

General Terms & Service Agreement

MB Telematics Ltd
Unit 7 Sapcote Road,
Sapcote Road Industrial Estate,
Sapcote Road,
Burbage,
LE10 2AU

IMPORTANT NOTICE – GDPR COMPLIANCE

These General Terms & Service Agreement include clauses governing the processing of personal data in accordance with GDPR article 28.
This enables all our customers to meet their obligation as Data Controller in this respect.

1. Definition:

Some definitions of this document have been clarified below. If a clause refers to a certain definition as such, the definition is used with a capital:

Anonymised Data:

Data anonymizing is the process of either encrypting or removing personally identifiable information from data sets, so that the people whom the data describe remain anonymous in order to protect their privacy.

Client:

The customer as stated in the order form.

Confidential Information:

All Information and documenting that is considered confidential or proprietary at the time of disclosure to the extent a party treats such Information as confidential or proprietary such as but not limited to: Information regarding clients, distributors, retailers, partners or users; financial information; pricing information; product specifications and designs; and development and manufacturing processes.

Contract:

The signed order Form together with the general terms & service agreement (this document) and our privacy policy.

Data Protection Laws:

The (I) European data protection directive (95/46/EC); and (II) the GDPR after 25 May 2018; and then (III) any successor legislation to the GDPR.

Device / Unit:

The device also referred to as “black box” or “control unit” which contains a SIM-card in order to send object data to the Tacho Web and or Live Tracking Platform.

Fleet:

The vehicles, machines, equipment, persons and all other assets that can be tracked through the Live Tracking Platform.

Live Tracking, Defect Check Platforms

The web application that gathers all object data through the Mobile Communication Services, which can be accessed through [hps://app.live-tracking.co.uk](https://app.live-tracking.co.uk) / app.defect-check.co.uk

MB Telematics Ltd Products and/or Services:

MB Telematics Ltd platform and/or hardware Including 3rd party systems IDHA

Force Majeure:

Any cause beyond the reasonable control of the Party affected, which affects the performance of the contract, including but not limited to prolonged disruption of transport, telecommunication or electric current, Mobile Communication Services, any delayed or incomplete deliveries caused by MB Telematics Ltd suppliers, failure to obtain all Products and/or (third party) services required for the proper fulfilment of the contract by MB Telematics Ltd caused by any other circumstances that cannot in fairness be attributed to MB Telematics Ltd Limited such as but not limited to casualty, fire, explosion,

flood, earthquake or other natural disasters, governmental restrictions or regulations, any acts of war, terrorism or apparent acts of terrorism, civil disturbances or riots, strikes, curtailment, suspension or restriction on transportation facilities and means of transportation or any other emergency.

GDPR:

General Data Protection Regulation (2016/679/EC).

General Terms & Service Agreement:

This document.

Hardware:

The Device(s), if applicable, together with any additional items like, but not limited to ID-readers, buttons, CAN-interfaces and sensors.

Intellectual Property Rights:

All inventions, patents, registered designs, design rights, data base rights, copyrights, expertise, trademarks, trade secrets and other intellectual property rights relating thereto in any and all countries.

Mobile Communication Services:

The mobile electronic communication services used for transmitting the objects data via GPRS/2G/3G/4G networks and their providers.

Object Data:

Data transmitted by the unit such as, but not limited to: GPS location, speed, direction, route, driver, time spent, activity, tachograph related data, (encrypted) tachograph files, fuel data, DTC info and sensor information.

Order:

An order placed by the client regarding the type and amount of Hardware and subscriptions to MB Telematics Ltd Platforms, formalized with an order form.

Order Form:

The individual form which states that MB Telematics Ltd supplies and client purchases or leases the MB Telematics Ltd products and/or services.

Party (or Parties):

MB Telematics Ltd and/or client, stated as parties when mentioned together.

Term:

The duration of the contract, agreed upon by signing the order form.

2. Applicability and Scope:

2.1. These General Terms & Service Agreement including the order form shall apply to all present and future business relations even if they are not explicitly agreed on again and are expressly incorporated into the Contract and all subsequent agreements entered into between MB Telematics Ltd and the client together with the MB Telematics Ltd products and/or services. The application of general terms and conditions other than these general terms & service agreement is expressly forbidden.

2.2. Each offer or quotation made by or on behalf of MB Telematics Ltd is made without obligation and does not bind the MB Telematics Ltd except stated otherwise in writing.

2.3. If any provision of the general terms & service agreement or contract shall be unlawful, void, or unenforceable, then that provision shall be deemed limited to the extent required to make it enforceable, or, if necessary, severed from the general terms & service agreement. Such a provision shall not affect the validity and enforceability of the remaining provisions of the general terms & service agreement.

2.4. MB Telematics Ltd reserves the right to make reasonable changes and to correct any misspelling or other such minor errors to the terms General Terms & Service Agreement and Privacy Policy at any time during the Term, which amendments shall enter into force on the date that the Client is notified thereof.

2.5. Any international treaty on the sale of goods, in which cooperation between parties can be excluded, does not apply and is hereby expressly excluded. The applicability of the Vienna Sales Convention 1980 (CISG 1980) in particular, is expressly excluded.

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3. Prices, Payment & Default:

3.1. All prices stated and quoted by MB Telematics Ltd are in British Pound Sterling (GBP) excluding VAT, or any other taxes and/or costs, unless stated otherwise.

3.2. The payment of any initial fees is stated and as such agreed on by signing the Order Form.

3.3. Unless stated otherwise in the Order Form, all invoices must be paid within 30 days of the date of issue of the invoice.

3.4. Unless agreed otherwise by written consent of both Parties any monthly (recurring) fees for MB Telematics Ltd Products and Services are to be collected via a standing order bank transfer or BACS payments.

3.5. MB Telematics Ltd shall remain the legal owner of the Hardware until the Client has paid all amounts outstanding to MB Telematics Ltd, including but not limited to the price of the Hardware and Services and all other amounts due to SMB Telematics Ltd. All amounts concerning the Hardware are stated in the Order Form.

3.6. In the case of leasing the Hardware, SMB Telematics Ltd shall remain the legal owner of the Hardware at all times. MB Telematics Ltd reserves the right to deinstall and remove the Hardware from the Client's or third party's possessions holding the Hardware on behalf of the Client and/or at the Client's expense in this particular case if the Client is in default of any obligations under the Contract or General Terms & Service Agreement or when any suspicion occurs that the Client may be in default of any of its obligations. The Client shall render all assistance necessary relating to the removal of the Hardware and will be liable for any reasonable costs relating to the removal of the Hardware.

3.7. MB Telematics Ltd reserves the rights to adjust rates once per calendar year and will notify the Client at least two (2) months in advance.

3.8. In case of any overdue payments the Client shall be considered in violation of the Contract and without any notice all of MB Telematics Ltd claims against the Client shall become immediately due and payable. The Client shall be obliged to pay the statutory interest rate for commercial debts on the outstanding amount and all judicial and extra-judicial costs incurred by MB Telematics Ltd relating to the recovery and collection of any overdue payment. In case of overdue payment, MB Telematics Ltd reserves the right to suspend the Client's access to and use of the MB Telematics Ltd platforms until all amounts due (including interest and costs) are settled and the costs related to the suspension and reactivation shall be carried by the Client.

3.9. MB Telematics Ltd reserves the right to deliberately impose credit limits on the Client's account and/or require the Client to provide a security deposit. If the Client does not respect the determined credit limit or is in default to provide the required security deposit, MB Telematics Ltd reserves the right to terminate the Contract with immediate effect and to retain any funds necessary to cover unpaid invoices regarding Products and Services as well as to cover any costs relating to the failure of the Client to return the leased Hardware to MB Telematics Ltd.

4. Term & Termination:

4.1. The Term for the subscription to the MB Telematics Ltd Products and Services is stated in the Order Form. After expiration of this initial Term the Contract shall automatically renew for the period of one (1) month, unless express written notice is received by either Party.

4.2. Either Party may, upon giving written notice, terminate the Contract with immediate effect, if the other Party is in breach of any of the material terms of the General Terms & Service Agreement, and does not cure such breach within 30 days upon receipt of notice of such breach.

4.3. MB Telematics Ltd reserves the right to terminate the Contract with immediate effect if the Client does not pay any amount due within 14 days of when it first becomes due.

4.4. MB Telematics Ltd shall terminate the Contract upon receipt of the Client's actual or intended petition for insolvency,

4.5. After termination of the Contract all clauses which are either expressly or by implication intended to survive termination shall continue to apply.

4.6. After termination of the Contract and the legal notice period of one (1) month the access to MB Telematics Ltd Platforms and all Services will be suspended.

5. Delivery & Returns:

5.1. Delivery of the Hardware shall take place as stated in the Order Form. Delivery is based on Direct Express Logistics (Carriage and Insurance Paid), unless agreed otherwise.

5.2. Unless stated otherwise in the Contract the Client is responsible for all shipping and handling charges as well as for any taxes.

5.3. MB Telematics Ltd will attempt to deliver the Hardware timely and shall not be held responsible for any delay caused by postal services or other third parties.

5.4. If the Client refuses to take possession of or neglects the reception of the Products it ordered, it nevertheless remains obliged to fulfil its payment obligations and all other obligations stated in the Contract. In this particular case, the Products will be stored at the risk and expense of the Client.

5.5. In the particular case that the Client leases the Hardware, the Client is obliged to return the Hardware within 30 days upon termination of the Contract. If the Hardware is not returned within these 45 days or, upon receipt SMB Telematics Ltd judges that the Hardware is not in good condition, with the exception of ordinary wear and tear, the Client shall be obliged to cover the initial price of the Hardware by paying the amount to MB Telematics Ltd.

5.6. The Client is responsible for any loss or damage caused during the return shipment.

6. Warranty:

6.1. MB Telematics Ltd warrants that the delivered Hardware will function as agreed upon in the Contract for a minimum period of 36 months, or during the full Term of the lease of the Hardware, as agreed upon in the Contract, considering the Client uses the Hardware as described and for the initial purpose.

6.2. MB Telematics Ltd shall not be responsible for any installation or possible damage/ malfunctions due to installations carried out by a Partner or other third party.

6.3. Warranty does not apply to normal wear and tear and does not cover any accidents, misuse, abuse, neglect, abnormal storage, damage and tampering with the Hardware.

6.4. The Client shall inspect the products upon delivery. In this respect the Client shall verify the amount and the condition of Products delivered. If the Client discovers any defect, it is obliged to notify MB Telematics Ltd immediately by sending an email or creating a support ticket on the MB Telematics Ltd website with a clear description of the problem. If, at any point in the process, the Client cannot make use of the MB Telematics Ltd Products and/or Services due to the defect, the Client shall be obliged to order new Hardware. The faulty or defected Hardware can be sent back only after MB Telematics Ltd has granted the return through their RMA process. MB Telematics Ltd will further investigate the Hardware and will determine whether the Client applies for a free replacement of the Hardware or not.

6.5. The Client is responsible for the expenses and risks of return shipments for an RMA claim.

6.6. If the Client self-installs the Hardware or outsources the installation of the Hardware to a Partner or other third party, article 6.1 – 6.3 do not apply.

6.7. The Client is responsible for the costs of replacement of any lost or damaged and/or non-reusable Hardware.

7. MB Telematics Ltd Platforms:

7.1. SMB Telematics Ltd grants the Client a limited non-exclusive, non-transferable license to use MB Telematics Ltd Live Tracking platform for tracking the Fleet, in order to obtain data and perform analysis on the Fleet during the Term and in accordance with the Contract.

7.2. The Client may exclusively use the MB Telematics Ltd Platforms in connection with the number of Devices stated in the initial Order Form. Additional devices can be ordered by placing an order with SMB Telematics Ltd and by signing a new contract form.

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7.3. The client is responsible for having a properly functioning web browser and internet connection in order to access MB Telematics Ltd platforms as well as a correct configuration of the MB Telematics Ltd platform.

7.4. MB Telematics Ltd does and cannot warrant that any object data and mobile communication services will continue to support the functionality offered by the MB Telematics Ltd nor that the client will be able to successfully use MB Telematics Ltd platforms for the intended use, due to the fact that such use depends partly on circumstances beyond MB Telematics Ltd reasonable control, including those circumstances for which the client will be held responsible pursuant to clauses 7.2 and 7.3 of these general terms & service agreement.

7.5. MB Telematics Ltd reserves the right to change the appearance, usability and functionality of their platforms and the display of object data.

8. Service: 8.1. During the term of the contract the client can consult MB Telematics Ltd with questions about MB Telematics Ltd products and/or services.

8.2. Questions can be issued via email, live chat, website contact forms, platforms ticketing and by phone.

8.3. The support team is reachable on working days from Monday - Friday from 9:00h - 17:00h (GMT).

8.4. Items explicitly considered beyond the scope of the MB Telematics Ltd support team, but not limited to:

8.4.1. structural work like managing the data and/or account, creating reports, analyzing data or whatever else can be expected to be the responsibility of the Client;

8.4.2. system configuration and/or management;

8.4.3. on-site support;

8.4.4. feature development;

8.4.5. converting, importing and/or exporting data;

8.4.6. file and/ or data repair;

8.4.7. support for the use of third-party products and software such as operating systems, phones, tables, computers, web browsers.

9. Data:

9.1. The client consents the collection, the compiling, the storage, the use and the processing of system usage Information as well as aggregated and non-aggregated data in order to maintain and improve MB Telematics Ltd products and/or services for the purpose of the detection of fraud and abuse, for technical diagnostics, to create usage reports and for the development of new products.

9.2. SMB Telematics Ltd shall anonymize any Personal Data ("Anonymised Data") prior to using the data.

9.3. The client hereby grants MB Telematics Ltd a non-exclusive, worldwide, irrevocable right and license to collect, use, copy, store, transmit, modify, and create derivative works of data and system usage Information and Anonymised data to the extent necessary to develop, provide, distribute, display, and maintain current and future versions and evolution of MB Telematics Ltd platform and new MB Telematics Ltd marketing communications and to make the same available, directly or indirectly to customers, distributors, resellers and end users, whether for their own use or for further distribution.

9.4. MB Telematics Ltd shall not distribute or make the Anonymised data available in standalone format, other than as incorporated into current and future versions of MB Telematics Ltd platforms or new products/services to any third parties, other than MB Telematics Ltd sub-contractors, without the express written consent of the client.

9.5. MB Telematics Ltd will not perform any de-anonymizing activities on the Anonymised Data.

9.6. MB Telematics Ltd shall provide the client with the necessary access data, such as account names, usernames and passwords. The client shall change the issued passwords immediately after having accessed MB Telematics Ltd platforms for the first time for security reasons. The client is in the obligation to keep the access data confidential at all times.

9.7. The Client is fully responsible and liable for any use of the SMB Telematics Ltd platforms. If any person other than the client itself obtained access to MB Telematics Ltd platforms via the client's access data,

a, even if the Client did not consent to or was unaware of such use the Client will be held responsible, unless such use takes place three (3) working days after MB Telematics Ltd has received a written request from the Client to suspend the user's access data on its behalf.

9.8. MB Telematics Ltd guarantees that all recorded fleet data and client data will be automatically deleted 30 days after the contract termination unless agreed otherwise. To request this data after termination of the Contract period, MB Telematics Ltd will charge fees. After a period of 30 days MB Telematics Ltd is entitled to delete all data.

9.9. MB Telematics Ltd uses the statutory retention periods for the storage of data in its systems. The client is in the obligation to take care of the applicable storage periods of its own administration(s) and associated data.

10. Data Transmission & SIM-cards:

10.1. MB Telematics Ltd will procure the Mobile Communication Services for the transmission of object data between the device(s) and MB Telematics Ltd platforms. The client acknowledges and agrees that MB Telematics Ltd depends on the performance of the third parties providing these services and shall therefore not be held responsible for any availability of the mobile communication Services, nor for the speed at which the object data will be transmitted.

10.2. If, at any given time, network providers will state that any network coverage such as, but not limited to 2G, will be discontinued, MB Telematics Ltd will inform the client with the actions that need to be taken to continue the use of MB Telematics Ltd products and/or services. If the hardware needs to be upgraded due to this, extra fees may apply.

10.3. MB Telematics Ltd will provide the client with SIM-cards for each Device that the client is authorized to use in connection with MB Telematics Ltd platforms, which the client shall use exclusively in combination with the device(s) in the purpose of transforming object data between the fleet and MB Telematics Ltd platforms.

10.4. MB Telematics Ltd remains the legal owner of the provided SIM-cards at all times. Upon termination of the contract the client shall return at its own expense or destroy such SIM-cards.

10.5. The client acknowledges and agrees that the SIM-card present in the device shall exclusively be used for the transmission of object data, the client will be held responsible and is liable in case of misuse, fraud or physical damage to the SIM-card.

10.6. The client shall at all times indemnify, defend and hold MB Telematics Ltd harmless from and against any losses, damages, fines, costs or expenses (including legal fees) arising from or in connection with claims from third parties.

11. Fair Use Policy:

11.1. By accepting these General Terms & Service Agreement, the Client agrees to respect the Fair Use Policy. MB Telematics Ltd fair use policy is designed to make sure that MB Telematics Ltd platforms are working in optimal conditions for all of our clients. The client can be asked to diminish the use of the platform and services if it is suspected that the client is making inappropriate or excessive use of MB Telematics Ltd

11.2. MB Telematics Ltd Fair Use Policy applies to all clients but will exclusively affect the client if it makes inappropriate or excessive use of the MB Telematics Ltd platform.

12. Data Protection:

12.1. This clause does not replace a party's obligations to comply with the data protection Laws. The client will ensure that it has all necessary notices in place and has secured the appropriate legal basis to enable lawful transfer of personal data to MB Telematics Ltd for the duration and purposes of the contract. references to "Data Processor", "Data Controller" and "Personal Data" shall have the meanings as defined in the data protection Laws.

12.2. MB Telematics Ltd shall ensure that its subcontractors acting as data processor or data controller during the term of the contract comply with the obligations of a data processor under the latest applicable local data protection laws, including their successors.

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12.3. MB Telematics Ltd shall act exclusively on the written instructions from the client when processing personal data provided to it under the contract and keep records of all such processing.

12.4. MB Telematics Ltd shall comply with the client's instructions in relation to the processing of personal data if requested by the client.

12.5. MB Telematics Ltd will at all times take all appropriate technical and organizational precautions to protect the client against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. A detailed description of the technical and organizational measures shall be available to the client upon request of the client during the term of the contract.

12.6. MB Telematics Ltd ensures that only appropriately trained personnel have access to and/or process personal data and that personal data will be treated confidentially.

12.7. MB Telematics Ltd shall not distribute any personal data outside the European economic area without the client's prior written consent.

12.8. MB Telematics Ltd shall without undue delay notify the client if it receives any complaint, notice or communication that relates directly or indirectly to the processing of personal data under the contract and will provide full co-operation and assistance in relation to any such complaint.

12.9. MB Telematics Ltd shall notify the client without undue delay and no later than within 5 days if it receives a request from a data subject for access to that person's personal data and it shall provide the client, at the client's cost, with full co-operation and assistance in responding to any request from a data subject and in ensuring compliance with its obligations under the data protection legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.

12.10. To demonstrate its compliance with this clause and allow the client and its authorized representatives to audit compliance by MB Telematics Ltd or by its subcontractors with MB Telematics Ltd obligations to the client under the contract in connection with its processing of personal data as a data processor.

12.11. MB Telematics Ltd shall notify the client without undue delay upon becoming aware of a personal data breach affecting the client's personal data, providing the client with sufficient information to allow the client to meet any obligations to report or inform data subjects of the personal data breach under the data protection laws. This information shall at least contain a description of the data breach, including the numbers of data subjects affected and the categories of data affected; the name and contact details of the DPO (or other relevant point of contact); the likely consequences of the data breach and any measures taken by the controller to remedy or mitigate the breach.

12.12. MB Telematics Ltd will, at the written direction of the client, delete personal data and copies thereof to the client on termination of the contract unless required by applicable law to store the personal data.

12.13. MB Telematics Ltd will maintain an internal data breach register that contains a record of all breaches the data processor has experienced that have or may have serious adverse consequences for the protection of personal data.

12.14. MB Telematics Ltd shall not subcontract its obligations to a new sub-processor without the prior written consent of the client unless such sub-processor undertakes, by way of written agreement, substantively the same obligations as imposed on MB Telematics Ltd in the contract.

12.15. The client shall have the right to obtain information from MB Telematics Ltd, upon written request, on the substance of the contract and the implementation of the data protection obligations within the subcontract relationship. MB Telematics Ltd shall remain liable to the client for the performance of the sub-processor's obligations under the contract.

12.16. The client may from me to me serve on MB Telematics Ltd an information notice requiring MB Telematics Ltd, within such time and in such form as is specified in the information notice, to give to the client such information notice the client may reasonably require relating to compliance by MB Telematics Ltd or by its subcontractors with MB Telematics Ltd obligations to the client under the contract in connection with its processing of personal data as a data processor and the rights of data subjects connected with such personal data, including subject access rights.

12.17. The Pares agree that on the request of the client they shall complete all relevant details in, and enter into, the standard contractual clauses as adopted by the European Commission.

12.18. The Pares agree that they will co-operate to register the standard contractual clauses as defined by the General Data Protection Regulation with any supervisory authority in any member state of the European economic area or to procure approval from any such supervisory authority (as the case may be) where the same is required and, without limitation, that they will provide additional information about the transfer referred to in the standard contractual clauses where required or requested to do so by any such supervisory authority.

12.19. The parties acknowledge that they have agreed that the client will respond to enquiries from data subjects and supervisory authority concerning the processing of personal data.

12.20. Notwithstanding any obligations MB Telematics Ltd has as a data processor, MB Telematics Ltd will immediately notify the client upon any legal request from any governmental and/or judicial body, where this request relates to the client's personal data.

12.21. If MB Telematics Ltd has or should have any reason to doubt the qualification of any data set or individual piece of data or information as personal data or vice versa, it will take direction from the client prior to making any decision on the processing of said data or information. This includes, but is not limited to, data that is derived from usage data or client generated content.

13. Third Party Licenses:

13.1. MB Telematics Ltd products and/or services can make use of software or elements of software from third parties such as but not limited to Microsoft Windows, Google Android, Apple iOS, and all main web browsers such as but not limited to Google Chrome, Mozilla Firefox and Microsoft Explorer/Edge. The use of this software or applications could be subject of other terms and conditions. These specific terms and conditions can be found on the website of their respected suppliers.

13.2. The client acknowledges that it has no contractual relationship with any MB Telematics Ltd service providers (including but not limited to network operators and hosting companies) and these are not the beneficiaries of these service providers.

13.3. Unless the client has a separate agreement with one of MB Telematics Ltd Limited's service providers, the service providers have no liability to the client.

14. Force Majeure:

14.1. If MB Telematics Ltd is prevented from fulfilling any of its obligations to the client under the contract due to force majeure and, in the judgement of MB Telematics Ltd, the force majeure will be of a temporary or transitory nature, then MB Telematics Ltd is entitled to postpone the execution of the agreement until the circumstance, cause or event causing the force majeure situation no longer arises.

14.2. If MB Telematics Ltd as a result of force majeure, is prevented from fulfilling any of its obligations to the client and, in the judgement of MB Telematics Ltd, the force majeure is of a permanent or long-lasting nature, then the Pares can come to a settlement regarding the dissolution of the agreement in accordance with the rule of law and any consequences thereof.

14.3. In the case that MB Telematics Ltd has partly fulfilled its obligations under force majeure or is only partly able to fulfil its obligations, it shall be entitled to charge all activities carried out prior to the start of and during the force majeure to the client.

15. Intellectual Property:

15.1. MB Telematics Ltd shall remain at all times the exclusive owner of all Intellectual Property Rights vested in the MB Telematics Ltd products and/or services. Any use or reproduction, in whole or in part, of Intellectual property is strictly prohibited.

15.2. In the situation the client at any time whether directly or indirectly contests MB Telematics Ltd ownership of the Intellectual Property Rights or violates in any way MB Telematics Ltd rights to the MB Telematics Ltd products and/or services, or the value of the Intellectual Property Rights vested therein, MB Telematics Ltd has the right to immediately terminate the contract.

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15.3. The client shall not cause or permit any third party to cause any damage or endanger the intellectual property rights of MB Telematics Ltd.

15.4. The client shall compensate MB Telematics Ltd any loss suffered by MB Telematics Ltd by reason of any use by the client of intellectual property rights of MB Telematics Ltd other than stated in the contract.

15.5. The client shall not in any way alter, or in any way temper with the packaging, design, logos, trademarks or labelling of the products and services as supplied by MB Telematics Ltd unless such alterations have first been approved by MB Telematics Ltd in writing.

16. Liability:

16.1. Nothing in this clause 16 and in the entire contract shall be deemed to exclude or limit the liability of either party in respect of loss or damage caused by willful intent or gross negligence of a party or its officers, employees, agents or contractors; or in respect of injuries to, damages to the health of, or death of any person, caused by a party or its officers, employees, agents or contractors, in respect of payment of any sums due under this contract; or for any other liability which cannot be excluded by law.

16.2. MB Telematics Ltd shall in no event be liable (whether in contract, tort, including negligence, or otherwise) for any indirect, incidental, consequential, general or exemplary damages, pure economic loss (whether direct or indirect), increased costs, fines or penalties, lost revenues, profits, goodwill or data, or damage to property, whether suffered by the client or any other person, arising from or related to any act or omission of MB Telematics Ltd.

16.3. MB Telematics Ltd will not be liable for any loss or damage suffered by the client to the extent caused by any delay or failure by the client to perform its obligations under this general terms and service agreement nor for any accidental, negligent or willful act of the client, its agents or employees and defects in any products and/or services provided to the client by a third party.

16.4. MB Telematics Ltd liability whether in contract, tort (including in either case negligence), misrepresentation (other than fraudulent misrepresentation), breach of statutory duty or otherwise pursuant to the contract, shall be limited to the net price paid or to be paid by the client for the MB Telematics Ltd platforms or products in the 12-month period immediately prior to the date liability first arose. In all other cases MB Telematics Ltd liability shall be excluded.

16.5. The tracking solution does not fall in the after the systems category and the client agrees not to hold MB Telematics Ltd liable for the, loss or recovery of any vehicles and assets.

16.6. The client agrees to indemnify, defend and hold SMB Telematics Ltd harmless from and against any liability, loss, injury, demand, action, cost, expense or claim arising out of or in connection with any use or possession by client of the data produced by the MB Telematics Ltd products and/or services and/or the improper or unauthorized use of the services.

16.7. MB Telematics Ltd is not liable for the installation of the hardware and any issues arising due to the installation if this installation is carried out by the Client, MB Telematics Ltd partner or other third party.

16.8. All warranties, conditions or other terms implied by statute that are not expressed in the contract are, to the fullest extent permitted by law, excluded from the contract.

17. Confidentiality:

Neither party shall share, expose, communicate or otherwise furnish, directly or indirectly, to any third party any confidential information without express written consent of the other party unless explicitly permitted herein or required by law at any time during or after the term of the contract.

18. Miscellaneous:

18.1. Except as expressly otherwise provided for herein, no amendment to the contract is valid or binding unless made in writing.

18.2. A person who is not a party to this agreement may not enforce any of its provisions under the contracts (Rights of Third Parties) Act 1999.

18.3. Neither party may assign, sub-contract, transfer or dispose of any of its rights and obligations under the contract, either in whole or in part, without the prior written consent of the other party, provided that MB Telematics Ltd may assign, sub-contract, transfer or dispose of any of its rights and obligations under the contract, either in whole or in part, to any of its partners without the client's prior consent.

18.4. All notices, consents, claims, waivers and other communications under this contract must be in writing, in English and delivered by hand or sent by regular mail, registered mail, express courier or e-mail to the appropriate addresses set out in the contract. A notice shall be effective upon proof of receipt or at the time of successful transmission (if delivered by e-mail).

18.5. The client and authorized users of the fleet containing MB Telematics Ltd hardware remain at all times responsible for observing all relevant laws and regulations in addition to codes of safe driving and MB Telematics Ltd shall not in any event be liable for any fine, penalty, or punishment imposed.

18.6. MB Telematics Ltd shall not be responsible for the malfunctioning of products or service due to the condition of the fleet the hardware has been installed in. The client is responsible for the optimal condition of the fleet. This includes the batteries of the fleet, since the MB Telematics Ltd hardware is subject to leakage current which potentially can drain the battery(s) of the object. Especially in longer periods of inactivity, the risk on a drained battery is significant.

19. Disputes and governing law each dispute arising under the contract shall be settled by the competent courts of England and Wales which will have exclusive jurisdiction in respect of any such disputes. The Contract is subject to the law of England and Wales.

Additional Terms and Conditions relating to Vehicle Immobilisation

INTERPRETATION

For the purposes of this document the definitions contained in MB Telematics Ltd standard Terms and Conditions which apply to the relationship with the customer shall have the same meaning in these additional terms and conditions relating to vehicle or asset Immobilisation.

BASIS OF CONTRACT

By completing and signing the Agreement including the option of Vehicle Immobilisation, the customer agrees that these additional terms and conditions relating to Vehicle Immobilisation shall apply in full as though they were included within the standard Terms and Conditions that apply to the Contract between MB Telematics Ltd and the Customer.

IMMOBILISATION SOLUTION

MB Telematics Ltd offers vehicle and asset Immobilisation which operate as follows:
Immobilisation via commands:

20.1 Using the Live Tracking System to remotely send activation or deactivation signals to the tracking device. The Immobilisation Solution would be activated or deactivated the next time the vehicle ignition is switched off.

Immobilisation via driver identification:

20.2 The use of a driver identification confirmation mechanism within the vehicle to ensure that only drivers in possession of customer approved identification can deactivate the solution to enable the starter motor so that the engine of the vehicle can be started normally.

Immobilisation via scenario:

20.3 There are some circumstances when the vehicle starter motor can be disabled automatically based on events with command controls.
3.2 If the equipment were to malfunction when the vehicle in mobilized the solution would default such that the vehicle starter motor is not disabled, and the engine of the vehicle would be capable of being started and the vehicle driven normally.

21 Once activated the vehicle / asset starter motor is disabled and cannot be used to start the engine of the vehicle / asset.

21.1 If the equipment were to malfunction the solution would default such that the vehicle starter motor is disabled and the engine of the vehicle would not be capable of being started and the vehicle would not be capable of being driven normally. It is therefore possible that the vehicle could be stranded until the equipment can be repaired.

GENERAL WARRANTIES

22 MB Telematics Ltd is not responsible for Immobilisation failure due to third party installations or its subcontractors.

22.1 All other warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

22.2 Any advice, instruction and/or recommendation relating to the Immobilisation solutions and/or their use whether written or oral given by MB Telematics Ltd employees ("Advice") is given in good faith, but MB Telematics Ltd only warrants that written Advice is given with reasonable skill and care. Ultimately the decision as to whether and how to proceed with any Immobilisation solution will be the responsibility of the customer and no further duty or responsibility is accepted by MB Telematics Ltd

22.3 The Customer warrants that:

22.4 it is entering into the Contract in the normal course of its business;

22.5 it has full power and authority to enter into the contract and has any necessary consents, licenses and authorizations to enable the customer and MB Telematics Ltd to perform their respective obligations under the contract.

22.6 Given the inherent nature of the internet, MB Telematics Ltd does not warrant that the Immobilisation solution will be completely error-free or will be performed totally without interruption.

LIABILITY

23 Nothing in these conditions shall limit or exclude MB Telematics Ltd liability for:

23.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

23.2 fraud or fraudulent misrepresentation;

23.3 any matter in respect of which it would be unlawful for MB Telematics Ltd to exclude or restrict liability.

23.4 MB Telematics Ltd shall under no circumstances whatever be liable to the customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the activation, deactivation, use or reliance on the Immobilisation Solution. Furthermore, the customer will indemnify MB Telematics Ltd against any claim or loss resulting from the installation and use of the Immobilisation solution in any way in the customer's vehicle whether it is stationary or moving at the time of activation or deactivation of the Immobilisation solution.

23.5 MB Telematics Ltd total liability to the customer in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount (excluding VAT) payable by the customer for the monthly payments relating to a specific vehicle in which the Immobilisation Solution is installed in the year in which the event occurred that gives rise to the claim.

23.6 There are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on Ctrack except as specifically stated in this Agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this Agreement, whether by statute, common law or otherwise, is expressly excluded.

GENERAL

24 The Immobilisation Solution Options offered by MB Telematics Ltd are vehicle specific and MB Telematics Ltd does not guarantee that any particular solution can be effectively implemented into a customer's vehicle although MB Telematics Ltd is prepared to provide advice in good faith to the customer about the options available for specific vehicle makes, models and types.

24.1 MB Telematics Ltd reserve the right to charge additional fees for an Immobilisation solution in addition to the standard fee.

24.2 The Customer is recommended to check the satisfactory operation of the Immobilisation solution after first installation, on an ongoing regular basis and after any subsequent work of any type is carried out on the vehicle.

24.3 The Immobilisation solution options are not systems which fall under the category of After the Systems with Vehicle Immobilisation for Vehicle Recovery.