

## TrackaPhone Limited, Standard Terms and Conditions of Sale

### Definitions

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| ‘TAP’ -                       | means Track A Phone Ltd (registered in England and Wales no. 4390177)  |
| ‘Product’ -                   | means any device, hardware, antennae, cables and any ancillary equipment and accessories   |
| ‘Service’ -                   | means delivery, installation, repair and replacement of Products, training, consultancy, development work, customer support, the provision of data, reports and other information by any medium and the provision of software by TAP to the Customer |
| ‘SIM’ -                       | means any subscriber identity module used in any of the Products   |
| ‘Customer’ -                  | means any company, partnership, association or individual entering into a contract for the purchase or rent of Products or Services from TAP.  |
| ‘Standard Terms’ -            | means the TAP standard terms and conditions of sale  |
| ‘Sub-Contract’ -              | means a contract in addition to the Standard Terms defining the specific requirements of the Customer  |
| ‘Agreement’ -                 | means the entire agreement between TAP and the Customer including the Standard Terms and any Sub-Contract or written order accepted by TAP   |
| ‘Initial Term’ -              | means the minimum period for which the Customer is contracted to receive and pay for Products and Services from TrackaPhone as defined in the Sub-Contract   |
| ‘Sub-Contract Minimum Term’ - | means the minimum period for which each individual subscription to the TAP services must meet which is equal in length to the Initial Term but commences from the date that each the subscription begins.  |

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### 1. General

- 1.1. TAP is the provider of a number of services for the location, protection and management of mobile devices, vehicles, assets and employees. All contracts for the sale of Products or Services made by TAP are deemed to include these Standard Terms, which shall prevail over any other document or communication between the parties unless otherwise agreed in writing.
- 1.2. If any part of the Standard Terms should be found to be invalid or unenforceable by a court or other competent authority, then the rest shall not be affected.
- 1.3. The Customer will elect the specific Products and Services they require at the point of order using the Sub-Contract supplied by TAP. This will also define minimum contract terms, minimum quantities, prices and payment terms among other specific terms as required.
- 1.4. In the event of a conflict between the provisions of any order and the provisions of these Standard Terms, the provisions of the Standard Terms shall prevail, save to the extent otherwise expressly agreed by the parties.
- 1.5. Neither TAP nor the Customer shall be liable to perform its obligations to the Standard Terms nor any Sub-Contract if such failure results from circumstances beyond their reasonable control
- 1.6. Any notice to be given in respect of these Terms by either of the parties shall be in writing, and delivered to the registered office or principal place of business of the other.

## 2. Prices and Payment Terms

- 2.1. TAP reserve the right to alter the pricing from time to time after advising the customer in writing with 30 days' notice.
- 2.2. TAP shall be entitled to suspend access of the Customer to any or all parts of the Service supplied at any time when the Customer is 14 days in arrears in the making of any payment due.
- 2.3. Amounts due to TAP shall be free from any set off claims, right of compensation, deductions or withholdings of any nature.
- 2.4. Prices are only valid if expressed in writing by TAP and only for the quantity of Products and time period stated in its quotation or order confirmation. If not stated, the validity period is 30 days.
- 2.5. Unless otherwise stated on TAP's order confirmation or invoice, payment of all invoiced amounts shall be made within 30 days of the date of invoice or before any due date for payment shown on the invoice. If any payment is not made by the Customer by the due date, TAP reserves the right to charge interest at the rate of 4% above the Barclays Bank plc base rate until payment is received in full.

## 3. Order, Delivery and Installation

- 3.1. It is the responsibility of the Customer (at its own expense) to insure all Products which it uses in relation to the Services from the date of delivery to the Customer.
- 3.2. All Products and Services are subject to availability and TAP is not obliged to accept every order placed.
- 3.3. The Customer is responsible for the accuracy of any orders placed by it and for ensuring that TAP has sufficient information in order to fulfil that order, for example the correct delivery address.
- 3.4. All delivery times and dates are approximate, but TAP shall use its reasonable endeavours to respect them. Time shall not be of the essence, and TAP shall not be liable for any loss or damage resulting from late delivery or from its failure to respect an appointment for installation.
- 3.5. If the Customer delays the installation of any Products beyond 90 days from the date of the first Product installation for that order, TAP shall be entitled to deliver the remaining Products to the Customer's delivery address and the order shall be deemed to be complete and will be invoiced as such.
- 3.6. In the event that installation is carried out by the Customer or a person appointed by the Customer, TAP shall not be liable for any loss or damage whatsoever, arising directly or indirectly, as a result of any negligence or failure to follow TAP's written instructions in installing the Products.

## 4. Title and Risk

- 4.1. Title in Products purchased by the Customer passes upon full payment and until then the Customer must insure and store the Products separately and maintain them in good order.
- 4.2. Title in the SIM shall remain vested in TrackaPhone, or its provider of SIMs, in all circumstances
- 4.3. Risk in the Products passes to the Customer upon their delivery to the Customer's designated delivery address, regardless of whether installation has been completed or not.

## 5. Warranties

- 5.1. TAP guarantees to the Customer that Products purchased will be free from defects for a period of 12 months from delivery unless otherwise stated on the order confirmation. Should the Products be defective within this period, TAP will, at its discretion, repair or replace them within a reasonable time using components or replacements that are new, or equivalent to new. In the case of Products rented from TAP this guarantee will continue for the duration of the Product rental.
- 5.2. TAP does not warrant that the Products are fit for any particular purpose, nor that that the Services will be without disruption, nor that any reports, data or information provided as part of the Services will be free from errors, omissions, inaccuracies or nonconformities, and TAP

shall have no liability or obligation to the Customer in this respect except as provided hereunder.

- 5.3. TAP makes no warranty for the security or integrity of any connection or transmission used in the provision of the Services.
- 5.4. TAP shall not be liable for and provides no warranty for any damage caused by the Customer or his representative or any unauthorised 3<sup>rd</sup> party through incorrect installation, use, modification or repair of the Products, nor for any accidental or other damage to the Products caused by any party or external force.

## **6. Intellectual Property Rights**

- 6.1. TAP retains all TAP-owned Intellectual Property in the Products and Services. Copyright and all other intellectual property rights subsisting in the database and data accessible via the Services and each and every piece of information provided through the Services 'the Information' is owned by TAP or the providers of such information.
- 6.2. The Customer may use Information retrieved from the Services only for the Customer's own purposes which means that the Customer may not sell, resell, retransmit or otherwise make the Information retrieved from the Services available in any manner or on any medium to any third party unless the Customer has obtained TAP's prior written consent.

## **7. SIM Cards**

- 7.1. The Customer shall not remove, or permit or allow others to remove, any SIM Card from any of the Products supplied by TAP. The Customer is responsible for the loss or theft and any consequent (including fraudulent or improper) usage of the SIM Cards.
- 7.2. In the event that TAP has reasonable grounds to believe that the Customer may be in breach of the provisions of clause 7.1, TAP may, at its sole discretion, discontinue the provision of Services to the Customer on any one or all of the Products supplied to the Customer.
- 7.3. The mobile number and any other numbers made available in connection with the use of the Products and Services remain the property of TAP.
- 7.4. The SIM card remains the property of the relevant mobile network service provider and is on loan to TAP only for use of the Services. If requested, the SIM card must be returned to TAP.
- 7.5. It is the Customer's responsibility to keep the SIM cards secure as TAP is not liable for any loss or liability incurred by the Customer resulting from their unauthorised use.
- 7.6. If a SIM card is lost or stolen or damaged it is the Customer's responsibility to inform TAP of this.
- 7.7. The Customer shall be responsible for the replacement costs of any SIM cards that are lost, stolen or require replacement (other than warranty replacements which shall be the responsibility of TAP) during the term of the Agreement.
- 7.8. The Customer may only apply to TAP to transfer the mobile numbers to another network operator or mobile service provider where:
  - a. The minimum contract commitment has been met
  - b. The Customer has applied for the transfer in writing
  - c. All outstanding charges owed by the customer have been paid to TAP
  - d. The Customer has made available accurate information requested by TAP to ensure a smooth transfer.
- 7.9. The Customer warrants that it has obtained all consents, registrations and notifications (including any amendments thereto) required by the Data Protection Act 1998 and the Telecommunications (Data Protection and Privacy) Regulations 1999 (and any amendments or replacements thereof, including any legislation implementing Directive 97/66/EC) (the "Data Protection Legislation") in respect of personal data to be supplied or disclosed to TAP (for example relating to employees or contractors) and the Customer undertakes to ensure that personal data is:
  - a. Accurate and up to date when disclosed
  - b. Processed and disclosed fairly and lawfully (as required by the Data Protection Legislation) by the Customer when supplying or disclosing such personal data to TAP.

## 8. Confidentiality

8.1. Both TAP and the Customer must treat all information received from the other marked 'Confidential', or which is reasonably obvious to be confidential, as it would treat its own confidential information. Information that is to be considered confidential may include, but not be limited to: business plans, lists of customers, operational and technical data and product plans. The provisions of this clause shall survive the termination of any contract between The Customer and TAP by three years.

## 9. Liability

9.1. Nothing in these Terms shall exclude or limit TAP's liability for death or personal injury caused by TAP's negligence nor its liability for fraudulent misrepresentation

9.2. Without prejudice to any other provision of these Terms, in any event TAP's total liability for any one claim or for the total of all claims arising from one act of default on TAP's part (whether in tort, contract, negligence or otherwise) shall not exceed the total amount paid by the customer for the Products or Services in respect of which a claim is made. In the case of any claim made against TAP for disruption to the Services or any errors in the Information provided, TAP's liability shall not exceed the total price paid by the Customer for the Services for the duration of any such disruption or errors and only in respect of those Products for which the Services were affected.

9.3. TAP shall not be liable to the Customer for any economic (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings), special, indirect or consequential losses.

9.4. The Customer shall indemnify TAP against all direct costs, claims, demands, losses, damages, expenses and liabilities arising out of or in connection with any failure by the Customer to observe any of the provisions in these Terms

## 10. Contracts (Rights of Third Parties) Act 1999

10.1. A person who is not a party to this contract has no right under the Contracts(Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## 11. Force Majeure

11.1. TAP shall not be liable to the Customer for non-performance or delay in performance of any of its obligations under these Terms or loss or damage of any Products due to acts of God, war, riot, civil commotion, embargo, strikes, fire, theft, delay in delivery or services of sub-contractors or sub-suppliers, shortage of labour or materials, confiscation or any other unforeseen event (whether or not similar in nature to those specified) outside the reasonable control of TrackaPhone.

## 12. Termination

12.1. TAP shall be entitled to terminate the Agreement immediately with reasonable cause upon refunding all prepayments of charges made by the Customer

12.2. TAP may terminate any contract with the Customer if the customer commits a material or persistent breach of these Terms and fails to remedy this within 30 days of written notice, or with immediate effect if the Customer does any act that might jeopardise the continuance of the Services.

12.3. Where the Customer wishes to terminate individual subscriptions to the Service prior to meeting the Initial Term TAP reserve the right to charge the customer a disconnection charge for each disconnection calculated as (monthly recurring fee x Months remaining on the Sub-Contract Minimum Term )

12.4. Where the Customer wishes to terminate the whole contract and the Initial Term has been met, TrackaPhone agree to calculate a co-terminus contract end date on request from the Customer in writing. The termination date will be calculated as (the collective remaining months of the Sub-Contract Minimum Term across the account) / (the total number of subscriptions) e.g. If the Customer has 100 subscriptions and 10 of these have 20 weeks remaining on their subcontract minimum term, then the contract termination date would be  $(10 \times 20) / 100 = 2$  weeks.

**13. Assignment**

13.1. The Customer may not assign his rights or obligations, in whole or in part, to any third party without TrackaPhone's written approval.

**14. Governing Law and Jurisdiction**

14.1. This Agreement and these Terms shall be construed in accordance with English law, and shall be subject to the exclusive jurisdiction of the courts of England and Wales

**15. Location Services**

15.1. TAP will make available the current versions of their proprietary software, and licences for the non-exclusive and non-transferable use of that software by the Customer for the Customer's own internal business purposes only during the continuance of this Agreement such use specifically excluding sub-sale assignment or sub-licensing reverse engineering de-compilation or disassembly and any action which might prejudice the enforcement by TAP of its intellectual property rights in that software.

15.2. TAP will make available via a range of on line portals and proprietary software on provision by the Customer of the authorised username and password provided by TAP to the Customer the information reasonably obtainable by them as to the whereabouts of mobile devices previously registered with TAP by the Customer and will use all reasonable endeavours to ensure that this information shall be available to the Customer at all times.

15.3. TAP shall in any event be under no obligation to provide such information in respect of:-

- a. Any mobile device not correctly and fully registered by the Customer with TAP
- b. Any mobile device for which the user of that device has not provided their consent both for the Customer to give TAP such data as is necessary for TAP to provide such information and for TAP to provide such information to the Customer.
- c. Where the mobile device is out of range, disabled or switched off or where the relevant network is not accessible or for any reason beyond the control of TAP.

15.4. The Customer warrants that:-

- a. All devices registered by it will be devices in the constant possession of persons who have given the consents referred to in **15.3.b.** above.
- b. All persons using the devices registered by it will first be informed how they can restrict the use of data regarding them.
- c. It will maintain its own backup data.
- d. It will use any data supplied by TAP for its own internal business purposes only and will not provide such information to any third party.
- e. It will keep usernames and passwords confidential and will not disclose these or allow them to be disclosed to any third party but will permit their use by authorised employees of the Customer whose names shall have been notified to TAP and in the event of any change in the status of any such authorised employee will immediately procure that the usernames and passwords are changed so as to prevent the access of an unauthorised person.
- f. It will not use the software or information provided by TAP save in strict compliance with the terms of this Agreement.
- g. It will comply with all applicable data protection and privacy legislation or regulations from time to time in force.
- h. It will take full cognisance of any advice issued from time to time by TAP.
- i. It will take full responsibility for obtaining the necessary consents in relation to the tracking of a mobile device.

15.5. For the purposes of the Data Protection Acts the customer authorises TAP to release location data to all appropriate statutory authorities if requested to do so.

**16. Protection Services**

- 16.1. The Customer acknowledges that TAP make no claims regarding the efficacy of their protection services which are subject to many factors outside of TAP's control, but are simply providing tools to reduce the potential risks faced by people and assets subscribed to the services.
- 16.2. TAP shall not be held responsible for any failure or refusal to respond to an emergency by the emergency services.
- 16.3. The Customer accepts the responsibility of ensuring that the termination points of any alarm escalation routes within their control are put in place, are adequate, and accurate
- 16.4. The Customer accepts that persistent excessive activation of alerts requiring action by the Emergency Response Service Personnel may result in either:
  - a. the Customer being upgraded to a higher service level to accommodate the additional alerts and charged appropriately
  - b. a re-negotiation of the commercial terms
  - c. a termination of the Emergency Response Services supplied.
- 16.5. Excessive usage is defined as alerts exceeding the fair usage limit for the service level the Customer has agreed to as defined in the Sub-Contract for 2 consecutive months or for 3 months in any 6 month period.