

Systeme Automotive Solutions Ltd

Terms & conditions



STANDARD TERMS

1. Application

- 1.1 These Terms apply to the provision of any Software, Hardware and Services by Systime (as defined below). By placing an Order with Systime, the Customer agrees to these Terms.
- 1.2 The Agreement between the parties is formed when Systime notifies the Customer by email that Systime accepts the Customer's Order, or commences supplying the relevant Software, Hardware and/or Services to the Customer, whichever is the earlier (**Order Acceptance**).
- 1.3 On Order Acceptance, each Order forms a separate Agreement between the parties.
- 1.4 The Agreement comprises:
 - a these Terms, including the Schedules; and
 - b the Order.
- 1.5 The Agreement applies to the exclusion of any standard terms the Customer may have for the purchase of goods or services and any terms included, or incorporated by reference, in any request for quote, purchase order or other correspondence between the parties.
- 1.6 If there is any conflict between the documents that form part of the Agreement, they will have precedence in the descending order of priority set out below:
 - a the Schedules;
 - b these Terms, excluding the Schedules; and
 - c the Order.

2. Changes

- 2.1 Systime may change these Terms at any time by notifying the Customer of the change by email or by posting a notice on the Website. Unless stated otherwise, any change takes effect from the date set out in the notice. The Customer is responsible for ensuring it is familiar with the latest Terms. The Customer will be bound by the changed Terms if, from the date on which the Terms are changed, the Customer:
 - a continues to access and use Hosting Services, SaaS Services or support services; or
 - b places an Order with Systime.
- 2.2 **These Terms were last updated on 8 December 2023.**

3. Interpretation

In these Terms:

Agreement means these Terms (including the Schedules) and the Order.

Auxo means Australasian Automotive Business Solutions Limited, company number 1697484, trading as Auxo Software,

Auxo Group means Auxo and its related companies, including:

- SAM Computer Systems Limited, NZ company number 895865;
- Systime Automotive Solutions Limited, NZ company number 1186630;
- TSI SAM Pty Limited, Australian Business Number (ABN) 17-156-607-251;
- TSI Systime Pty Limited, Australian Business Number (ABN) 40-132-463-284.

Auxo Group NZTA Data Retrieval Service means the service described in Schedule 1 (see page 23).

Auxo Group Software means software owned by an Auxo Group company.

Charges means:

- subject to clause 9.2, the applicable fees set out in the order form or a quote issued by Systime;
or
- if Systime has not issued an order form or quote, Systime's standard charges or price as at the time of supply,

in each case, as may be updated from time to time in accordance with clause 9.9.

Confidential Information means any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the provision and use of the Service. Systime's Confidential Information includes Intellectual Property owned by Systime (or its licensors), including the Auxo Group Software and the Documentation. The Customer's Confidential Information includes the Data (if applicable).

Customer means the customer placing the Order.

Data means all data, content, and information (including personal information) owned, held, used or created by the Customer or on its behalf that is stored using, or inputted into, the Software.

Delivery has the meaning given in clause 8.4. Other grammatical forms of that term have consistent meanings.

Documentation means the specifications, technical guides, user manuals and other written materials provided by Systime relating to the Software, Hardware and/or Services.

Force Majeure means an event that is beyond the reasonable control of a party, excluding:

- an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or
- a lack of funds for any reason.

Hosted Software means Software that Systime hosts for the Customer.

Hosting Services means hosting of Software by Systime.

including and similar words do not imply any limit.

Intellectual Property Rights includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. *Intellectual Property* has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

Licensed Auxo Group Software has the meaning given in clause 5.2.

Objectionable includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

Order Acceptance has the meaning given in clause 1.2.

Order means:

- an ordering document issued by Systime and signed or submitted to Systime by the Customer;
- a quote issued by Systime and accepted by the Customer; and
- any other request by the Customer for Systime to supply Software, Hardware or Services.

a *party* includes that party's permitted assigns.

Permitted Users means the Customer's personnel who are authorised to access and use the Service on the Customer's behalf in accordance with clause 6.6.

a *person* includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity.

personal information means information about an identifiable, living person.

personnel includes officers, employees, contractors and agents, but a reference to the Customer's personnel does not include Systime.

SaaS Services means Software provided on a software-as-a-service basis.

Services means Hosting Services, SaaS Services, support services and any other services set out in an Order.

Smartcheck means the service described in Schedule 2 (see page 25).

Software means the Auxo Group Software and/or Third Party Software set out in an Order.

Support Charges means the Charges payable for Support.

Support Services means support for the Software, the SaaS Services, and/or the Hosting Services, as further described in the Order.

Systime means Systime Automotive Solutions Limited, company number 1186630.

Terms means these terms titled *Systime Automotive Solutions Ltd Standard Terms*, including the attached Schedules.

Territory means, unless otherwise specified in the Order, the country in which the Customer is incorporated.

Third Party Software means Software that is not Auxo Group Software.

Underlying Systems means the Software, IT solutions, systems and networks (including software and hardware) used to provide Hosting Services or SaaS Services, including any third party solutions, systems and networks.

Words in the singular include the plural and vice versa.

