

General terms and conditions for the TomTom 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 Service.

“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”

means TomTom International B.V., a private company with limited liability having its official seat at Amsterdam and office at Rembrandtplein 35, 1017 CT Amsterdam, The Netherlands.

“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.tomtom.com/business

Article 2 – Applicability

2.1 These General Terms and Conditions for the WEBFLEET Service shall apply to and are expressly incorporated into the Agreement and 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 WEB-

FLEET 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 contactability 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 Service.

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

5.1 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.

5.2 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 that the (content of the) Location Data sent to or from the TomTom Platform violate applicable laws and regulations, infringes the rights of such third parties or is otherwise unlawful toward third parties.

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

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in the Order Form. 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 Subject to article 8.3, in no event, whether in contract, tort (including in either case negligence), misrepresentation (other than fraudulent misrepresentation), breach of statutory duty or otherwise pursuant to the Agreement, TomTom shall be liable for any loss of profits, anticipated savings, revenue, business, loss or corruption of data, loss of use, loss of goodwill, loss due to delay or any indirect or consequential loss or damage whatsoever.

8.2 Subject to articles 8.1 and 8.3, 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 Agreement, shall be limited to the net price paid or to be paid by the Client in the first twelve (12) months of the year in which the loss or damage occurred.

8.3 Nothing in the Agreement shall be deemed to exclude or limit TomTom's liability in respect of:

(I) Loss or damage caused by willful intent or gross negligence of TomTom or TomTom's officers, employees, agents or contractors; or

(II) Injuries to or death of any person, caused by TomTom or TomTom's officers, employees, agents or contractors.

8.4 Any claim for loss or damages (except a claim for damages arising out of Article 8.3 (II)) 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.

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. Each party shall indemnify the other party against claims resulting from or in connection with the indemnifying party's non-observance or insufficient observance of the aforementioned provisions.

10.2 TomTom is free to collect, process, store and use personal data, more specifically the Location Data, to the extent that such is necessary for enabling the Client to use WEBFLEET Service or for invoicing purposes. TomTom may decide in the future to outsource the hosting of our data centres to a third party. Currently, TomTom the data centres in-house. TomTom currently does not anticipate to outsource data centres but if TomTom were to outsource the hosting of data centres to a third party, we would only do so under the strict terms of a data processor agreement, compliant to the European Data Protection Directive. TomTom will not sell your personal data to third parties. In the event that TomTom decides to outsource data centers, the Client agrees that TomTom may make data available to third parties that TomTom may start using for the purpose of providing a better WEBFLEET Service.

10.3 The Client agrees to the collection, processing, storage and use by TomTom of their Location Data. Client shall inform its employees, relatives and all the persons fitted with the Onboard Units and connected to the WEBFLEET Service about the type of data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to third parties for the purpose of providing the WEBFLEET. Moreover the Client shall inform these employees, relatives and other persons about their rights regarding the data processed.

10.4 The Client warrants that it holds the written consent from its employees, relatives and all the persons fitted with the Onboard Units and connected to the WEBFLEET Service, to pass on personal data, more specifically Location Data, and that it explicitly instructs TomTom to provide the WEBFLEET Service by using and storing such data, and to pass on such data to the third parties that TomTom uses for the provision of the WEBFLEET Service. The Client shall present the relevant consent or an appropriate operating agreement to TomTom on request.

10.5 The Client may revoke its consent for the collection, processing, storage and use of their Location Data at any time. Such revocation must be presented to TomTom in writing and shall not affect the Agreement and will leave the Client's payment obligations under the Agreement intact. The Client acknowledges that as a result of such revocation TomTom may no be able to provide the WEBFLEET Service.

Article 11 – Intellectual Property

11.1 TomTom retains all intellectual property rights vested in the WEBFLEET Service 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 The Client will not at any time contest TomTom's ownership of the intellectual property rights, nor assist anyone else to do so, nor do anything that would jeopardize or diminish TomTom's rights to the WEBFLEET Service or the value of the intellectual property rights vested therein.

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 of 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.

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 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.

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

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