

TomTom Telematics General Terms and Conditions

1 – Definitions

In these TomTom Telematics General Terms and Conditions, unless explicitly stated otherwise, the following words and expressions have the meaning as set out below:

“Affiliates”

means with respect to any Party, any other entity controlling, controlled by or under common control with such Party. The terms “control”, “controlling” and “controlled”, as used in this definition, shall mean the legal, beneficial or equitable ownership, directly or indirectly, of more than 50% of the issued share capital or more than 50% of the voting rights, or the power, directly or indirectly, to appoint a member of the board of directors or similar governing body of such entity;

“Contract”

means collectively the agreement between TomTom and the Client for the provision of the WEBFLEET Service and/or Products, consisting of the Order Form and any attachments thereto, including these TomTom Telematics General Terms and Conditions, and to the extent selected on the Order Form, Product- and/or Service Schedule(s);

“Client”

means the customer stated in the Order Form;

“Confidential Information”

Means (I) all information and documentation that is considered confidential or proprietary at the time of disclosure, and (II) all information and documentation that falls within any of the following categories: information regarding Clients, distributors, retailers, agents or Users; financial information (except as may have been publicly disclosed pursuant to regulatory requirements); Product pricing information; Product specifications and designs; and manufacturing processes, and all other information disclosed by either Party, which could be reasonably considered confidential to the extent such Party treats such information as confidential or proprietary;

“Force Majeure”

means any cause beyond the reasonable control of the Party affected, which affects the performance of the Contract, including but not limited to prolonged break-down of transport, telecommunication or electric current, Mobile Communication Services, late and/or stagnation of deliveries by TomTom’s suppliers, incomplete deliveries by TomTom’s suppliers, failure to obtain all Products and/or (third party) services required for the proper fulfilment of the Contract by TomTom caused by circumstances that cannot in fairness be attributed to TomTom;

“Initial Term”

means the number of months specified in the Order Form commencing on the date stated in the Contract;

“Intellectual Property Rights”

means all inventions, patents, registered designs, design rights, data base rights, copyrights, know-how, trademarks (including the Trademarks), trade secrets and any other intellectual property rights, and the applications for any of the same and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world;

“Order”

means an order placed by the Client regarding the type and amount of Products to be delivered to the Client including the requested estimated delivery date and/or subscriptions to the WEBFLEET Service to be taken by the Client, in accordance with the Contract;

“Order Form”

means the order form pursuant to which TomTom will supply and the Client will purchase or rent the Products and/or take the WEBFLEET Service in accordance with the terms of the Contract;

“Party/Parties”

means either TomTom or Client or jointly;

“Product- or Service Schedule”

means the schedule containing product or service specific terms as indicated on the Order Form to apply together with these TomTom Telematics General Terms and Conditions;

“Products”

means the TomTom products purchased or rented from TomTom directly, as listed in the Contract;

“Territory”

means the territory specified in the Order Form;

“TomTom or TomTom Telematics”

means TomTom Telematics Sales B.V. and its Affiliates, a private company with limited liability having its official seat in Amsterdam and office at De Ruijterkade 154, 1011 AC Amsterdam, The Netherlands;

“TomTom Telematics General Terms and Conditions”

means these general terms and conditions that apply to the WEBFLEET Service, Product purchase and Product rental, as applicable;

“TomTom Platform”

means the IT systems that run the WEBFLEET Service;

“Trademarks”

means the TomTom names, trademarks and logos (whether registered or applied for) and any other names, trademarks, logos, designs and symbols designated to be used on or in relation to the Products or services provided by TomTom;

“User”

means a person authorised by the Client to access and use the WEBFLEET Service;

“WEBFLEET Service”

means the online service, as available via the WEBFLEET Website, designed to enable the Client to monitor and control the Fleet, to the extent that such Fleet is located in the Territory, by displaying and facilitating the transmission of Location Data between the TomTom Platform and the Onboard Units;

“WEBFLEET Website”

means the website www.webfleet.com.

2 – Applicability and Scope

2.1 These TomTom Telematics General Terms and Conditions, including to the extent indicated on the Order Form the relevant Product- and/or Service Schedule(s), shall apply to and are expressly incorporated into the Contract and all subsequent agreements entered into between TomTom and the Client in connection with the WEBFLEET Service and/or Products. It is expressly agreed that the general terms and conditions, or any other terms, of the Client do not apply.

2.2 All quotations submitted by TomTom shall be non-binding on its part, unless explicitly stipulated otherwise in writing by TomTom. A Contract shall be concluded and binding for the Parties thereto, if and when TomTom confirms in writing the Order placed by the Client or TomTom performs such Order, whichever occurs first.

3 - Term and Termination

3.1. The term for the subscription to the WEBFLEET Service and for, where applicable, the purchase or rental of Products, commences on the date stated in the Contract and shall expire after the Initial Term. Following the Initial Term, the Contract shall automatically renew for consecutive additional periods of one (1) year each, unless either Party gives the other Party written notice of its intention not to renew at least three (3) months prior to the date on which the Contract would otherwise renew.

3.2 Either Party may, without prejudice to any of its other rights arising hereunder, upon giving written notice, terminate the Contract with immediate effect, if: (I) the other Party fails to observe or perform any material term or condition hereof, including in any event non- or late payment, and such default or breach (if capable of remedy) is not remedied within twenty (20) calendar days after notice in writing, specifying the breach and requiring the same to be remedied, has been given; or (II) any of the following events occur: (a) the presentation of a petition for winding up of the other Party; (b) the other Party is the subject of an order or an effective resolution is passed for winding up the other Party; (c) the application for an order or application for the appointment of a receiver (including an administrative receiver), administrator, trustee or similar officer in respect of the other Party; (d) if a receiver, administrative receiver, administrator or similar office is appointed over all or any part of the assets or undertaking of the other Party; (e) the other Party making a composition or arrangement with its creditors generally or an assignment for the benefit of its creditors or other similar arrangement; (f) the other Party goes into liquidation; (g) the other Party becoming unable to pay its debts or otherwise becoming insolvent; or (h) the other Party ceasing, or threatening to cease, to carry on business.

3.3 Upon: (I) the Client’s actual or intended petition for insolvency; or (II) the institution of bankruptcy proceedings; or (III) the appointment of a receiver or administrative receiver in respect of the Client; or (IV) the petition or award of a suspension of payments order; or (V) the Client offering its creditors a private repayment arrangement or should its assets be attached; or (VI) the Client becoming unable to pay its debts or otherwise becoming insolvent, then the Client’s debts to TomTom shall become immediately due and payable. Subsequent to any such events, TomTom shall be entitled to suspend performance of the Contract until such time that the Client has fulfilled all of its obligations under the Contract.

3.4 All clauses which are either expressly or by implication intended to survive termination shall continue to apply after termination of this Contract. Only Orders placed and accepted by TomTom prior to the termination date shall be fulfilled by TomTom.

4 – Prices, Payment and Default

4.1 All prices quoted by TomTom are in Euro (unless stated otherwise), exclusive of VAT, any other taxes and incidental costs and expenses.

4.2 Payment of the WEBFLEET Service subscription fees, the rental rates for Products quoted by TomTom and the prices quoted by TomTom for the purchase of the Products shall be made in Euro monthly in advance within 10 days net from invoice date (unless agreed otherwise). TomTom will collect all payments via direct debit and the Client hereby authorizes TomTom to collect the payments due from the Client’s bank account as specified in the Order Form. The pre-notification for the collections of payments via direct debit will be printed on the invoice. The time between the pre-notification and the actual collection can be shorter than the SEPA standard of 14 calendar days.

4.3 The fees and rates may be adjusted by TomTom once per calendar year, provided that TomTom has given the Client at least two (2) months prior notice.

4.4 If payment is not made on time: (I) the Client shall be in breach of the Contract, without any notice of default being required and all of TomTom’s claims against the Client shall become immediately due and payable; (II) 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 TomTom relating to the recovery and collection of any overdue amount; (III) TomTom reserves the right to suspend the Client’s access to and use of the WEBFLEET Service until all outstanding amounts (including interest and costs) are settled; and (IV) the costs of suspending and reactivating shall be borne by the Client.

4.5 TomTom may impose credit limits on the Client’s account or require the Client to provide a sufficient security

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deposit. If the Client exceeds the credit limit or fails to provide the required security deposit, TomTom may terminate this Contract with immediate effect and retain any such funds necessary to cover unpaid invoices by the Client concerning the rates for Products and WEBFLEET Service subscription fees and/or costs related to the failure of the Client to return the rental Products to TomTom, as applicable.

4.6 All payments made by the Client must be effected without set-off, discount and/or suspension of any type whatsoever, unless specifically agreed otherwise in writing.

5 – Force Majeure

5.1 If a Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, then that Party will be excused from the performance or punctual performance, as the case may be, of its obligations, to the extent that such Force Majeure continues, and such Party agrees to use all reasonable endeavours to overcome or work around the Force Majeure so as to be able to perform its obligations under the Contract.

5.2 Should the period in which a Party cannot fulfil its obligations because of Force Majeure continue for longer than 30 calendar days, either Party shall be entitled to terminate the Contract in writing without there being an obligation to pay any compensation whatsoever arising out of or in connection hereto.

5.3 Notwithstanding clause 5.2 of these TomTom Telematics General Terms and Conditions, if, at commencement of Force Majeure, TomTom has partly fulfilled its obligations or is only partly able to fulfil its obligations, it shall be entitled to charge all activities carried out prior to the start of the Force Majeure event and costs incurred in this respect separately to the Customer as if such costs related to a separate Contract.

6 – Intellectual Property

6.1 TomTom retains all Intellectual Property Rights vested in the WEBFLEET Service, WEBFLEET Website, TomTom Platform, and the Products. The Client shall not at any time acquire any rights, title or interest in these Intellectual Property Rights by virtue of any use that the Client may make thereof pursuant to the Contract.

6.2 The Client shall: (I) not cause or permit any third party to cause any damage or endanger the Intellectual Property Rights of TomTom; (II) without prejudice to any other rights of TomTom, indemnify TomTom for any loss suffered by TomTom by reason of any use by the Client or User of Intellectual Property Rights of TomTom other than in accordance with the Contract; (III) not in any way alter the packaging or labeling of the Products as supplied by TomTom unless such alterations have first been approved by TomTom in writing; (IV) not alter, remove, or in any way tamper with the Trademarks or affix any other name, Trademark, logo, design or symbol on a Product or the packaging thereof unless such has been approved by TomTom in writing; (V) not use any Trademarks so as to prejudice the distinctiveness or validity or the goodwill of TomTom therein; (VI) not in any way use the Trademarks on or in connection with any products or services other than the Products; (VII) not in any way use the Trademarks in any name, Trademark or logo of the Client, whether or not such name, Trademark or logo is used in connection with the performance of a Contract; (VIII) not use any name, Trademark, logo, design or symbol so resembling any of the Trademarks as to be likely to cause confusion or deception; (VIX) ensure that all references to, and use of, any Trademarks are approved by TomTom; (X) not challenge the validity or enforceability of, or TomTom's entitlement to use any of its intellectual property.

6.3 In the event the Client at any time whether directly or indirectly contests TomTom's ownership of the Intellectual Property Rights, or does anything that would jeopardize or diminish TomTom's rights to the WEBFLEET Service, WEBFLEET Website, TomTom Platform, or the Products, or the value of the Intellectual Property Rights vested therein, TomTom has the right to immediately terminate the Contract.

6.4 The Client shall not engage in any conduct which in the opinion of TomTom is prejudicial or likely in the future to be prejudicial to TomTom's business or marketing of the Products.

7 – Liability

7.1 Subject to clause 7.3 of these TomTom Telematics General Terms and Conditions, TomTom's aggregate 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 WEBFLEET Service in the full year (12 months) in which the loss or damage occurred, the price paid for those Products that actually caused the damage or the rental rates paid or to be paid by the Client for those Products that actually caused the damage over a preceding period of 12 months, whichever is greater. In all other cases TomTom's liability shall be excluded.

7.2 TomTom shall never be liable for: (I) any loss of profits, anticipated savings, revenue, business, loss or corruption of data, loss of use, loss of goodwill, loss due to delay; or (II) any indirect or consequential loss or damage whatsoever.

7.3 Nothing in this clause 7 and in the entire Contract shall be deemed to exclude or limit the liability of either Party: (I) in respect of loss or damage caused by willful intent or gross negligence of a Party or its officers, employees, agents or contractors; or (II) 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. (III) in respect of payment of any sums due under this Contract; or (IV) for any other liability which cannot be excluded by law.

7.4 Any claim for loss or damages (except a claim for damages arising out of clause 7.3 of the TomTom Telematics General Terms and Conditions) must be notified to TomTom within twelve (12) months as from the date on which the damage was caused, failing which such claim is deemed to be waived.

7.5 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.

8 – Confidentiality

Neither Party shall at any time during or after the term of the Contract divulge, disclose or otherwise furnish, directly or indirectly, to any third party any Confidential Information unless explicitly permitted herein or required by law. The provisions of this clause 8 shall not apply to any information which the receiving Party can demonstrate (I) is or becomes public knowledge other than by breach of a duty of confidentiality; or (II) is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party; or (III) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or (IV) is independently developed without access to the Confidential Information. The receiving Party may disclose the Confidential Information disclosed by the disclosing Party as

required by law or to comply with an order of a court or other governmental entities or regulatory authorities that have jurisdiction over the receiving Party, provided that the receiving Party: (I) gives the disclosing party reasonable written notice to allow it to seek an injunctive order or other appropriate remedies and provide any assistance which the disclosing party may require in order to secure such order or remedies; (II) discloses only such information as is required by the governmental entity or regulatory authority; and (III) uses its reasonable best efforts to obtain confidential treatment for any Confidential Information so disclosed.

9 – Miscellaneous

9.1 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 TomTom 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 Affiliates without the Client's prior consent.

9.2 The illegality, invalidity or unenforceability of any provision of the Contract shall not affect the legality, validity or enforceability of the remainder of the clause or paragraph which contains the relevant provision or any other provision of the Contract. If the remainder of the provision is not affected, the Parties shall use all reasonable endeavours to agree within a reasonable time upon any lawful and reasonable variations to the Contract which may be necessary in order to achieve, to the greatest extent possible, the same effect as would have been achieved by the clause, or the part of the clause, in question.

9.3 Except for clause 7.4 of these TomTom Telematics General Terms and Conditions, the rights of either Party under the Contract are without prejudice to all other rights and remedies available to either Party and no failure or delay by either Party to exercise any right under the Contract will operate as a waiver of such right under the Contract.

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

9.5 TomTom may unilaterally change the provisions of these TomTom Terms and Conditions, which amendments shall enter into force on the date that the Client is notified thereof.

9.6 All notices, consents, 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 (or to such addresses as a Party may notify to the other Party from time to time). A notice shall be effective upon receipt and shall be deemed to have been received at the time of delivery (if delivered by hand, registered mail or express courier) or at the time of successful transmission (if delivered by e-mail).

9.7 TomTom shall provide to the Client on request a copy of all such data held by it under the Contract, and shall promptly inform the Client if any such data is lost or destroyed or becomes damaged, corrupted, or unusable. TomTom will restore such data at its own expense.

10 – Disputes and Governing Law

Each dispute arising under the Contract shall, in first instance, be settled by the competent Court of Ireland, which will have exclusive jurisdiction in respect of any such disputes. The Contract is subject to Irish law.

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