loss, but does not give any assurances that there will be no loss of Data. Atrax expressly excludes liability for any loss of Data no matter how caused.

9 Warranties And Acknowledgements

9.1 *Acknowledgement:*

You acknowledge that:

- You are authorised to use the Weightrax Software and the Website and to access the information that You access using the Weightrax Software and the Website.
- If You are using the Weightrax Software and accessing the Website on behalf of or for the benefit of an organisation (whether a body corporate or not) then Atrax will assume that You have the right to do so and that organisation will be liable for your actions or omissions (including any breach of these Terms).
- The provision of, access to, and use of, the Weightrax Software and Website is on an "as is, where is" basis and at your own risk.
- Atrax does not warrant that the use of the Weightrax Software and Website will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Weightrax Software and Website , including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Weightrax Software and Website . Atrax is not in any way responsible for any such interference or prevention of your access or use of the Weightrax Software and Website.
- It is your sole responsibility to determine that the Weightrax Software and Website meets the needs of your business.

9.2 *No warranties:*

While Atrax will use its reasonable endeavours to maintain the Weightrax Software and Website in operational order, Atrax gives no warranty about the Weightrax Software and the Website . Without limiting the foregoing, Atrax does not warrant that the Weightrax Software and the Website will meet your requirements or that it will be suitable for your purposes. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

9.3 *Consumer guarantees:*

You warrant and represent that You are acquiring the right to access and use the Weightrax Software and Website and agreeing to these Terms for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Weightrax Software, the Website or these Terms.

10 Limitation Of Liability

To the maximum extent permitted by law, Atrax excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of Data, profits and savings) or damage resulting, directly or indirectly, from the use of, or reliance on, the Weightrax Software and the Website.

If You suffer loss or damage as a result of Atrax's negligence or failure to comply with these Terms, any claim by You against Atrax arising from Atrax's negligence or failure will be limited in respect of

any one incident, or series of connected incidents to the Licence Fees paid by You in the previous 3 months provided that if the License Fee has been paid for more than 3 months in advance of the due date for payment, then any claim will be limited to the amount of the Licence Fees paid in advance.

11 Termination

11.1 Accrued Rights:

Termination of these Terms pursuant to clause 3 is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination. On termination of this agreement You will:

- (i) Remain liable for any accrued charges and amounts which become due for payment before or after termination; and
- (ii) Immediately cease to use the Weightrax Software and the Website.

11.2 Termination:

Clauses 6.1, 6.3, 6.4, 7, 8 and 9 survive the termination of these Terms.

12 Help Desk

12.1 Technical Problems:

In the case of technical problems with the Weightrax Software or Website You must make all reasonable efforts to investigate and diagnose the problems before contacting Atrax. If You still need technical help, please check the support page provided online by Atrax or failing that contact us through support@weightrax.com.

12.2 Hardware support

Atrax accepts no liability for all computer hardware, Internet service and associated hardware products utilised in the use of the Weightrax Software and Website and Atrax accepts no liability for their operation or support.

12.3 Service availability:

Whilst Atrax intends that the Weightrax Software and Website should be available 24 hours a day, seven days a week, it is possible that on occasion it may be unavailable to permit maintenance or other development activity to take place and the Customer waives all rights and remedies it may have against Atrax for such unavailability.

13 General

13.1 Entire agreement:

These Terms and the terms of any other notices or instructions given to You under these Terms, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and Atrax relating to the Weightrax Software, the Website and the other matters dealt with in these Terms.

13.2 Waiver:

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

13.3 Delays:

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

13.4 No Assignment:

You may not assign or transfer any rights to any other person or organisation without Atrax's prior written consent.

13.5 Governing law and jurisdiction:

You accept that New Zealand Law governs these Terms and You submit to the exclusive jurisdiction of the Courts of New Zealand for all disputes arising out of or in connection with these Terms, without reference to any conflicts of laws.

13.6 Severability:

If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this agreement will be binding on the parties.

13.7 Notices:

Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission but if receipt is disputed, then the party giving the notice shall be required to produce a printed copy of the email which evidences that the email has transmitted. Notices to Atrax must be sent to support@weightrax.com or to any other email address notified by email to You by Atrax. Notices to You will be sent to the email address that You provided on acceptance of the proposal or any other address notified by you in writing.

13.8 Rights of Third Parties:

A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms.