

# GENERAL TERMS AND CONDITIONS OF BUSINESS OF TRACKER.CH AG

## 0. Scope

These General Terms and Conditions of Business shall apply to the supply of "tracker" products and services for relationships between customers and tracker.ch AG, Webereistrasse 47, 8134 Adliswil (hereinafter referred to as the "Company"), insofar as they are declared applicable by the Customer clicking in the appropriate place or otherwise.

Customers of the Company shall include any and all contracting partners of the Company, as well as any and all third parties using the "tracker" service.

The "tracker" service shall include the entire offer of tracker.ch AG in accordance with its website (currently [www.tracker.com](http://www.tracker.com)).

These General Terms and Conditions of Business shall also apply in the event that the "tracker" product or service is sold or procured by a company other than tracker.ch AG.

Any regulations in the main contract concluded between the Company and the Customer shall take precedence over the present GTC. Any oral or written ancillary agreements in addition to any main contract, if applicable, and the present GTC shall not be deemed to exist, unless they are explicitly referred to in the respective main contract.

## 1. Services provided by the Company

- 1.1 The Company shall supply the "tracker" service in accordance with the relevant agreement, together with the available operating resources. The Company shall reserve the right to adjust the service it offers if required or in the case of significant grounds for doing so.
- 1.2 The Company shall be able to appoint third-party suppliers and subcontractors for the purposes of fulfilment of the Agreement.

## 2. Conclusion/commencement of the Agreement

- 2.1 The Agreement shall be concluded in writing or electronically using the predefined standard declarations. Upon submitting an application to conclude an Agreement with the Company, the Customer shall simultaneously acknowledge these General Terms and Conditions of Business of the Company and shall agree to provide the Company with accurate information.
- 2.2 The contractual relationship shall commence upon acceptance of the offer by the Company. Acceptance shall take the form of a confirmation message sent to the mobile phone of the Customer making the application or an e-mail and/or letter of confirmation sent to the Customer making the application.
- 2.3 **The Customer making the application shall confirm, upon submitting the application, that he or she is the owner of the telephone number specified and shall be obliged to inform the Company immediately of any change of owner.**

## 3. Right of Withdrawal for Consumers (shall not apply to business customers)

- 3.1 The Customer, who is considered a consumer as defined by law, shall have the right to withdraw from the present Agreement within a period of 14 days without stating reasons. The withdrawal period shall start to run from the date of service of the products or from the date on which the Agreement is concluded, with the later date being relevant. Relevant for compliance with the time period shall be the date of postmarking.
- 3.2 To exercise the right of withdrawal, the Customer, who is considered a consumer, shall address a written (e-mail notification shall be sufficient) declaration to the Company that the Customer will make use of his or her right of withdrawal.
- 3.3 Any services already used until the right of withdrawal is exercised shall be reimbursed to the Company.
- 3.4 Such right of withdrawal shall only apply to consumers as defined by law and shall explicitly not apply to business customers.

## 4. Consent

- 4.1 The Customer shall agree for the data stored in the electronic device to which the relevant telephone number belongs to be reconfigured so as to enable the relative location or route of the corresponding device to be displayed on the internet.
- 4.2 The customer expressly consents that the location or tracking route of the electronic device is visible at all times via his password-protected personal account, which can be accessed over the Internet. In this regard, he renounces any claims arising from personal rights or telecommunications/data protection laws and the like.
- 4.3 The customer also consents to the processing and use of his data, insofar as this is necessary for fulfilment of the contractual obligations.

The customer gives his consent for his personal access code and all of his personal data to be deposited in a safe entrusted to a lawyer. This deposit serves the sole purpose of safeguarding customer data for use in remedying any faults in the service provided. Authorisation to access this data is limited exclusively to those specialist technicians employed or commissioned by tracker.ch AG to remedy faults, or to the manager at tracker.ch AG who is responsible for security.

In order to ensure that he receives an optimal service, the customer shall consent to internal data processing and the use of data, particularly for the purpose of informing him of the full company product range. The Company reserves the right to make the identity of the customer known to a third party upon reasonable request.

- 4.4 In this respect, the Customer shall agree that the position data will be made available to third parties in an anonymised form (especially for the purpose of improving traffic forecasts).

## 5. Termination and cessation

- 5.1 The Agreement shall be concluded **for an indefinite period of time.**
- 5.2 The contractual relationship may be terminated subject to a notice period of three (3) months, **for the first time to the date of expiration of the minimum contract term agreed upon in the main contract.**

After expiration of the minimum contract term agreed upon in the main contract, the Agreement may be terminated in each case to the end of the respective following minimum contract term agreed upon in the main contract, subject to a period of notice of three (3) months.

