

General terms and conditions for the WEBFLEET service

Article 1 – Definitions

“Agreement”

means the agreement between TomTom and the Client, consisting of the Order Form and any attachments thereto, including the General Terms and Conditions.

“Client”

means the customer stated in the Order Form.

“Effective Date”

means the date the Order Form is signed by the Client.

“Fleet”

means the vehicles, assets or persons to be tracked or traced via the WEBFLEET Service.

“Force Majeure”

means any cause beyond the reasonable control of the party affected, which affects the performance of the Agreement, including in any case prolonged break-down of transport, telecommunication or electric current.

“General Terms and Conditions”

means these general terms and conditions for WEBFLEET Services.

“Initial Term”

means the number of months specified in the Order Form, commencing from the date stated in the contract confirmation letter.

“Item List”

means the item list attached to the Order Form.

“Location Data”

means data on the geographical position of the Fleet and other messages sent to or by the Fleet.

“Mobile Communication Services”

means the mobile electronic communication services used for transmitting the Location Data.

“Onboard Unit”

means a device, as referred to on the Item List, purchased or leased by the Client under a separate contract, that can be used for obtaining Location Data via satellite tracking and for sending and receiving such data and other messages via Mobile Communication Services (either automatically according to a set procedure or by manual information retrieval).

“Order Form”

means the order form pursuant where to TomTom will provide to the Client and the Client will take from TomTom the WEBFLEET Service in accordance with the terms of the Agreement.

“Price List”

means the prices specified in the Order Form.

“Territory”

means the territory specified in the Order Form.

“TomTom”

TomTom Telematics Sales B.V., Australian branch, a private company with limited liability, incorporated under the laws of the Netherlands, with its registered seat at De Ruijterkade 154, 1011 AC, Amsterdam, the Netherlands, through its Australian branch, with registered office at C/- TMF Corporate Services (AUST) PTY Limited, Level 16, 201 Elizabeth Street, Sydney, NSW 2000.

“TomTom Platform”

means the IT systems that run the WEBFLEET Service.

“User”

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, structured and 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

Article 2 – Applicability

2.1 These General Terms and Conditions for the WEBFLEET Service shall apply to and are expressly incorporated into the Agreement all subsequent agreements entered into between TomTom and the Client in connection with the WEBFLEET Service.

2.2 The applicability of the Client’s general terms and conditions is hereby expressly excluded.

Article 3 – The WEBFLEET Services

3.1 The Client is granted a non-exclusive and non-transferable right to use the WEBFLEET Service for tracking and tracing the Fleet and for reporting, planning and messaging purposes.

3.2 The Client may use the WEBFLEET Service in connection with the number of Onboard Units set out in the Order Form. If, at any time, the Client wishes to increase the then current number of Onboard Units it must notify TomTom thereof and sign a separate agreement.

3.3 The Client is responsible for:

- (i) equipping the Fleet with properly working Onboard Units and ensuring the contacta-

bility of such Onboard Units,

- (ii) ensuring that it has properly functioning browser software and Internet access to the WEBFLEET Service of sufficient capacity,

- (iii) the correct configuration of the WEBFLEET Services.

3.4 TomTom does neither warrant that GPS or the Mobile Communication Services will continue to support the functionality offered by the WEBFLEET Service nor that the Client will be able to successfully use the WEBFLEET Service for the intended use, as referred to in article 3.1, due to the fact that such use depends partly on circumstances beyond TomTom’s reasonable control, including those circumstances for which the Client will be responsible pursuant to articles 3.3 or 5.1.

3.5 TomTom reserves the right to change the look and feel of the WEBFLEET Website and the way the Location Data are displayed.

Article 4 – User names and passwords

4.2 TomTom shall provide the Client with the necessary access data, such as account names, user names and passwords. For security reasons, the Client must change the issued passwords immediately after having accessed the WEBFLEET Service for the first time and keep the access data confidential.

4.3 The Client is responsible and liable for any use of the WEBFLEET Service, if the user obtained access to such service via the Client’s access data, even if the Client did not consent to or was unaware of such use, unless such use takes place three (3) working days after TomTom has received a written request from the Client to invalidate his access data.

Article 5 – Transmission

TomTom will procure the Mobile Communication Services for the transmission of Location Data between the Onboard Units and the TomTom Platform. The Client acknowledges and agrees that TomTom is dependent on the performance of the third parties providing these services, and therefore cannot warrant:

- (i) that the Mobile Communication Services will be available on a continuous basis and at any place within the Territory (for instance due to gaps in network coverage and to the fact that these providers reserve the right to suspend their services for maintenance purposes, for security reasons, under instruction of competent authorities etc.);

- (ii) the speed at which the Location Data will be transmitted.

Article 6 – SIM-cards

6.1 TomTom will provide the Client with SIM-cards for each Onboard Unit that the Client is licensed to use in connection with the WEBFLEET Services, which the Client shall use solely

- (i) in combination with the Onboard Units and

- (ii) for transmitting Location Data between the Fleet and the TomTom Platform.

6.2 The ownership of SIM-cards provided by TomTom is retained by TomTom and the Client must return or destroy such SIM-cards upon expiry or termination of the Agreement.

6.3 The Client shall indemnify, defend and hold TomTom and its affiliates harmless from and against any losses, damages, fines, costs or expenses (including legal fees) arising from or in connection with claims from third parties, in particular the underlying wireless service carrier, that the Client’s use of the SIM-cards provided by TomTom is not in conformity with the Agreement.

Article 7 – Fees and Payment

7.1 The Client will pay TomTom for the provision of the WEBFLEET Service the charges set out in the Price List. The charges are exclusive of

- (i) VAT and any other sales taxes and incidental costs and expenses and

- (ii) costs in relation to the purchase, lease or use of the items and services, as referred to under articles 3.3 and 5.1 (unless otherwise agreed).

7.2 The charges are fixed for the Initial Term and may be adjusted by TomTom thereafter per the first day of each additional period of one year, provided that TomTom has given the Client at least four (4) months prior notice.

7.3 The charges will be due monthly in advance. Unless otherwise agreed, 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 debits 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. If the direct debit appears to be unsuccessful:

- (i) the Client shall be in breach of this Agreement, 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.

7.4 All payments to be made by the Client must be effected without set-off or suspension.

Article 8 – Liability

8.1 In cases of slight negligent breaches of essential contractual obligations (cardinal obligations) TomTom’s entire liability shall be limited to the typically foreseeable damage. The parties agree that for the purpose of these General Terms and Conditions the typically foreseeable damage shall be limited to the net price paid or to be paid by the Client in the first three months of the year in which the loss or damage occurred.

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8.2 In all other cases TomTom's liability shall be excluded.

8.3 Nothing in this article 8 and in the entire Agreement shall be deemed to exclude or limit TomTom's liability:

- (I) in respect of loss or damage caused by willful intent or gross negligence of TomTom or TomTom's officers, employees, agents or contractors; or
- (II) in respect of injuries to, damages to the health of, or death of any person, caused by TomTom or TomTom's officers, employees, agents or contractors.
- (III) under the German Product Liability Act; or
- (IV) for breaches of a guarantee.

8.4 Any claim for loss or damages is deemed to be waived eighteen (18) months after the end of the year in which the loss or damage has occurred and the Client obtained or must have obtained knowledge of TomTom being the (potential) infringer, unless the liability was caused by wilful intent in which case the limitation period provided by statutory law applies.

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

Article 9 – Force Majeure

If a party is prevented or delayed in the performance of any of its obligations under the Agreement 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 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 Agreement.

Article 10 – Data Protection

10.1 The parties will observe all provisions of the relevant data protection laws and regulations, insofar as the violation of such provisions affects the interests of the other party and/or the data subject involved. This includes the obligation of the Client to duly inform involved data subjects about the processing of their personal data by TomTom under the instruction of the Client.

10.2 TomTom shall only collect, process, store and use personal data, and the Location Data, to the extent that such is necessary for the performance of this Agreement and the improvement of the WEBFLEET Service.

10.3 The Client instructs TomTom to collect, process, store and use their Location Data for the purpose as included under Clause 10.2 above.

10.4 The Client approves that TomTom is allowed to outsource the hosting of its data centers to a third party within the European Economic Area. TomTom warrants that such third party is legally bound to the relevant provisions of this Agreement and to its respective obligations under the provisions of the data protection laws as a „Data Processor“ as defined in the European Data Protection Directive (95/46/EC).

10.5 The Client may revoke its consent for the collection, processing, storage and use of the Location Data in relation to this Agreement at any time. Such revocation must be presented to TomTom in writing and shall not affect the Agreement and will leave the Client's obligations (including payment obligations) under the Agreement intact. The Client acknowledges that as a result of such revocation TomTom may not be able to provide the WEBFLEET Service.

10.6 TomTom shall implement appropriate technical and organizational measures to protect any personal data collected under the Agreement against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing. Having regard to the state of the art and the cost of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected.

10.7 The parties acknowledge that they have agreed that the Client will respond to enquiries from data subjects, any governmental and/or judicial body concerning the processing of personal data by TomTom. The Client should have sufficient processes in place to handle such enquiries.

Article 11 – Intellectual Property

11.1 TomTom retains all intellectual property rights vested in the WEBFLEET Services and 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 Agreement.

11.2 In the event the Client at any time whether directly or indirectly contests TomTom's ownership of the intellectual property rights, or do anything that would jeopardize or diminish TomTom's rights to the WEBFLEET Services or the value of the intellectual property rights vested therein, TomTom has the right to immediately terminate this Agreement.

Article 12 – Term and Termination

12.1 The Agreement commences on the Effective Date and shall expire after the Initial Term. Following the Initial Term, the Agreement 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 Agreement would otherwise renew.

12.2 Each party may, without prejudice to any of its other rights arising hereunder, upon giving written notice, terminate the Agreement 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) shall not be remedied within twenty (20) calendar days after notice in writing, specifying the breach and requiring the same to be remedied, has been given,
- (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, or
- (III) there has been any delay or failure in performance under the Agreement resulting from any event of Force Majeure, which delay or failure shall have continued for a period of three (3) months.

Article 13 – Miscellaneous

13.1 Neither party may assign, sub-contract, transfer or dispose of any of its rights and obligations under the Agreement, 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 Agreement, either in whole or in part, to any of its affiliates without the Client's prior consent, provided that if the entire Agreement is transferred to an affiliate, such affiliate must be as solvent as TomTom.

13.2 The illegality, invalidity or unenforceability of any provision of the Agreement shall not affect the legality, validity or enforceability of the remainder of the Article or paragraph which contains the relevant provision or any other provision of the Agreement. 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 Agreement which may be necessary in order to achieve, to the greatest extent possible, the same effect as would have been achieved by the Article, or the part of the Article, in question.

13.3 No amendment to the Agreement is valid or binding unless made in writing.

13.4 TomTom is entitled to amend these General Terms and Conditions, which amendments shall enter into force on the date that the Client is notified thereof.

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

Article 14 – Fair Use Policy

14.1 By accepting our General WEBFLEET Terms and Conditions, you agree to be bound by the Fair Use Policy below. TomTom's Fair Use Policy is designed to make sure that the WEBFLEET Service is of great value, high quality and reliable whenever your company uses them.

14.2 TomTom has a Fair Use Policy because at peak times, many TomTom Customers use the shared network bandwidth of our WEBFLEET Services. The Fair Use Policy is the following. The vast majority of TomTom Customers use the WEBFLEET Services considerably and their usage levels do not disproportionately affect the shared network capacity. Only a very small number of our Customers use the WEBFLEET Services inappropriately, for example units that are consuming a large amount of data due to automated systems that generate large messaging traffic through via WEBFLEET.connect. As a result of this excessive use the quality of the WEBFLEET Services for all users may be affected. Our Fair Use Policy manages inappropriate and/or excessive use and makes sure the WEBFLEET Services can be used by everyone.

14.3 TomTom's Fair Use policy works in the following way. If your company regularly uses the WEBFLEET Services inappropriately and/or excessively and we believe this is affecting the WEBFLEET Services, we will notify your company about this usage and will ask your company to change or decrease this kind of usage. If your company continues to use the WEBFLEET Services inappropriately TomTom reserves the right to suspend (a part of) the WEBFLEET Services or end your agreement with us, with prior notice.

14.4 TomTom's Fair Use Policy applies to all our Customers but will only affect your company if your company is one of the very few Customers who make inappropriate or excessive use of our WEBFLEET Services.