A reference to:

- a a related company has the meaning given in section 2(3) of the Companies Act 1993 (read as if the expression “company” in that subsection included any body corporate of any jurisdiction); and
- b a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

4. Provision of software, hardware and services

4.1 In consideration for payment of the Charges, Systime:

- a where the Order states that the Customer is purchasing or renting Software, licenses that Software to the Customer in accordance with clause 5;
- b where the Order states that the Customer is purchasing Hosting Services or SaaS Services, will provide the Hosting Services or SaaS Services to the Customer in accordance with clause 6;
- c where the Order states that the Customer is renting Auxo Group Software, purchasing Hosting Services or SaaS Services or subscribing to Support Services, will provide Support in accordance with clause 7;
- d where the Order states that the Customer is purchasing or renting Hardware, will sell or rent that Hardware to the Customer in accordance with clause 8; and

e will provide the other Services set out in the Order,

in each case, in accordance with the Agreement.

4.2 Systime must use reasonable efforts to provide the Services:

- a in accordance with the Agreement and New Zealand law;
- b exercising reasonable care, skill and diligence; and
- c using suitably skilled, experienced and qualified personnel.

4.3 The Customer must:

- a permit Systime's personnel to have access to the Customer's premises to provide the Services during normal business hours or at such other times as the parties agree, subject to Systime and its personnel complying with the Customer's security, health and safety and other applicable policies notified by the Customer to Systime;
- b perform all tasks, functions and responsibilities set out in an order form or quote or otherwise reasonably requested by Systime in a timely manner, and supply sufficient suitably skilled resources and personnel for this purpose;
- c promptly make decisions (including approvals) and provide Systime with all information reasonably required to provide the Services;
- d before using the Auxo Group NZTA Data Retrieval Service, accept the terms of use set out in Schedule 1 by completing the form set out at: forms.auxosoftware.com/sam/nzta; and
- e when using the Auxo Group NZTA Data Retrieval Service, comply with the terms of use set out in Schedule 1;
- f take full responsibility for the back-up of the Licensed Auxo Group Software and associated data except where use of the Software is subject to the Hosting and SaaS Services defined in clause 6;
- g comply with any local, state or federal laws applicable to them in regards to the operation of the software and storage of the data and information contained therein; and
- h when using the Smartcheck service, comply with the terms of use set out in Schedule 2.

4.4 Provided Systime and the other members of the Auxo Group have not caused or contributed to any negligent act or omission, the Customer is solely responsible and liable for:

- a any activity that occurs through the use of the Customer's user names and passwords provided by Systime or another member of the Auxo Group;
- b all charges arising from the use of the Customer's account as a result of viruses, Trojan programs or other computer programs;
- c the Customer's computer network (as opposed to the Systime's) and internet performance; and

d the Customer's conduct and data, and any charges relating to usage of the Software or Services.

4.5 Systime's provision of the Software, Hardware and Services to the Customer is non-exclusive. Nothing in the Agreement prevents Systime from providing the Software, Hardware or Services to any other person.

5. Software licences

5.1 This clause 5 applies if the Order states that the Customer is purchasing or renting Software.

5.2 Systime grants to the Customer, and the Customer accepts, a non-exclusive and non-transferable licence to use the Auxo Group Software described in the Order as being purchased or rented (**Licensed Auxo Group Software**) and the Documentation for that Software solely:

- a for the Customer's lawful internal business purposes;
- b by the number of concurrent users specified in the Order;
- c within the Territory; and
- d on the terms and conditions of the Agreement.

5.3 Systime reserves the right to suspend or withdraw the licence in the event of non-payment of any product(s) or service(s) provided.

5.4 For rental Licensed Auxo Group Software, the ongoing payment of the rental Charges is a condition of the licence.

5.5 To prevent fraudulent use, Licensed Auxo Group Software periodically expires and requires the entry of a re-activation code. Re-activation is controlled centrally from an Systime server and is usually automatic. If any amount payable by the Customer is overdue, Systime may require payment of the overdue amount prior to providing a renewal codes. This service is provided at no charge to legitimate users.

5.6 The Customer must:

- a use the Licensed Auxo Group Software and its Documentation for lawful purposes only and must not copy (except making a single copy for the Customer's own back-up purposes), reproduce, translate, decompile, reverse-engineer, resell, modify, vary, sub-license or otherwise deal in the Licensed Auxo Group Software or its Documentation except:
 - i as expressly provided for in the Agreement; or
 - ii to the extent expressly permitted by any law or treaty that is in force in the Territory where that law or treaty cannot be excluded, restricted or modified by the Agreement;
- b use the Licensed Auxo Group Software on several desktop/laptop computers provided that the Licensed Auxo Group Software is not installed on more than 1 file server or server instance;

- c allow the Auxo Group to access Licensed Auxo Group Software to inspect that Software and verify compliance with the licence term in this clause 5;
 - d ensure the Licensed Auxo Group Software and its Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;
 - e maintain all proprietary notices on the Licensed Auxo Group Software and its Documentation; and
 - f not transfer, assign or otherwise deal with or grant a security interest in the Licensed Auxo Group Software, its Documentation or the Customer's rights under this clause 5.
- 5.7 If any Third Party Software is described in the Order as being purchased or rented, that Software will be licensed on the terms set out in the relevant licensor's licence agreement, which the Customer will be required to accept prior to installation. The Customer must comply with the terms of that licence agreement.
- 5.8 Unless otherwise agreed by Systime in writing:
- a the minimum term for Software rental is 6 months; and
 - b after the completion of the minimum term, Software rental can be cancelled by either party on not less than 90 days' notice.

6. Hosting and SaaS services

- 6.1 This clause 6 applies if the Order states that the Customer is purchasing Hosting Services or SaaS Services.
- 6.2 Subject to clause 6.3, and unless otherwise specified in the Order, Systime must use reasonable efforts to ensure the Hosted Software or SaaS Services are available during normal business hours. However, it is possible that on occasion the Hosted Software or SaaS Services may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. Systime must use reasonable efforts to notify advance details of any unavailability to the Customer by email and/or through its support pages available at <https://auxosoftware.com/support/>.
- 6.3 Through the use of web services and APIs, the Hosted Software or SaaS Services may interoperate with a range of third party service features (**Third Party Features**). Systime does not make any warranty or representation on the availability of those Third Party Features. Without limiting the previous sentence:
- a if a Third Party Feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, Systime may cease to make the relevant Third Party Feature available to you. If Systime ceases the availability of a Third Party Feature:
 - i where Systime is charging the Customer a fee for that Third Party Feature as a separate item from the Charges for the Hosting Services or SaaS Services, Systime will cease

charging you that fee, with effect from the date Systime ceases the availability of the Third Party Feature; and

- ii no other refund, discount or other compensation will be payable by Systime; and
- b if a Third Party Feature provider changes the terms on which it provides that feature to Systime, Systime may change these Terms as it considers necessary to reflect that change in accordance with clause 2.1.

6.4 The Customer and its personnel must:

- a use the Hosted Software and SaaS Services in accordance with the Agreement solely for:
 - i the Customer's own internal business purposes; and
 - ii lawful purposes; and
- b not resell or make available Hosted Software or SaaS Services to any third party, or otherwise commercially exploit the Hosted Software or SaaS Services.

6.5 When accessing the Hosted Software or SaaS Services, the Customer and its personnel must:

- a not impersonate another person or misrepresent authorisation to act on behalf of others or Systime;
- b when sending bulk or commercial email, comply with:
 - i all applicable laws, including the Unsolicited Electronic Messages Act 2007; and
 - ii the most recent version of https://www.marketing.org.nz/Resources/Regulatory/Guidelines_Email_Marketing
- c correctly identify the sender of all electronic transmissions;
- d not attempt to undermine the security or integrity of the Underlying Systems;
- e not use, or misuse, the Hosted Software or SaaS Services in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Hosted Software or SaaS Services;
- f not attempt to view, access or copy any material or data other than:
 - i that which the Customer is authorised to access; and
 - ii to the extent necessary for the Customer to use the Hosted Software or SaaS Services in accordance with the Agreement; and
- g neither use Hosted Software or SaaS Services in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading; and

- h comply with any other reasonable policy or condition notified by Systime to the Customer.
- 6.6 Without limiting clause 6.5, no individual other than a Permitted User may access or use the Service. The Customer may authorise any member of its personnel to be a Permitted User, in which case the Customer must provide Systime with the Permitted User's name and other information that Systime reasonably requires in relation to the Permitted User. The Customer must procure each Permitted User's compliance with clauses 6.4 and 6.5.
- 6.7 A breach of any of the Agreement by the Customer's personnel (including, to avoid doubt, a Permitted User) is deemed to be a breach of the Agreement by the Customer.
- 6.8 The Customer is responsible for procuring all licences, authorisations and consents required for the Customer and its personnel to use Hosted Software or SaaS Services, including to use, store and input Data into, and process and distribute Data through, the Hosted Software or SaaS Services.
- 6.9 Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the Customer's property. The Customer grants Systime a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of Systime's rights and performance of its obligations in accordance with the Agreement.
- 6.10 The Customer acknowledges that:
 - a Systime may require access to the Data to exercise its rights and perform its obligations under the Agreement; and
 - b to the extent that this is necessary but subject to clause 11, Systime may authorise a member or members of its personnel to access the Data for this purpose.
- 6.11 The Customer must arrange all consents and approvals that are necessary for Systime to access the Data as described in clause 6.10.
- 6.12 The Customer acknowledges and agrees that:
 - a Systime may:
 - i use Data and information about the Customer's and its personnel's use of the Hosted Software and SaaS Services to generate anonymised and aggregated statistical and analytical data (**Analytical Data**);
 - ii use Analytical Data for its internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and
 - iii supply Analytical Data to third parties;
 - b Systime's rights under clause 6.12a above will survive termination of expiry of the Agreement; and
 - c title to, and all Intellectual Property Rights in, Analytical Data is and remains Systime's property.

- 6.13 The Customer acknowledges and agrees that to the extent Data contains personal information, in collecting, holding and processing that information through the Hosted Software or SaaS Services, Systime is acting as the Customer's agent for the purposes of the Privacy Act 2020 and any other applicable privacy law. The Customer must obtain all necessary consents from the relevant individual to enable Systime to collect, use, hold and process that information in accordance with the Agreement.
- 6.14 While Systime will take standard industry measures to back up all Data stored using the Hosted Software or SaaS Services, the Customer agrees to keep a separate back-up copy of all Data and files inputted or uploaded by the Customer onto the Hosted Software or SaaS Services and understands that:
- a Any images or files uploaded to or otherwise stored on the Hosted Software or SaaS Services are excepted from the data back-up obligations of Systime and such files may be modified, corrupted or distorted once uploaded.
 - b Systime reserves the right to delete images and files uploaded at its sole discretion. Such deletions shall primarily occur due to the cancellation, cessation, downgrade or non-payment of services; or instances of unreasonable use or as otherwise outlined in clause 6.19.
- 6.15 If the Customer is located outside New Zealand, the Customer agrees that Systime may store Data (including any personal information) in secure servers in New Zealand and may access that Data (including any personal information) in New Zealand from time to time.
- 6.16 The Customer indemnifies Systime against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by Systime's solicitors) and loss of any kind arising from any:
- a breach of clause 6.4 or 6.5; or
 - b actual or alleged claim by a third party that any Data stored using the Hosted Software or SaaS Services infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.
- 6.17 Unless otherwise specified in an order form or quote issued by Systime or agreed by Systime in writing:
- a the minimum term for Hosting Services and SaaS Services is 6 months; and
 - b after the completion of the minimum term, the Hosting Services or SaaS Services can be cancelled by either party on not less than 90 days' notice.
- 6.18 At any time prior to one month after the date of termination of Hosting Services, SaaS Services or the Agreement, the Customer may request:
- a a copy of any Data stored using the Hosted Software or SaaS Services, provided that the Customer pays Systime's reasonable costs of providing that copy. On receipt of that request, Systime must provide a copy of the Data in a common electronic form. Systime does not warrant that the format of the Data will be compatible with any software; and/or

- b deletion of the Data stored using the Hosted Software or SaaS Services, in which case Systime must use reasonable efforts to promptly delete that Data.

To avoid doubt, Systime is not required to comply with clause 6.18a to the extent that the Customer has previously requested deletion of the Data.

6.19 Without limiting any other right or remedy available to Systime, Systime may restrict or suspend the Customer's access to and use of the Hosted Software or SaaS Services and/or delete, edit or remove the relevant Data or files stored using the Hosted Software or SaaS Services if Systime considers that the Customer or any of its personnel have:

- a undermined, or attempted to undermine, the security or integrity of the Hosted Software or SaaS Services or any Underlying Systems;
- b used, or attempted to use, the Hosted Software or SaaS Services:
 - i for improper purposes; or
 - ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Service;
- c transmitted through, inputted into or stored using the Hosted Software or SaaS Services any Data that breaches or may breach the Agreement or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading; or
- d failed to adhere to the payment schedule for the service(s) provided
- e otherwise materially breached the Agreement.

7. Support services

7.1 This clause 7 applies if the Order states that the Customer is:

- a is renting Auxo Group Software or purchasing Hosting Services or SaaS Services; or
- b subscribing to Support Services.

7.2 For rental Auxo Group Software and SaaS Services, the Support Services are included in the rental or SaaS Service Charges. For Hosting Services (other than for rental Auxo Group Software), the Support Charges are additional to the Charges for the Hosting Services.

7.3 Systime will provide the Customer with support, provided the Customer has:

- a paid all Charges due;
- b in the case of Licensed Auxo Group Software, maintained a proper operating environment for the use of the Software in accordance with any guidance from Systime, including in the Documentation; and

c complied with the Agreement and the Documentation.

7.4 Unless otherwise specified in an order form or quote issued by Systime or agreed by Systime in writing:

a the minimum term for Support Services is 6 months; and

b after the completion of the minimum term, Support services can be cancelled by either party on not less than 30 days' written notice.

To avoid doubt, this clause 7.4 does not apply to Software rentals, Hosting Services or SaaS Services. The minimum term for Software rentals is as set out in clause 5.8 and the minimum terms for Hosting Services and SaaS Services are as set out in clause 6.17.

8. Hardware

8.1 This clause 8 applies if the Order states that the Customer is purchasing or renting Hardware.

8.2 Systime will use reasonable endeavours to deliver the Hardware on or before the delivery date requested in the Order, but will not be liable for any loss, liability or damage resulting from any delay, nor will the Customer be relieved of any obligation to accept or pay for the Hardware by reason of that delay.

8.3 Delivery and return of Hardware is at the Customer's cost and risk. If requested, Systime will ship Hardware at the Customer's expense.

8.4 Risk of loss in Hardware passes to the Customer when the Hardware is delivered or made available for collection by a common carrier or other person nominated by the Customer at Systime's premises (whichever is the earlier).

8.5 Where the Customer is purchasing Hardware, title in the Hardware passes to the Customer when full payment for the Hardware is received by Systime. Until payment in full of has been made:

a the Customer must if requested by Systime store the Hardware supplied in such a way that it is clear that it is the property of Systime;

b if the Customer is in breach of the Agreement (including failing to pay any payment when due), Systime or its agent will be entitled to enter upon the Customer's premises at any reasonable time and repossess the Hardware;

c the Customer must not, and must not attempt to, sell, assign, pledge, mortgage, charge, encumber, hire, license, or part with possession or permit any lien to exist in respect of the Hardware or grant any security interest over the Hardware to any third party; and

d if the Customer sells the Hardware prior to payment in full in breach of clause 8.5c, then the proceeds of sale will be the property of Systime but for an amount no more than the Customer's indebtedness to Systime.

8.6 Where the Customer is renting Hardware:

- a unless otherwise specified in an order form or quote issued by Systime or agreed by Systime in writing:
 - i the term of the rental will begin on the 1st day of the month following receipt of the first rental payment;
 - ii the minimum term of the rental will be either 36 or 48 months (as specified in the Order); and
 - iii after the completion of the minimum term, the Hardware rental can be cancelled by either party on not less than 90 days' notice;
- b legal and beneficial ownership of the Hardware remains with Systime at all times;
- c the Customer must, until the Hardware is returned to Systime:
 - i effect and maintain standard commercial insurance against standard risks, including fully insuring the Hardware for full replacement value, with Systime's interest in the Hardware noted on the applicable policy;
 - ii provide Systime with evidence of the Customer's compliance with clause 8.6ci on request by Systime; and
 - iii not allow anything to be done that might prejudice the insurance;
- d the Customer must:
 - i take proper care of the Hardware;
 - ii not service or repair the Hardware;
 - iii allow Systime to access the Customer's premises at reasonable times to inspect, service and repair the Hardware;
 - iv not remove, deface or obscure, and not allow any other person to remove, deface or obscure, any marks of identification or ownership or registration on the Hardware;
 - v immediately notify Systime of any loss, theft or damage to the Hardware; and
 - vi is liable for any loss, theft or damage to the Hardware however caused. The amount to repair the damage or replace the Hardware, plus lost rental revenue (if applicable), is at Systime's sole discretion.
- e if the Customer is in breach of the Agreement (including failing to pay any payment when due), or on termination of the rental or the Agreement for any reason, Systime or its agent will be entitled to enter upon the Customer's premises at any reasonable time and repossess the Hardware;

- f if the rental or the Agreement is cancelled or terminated for whatever reason before the end of the minimum term, Systime reserves the right to charge the Customer the full monthly rental Charges for the outstanding contract period;
- g Systime may assign its rights, title and interest in the Hardware in part or in whole at any time;
- h the Customer:
 - i agrees that the supply of rental Hardware under the Agreement creates a security interest over the rental Hardware, and all of the Customer's present and future rights in relation to the rental Hardware and any proceeds, in favour of Systime that may be registered on the personal property securities register under the Personal Properties Securities Act 1999 (**PPSA**);
 - ii must provide all information and do all things including the execution of documents as Systime may require for the purpose of ensuring that Systime has a perfected first ranking security interest in the Hardware and any proceeds under the PPSA;
 - iii must not, and must not attempt to, sell, assign, pledge, mortgage, charge, encumber, hire, license, or part with possession or permit any lien to exist in respect of the Hardware or grant any security interest over the Hardware to any third party;
 - iv agrees that sections 114(1)(a), 133 and 134 of the PPSA do not apply to the enforcement by Systime of any security interest created or provided for by the Agreement to which Part 9 of the PPSA applies, and waives any right it may have under sections 116, 120(2), 121, 125, 127, 129 and 131 of the PPSA on such enforcement; and
 - v waives any right it may have to receive from Systime a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to the Hardware.

9. Charges

9.1 The Customer must pay Systime the Charges.

9.2 The Charges:

- a set out in Systime's order form or quote are valid for up to 30 days from the date Systime issues the order form or quote; and
- b are subject to change without notice at any time prior to Order Acceptance. The Customer should confirm the Charges with Systime before placing an order.

9.3 Unless other set out in Systime's order form or quote, all freight, travel, accommodation, cabling and similar disbursements are additional to the Charges.

9.4 The Charges set out in Systime's order form or quote are quoted on the assumption that any existing PCs, printers and other peripheral equipment are suitable for the tasks required of them. Any

additional costs arising from incompatible or inadequate hardware platforms, software or services provided by any third party suppliers are the responsibility of the Customer.

- 9.5 Systime will provide the Customer with valid GST tax invoices in accordance with the invoicing terms set out in Systime's order form or quote or, if none are stated:
- a for Software and Hardware purchases and installation and training services, prior to delivery where possible; and
 - b for Software and Hardware rentals, Hosting Services, SaaS Services and the Software Support Plan, monthly in advance and prior to the due date for payment.
- 9.6 The Charges exclude GST, which the Customer must pay on taxable supplies, and all other taxes, duties and levies.
- 9.7 The Customer must pay the Charges and disbursements:
- a in accordance with the invoicing terms set out in Systime's order form or quote or, if none are stated:
 - i for Software and Hardware purchases and installation and training services, on delivery;
 - ii for monthly Charges for Software and Hardware rentals, Hosting Services, SaaS Services and the Software Support Plan, on or before the first day of the relevant month;
 - iii for all other amounts, within 7 days of the date of invoice; and
 - b electronically in cleared funds without any set off or deduction.
- 9.8 Systime may:
- a charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at a rate of 1.5% per month; and
 - b recover all costs incurred in recovering overdue amounts and interest from the Customer, including the actual fees charged by its lawyers and any debt collection agency.
- 9.9 Systime may increase the Charges for Software and Hardware rentals, Hosting Services, SaaS Services and the Software Support Plan at any time following the expiry of the relevant minimum term by giving at least 30 days' notice. If the Customer does not wish to pay the increased Charges, the Customer may terminate the relevant rental or Services on no less than 10 days' notice, provided the notice is received by Systime before the effective date of the increase. If the Customer does not terminate the relevant rental or Services in accordance with this clause, the Customer is deemed to have accepted the increased Charges.

10. Intellectual property

- 10.1 Subject to clause 6.9, title to, and all Intellectual Property Rights in, the Auxo Group Software and all Underlying Systems is and remains Systime's property (and its licensors' property). The Customer must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.
- 10.2 To the extent not owned by Systime, the Customer grants Systime a royalty-free, transferable, irrevocable and perpetual licence to use for its own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by Systime in the provision of the Services.
- 10.3 If the Customer provides Systime with ideas, comments or suggestions relating to the Auxo Group Software, Services or Underlying Systems (together **feedback**):
- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by Systime; and
 - b Systime may use or disclose the feedback for any purpose.
- 10.4 The Customer must:
- a not challenge Systime's (or any other Auxo Group company's) ownership, or the validity, of the Auxo Group Software or its Documentation or any other item or material created or developed by or on behalf of Systime under or in connection with the Agreement (including the Intellectual Property Rights in those items); and
 - b notify Systime in writing immediately after it becomes aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the Auxo Group Software or the Documentation.

11. Confidentiality

- 11.1 Each party must, unless it has the prior written consent of the other party:
- a keep confidential at all times the Confidential Information of the other party;
 - b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
 - c disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, clauses 11.1a and 11.1b.

- 11.2 The obligation of confidentiality in clause 11.1 does not apply to any disclosure or use of Confidential Information:
- a for the purpose of performing a party's obligations, or exercising a party's rights, under the Agreement;
 - b required by law (including under the rules of any stock exchange);
 - c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
 - d which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
 - e by Systime if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that Systime enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 11.

12. Warranties

- 12.1 Each party warrants that it has full power and authority to enter into, and perform its obligations under, the Agreement.
- 12.2 Systime does not give any warranty to the Customer relating to Third Party Software, which usually has separate warranties supplied by the relevant licensor.
- 12.3 Systime does not give any warranty to the Customer relating to Hardware purchased by the Customer. Systime will use commercially reasonable efforts to transfer to the Customer the benefit of any warranties provided by the relevant manufacturer.
- 12.4 For rental Hardware:
- a Systime warrants that the Hardware functions in accordance with the manufacturer's specifications;
 - b Systime will, at its own expense, repair or replace Hardware that fails to function in accordance with the manufacturer's specifications as soon as reasonably practicable. Work carried out for causes other than Hardware failure will be charged to the Customer; and
 - c the installation, transfer, removal and ongoing operation of software other than Auxo Group Software is excluded from any warranty.
- 12.5 To the maximum extent permitted by law:
- a Systime's warranties are limited to those set out in the Agreement, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under Part 3 of the Contract and Commercial Law Act 2017) are expressly excluded; and

- b Systime makes no representation concerning the quality of the Software, Hardware or Services and does not promise that the Software, Hardware or Services will:
 - i meet the Customer's requirements or be suitable for a particular purpose; or
 - ii be secure, free of viruses or other harmful code, uninterrupted or error free.
- 12.6 The Customer agrees and represents that it is acquiring the Software, Hardware and Services, and accepting the Agreement, for the purpose of trade. The parties agree that:
 - a to the maximum extent permissible by law, the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the Service or the Agreement; and
 - b it is fair and reasonable that the parties are bound by this clause 12.6.
- 12.7 Where legislation or rule of law implies into the Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in the Agreement. However, Systime's liability for any breach of that condition or warranty is limited, at its option, to:
 - a supplying the Software, Hardware or Services again; and/or
 - b paying the costs of having the Software, Hardware or Services supplied again; and/or
 - c refunding the Charges paid for the Software, Hardware or Services.
- 12.8 The Customer acknowledges that Software may link to third party services, websites or feeds that are connected or relevant to the Software. Any link from the Software does not imply that Systime endorses, approves, or recommends, or has responsibility for, those services, websites or feeds or their content or operators. To the maximum extent permitted by law, Systime excludes all responsibility or liability for those services, websites or feeds.

13. Liability

- 13.1 Subject to clauses 13.2, 13.4, 13.5 and **Error! Reference source not found.**, each party will indemnify the other party and each of the other party's personnel (each an **Indemnified Party**) against any action, claim, demand or proceeding which may be brought against an Indemnified Party (**Claim**) to the extent the Claim arises from or in connection with:
 - a any Claim by a third party alleging that Intellectual Property provided to a party (**first party**) by the other party infringes the Intellectual Property rights of any third party;
 - b any breach by the party of the terms of the Agreement;
 - c any negligent act or omission or act of fraud or dishonesty by the party (or its personnel) in the performance of the party's obligations under the Agreement; or
 - d any Claim by a third party caused or contributed to by the Party or its personnel,

except to the extent that the Claim is caused by the negligence or wilful default of the Indemnified Party.

13.2 Subject to clause 13.3:

- a each party's aggregate liability under or in connection with the Agreement or relating to the Software, Hardware or Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not exceed:
 - i where Systime is the liable party and the liability relates to Hosting Services, SaaS Services or Support Services, an amount equal to the Charges paid by the Customer for the relevant Hosting Services, SaaS Services or Support Services (as applicable) in the 1 month period prior to the date of the first event giving rise to liability;
 - ii where Systime is the liable party and the liability relates to Software, Hardware or Services (other than Hosting Services, SaaS Services or Support Services), the Charges paid by the Customer for the Software, Hardware or Services to which the liability relates; and
 - iii in all other cases, the aggregate of all Charges and other amounts payable under the Agreement; and
- b to the full extent permitted by law, each of the parties excludes all liability however arising for any loss of profit, revenue, savings, business, data and/or goodwill and for any indirect, special or consequential loss or damage arising in any way out of or in connection with the Agreement.

13.3 Clause 13.2 does not apply to limit a party's liability:

- a to pay the Charges and other amounts payable under the Agreement;
- b for loss or damage which is a result of its grossly negligent or wilful acts or omissions or those of its personnel;
- c under, or for breach of, clause 4.4;
- d for breach of clause 5.7;
- e under the indemnities in clauses 6.16 and 13.1a; or
- f for breach of confidentiality or infringement of Intellectual Property Rights.

