

VIOTEL TERMS OF TRADE

1 APPLICATION

- 1.1 By placing an Order with Viotel, the Customer agrees to these Terms.
- 1.2 The Agreement between the parties is formed when Viotel accepts the Order by notifying the Customer by email that Viotel accepts the Customer's Order, or by commencing supplying the relevant Services and/or Products 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 the SaaS Terms, if applicable;
 - b the Viotel Product Warranty, if applicable;
 - c these Terms;
 - d the Proposal/Quote; and
 - e 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 SaaS Terms, if applicable;
 - b the Viotel Product Warranty, if applicable;
 - c these Terms;
 - d the Proposal/Quote; and
 - e the Order.

2 CHANGES

- 2.1 Viotel may change these Terms at any time by notifying the Customer 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 and, when placing an Order, applies only to Orders placed by the Customer following that date. 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 places an Order with Viotel.

2.2 These Terms were last updated on 19th October, 2023.

3 INTERPRETATION

In these Terms:

Agreement means the SaaS Terms (if applicable), the Viotel Product Warranty (if applicable), these Terms, the Proposal/Quote and the Order.

Charges means:

- ▲ subject to clause 7.2, the applicable fees and charges set out in the Proposal/Quote; or Order; or
- ▲ if the Proposal/Quote or Order does not state the applicable fees or charges, Viotel's standard fees or charges as at the time of supply,

in each case, as may be updated from time to time in accordance with clause 7.7.

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 Agreement. Viotel's Confidential Information includes Intellectual Property owned by Viotel.

Customer means the customer placing the Order.

Delivery has the meaning given in clause 5.4. Other grammatical forms of that term have consistent meanings.

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.

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.

Order Acceptance has the meaning given in clause 1.2.

Order means:

- ▲ a Proposal/Quote issued by Viotel and accepted by the Customer; and
- ▲ any other request by the Customer for Viotel to supply Services or Products.

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

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 Viotel.

Products means Third Party Products and Viotel Products.

Proposal/Quote means a proposal or quote issued by Viotel to the Customer.

Related Services means any services related to the Products and/or SaaS Services (e.g. installation, calibration, maintenance, training or consulting services) set out in an Order, excluding the SaaS Services.

SaaS Services means the data logging, data visualisation, datamining and monitoring services (if any) set out in an Order and provided by Viotel on a *software-as-a-service* basis.

SaaS Terms means Viotel's SaaS Terms of Use located at www.viotel.co/saas as updated by Viotel from time to time.

Sales Tax means sales tax, goods and services tax, value added tax or equivalent tax payable under any applicable law.

Services means the SaaS Services and any Related Services.

Subscription Term means the subscription term for the SaaS Services (e.g. monthly or annual) specified in the Order.

Terms means these terms titled *Viotel terms of trade*.

Third Party Products means products that are not manufactured by Viotel.

Viotel means the contracting entity specified in clause 13.

Viotel Products means products that are manufactured by Viotel.

Viotel Product Warranty means the warranty document located at www.viotel.co/warranty

Website means www.viotel.co/

Words in the singular include the plural and vice versa.

A reference to 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 SERVICES AND PRODUCTS

4.1 In consideration for payment of the Charges, Viotel:

- a where the Order states that the Customer is purchasing SaaS Services, will provide the SaaS Services to the Customer in accordance with the SaaS Terms. In order to access and use the SaaS Services, the Customer must accept the SaaS Terms. If the Customer does not accept the SaaS Terms, Viotel may refuse to provide or withhold access to and/or use of the SaaS Services;
- b where the Order states that the Customer is purchasing Related Services, will provide the Related Services to the Customer in accordance with clause 4.2; and
- c where the Order states that the Customer is purchasing or renting Products, will sell or rent those Products to the Customer in accordance with clause 5,

in each case, in accordance with the Agreement.

4.2 Viotel must use reasonable efforts to provide the Related 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 Viotel's provision of the Services and Products to the Customer is non-exclusive. Nothing in the Agreement prevents Viotel from providing the Services or Products to any other person.

5 PRODUCTS

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

5.2 Viotel will use reasonable endeavours to deliver the Products 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 Products by reason of that delay.

5.3 Delivery and (where applicable) return of the Products is at the Customer's cost and risk. If requested, Viotel will ship the Products at the Customer's expense.

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

5.5 Where the Customer is purchasing Products, title in the Products passes to the Customer when full payment for the Products is received by Viotel. Until payment in full has been made:

- a the Customer must if requested by Viotel store the Products supplied in such a way that it is clear that it is the property of Viotel;

- b if the Customer is in breach of the Agreement (including failing to pay any payment when due), Viotel or its agent will be entitled to enter upon the Customer's premises at any reasonable time and repossess the Products;
- 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 Products or grant any security interest over the Products to any third party; and
- d if the Customer sells the Products prior to payment in full in breach of clause 5.5c, then the proceeds of sale will be the property of Viotel but for an amount no more than the Customer's indebtedness to Viotel.

6 RENTAL PRODUCTS

6.1 This clause 6 applies if the Order states that the Customer is renting Products.

6.2 Unless otherwise specified in the Order:

- a the term of the rental will begin on the 1st day of the month following receipt of the first rental payment;
- b the minimum term of the rental will be 3 months; and
- c after the completion of the minimum term, the Product rental can be cancelled by either party on not less than 30 days' notice.

6.3 Legal and beneficial ownership of the Products remains with Viotel at all times.

6.4 The Customer must, until the Products are returned to Viotel:

- a effect and maintain standard commercial insurance against standard risks, including fully insuring the Products for full replacement value, with Viotel's interest in the Products noted on the applicable policy;
- b provide Viotel with evidence of the Customer's compliance with clause 6.4a on request by Viotel; and
- c not allow anything to be done that might prejudice the insurance.

6.5 The Customer must:

- a take proper care of the Products;
- b not service or repair or tamper with the Products;
- c allow Viotel to access the Customer's premises at reasonable times to inspect, service and repair the Products;
- d 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 Products;

- e not allow the Products to be used or installed in a way that results in them becoming a fixture to any land, including real property; and
 - f immediately notify Viotel of any loss, theft or damage to the Products.
- 6.6 The Customer is liable for any loss, theft or damage to the Products however caused. The amount to repair the damage or replace the Products, is at Viotel's sole discretion.
- 6.7 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, Viotel or its agent will be entitled to enter upon the Customer's premises at any reasonable time and repossess the Products.
- 6.8 If the rental or the Agreement is cancelled or terminated for whatever reason before the end of the minimum term, Viotel reserves the right to charge the Customer the full monthly rental Charges for the outstanding contract period.
- 6.9 Viotel may assign its rights, title and interest in the Products in part or in whole at any time.
- 6.10 If the Customer is domiciled in New Zealand, the Customer:
- a agrees that the supply of rental Products under the Agreement creates a security interest over the rental Products, and all of the Customer's present and future rights in relation to the rental Products and any proceeds, in favour of Viotel that may be registered on the personal property securities register under the Personal Properties Securities Act 1999 (**PPSA**);
 - b must provide all information and do all things including the execution of documents as Viotel may require for the purpose of ensuring that Viotel has a perfected first ranking security interest in the rental Products and any proceeds under the PPSA;
 - c 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 rental Products or grant any security interest over the rental Products to any third party;
 - d agrees that sections 114(1)(a), 133 and 134 of the PPSA do not apply to the enforcement by Viotel 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
 - e waives any right it may have to receive from Viotel 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 rental Products.

6.11 If the Customer is domiciled in Australia:

- a the Customer:
 - i agrees that the supply of rental Products under the Agreement creates a security interest over the rental Products, and all of the Customer's present and future rights in relation to the rental Products and any proceeds, in favour of Viotel that may be registered on the personal property securities register under the Personal Property Securities Act 2009 (Cth) (**PPSA**);
 - ii must provide all information and do all things including the execution of documents as Viotel may require for the purpose of ensuring that Viotel has a perfected first ranking security interest in the rental Products 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 rental Products or grant any security interest over the rental Products to any third party;
- b to the maximum extent permitted by law:
 - i for the purposes of sections 115(1) of the PPSA:
 - ▲ the Customer waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA, including notices under sections 95, 118, 121, 130, 132 or 135 of the PPSA; and
 - ▲ sections 142 and 143 of the PPSA are excluded; and
 - ii for the purposes of sections 115(7) of the PPSA, Viotel need not comply with sections 132 and 137(3) of the PPSA;
- c nothing in this clause 6.11 is intended as an agreement to subordinate a security interest arising under this Agreement and conditions in favour of any person under section 61 of the PPSA;
- d the parties agree that unless otherwise agreed between the parties in writing, neither of them will disclose information of the kind referred to in section 275 of the PPSA, to the extent permitted under that section, and that this clause constitutes a confidentiality agreement within the meaning of the PPSA; and
- e the Customer waives any right it may have to receive from Viotel 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 rental Products.

7 CHARGES

7.1 The Customer must pay Viotel the Charges.

- 7.2 The Charges:
- a set out in the Proposal/Quote are valid for up to 30 days from the date Viotel issues the Proposal/Quote (**Validity Period**);
 - b are subject to change following expiry of the Validity Period, by Viotel giving notice to the Customer, prior to Order Acceptance.
- 7.3 Viotel will provide the Customer with valid Sales Tax invoices in accordance with the invoicing terms set out in the Proposal/Quote or Order and all applicable laws, or, if none are stated:
- a for Product purchases, prior to delivery;
 - b for Product rentals and the SaaS Services, prior to the due date for payment; and
 - c for Related Services, following provision of the Related Service.
- 7.4 The Charges exclude Sales Tax, which the Customer must pay on taxable supplies, according to applicable laws.
- 7.5 The Customer must pay the Charges:
- a in accordance with the invoicing terms set out in the Proposal/Quote or Order or, if none are stated:
 - i for Product purchases, on delivery;
 - ii for Product rentals and the SaaS Services, on or before the first day of the relevant month;
 - iii for Related Services, by the 20th of the month following the date of the invoice;
and
 - b electronically in cleared funds without any set off or deduction.
- 7.6 Viotel 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 1.0% 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.
- 7.7 Viotel may increase the Charges for Product rentals and the SaaS Services 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 30 days' notice, provided the notice is received by Viotel before the effective date of the increase. If the Customer does not terminate the relevant

rental or SaaS Services in accordance with this clause, the Customer is deemed to have accepted the increased Charges.

8 INTELLECTUAL PROPERTY

- 8.1 All Intellectual Property Rights in the Products are and remain Viotel's property. The Customer must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.
- 8.2 To the extent not owned by Viotel, the Customer grants Viotel 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 Viotel in the provision of the Services.
- 8.3 If the Customer provides Viotel with ideas, comments or suggestions relating to the Services or Products (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 Viotel; and
 - b Viotel may use or disclose the feedback for any purpose.

9 CONFIDENTIALITY

- 9.1 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 9.1a and 9.1b.
- 9.2 The obligation of confidentiality in clause 9.1 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 Viotel 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 Viotel enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 9.

10 WARRANTIES

- 10.1 Each party warrants that it has full power and authority to enter into, and perform its obligations under, the Agreement.
- 10.2 Viotel's warranty for the Viotel Products is as set out in the Viotel Product Warranty.
- 10.3 If Viotel Products fail to meet the warranties in the Viotel Product Warranty, Viotel will repair or replace in accordance with, and subject to the terms of, the Viotel Product Warranty. Work carried out where the Viotel Product Warranty does not apply will be charged to the Customer.
- 10.4 Viotel does not give any warranty to the Customer relating to Third Party Products. Viotel will use commercially reasonable efforts to transfer to the Customer the benefit of any warranties provided by the relevant manufacturer.
- 10.5 To the maximum extent permitted by law:
 - a Viotel'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 of merchantability or fitness for purpose) are expressly excluded; and
 - b Viotel makes no representation concerning the quality of the Services or Products and does not promise that the Services or Products 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.
- 10.6 The Customer agrees and represents that it is acquiring the Services and Products, and entering into the Agreement, for the purpose of trade. The parties agree that:
 - a to the maximum extent permissible by law, no consumer protection laws apply to the supply of the Services or the Agreement; and
 - b it is fair and reasonable that the parties are bound by this clause 10.6.
- 10.7 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, Viotel's liability for any breach of that condition or warranty is limited, at its option, to:
 - a supplying the relevant Services or Products again; and/or
 - b paying the costs of having the relevant Services or Products supplied again; and/or
 - c refunding the Charges paid for the relevant Services or Products.