Example: A minimum contract term of twelve (12) months is agreed upon in the main contract. The Agreement is not terminated within the first twelve (12) months. The Agreement may be terminated subject to a period of notice of three (3) months to the end of an additional 12-month term of the Agreement.

- 5.3 Notice of termination must be provided to tracker.ch AG in a timely manner by registered letter or by completing and sending the online form provided on the Company website.
- 5.4 In the event that the Agreement is terminated by the Customer prior to the commissioning of the service, the Customer shall owe the Company all of the expenses incurred in this connection.
- 5.5 In the event of misuse by the Customer, the Company shall be entitled to cancel the Agreement with immediate effect and without giving notice. The following actions in particular shall be regarded as misuse:
  - Registration under a false identity
  - Registration not as the owner of the telephone number given
  - Failure to report a change of telephone number
  - Other illegal uses or uses contrary to the Agreement

- 5.6 In the event that the Company cancels the Agreement without notice or within the deadline, in particular because the Customer has acted in breach of the Agreement in accordance with Number 4.6 above, the Customer shall owe the Company all of the expenses incurred in this connection. In particular, the Company shall be entitled in this instance to demand the outstanding monthly fees which would have been incurred up until the next possible ordinary date of termination. The amounts shall be due immediately.

This provision shall also apply in the case that the Customer dissolves the Agreement outside the ordinary periods of notice. Excluded from this shall be any terminations without notice substantiated by the Customer.

- 5.7 The approval of the Customer to automatic credit card debiting may be revoked by the Customer in writing at any time (e-mail shall also be deemed as written form).

## 6. Liability

- 6.1 The Company shall accept no liability for ensuring the uninterrupted and trouble-free operation or the trouble-free operation at a specific point in time of its services. The Company will not assume any warranty for the data traffic in the existing radio network. Liability for operational interruptions due in particular to the elimination of faults, maintenance or the introduction of new technologies shall be hereby **excluded**.
- 6.2 The Company shall provide no guarantee of the integrity of the data stored in or communicated via its system or the internet. Any guarantee covering inadvertent disclosure of and damage to or deletion of data sent or received via its system or saved there shall be **excluded**.
- 6.3 **In particular, the Company shall accept no responsibility for losses suffered by customers or third parties as a result of misuse of the service (including viruses).**
- 6.4 Any liability on the part of the Company and its vicarious agents for ensuring a specific technical or economic outcome, for indirect damage such as loss

of earnings, for claims submitted by third parties, as well as for damage resulting from production downtime, loss of data and liability for slight and medium negligence shall be expressly **excluded**, with reservations being made for further compulsory legal liability provisions.

- 6.5 In all cases, the Company shall reserve the right to submit claims for compensation against users responsible for committing offences (in particular data breaches, data misuse and so-called hacking attacks) involving the Company's network or infrastructure. This shall also apply to non-compliance with so-called netiquette.

## 7. Benefit and Risk / Delivery Times

- 7.1 As a general rule, dates and delivery deadlines shall be non-binding. Any delivery deadlines specified by the company shall be subject to proper and timely delivery to the subcontractors of the Company.
- 7.2 Benefit and risk with regard to the products of the Company shall pass to the Customer upon handover of the products to the contracted supplier company.

## 8. Defects

- 8.1 The Customer shall examine immediately after receipt the products made available and/or handed over by the Company and shall give written notification of defects if any defect is discovered. If the Customer fails to do so, the products shall be deemed approved, unless such defects are of such nature that they had not been detectable during such careful examination. In the event that any such defects occur only at a later time, the notification shall be made immediately after they have been detected. Otherwise, the products shall be deemed approved also with regard to such defects.
- 8.2 In the event that any defect subject to warranty occurs during the statutory warranty period for which notification of defects has been made in due time, the Customer shall initially only be entitled to have the product be repaired by the Company and/or by a third party consulted by the Company. Any reduction in price or redhibition shall be excluded. If the product cannot be repaired, the Company may replace the product by a technically equivalent one. Moreover, any and all warranty claims within the scope permitted by law shall be **excluded**.
- 8.3 Any warranty shall be excluded, in particular, for any damage which has been caused by normal wear and tear or is attributable to accident, incorrect use, contact with liquid or to any other external influences on the device.

## 9. Obligations and Rights of the Customer

- 9.1 "Netiquette" shall generally apply. This code of conduct for working with the internet and governing behaviour online shall apply to all issues relating to internet use. The Customer shall agree to abide by "netiquette" as an integral part of the Agreement with the Company.
- 9.2 Should a Customer become aware of any unlawful information, he or she shall be obliged to inform the Company of this. The Company shall, as far as possible, investigate the matter and take any possible measures which are necessary.
- 9.3 The subletting of services procured from the Company to third parties shall be permitted solely and exclusively following corresponding agreement with the Company. In the event of violation of this provision, the Company shall reserve the right to terminate the relevant agreement without notice or to enforce corresponding claims for compensation. Furthermore, Number 4.7 above shall apply.
- 9.4 The Customer shall be responsible for his or her own hardware and software components (including programs and PC configuration). The Company cannot guarantee sound internet access on all end terminals. In the event of malfunction resulting in action at the Customer's premises being necessary, with it not being possible to rectify the fault in any other way, the Customer shall be obliged to have his or her system adapted at his or her own expense or to cease operations. Otherwise, the company shall be unilaterally entitled to switch off the connection.
- 9.5 **The Customer shall be responsible for taking the necessary security precautions in order to ensure a secure flow of data. He or she shall be held liable by the Company for the use of his or her account and SIM card. Passwords and user IDs must not be communicated to third parties. However, if they are communicated by or at the request of the user, the account holder shall be held liable for any potential consequences.**
- 9.6 **The user must ensure that his or her use of the "tracker" service is in accordance with applicable Swiss and foreign law, if applicable. This includes, in addition to criminal law, in particular data protection and personal rights, telecommunications legislation and execution legislation, copyright and related industrial property rights.**

## 10. Troubleshooting

- 10.1 The Company shall provide its customers with a telephone support service in order to assist them with technical queries concerning the handling and installation of the services offered. The costs and operating hours of this

service shall be published on the relevant platform and may be requested from the Company during usual office hours. The Company shall not assume responsibility for the costs incurred for support provided by third parties.

- 10.2 Faults of any kind shall be rectified as quickly as possible. In the event of operational interruptions due to troubleshooting, maintenance work, the introduction and installation of new technologies or similar circumstances, it shall not be possible for any claims whatsoever to be asserted against the Company.

- 10.3 In the event that a Customer makes a request for faults to be rectified which are shown, by an examination carried out by the Company at the request of the Customer, to be due to defects in the equipment employed by the user, or due to the incorrect use thereof, the costs incurred shall be borne by the Customer.

## 11. Special Provisions

- 11.1 **Use of the Internet and of the "tracker" service carries various data protection risks for the user. The Company shall make every effort to ensure that the security systems in place are as effective as possible by taking economically reasonable, technically feasible and proportionate measures. However, the company cannot issue any guarantees against misuse. All participants shall be held personally responsible for taking measures to secure and shield their data and their network against infiltration and other attacks.**
- 11.2 In the event that the Company finds evidence of hacking (or similar) by a "tracker" service user, it shall reserve the right to deactivate access to the service without advance notice. Furthermore, the Customer in question shall also be barred indefinitely from using all of the Company's goods and services. In addition, the Company shall reserve the right to initiate civil and/or criminal proceedings against the user concerned, where applicable.

## 12. Billing/terms and conditions of payment

- 12.1 Invoicing shall take place in accordance with the terms and conditions agreed in the relevant Agreement. Invoices shall be issued on the basis of the agreed prices (stipulated in the Agreement or on a general price list). The Company shall raise invoices based on its records.
- 12.2 Any objections to invoicing shall be raised in writing within a period of six (6) months after invoicing at the latest. Thereafter, they shall be deemed accepted by the Customer.
- 12.3 Payment deadlines shall be determined according to the Agreement concluded with the Company. Upon the expiry of the payment deadline, the customer shall automatically be in default, without the need for a reminder. The Company shall be permitted to levy reminder fees of at least CHF 20.00 per reminder. In the event of default, the company shall be entitled to block access immediately. Interest of 8% must be paid on outstanding invoices from the due date. A handling fee of at least CHF 50.00 shall be charged for reconnection.
- 12.4 Prices shall be subject to change at any time. Any changes shall be communicated by the Company to the Customer in an appropriate manner (e.g. on the invoice or by e-mail).
- 12.5 The Company shall be permitted to offset its claim against counterclaims submitted by the Customer. The Customer shall be entitled to offset possible counterclaims against claims submitted by the Company.

## 13. Partial Nullity

- 13.1 Should one or more provisions of these General Terms and Conditions of Business prove to be null and void or invalid, this shall not affect the remaining provisions. These shall remain unchanged and retain their validity. The null and void provision(s) is (are) to be replaced, as far as possible, by provisions which are legally valid and of equal economic value. The same shall also apply in the case that any loophole exists.
- 13.2 In the event of contradictions between the different language versions of the General Terms and Conditions of Business, the German version shall be authoritative.

## 14. Place of jurisdiction

These provisions shall be governed exclusively by Swiss substantive law, to the exclusion of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods). In the case of any disputes arising directly or indirectly from this Agreement, the **place of jurisdiction shall be selected by the Company from either the location of the Company's registered offices or the registered offices and/or place of residence of the Customer.**

Valid with effect from 1<sup>st</sup> February 2015