13.4 In the case of any Claim referred to in clause 13.1a, the first party must notify the other party promptly of such Claim. The other party may handle that Claim's defence. On request, the first party will provide the other party with all reasonable assistance with any such Claim and the first party agrees not to do anything to prejudice the settlement or defence of any such Claim.

13.5 Systime exercises no control whatsoever over the content of the information passing through its sites, and it is the Customer's responsibility to ensure that the information it transmits and receives complies with all applicable laws and regulations.

13.6 Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement or the Software, Hardware or Services.

14. Termination

14.1 Either party may, by notice to the other party, immediately terminate the Agreement if the other party:

- a breaches any material provision of the Agreement and the breach is not:
 - i remedied within 30 days of the receipt of a notice from the first party requiring it to remedy the breach; or
 - ii capable of being remedied; or
- b becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.

14.2 The Customer may terminate the Agreement in accordance with clause 9.9.

14.3 Termination of the Agreement does not affect either party's rights and obligations that accrued before that termination.

14.4 On termination of the Agreement, the Customer must pay all Charges for Software, Hardware and Services provided prior to that termination.

14.5 No compensation is payable by Systime to the Customer as a result of termination of the Agreement for whatever reason, and the Customer will not be entitled to a refund of any Charges that it has already paid.

14.6 Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination of the Agreement but subject to clause 6.18, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.

15. General

15.1 The Customer agrees that during the term of the Agreement and for 2 years after its expiry or termination (**Restraint Period**), the Customer and its related companies must not, without the prior written consent of Systime:

- a directly or indirectly solicit or offer employment or any contract for services to any of Systime's personnel;
- b solicit or entice any member of the other party's personnel to terminate their position, employment or relationship with Systime; or

- c assist or encourage any person to do any of the things described in clauses 15.1a and 15.1b.
- 15.2 Clause 15.1 will not apply to any Systime personnel who terminated their position, employment or relationship with Systime 2 years or more prior to the Customer offering employment or a contract for services.
- 15.3 Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure.
- 15.4 No person other than the Customer and Systime has any right to a benefit under, or to enforce, the Agreement.
- 15.5 For Systime to waive a right under the Agreement, that waiver must be in writing and signed by Systime.
- 15.6 Subject to clause 6.13, Systime is an independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.
- 15.7 If Systime needs to contact the Customer, Systime may do so by email. The Customer agrees that this satisfies all legal requirements in relation to written communications. The Customer may give notice to Systime under or in connection with the Agreement by emailing admin@sam.co.nz.
- 15.8 The Agreement, and any dispute relating to the Agreement or the Software, Hardware or Services, is governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement or the Software, Hardware or Services.
- 15.9 Clauses which, by their nature, are intended to survive termination of the Agreement, including clauses 6.16, 6.17, 10, 11, 13, 14.3 to 14.6 and 15.8, continue in force.
- 15.10 If any part or provision of the Agreement is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If modification is not possible, the part or provision must be treated for all purposes as severed from the Agreement. The remainder of the Agreement will be binding on the Customer.
- 15.11 Subject to clauses 2.1 and 9.9, any variation to the Agreement must be in writing and signed by both parties.
- 15.12 The Agreement sets out everything agreed by the parties relating to the Software, Hardware and Services, and supersedes and cancels anything discussed, exchanged or agreed prior to the date of Order Acceptance. The parties have not relied on any representation, warranty or agreement relating to the Software, Hardware or Services that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the date of Order Acceptance. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986, and that it is fair and reasonable that the parties are bound by this clause 15.12.
- 15.13 The Customer may not assign, novate, subcontract or transfer any right or obligation under the Agreement without Systime's prior written consent, that consent not to be unreasonably withheld. In

the case of a genuine sale of a going concern that uses Auxo Group Software, Systime will typically allow the Agreement to be transferred provided the transferee accepts the Agreement and agrees to make all payments in accordance with the Agreement. The Customer remains liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer.

- 15.14 The Customer accepts that in the instance of the Software being provided on demonstration or trial basis, access may be shared by other users and the data entered therein should be considered shared and publicly visible. As such, data of a private or confidential nature should not be input into this system; and any potential privacy breaches should be immediately disclosed to Systime.

Schedule 1

MOTOR VEHICLE REGISTER DATA RETRIEVAL SERVICE – TERMS OF USE

In this Schedule:

PPSR means the Personal Property and Security Register

RMVT means a registered motor vehicle trader

NZTA means the Waka Kotahi New Zealand Transport Agency

By registering and using the Auxo Group NZTA Data Retrieval Service, the Customer agrees that:

1. The Customer is responsible for payment in full of all NZTA data requests that return a result. Notwithstanding this, multiple databases operated by different Government agencies and departments are being accessed during a search. It is possible that one or more of these sources may be unavailable from time to time due to maintenance or outage. Systime and the Auxo Group's partner Carjam will endeavour to check for unavailability and advise this as early in the search process as possible to avoid costs if possible.
2. Systime reserves the right to vary pricing at any time with a notice period of not less than 30 days. The current and applicable pricing schedule will be clearly displayed within the software system.
3. Invoicing for the Auxo Group NZTA Data Retrieval Service will only be available by electronic (email) means. It is a requirement of access to this service that an active and valid email address will be provided and maintained for this invoicing. Billing is automated and manual invoices will not be sent for this service.
4. Internet access from the computer where the search is being run is required to access the NZTA data.
5. Systime reserves the right to:
 - a. suspend the Auxo Group NZTA Data Retrieval Service for late payment;
 - b. charge interest on overdue payments at a rate of 1.5% per month, calculated daily; and
 - c. recover any costs incurred in recovering debts or in exercising any other rights, including commissions and legal costs on a solicitor and client basis
6. The data and information provided via the NZTA Data Retrieval Service is collated from several disparate sources and is only valid as at the date and time of request. Its accuracy and completeness is beyond the control of Systime and its partner Carjam. No liability whatsoever attaches to Systime, and the Customer indemnifies Systime against any claim for loss or consequence deriving from the provision of the NZTA Data Retrieval Service.
7. The Customer must ensure that all NZTA data retrieval requests are conducted for legitimate purposes relating to the normal operation of its business and provision of services to its clients. In particular:
 - a. Where PPSR information is included, the Customer undertakes that this information will be accessed and used for legitimate purposes as set out in the Personal Property Securities Act 1999.
 - b. Where vehicle owner information is included, the Customer undertakes that all searches will be for a specified purpose as allowed under section 241(1) of the Land Transport Act 1998.
 - c. For access to vehicle owner information, the Customer must provide Systime with a membership number of industry body approved to provide MVR access e.g. NAITA, MTA, or

direct authorisation from the NZTA, and advise Systime of any changes to membership status.

8. Where information is passed to a third party, including the Customer's own clients, it is the Customer's responsibility to ensure that all actual and implied obligations regarding data usage and privacy are passed to the third party. These include but are not limited to:
 - a. The information must be retrieved for legitimate purposes.
 - b. Where laws such as the Personal Property Securities Act 1999 apply, these must be complied with.
 - c. All uses must be specified purposes as allowed under section 241(1) of the Land Transport Act 1998.
9. The Customer is responsible for all staff accessing NZTA information to be trained and aware of the relevant requirements of the Personal Property Securities Act 1999 and the Land Transport Act 1998 including the points in (7) and (8) above.
10. Software upgrades or new versions may be provided from time to time to support this service. Provided these do not adversely affect any service Systime provide to the Customer, the Customer must install the upgrade or new version as soon as is reasonably practicable, but in no case more than 3 months from the date Systime supplies it to the Customer.
11. The Auxo Group owns all intellectual property relating to the Auxo Group NZTA Data Retrieval Service provided in Auxo Group Software. This includes copyright, trade marks, design rights and any intellectual property rights arising from future improvements or changes. This ownership is retained by the Auxo Group where the service or information derived from it is resold to end-consumers.
12. Either party may terminate the Auxo Group NZTA Data Retrieval Service with 30 days' notice.

[>> Activate the NZTA Data Retrieval Service.](#)

Schedule 2

Smartcheck eWOF – Terms of Use

In this Schedule:

Smartcheck means the Smartcheck addon functionality within Auxo Group Software and the associated Smartcheck web application and services; including the eWOF electronic WOF check sheet services.

Waka Kotahi means the Waka Kotahi New Zealand Transport Agency

eWOF means Electronic Warrant of Fitness check sheet functionality provided using Smartcheck

By activating, registering and/or using the Smartcheck service, the Customer agrees that, in addition to the terms set out in clauses 1 to 15 of the Systime Standard Terms and Conditions:

1. The Customer is responsible for payment in full of the Smartcheck service subscription. Notwithstanding this, Smartcheck may be unavailable from time to time due to maintenance or outage. Systime will endeavour to advise of any systemic outages as soon as is reasonably practicable.
2. Internet access is required on any devices accessing the Smartcheck service.
3. No liability whatsoever attaches to Systime, and the Customer indemnifies Systime against any claim for loss or consequence deriving from the provision of the Smartcheck Service.
4. The Customer must ensure that all use of Smartcheck eWOF is conducted for legitimate purposes relating to the normal operation of its business and in accordance with any requirements set by Waka Kotahi regarding to the operation of this service, including:
 - a. Retaining at least one paper WOF Checksheet book on their premise, to be used only where Waka Kotahi has been notified and agreed, in the instance of an outage where the online Smartcheck service cannot be operated.
5. The Customer is responsible for all staff using Smartcheck to be trained and aware of the full and proper operation of Smartcheck, including but not limited to;
 - a. entry and completion of a vehicle inspection, including recheck inspections;
 - b. retrieval and supply of records upon demand by any relevant authority;
 - c. what to do where the user experiences difficulty accessing or using Smartcheck, including but not limited to loss of connectivity, loss or damage to hardware and system failure
6. To aid in compliance with paragraph 5 of this Schedule, Systime will provide training material in the form of Knowledge Base articles and User Documentation provided through its customer service portal or on request to the Systime customer service (support) team.
7. Software upgrades or updates may be provided from time to time to support the Smartcheck service. Provided these do not adversely affect any service Systime provides to the Customer, the Customer must install the upgrade or update as soon as is reasonably practicable, but in no case more than 3 months from the date Systime supplies it to the Customer.
8. The Auxo Group owns all intellectual property relating to the Smartcheck service. This includes copyright, trade marks, design rights and any intellectual property rights arising from future improvements or changes.
9. Either party may terminate the Smartcheck service with 30 days' notice.