

## TERMS AND CONDITIONS OF PURCHASE

The following terms and conditions regulate the business relationship between You (“You” or “Your”) and MPERS International Pty Ltd trading as Survivor Watch (ABN 38 624 308 694) of Level 6, 91 Phillip St. Parramatta. NSW 2150 (“SW”, “We” or “Our”) for the purchase of Products and Services through SW’s authorised agents or resellers.

SW’s Terms and Conditions of Use, Product Warranty and Privacy Policy also apply to any transaction You may make and Your acceptance of these terms and conditions constitutes an acceptance of these. Any purchase of Products and Services, acceptance of our quotation or payment of any invoices by You from SW shall be regulated by the terms and conditions outlined in this Agreement.

### 1. DEFINITIONS

In these terms and conditions:

Agreement means these terms and conditions.

Carrier means any person or business used by SW to deliver Products from SW to You, whether all or part of the distance of the delivery.

Products means any personal emergency monitoring and response goods offered for sale by SW, including the Survivor Watch.

Services means services offered by SW, including any monitoring program purchased with the Survivor Watch which is also subject to the terms of a separate Monitoring Agreement.

Website means this website or any other website through which SW offers for sale the Products and Services.

Written Material means any informational material published by SW in any medium from time to time (including on the Website at [www.survivorwatch.com.au](http://www.survivorwatch.com.au) or [www.theswatch.com.au](http://www.theswatch.com.au)) with a view to providing information to any customer or prospective customer of SW about the Products and Services.

### 2. OUR CONTRACT WITH YOU

2.1 SW will take orders for Products and Services placed by you through our authorised agents, resellers or representatives subject to the terms of this Agreement.

2.2 Before an order is placed SW will email you a quote confirming the details of Your order including the price of the Products and Services. Once You have placed an order, You will receive an email acknowledging the details of Your order. This email is not SW’s acceptance of Your order, but confirms that SW has received Your order. All orders are subject to acceptance and availability.

2.3 SW will notify You by email if any Product is unavailable and offer an alternative item or a full refund. You may also be given the option of pre-ordering and purchasing Products in advance if they are out of stock. Pre-ordering will ensure that you receive the Products in priority to other customers once the Products have been delivered to SW. Alternatively, you may choose to register your email address for notification of arrival of the selected Products. If SW is unable to deliver pre-ordered Products for any reason, SW will notify You by email and offer a full refund.

2.4 Subject to clause 2.6, receipt of full payment of Your order by SW is evidence of SW’s acceptance of Your order, and a binding and enforceable agreement between You and SW. This Agreement can

only be modified by written agreement between You and SW. Neither SW's third party payment processor nor its nominated Carrier has the authority to accept an order on behalf of SW. Once Your order has been accepted by 3G, and the contract between You and SW has been completed, You will receive a second email containing a tracking number, confirming that Your order has been dispatched unless an agreement has been made with our representative to deliver your order in person.

2.5 The Products are at your risk upon dispatch from SW. SW will not be liable for any loss or damage to the Products in the course of transit.

2.6 While SW makes every effort to ensure that the Written Material is accurate, SW may discover clerical errors, including errors relating to the pricing of Products and Services. All clerical errors in Written Material, including pricing errors, are subject to correction and will not bind SW. Even where payment has been received by SW, SW is not obliged to accept or fulfil orders for Products and Services advertised at an incorrect price. SW will let You know as soon as possible if it discovers an error in the pricing of Products and Services which You have ordered, to inform You that SW has not accepted Your order and that the relevant part of Your order has been cancelled. If You have already paid for the Products and Services, SW will refund the full amount as soon as possible. If the Products have already been delivered, SW will process your refund once You have returned the Products in the same condition in which you received them.

2.7 A separate Monitoring Agreement governs the provision of the Services by SW to You, and is available at [www.survivorwatch.com.au](http://www.survivorwatch.com.au)

### 3. PRICE AND PAYMENT

3.1 The price of any and all Products and Services contained in any Written Material of SW is subject to change from time to time at the sole discretion of SW. All our prices are in Australian dollars (AUD) and includes GST (Goods and Services Tax).