11 LIABILITY

- 11.1 Viotel's maximum aggregate liability under or in connection with the Agreement or relating to the Services or Products, whether in contract, tort (including negligence), breach of statutory duty or otherwise:
- a where the liability relates to the SaaS Services, must not in any 3 month period exceed an amount equal to the Charges paid by the Customer for the SaaS Services in that 3 month period;
 - b where the liability relates to the Related Services, must not exceed the Charges paid by the Customer for the Related Services to which the liability relates; and
 - c where the liability relates to the Products, must not exceed the Charges paid by the Customer for the Products to which the liability relates.
- 11.2 Neither party is liable to the other under or in connection with the Agreement or the Services or Products for any:
- a loss of profit, revenue, savings, business, use, data, and/or goodwill; or
 - b consequential, indirect, incidental or special damage or loss of any kind.
- 11.3 Clauses 11.1 and 11.2 do not apply to limit Viotel's liability under or in connection with the Agreement for:
- a personal injury or death;
 - b fraud or wilful misconduct; or
 - c a breach of clause 9.
- 11.4 Clause 11.2 does not apply to limit the Customer's liability:
- a to pay the Charges; or
 - b under the indemnity in the SaaS Terms (if applicable); or
 - c for those matters stated in clause 11.3a to 11.3c.
- 11.5 Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.
- 11.6 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 Services or Products.

12 TERM AND TERMINATION

- 12.1 Unless otherwise specified in an Order that has been accepted by Viotel in accordance with clause 1.2 or agreed by the parties in writing, either party may terminate the SaaS Terms and the Customer's right to access and use the SaaS Services with effect at the end of the then-current Subscription Term by giving not less than 30 days' notice to the other party.
- 12.2 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 10 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.
- 12.3 The Customer may terminate the Agreement in accordance with clause 7.7.
- 12.4 Termination of the Agreement does not affect either party's rights and obligations that accrued before that termination.
- 12.5 On termination of the Agreement, the Customer must pay all Charges for Services and Products provided prior to that termination.
- 12.6 No compensation is payable by Viotel 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.
- 12.7 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, 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.

13 CONTRACTING ENTITY AND GOVERNING LAW

The company the Customer is contracting with under these Terms is stated below. These Terms will be construed in accordance with and governed by the law set out below, and the

parties submit to the non-exclusive jurisdiction of the courts stated below in relation to disputes arising out of or in connection with these Terms.

If the Customer is domiciled in:	it will be contracting with:	the governing law is the law of:	the parties submit to the non-exclusive jurisdiction of:
New Zealand	Viotel Limited, a New Zealand company, company number 7540596	New Zealand	the courts of New Zealand
Australia or any other country other than New Zealand	Viotel Australia Pty Ltd, an Australian company, ACN 645 231 349	Tasmania	the courts of Tasmania and the Commonwealth of Australia

14 GENERAL

- 14.1 Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure.
- 14.2 No person other than the Customer and Viotel has any right to a benefit under, or to enforce, the Agreement.
- 14.3 For Viotel to waive a right under the Agreement, that waiver must be in writing and signed by Viotel.
- 14.4 Viotel is an independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.
- 14.5 If Viotel needs to contact the Customer, Viotel 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 Viotel under or in connection with the Agreement by emailing admin@votel.co.
- 14.6 Clauses which, by their nature, are intended to survive termination of the Agreement, including clauses 8, 9, 11, 12.4 to 12.7 and 13, continue in force.
- 14.7 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.

- 14.8 Subject to clauses 2.1 and 7.7, any variation to the Agreement must be in writing and signed by both parties.
- 14.9 The Agreement sets out everything agreed by the parties relating to the Services and Products, 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 Services or Products 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. The parties agree that it is fair and reasonable that the parties are bound by this clause 14.9.
- 14.10 The Customer may not assign, novate, subcontract or transfer any right or obligation under the Agreement without Viotel's prior written consent, that consent not to be unreasonably withheld. The Customer remains liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer.