

Terms & Conditions

Tracker Network (Pty) Ltd Terms of Customer Contract

1. Parties

This agreement is between Tracker and the Customer.

2. INTERPRETATION

2.1 In this agreement, unless inconsistent with or otherwise indicated by the context -

2.1.1. "activator" means the person/s indicated as such on the application form by the Customer, as amended from time to time by the Customer in writing;

2.1.2. "application form" means the form accompanying these pages identifying the Customer together with any document attached thereto/ referred to therein and which form part of this agreement for all purposes and may include voice recorded telephonic communication between the Customer and Tracker;

2.1.3. "Aggregated Customer data" means generic, non-specific aggregated Customer data and includes, inter alia, make and model of vehicle, frequently travelled areas, theft and hi-jacking statistics, etc. but excludes personal information;

2.1.4. "Alert service" means the optional service subscribed to by the Customer for the notification by Tracker to the Customer of a suspected unauthorised movement of the Customer's vehicle;

2.1.5. "authorised user" means the person/s identified in the application form and, from time to time after the completion of the application form, such other persons as the Customer may identify by means of giving Tracker notice of such particulars concerning the authorised user as Tracker may reasonably require, and who is authorised to perform the task/s as indicated in the application form;

2.1.6. "Customer" means the corporate/juristic or other person having juristic personality identified on the application form as such, whose application for the service has been accepted by Tracker by means of installing the hardware in a vehicle;

2.1.7. "Customer data" means information (excluding personal information) pertaining to the Customer and/or the Customer's vehicle as generated, sent, received and/or stored by electronic means (including the hardware) in the rendering of the services and the operation of the hardware;

2.1.8. "ECTA" means the Electronic Communications and Transactions Act No 25 of 2002, as amended;

2.1.9. "false alarm" means any service signal relating to the movement of the Customer's vehicle which is caused by the Customer failing to adhere to the correct operating procedures.

2.1.10. "hardware" means the specialised in-vehicle communication and positioning equipment and material required for the provision of the services (including a "Subscriber Identification Module (SIM) as supplied by Vodacom on Vodacom's terms and conditions), and includes any software or firmware associated with the hardware;

2.1.11. "operating instructions" means any oral or written guidelines, conditions, operating procedures, SAPS protocols or other instructions from time to time provided by Tracker to the Customer in connection with the provision of the service or the operation of the Hardware;

2.1.12. "personal information" means the information as defined in Section 1 of the ECTA pertaining to the Customer as contained in the Application;

2.1.13. "Police" means the South African Police Service as contemplated in the South African Police Service Act 68 of 1995 and includes any member of the Service as contemplated in that Act as well as any employee, servant

or agent of the South African Police Service;

2.1.14. "price option" means the one of the two price options which the Customer selected. The price options are fully described in the official price list issued by Tracker from time to time and are summarised as:

2.1.14.1 Cash option for the hardware and monthly subscriptions escalating on 1 October each year. A calendar month's written notice is required to cancel the contract. Payment for the hardware is due on installation.

2.1.14.2 Free Fitment option with a minimum contract period of 36 months ("the contract period") and monthly subscriptions escalating on 1 October each year. After the initial 35 months, the contract continues, until cancelled by the Customer giving a calendar month's written notice to Tracker;

2.1.15 "service" means the Alert and/or Retrieve service provided by Tracker to the Customer, in co-operation with, inter alia, the Police, for the location of stolen vehicles (collectively "the Tracker system");

2.1.16 "services" means collectively the service and/or the SkyTrax service;

2.1.17 "SkyTrax service" means vehicle telematics services for purposes of vehicle tracking, monitoring and emergency assistance and such other purposes as Tracker may make available from time to time;

2.1.18 "SkyTrax" means the vehicle telematics system which uses, derives, generates and computes telemetry data relating to a host, road going vehicle and which communicates via a telecommunications network (whether cellular and/or satellite and/or radio) and a store and forward switch with a client server and/or Web server;

2.1.19 "software" means Tracker's fleet management software, including all source codes and intellectual property associated therewith;

2.1.20 "subscription charge" means the fee, payable by the Customer to Tracker monthly in advance for the service and/or the SkyTrax service, which is initially the amount shown on Tracker's official price list at the time of the completion of the application form, and thereafter as may be determined in accordance with 10.2, in all cases as will be shown on Tracker's official price list from time to time;

2.1.21 "subscription period" means the period for which subscription charges have been paid by the Customer, commencing on the day of installation of the hardware and terminating upon termination of this agreement in terms of 13;

2.1.22 "Territory" means the geographical Territory of the Republic of South Africa as set out in the Constitution of the Republic of South Africa Act 200 of 1993, or any amendment or substitution of that Act;

2.1.23 "testing" means to test the alert and retrieve hardware by way of self-testing or by contacting Tracker in order to ascertain whether the hardware in the vehicle is still operational and in good working order;

2.1.24 "third party business partners" means third parties contracted to and/or associated with Tracker and required by Tracker for the provision of the services or aspects thereof, and/or the efficient functioning of the hardware;

2.1.25 "Tracker" means Tracker Network (Pty) Limited, Registration No. 1995/05497/07, of Stonemill Office Park, Republic Road, Darrenwood; 2194;

2.1.26 "Vehicle/s" means any motor vehicle or other movable article;

2.1.27 "Vodacom" means Vodacom Service Provider Company (Pty) Ltd (Registration No. 1991/001471/07), a provider of cellular telecommunications network services and connections thereto or such other cellular telecommunication network services provider chosen by Tracker from time to time;

2.2 This agreement applies to all vehicles described in the application form and from time to time after completion of the application form, added thereto or substituted by the Customer.

3. APPLICABLE TERMS

All services rendered by Tracker are rendered in accordance with this agreement. The Customer's acceptance of the Application and/or the making available of the vehicle for installation of the hardware and/or payment of the installation fee and/or monthly subscriptions constitutes the Customer's acceptance of the terms of this agreement.

4. INSTALLATION AND COMMENCEMENT OF SERVICE

Tracker shall commission the hardware as soon as reasonably possible after the installation thereof in the vehicle and with effect from such commission, the service/s shall be available to the Customer. Once the Customer has accepted such installation by means of a signature on Tracker's standard installation report or hand held device, or any other means as determined by Tracker from time to time by or on behalf of the Customer, Tracker shall not be liable for any claim arising from faults or damages to the vehicle and/or the vehicle's electrical systems thereafter. However, the hardware installed in the vehicle will not affect the operation of the vehicle, specifically the operation of the vehicle's electrical and computer systems. Should it however be proved, beyond reasonable doubt, that the installation or the hardware has negatively affected the operation of the vehicle, Tracker shall rectify the problem at its own cost. In the event that a fault is reported to Tracker which fault is not due to Tracker hardware and/or workmanship, the Customer will be liable for the costs incurred for despatching a technician, as well as the diagnostic fee.

5. PROVISION OF THE SERVICE

5.1. Tracker shall use its best endeavours to maintain the availability of the service/s to the Customer in the Territory subject to the terms and conditions set out in this agreement.

5.2. If the vehicle is stolen in the Territory during the subscription period, Tracker shall use its best endeavours to activate the hardware for the purpose of locating the stolen vehicle, provided that -

5.2.1. With the exception of vehicles fitted with SkyTrax, a vehicle shall be treated as stolen only if it is reported as stolen to Tracker and the Police by any authorised user or activator and otherwise in accordance with the operating instructions;

5.2.2. Tracker shall cause the Customer to be notified once any stolen vehicle has been located, but it shall be the responsibility of the Customer to report any other recovery of the stolen vehicle as soon as possible to the Police and Tracker in order to ensure that the Tracker Unit is deactivated;

5.2.3. Due to the many factors outside its control, Tracker does not undertake or warrant that the service/s will lead to the location of the stolen vehicle and in any event the service/s are not available outside the Territory, and the SkyTrax service is limited to GSM and GPS coverage;

5.2.4. The Customer shall be responsible to make any necessary arrangements with the Police for the return of a vehicle that has been located;

5.2.5. Tracker shall not be liable to render any service outside the Republic of South Africa. The Customer may however activate international roaming for the SkyTrax service, which activation will only be possible if made 24 (twenty four) hours prior to and within the borders of the Republic of South Africa. The Customer shall be liable for the costs of such international roaming.

6. THE POLICE

6.1. The service is rendered in terms of arrangements entered into between Tracker and the Police, which provide an agreed framework for the operation of the Tracker System in the Territory. However, the Police are not obliged to use the Tracker System and their use of the system will vary with, and will be subject to, personnel and logistical constraints on them and prevailing circumstances from time to time. The Police use the Tracker System in their sole discretion for the location of vehicles and are under no obligation to the Customer in respect of the Tracker System.

6.2. Nothing contained in this agreement imposes upon the Police any legal duty of care or obligation in relation to policing duties which is greater than or different from that which is owed to the public at large. Nor does this agreement record or imply any undertaking on the part of the Police that they shall continue to participate in the operation of the Tracker System.

7. HARDWARE WARRANTY

Tracker shall, at its election, either repair or replace the hardware free of charge if the hardware becomes inoperative or develops faults by reason of defective components, workmanship or design within 12 months of the hardware being installed for the first time by Tracker. This warranty shall not be applicable if the hardware or its installation has been tampered with, modified, repaired (except by persons authorised by Tracker) or has otherwise been subject to water damage, misuse or a collision.

8. DATA AND PRIVACY

8.1 The Customer hereby acknowledges and agrees that -

Personal Information

8.1.1 The Customer is required to furnish Tracker with personal information and other data in terms of the agreement and to allow for the provision of the services. The Customer undertakes to provide such data and personal information as required in the application and to provide Tracker with amendments to such data and personal information as and when such amendments occur;

8.1.2 Tracker shall only use the personal information for the purpose of administering the agreement and shall only disclose such personal information to such of its third party business partners as is necessary to enable the provision of the services;

8.1.3 Save as provided in 8.1.2 above or as required in law or as specifically authorised by the Customer in writing, Tracker shall keep personal information strictly confidential;

Customer Data

8.1.4 Pursuant to rendering the services and the operation of the hardware, Tracker and/or the third party business partners are required to intercept, collect, collate, process, store and maintain Customer data. With effect from the installation date, the Customer hereby consents to Tracker and/or the third party business partners intercepting, collecting, collating, processing, storing and maintaining Customer data;

8.1.5 Certain aspects of the services and the functioning of the hardware are dependant upon third party business partners and as such, the Customer Data will be viewed/received by more than one person. With effect from the installation date, the Customer hereby acknowledges that for purposes hereof, Tracker and the third party business partners are the intended recipients of the Customer Data and consents to Tracker and the third party business partners intercepting, viewing and receiving the Customer data;

8.1.6 Tracker is entitled for purposes of product marketing to supply and freely trade in the Aggregated Customer Data and/or Customer Data to third parties, free of any charge payable by Tracker to the Customer. Tracker warrants that such Aggregated Customer data shall exclude personal information;

8.1.7 Tracker is hereby permitted to use Aggregated Customer data (which shall exclude Personal Information) to compile profiles for statistical purposes. The Customer agrees that Tracker may freely trade with such profiles and statistical data.

8.1.8 Tracker shall comply with the provisions of the ECTA, in particular insofar as personal information is concerned;



8.1.9 Tracker hereby subscribes to the principles outlined in Section 51 of ECTA. In this regard the parties agree that:

8.1.9.1 Tracker shall not electronically request, collect, collate, process or store the Customer data which is not necessary for the lawful purpose for which the Customer Data is required;

8.1.9.2 The express written permission of the Customer for the collection, collation, processing and/or disclosure of the Customer Data to the third party business partners has been obtained;

8.1.9.3 Tracker has in terms hereof disclosed to the Customer the specific purpose for which the Customer Data and/or Aggregated Customer Data is/will be requested, collected, collated, processed and/or stored;

8.1.9.4 Tracker shall not use the Customer Data for any purpose other than the disclosed purpose referred to elsewhere herein without the express written permission of the Customer, unless Tracker is permitted or required to do so by law;

8.1.9.5 Tracker shall for so long as the Customer Data is used and for a period of at least 1 (one) year thereafter, keep a record of the Customer Data and the specific purpose for which the Customer data was collected;

8.1.9.6 Tracker shall delete or destroy all personal information, Customer Data or Aggregated Customer Data, which in its opinion, has become obsolete.

9. WARRANTIES AND UNDERTAKINGS BY THE CUSTOMER

9.1 The Customer warrants that the information supplied in the Application (including bank account details and vehicle information) is true and correct and hereby undertakes to update the said information as soon as any changes occur.

9.2 The Customer warrants that he/she/it is the owner of vehicle, alternatively, the Customer hereby warrants that he/she/it will obtain written authorisation and/or duly executed resolution from the owner authorising the Customer to enter into this agreement with Tracker on the owner's behalf, which written permission shall be provided to Tracker prior to entering into this agreement.

9.3 The Customer hereby undertakes to inform any third party driver of the vehicle that the vehicle is fitted with hardware which generates Customer Data which is intercepted and monitored by Tracker and/or its third party business partners;

9.4 The Customer indemnifies and holds Tracker harmless from any claims, costs, damages or losses of whatsoever nature and howsoever arising as a result of the breach of the aforesaid warranties and/or undertakings.

10. SUBSCRIPTIONS

10.1 The Customer shall pay all subscription charges monthly in advance in terms of Tracker's payment policy.

10.2 Tracker shall be entitled to change the subscription charge on not less than 30 days prior notice to the Customer, provided that such changed subscription price will be CPIX related.

11. PAYMENT POLICY

11.1 Payment of subscription charges shall be made by way of debit order, unless otherwise agreed, on the date specified by the Customer unless the debit order is returned, in which event Tracker may take such payment on a date of its choice.

11.2 Tracker shall provide the Customer with a monthly invoice or statement upon request.

11.3 Tracker is entitled to recover any other outstanding amounts via debit order, including subscriptions in arrears and additional charges as provided for in 13.

11.4 The Customer shall be liable for any bank charges incurred by Tracker as a result of returned debit orders.

11.5 Tracker shall be entitled to recover from the Customer any outstand-

ing or overdue amounts, all bank charges and legal costs, including collection commission on the scale as between an attorney and his or her own client, arising from such recovery.

11.6 Where an insurance company or other third party pays the subscription charge to Tracker on behalf of the Customer, Tracker will automatically debit the Customer's bank account, the details of which were either obtained from the Customer, or the insurance company/third party payee, with subscriptions and any other amounts due upon notification from such insurance company/third party payee that the Customer is in default of payment. The subscription charge so debited shall be the standard Tracker subscription charge and not the special insurance rate.

12. SOFTWARE LICENSE

In the event that the Customer wishes to make use of the software as indicated in the Application, Tracker shall grant to the Customer a limited, non-exclusive licence to use the software for the duration of the agreement within the territory, subject to the Customer entering into a software licensing agreement with Tracker upon the terms and conditions set out therein.

13. ADDITIONAL CHARGES

The Customer shall be liable for the following additional charges, and any other charges applicable to any additional service/s, as requested by the Customer and provided by Tracker:

13.1 Tracker will charge a fee for the de-installation of the hardware from one vehicle and the re-installation of the hardware into another vehicle.

13.2 Tracker may, at its discretion, elect not to de-install a unit for purposes of re-installation into another vehicle, however, should the Customer insist on such de-installation, the Customer shall be liable for the applicable de-installation fee.

13.3 Tracker will charge a fee for replacing one product with another.

13.4 Tracker will charge a fee for the testing of the Alert and Retrieve hardware.

13.5 Tracker will charge a fee for the third and any subsequent false alarms relating to the Alert service in any one calendar month.

13.6 The charges or additional services referred to herein or provided to the Customer are available on request and payment will be taken by direct debit.

14. SUSPENSION AND TERMINATION OF SERVICE

14.1 Tracker may, at its sole discretion and without incurring any liability, at any time and from time to time, suspend the service/s in whole or in part -

14.1.1 if a technical failure affects the provision of the service/s;

14.1.2 if changes to or termination of the service/s are required by any governmental or regulatory authority;

14.1.3 if the provider of the radio communications network in the Territory ceases to make such network available or ceases to trade; or

14.1.4 if any third party business partner to Tracker relating to the SkyTrax service ceases to make such service available; or

14.1.5 during any period when the Customer is in default of any provision of this agreement including the operating instructions and any default in the payment of any amounts owing to Tracker in which event the Customer will be notified thereof telephonically and/or in writing. Notwithstanding the aforesaid, should the Customer be in default of payment of the subscription charge for 2 (two) consecutive months, Tracker shall be entitled to suspend the service without any further notice.

14.2 Tracker shall not be liable for any delay in performing or any failure to perform any of its obligations in terms of this agreement caused by force majeure, being any cause beyond the control of Tracker, or caused by any act or omission of government, road, regulatory or other competent authority, or by any institution owned, controlled or operated by the State, whether such act or omission be official or otherwise.

14.3 This agreement shall terminate -

14.3.1 if cancelled by the Customer on not less than one calendar month's written notice to Tracker, provided that it may not be cancelled during the first 36 months in respect of the Free Fitment option.

14.3.2 if cancelled by Tracker, on not less than one calendar month's written notice by Tracker to the Customer to this effect in the event of the Customer/authorised user being in breach of any term of this agreement including any operating instructions all of which are agreed to be material; or

14.3.3 automatically, without prior notice and without liability on the part of Tracker, in the event of the Customer/authorised user using the service for any purpose other than the location of the vehicle as intended in 5.1, or using the Alert service or the SkyTrax service in any manner deemed by Tracker in its sole and absolute discretion to be inappropriate (and the Customer hereby indemnifies and agrees to hold Tracker harmless against any claim that may be made against Tracker as a result of such improper use of the service and/or the SkyTrax service).

14.4 If this agreement is cancelled by Tracker under 14.3.2 or has terminated automatically under 14.3.3, Tracker shall be entitled, if the Customer has not completed his minimum contract period, to claim and recover from the Customer an amount equal to the subscription charges that would have been payable by the Customer for the remaining minimum contract period. This agreement shall not terminate automatically in the event of the loss, theft or damage to the hardware or to the vehicle that it is fitted to.

14.5 Should the Customer wish to terminate this agreement during the contract period as set out in 2.1.13 above, Tracker shall be entitled, without prejudice to any of its rights arising out of this agreement or in law, to accept the Customer's termination, to suspend the provision to the Customer of the services, and to recover from the Customer upon demand, as liquidated damages, an amount equal to the outstanding amount on the hardware that would have been payable by the Customer to Tracker, but for early termination.

15. LIMITATION OF LIABILITY

15.1 Tracker does not provide any warranty (save as set out in 7) in respect of, and shall not be liable for any loss or damage, including any loss of profits, business or revenue, or any consequential loss suffered by the Customer as a result of -

15.1.1 any delay, defect or other failure in the provision of the service/s, the installation or operation of the hardware, or in the radio communications network or GSM network in the Territory, operating in conjunction with the hardware or other aspects of the Tracker System; or

15.1.2 any negligence on the part of Tracker or any of its authorised agents.

15.2 The Customer is responsible for ensuring that the hardware is comprehensively insured.

16. CESSION AND DELEGATION

16.1 The Customer or authorised user shall not be entitled to cede or delegate any of its rights or obligations in terms of this agreement without the prior written consent of Tracker, which consent shall not be unreasonably withheld in the event of the Customer or authorised user wishing to dispose of the vehicle to a person who is willing and able to become a customer of Tracker on such terms and conditions and in terms of such procedures as Tracker may require at the time.

16.2 Tracker shall be entitled to cede or delegate its rights or obligations in terms of this agreement to any person without the consent of the Customer.

17. GENERAL

17.1 This agreement, which includes the application form and the operating instructions, if any, issued by Tracker from time to time, constitutes the whole agreement between the parties as to the subject matter hereof, but Tracker may, without the further consent or agreement of the Customer, only in respect of operating instructions referred to in 5.2.1, vary any of the terms and conditions of this agreement by means of issuing new or amended operating instructions to the Customer from time to time during the contract period.

17.2 Any notice required to be given in terms of this agreement by one party to the other shall be given, in the case of Tracker, to the address set out in 2 or, in the case of the Customer, to the Customer's address, which the Customer appoints as its domicilium citandi et executandi, as set out in the application form, or as amended by the parties from time to time, provided that it is an address within the Republic of South Africa.

17.3 Any notice given in terms of this agreement shall be in writing unless otherwise provided for herein and shall, if transmitted by facsimile, be deemed to have been received by the addressee on the day following the date of despatch, unless the contrary is proved.

17.4 If any provision of this agreement is, or is rendered, unlawful or unenforceable (retrospectively or otherwise) then the unlawful or unenforceable provision shall be deemed to be modified to the extent and in the manner necessary to render it consistent with the law or interpretation rendering it unlawful or unenforceable or, if such modification is not possible, the provision shall be deemed to be severable from the remaining provisions of this agreement and shall be deemed not to have been written;

17.5 The parties hereby consent to the jurisdiction of the Magistrates court; provided that nothing in this clause shall be construed as prohibiting either party from instituting proceedings in the High Court of South Africa;

17.6 The Customer agrees that Tracker may, in accordance with legislation to which it is bound, carry out a credit enquiry with any registered credit bureau, and consents to Tracker submitting any of the Customer's details to any registered credit bureau, including but not limited to the Customer's personal data, payment history and/or failure to meet payment commitments, which information may be shared by that credit bureau with any other registered credit bureau or credit provider for any purpose as prescribed by the National Credit Act, 34 of 2005.

DATED and SIGNED at _____ on this ____ day of _____ who warrants that he/she is duly authorised hereto.

FOR AND ON BEHALF OF:

Duly authorised

NAME IN PRINT:

DESIGNATION: (if applicable)