The full retail price for the Products and Services are as follows:

Products: Survivor Watch \$819.50 incl GST

Services: Monthly Subscription Fee (12 months)

\$49.50 per month, which includes: SW's 24/7 monitoring services (please refer to separate Monitoring Services Agreement);

access to SW's online portal when it becomes available and mobile application;

an embedded-sim card (which is preinstalled in the Survivor Watch);

\$3 of SMS and voice calls; and 150MB data.

Minimum total cost of Services is: \$594

Minimum total cost for Products and Services over 12 months \$1,413.50

If you exceed the threshold of SMS, voice calls or data which is included in the Monthly Subscription Fee, you will be charged the following amounts:

\$1.10 (incl. GST) per minute for national voice calls;

\$2.20 per MB of data usage;

\$1.10 (incl GST) per SMS or MMS

For international roaming there is a charge of \$10 per mb.

3.2 Full payment of an order for Products must be made and received by SW before the Products will be delivered to you, and before the Services are activated. You authorise all amounts due to SW for Services provided under this agreement to be paid by electronic funds transfer, credit card payment, or direct debit, using the credit card or bank account information provided by You to Our third party payment processor, PayPal Australia Pty Ltd, automatically at the end of each month in which Services are provided.

3.3 SW agrees to pay banking charges by the receiving bank on payments to SW. All other charges relating to the payment of an order in a currency other than Australian Dollars will be borne by You.

3.4 You represent and warrant that if You are purchasing something from SW that (i) any bank accounts or credit card information You supply is true, correct and complete, (ii) You are the credit card holder or You have express authority from the card holder to use the credit card which is used to make the purchase, (iii) charges incurred by You will be honoured by Your credit card company, and (iv) You will pay the charges incurred by You at the posted prices, including any delivery fees and applicable taxes.

3.5 If Your payment is not honoured, SW will demand payment of the amount due, and if not paid within 5 business days may immediately terminate this agreement. Such termination does not relieve You of Your obligation to pay for Services provided by SW prior to such termination.

3.6 If you terminate the Services before the expiry of the initial 12month period, exit fees will apply and will be charged to your nominated credit card or direct debited from your nominated bank account.

3.7 After the expiry of the initial 12month period, the Services can be renewed for additional 12 month periods for \$540 (inc GST) (subject to any additional charges which may be incurred for exceeding included voice calls, SMS and data).

3.8 You acknowledge that the price for Products and Services does not include charges associated with the dispatching of anyone (including government personnel and agencies) in response to notifications and signals from the Products, and that You are responsible for the payment of such charges.

#### 4. DELIVERY

4.1 Where applicable, deliveries will be made by the Carrier to the shipping address provided in Your order. You confirm that the Carrier can leave Products purchased by You outside the premises at the shipping address provided by You without obtaining Your signature for proof of delivery. You hereby release and indemnify SW from liability for loss or damage that may result from leaving the Products purchased by You at Your shipping address without obtaining a signature.

4.2 We will deliver to most addresses within Australia. We aim to get Your Products to You within 10 business days of SW's acceptance of Your order and payment has been cleared in our bank accounts. Once Your Products have been posted, a specific tracking number will be sent to Your email address. Orders within Australia will be delivered using Australia Post.

4.3 We are not taking international orders at this stage. If you are interested in making an international order, please email [info@survivorwatch.com.au](mailto:info@survivorwatch.com.au)

4.4 Our shipping and handling costs within Australia are \$27.50. If 3GSW is unable to deliver Your Products for whatever reason within 30 days of the date of Your order, SW will notify You to arrange another date for delivery.

4.5 If the Products ordered are not available to be delivered all at once, SW may, at its discretion and on its selected terms and conditions, deliver the Products ordered in instalments. This will be indicated by multiple tracking numbers in the confirmation email You receive from SW.

4.6 You must inspect the Products once delivered, and ensure the Products delivered match Your order. You must inform SW within 24 hours if there are any damaged or incorrect Products, or if Products are missing from Your order, using the contact details in clause 8.8.

## 5. CANCELLATION OF ORDER AND RETURN OF PRODUCTS

5.1 Nothing in this cancellation and returns policy limits, restricts, excludes or modifies any of Your statutory rights under the Australian Consumer Law.

5.2 Once SW has received full payment of Your order, then subject to Your statutory rights under the Australian Consumer Law, You have no right and are unable to cancel, refund and/or modify Your order. SW does not offer refunds simply in the event You change Your mind or make a wrong decision.

5.3 SW will replace any Products purchased from SW that are not of acceptable quality, have been wrongly described or do not otherwise meet the consumer guarantees contained in the Australian Consumer Law, or any other statutory rights you may have.

5.4 Where a Product is defective, SW also provides a manufacturer's warranty, details of which are available at [www.survivorwatch.com.au](http://www.survivorwatch.com.au). This may be extended for an additional 12 month period at a cost of \$120 (inc GST). Should You need to return any Products, please notify SW promptly, by emailing [info@survivorwatch.com.au](mailto:info@survivorwatch.com.au)

5.5 The cost of return shipping is at Your expense, unless the Products delivered to You are faulty or do not fit the description of Your order. We recommend using a tracked service to ship the package. SW is not responsible for Products that are lost during return shipment.

5.6 Once the Products being returned have been delivered to SW, we will email You to confirm that the Products have been received. Within 60 days of receiving the Products, SW will examine the Products and determine whether the fault can be remedied, and then process either the repair, replacement or refund, at SW's option and subject to Your statutory rights. If Products are being returned, SW will issue a refund to the credit card used for the original purchase. If Products are being repaired or replaced, SW will deliver the repaired or replacement Products in accordance with clause 5. The repaired or replacement Products will be shipped upon availability. Shipping is free on repaired or replacement Products, however, shipping to international destinations may incur additional import duty and taxes which You are responsible for paying.

## 6. USING SW'S PRODUCTS AND SERVICES

6.1 You are responsible for insuring that all information you provide to SW is accurate and up to date, to ensure the proper use of the Products. You agree to advise us of any change in Your contact details.

6.2 The Products are to be used primarily as a personal safety emergency device, enabling communication between the wearer of the Products (User), SW's 24 hour monitoring centre and

the User's nominated personnel. Please refer to the Monitoring Agreement for further terms and conditions under which SW will provide the Services to You.

6.3 You may need a Survivor Watch™ account (User Account) in order to use some of Our Services (including the SW online portal and mobile application). You may create Your own User Account, or Your User Account may be assigned to You by an administrator once this service becomes available. If You are using a User Account assigned to You by an administrator, additional terms may apply and Your administrator may be able to access or disable Your User Account. If You learn of any unauthorized use of Your password or User Account, please contact SW Customer Support by sending an email with all the relevant information to [info@survivorwatch.com.au](mailto:info@survivorwatch.com.au)

6.4 Our Services (including the SW online portal and mobile application) may allow You to submit content (User Content). You retain ownership of any intellectual property rights that You hold in User Content. If You submit User Content to our Services, You give SW (and those We work with) a worldwide, non-exclusive licence to use, host, store, reproduce, modify, create derivative works, communicate, publish, publicly perform, publicly display and distribute such User Content, for the limited purpose of operating, promoting or improving Our Products and Services. This licence of User Content continues after You stop using Our Services or the expiry or termination of this agreement for any reason. By submitting User Content, You represent that you have the right to grant SW this licence of such User Content.

6.5 When a Service requires or includes downloadable software, this software may require you to update Your device once a new version is available by swiping the general settings icon on the watch and scroll down to the software update to press the icon and follow the prompts. Some Services may let You adjust Your automatic update settings. SW grants You a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the software provided to You by SW as part of the Services. This licence is for the sole purpose of enabling You to use and enjoy the benefit of the Services as provided by SW, in the manner permitted by these terms. You may not copy, modify, distribute, sell, or lease any part of Our Services or included software, nor may You reverse engineer or attempt to extract the source code of that software, unless laws prohibit those restrictions, or You have our written permission. Some software used in Our Services may be offered under an open source license that we will make available to You, and the terms of the open source license may expressly override this clause 6.5.

## 7. DISCLAIMERS

7.1 The Products use GPS, GPRS, mobile digital network services and Wi-Fi technologies in order for SW to provide the Services. You acknowledge that such technology may go offline or experience outages, and during such outages the Products cannot be used to make, receive or transmit calls or signals. SW is not obliged to provide Services during any such outages.

7.2 You acknowledge that Products may not work with other providers of mobile digital network services and Wi-Fi technologies.

7.3 SW may at any time and without any advance notice to You or any other person make improvements or changes to its Written Material or to any of the Products or Services.

7.4 To the fullest extent permitted by law and subject to Your statutory rights, in no event will SW be liable to You for any special, consequential or indirect losses, any loss of profits, loss of opportunity, loss of data, loss of goodwill or loss arising from business interruption, whether I contract, negligence or otherwise, which You suffer or incur as a result of, or in connection with, any conduct

or omission by SW, or Your use of the Website, or the purchase of any Products or Services. Nothing in this Agreement limits, restricts, excludes or modifies any of Your statutory rights that cannot be limited, restricted, excluded or modified.

## 8. TERMINATION; DEFAULT

8.1 SW may discontinue Services and terminate or suspend this agreement if You fail to make any payment when due otherwise default under the terms of this agreement. If SW suspends the provision of Services because of Your failure pay fees for such Services, and You ask us to reactivate the Products, You will be liable to pay to SW the following;

(a) \$49.95 to reissue You with a new sim for safety and security purposes;

(b) a reconnection fee of \$99.95; and

(c) any outstanding fees and charges.

## 9. PRIVACY POLICY

You acknowledge that you have read SW's Privacy Policy posted on Our website and available at [www.survivorwatch.com.au](http://www.survivorwatch.com.au) SW may modify the Privacy Policy at any time, with or without notice to You, in Our sole discretion and You are responsible for checking Our website regularly for updates. You agree that SW may take any action with respect to Your personal data, including individually identifiable data pertaining to You or those nominated by You, provided such act is not in violation of the Privacy Policy and is otherwise deemed necessary or appropriate by SW for the provision of the Services or otherwise for the conduct of Our business.

## 10. GENERAL

10.1 If any provision of this Agreement is found to be invalid or unenforceable, that provision shall be enforced to the maximum extent possible and will be deemed deleted to the extent that it is not enforceable, and the remaining provisions of these terms and conditions shall remain in full force and effect.

10.2 The failure by SW to insist upon or enforce strict performance of any part of this Agreement will not be construed as a waiver of any right or remedy of SW in respect of any existing or subsequent breach of this Agreement.

10.3 In the event of a dispute arising out of or in connection with these terms or any contract between You and SW, then You agree to attempt to settle the dispute by engaging in good faith with SW in a process of mediation before commencing any arbitration or litigation.

10.4 SW is not liable and is hereby released by You from any claim, liability or responsibility pursuant to this Agreement concerning any failure by SW to perform any obligation under this Agreement where such a failure is due to strike, lock-out, riot, industrial action, fire, storm, tempest, act of God, material shortage, government law or regulation or requirement or any other cause beyond the control of SW and no such failure shall entitle You to terminate this Agreement.

10.5 This Agreement constitutes the entire agreement between You and SW for the purchase of the Products and Services using the Website, and they replace all prior or contemporaneous undertakings or agreements, written or oral, regarding such purchase.

10.6 Any variation to this Agreement shall be effective only if accepted in writing by SW.

10.7 This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales.

10.8 You can contact SW by emailing [info@survivorwatch.com.au](mailto:info@survivorwatch.com.au) or