

1. INTERPRETATION

- 1.1 In these conditions, unless the context requires otherwise:
 'BUYER' means the person who buys or agrees to buy Products and Services from the Seller.
 'COMMUNICATION SERVICES' means the services of Product sending emails and/or SMS text messages to the Buyer (or its representatives) as detailed in the Service Specification.
 'CONDITIONS' means the terms and conditions of sale set out in this document and includes any special terms and conditions agreed in writing between the Buyer and the Seller
 'CONTRACT' means each individual contract for the purchase and sale of Products between the Seller and the Buyer.
 'HOSTING SERVICES' means the services that the Seller agrees to make available pursuant to any Contract .
 'MINIMUM TERM' means the minimum period, which the Buyer and the Seller agree that the Services will be provided pursuant to the Contract
 'PRODUCTS' means the T-mac product(s) with any agreed modifications, which the Buyer agrees to buy from the Seller pursuant to any Contract.
 'ORDER' means any Purchase Order for the Product issued by the Buyer to the Seller and accepted by the Seller
 'SELLER' means t-mac Technologies Limited (registered in England under number 5254756) of Stand Park Sheffield Road Chesterfield Derbyshire S41 8JT.
 'SERVICES' means the hosting and communication services that the Seller agrees to provide to the Buyer pursuant to any Contract.
 'SERVICE SPECIFICATION' means the specification describing the Services to be provided to the Buyer in the Contract.
 'WRITING' includes email, facsimile transmission and comparable means of communication.

- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as reference to that provision as amended, re-enacted or extended at the relevant time.
 1.3 The headings in these conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF THE SALE

- 2.1 These Conditions shall apply to all Contracts between the Seller and the Buyer to the exclusion of other terms and conditions including any terms and conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
 2.2 All orders for Products and Services shall be deemed to be an offer by the Buyer to purchase the Products and Services subject to these Conditions.
 2.3 Acceptance of delivery of the Products shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
 2.4 No variation to these Conditions shall be binding unless agreed in writing by the Buyer and the Seller.
 2.5 Any advice or recommendation given by the Seller or its employees or agents as to the storage, application or use of the Products which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
 2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. TERMINATION

- 3.1 The Buyer may not cancel a Contract for the acquisition of the Products or the provisions of the Services before the end of the Minimum Term.
 3.2 The term of any Contract for the provision of the Services shall continue until either the Seller or the Buyer gives to the other at least 1 month's notice in writing to terminate the Contract to expire at any time after the end of the Minimum Term.
 3.3 The Seller by giving to the Buyer notice in writing to terminate the Contract to expire at any time if the Buyer fails to pay any sums due to the Seller under these Conditions.
 3.4 The termination of the Contract by the expiry of notice, shall not prejudice the rights of the Seller in respect of any matter required to be performed or observed by the Buyer either during the currency of the Contract or following its termination.

4. SIM CARDS

- 4.1 Where units are supplied with SIM cards they may be subject to excess data usage charges at £1.50 per mega-bite or £7.50 per mega-bite for overseas use on UK SIMS

5. PRICE OF PRODUCTS/SERVICES

- 5.1 The price of the Products shall be the price stated in any order by the Buyer that has been accepted by the Seller ("the Product Price").
 5.2 The price of the Services shall be monthly price calculated in accordance with the Seller's published price list for the Services from time to time provided that the Seller shall give to the Buyer at least 1 month's notice of any changes to the Seller's published price list ("the Service Fees").
 5.3 VAT at the then current rate shall be added to the Product Price and the Service Fees.

6. TERMS OF PAYMENT

- 6.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Products on or at any time after delivery of the Products, unless the Buyer wrongfully fails to take delivery of the Products, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has tendered delivery of the Products.
 6.2 The Buyer shall pay the Product Price together with any VAT thereon on/ within 30 days of the date of the invoice by cheque or automated electronic transfer notwithstanding that delivery may not have taken place and the property in the Products has not passed to the Buyer. The time for payment of the price shall be of the essence of the contract. Receipts for payment will be issued on request.
 6.3 The Buyer shall pay the Service Fees together with any VAT thereon monthly during the term of the Contract by way of cheque or automated electronic transfer on the dates agreed in the Contract provided that:

- 6.3.1 the Buyer shall pay the Service Fees associated with any Hosting Services either annually or monthly in advance (as stated in the Contract);

- 6.3.2 the Buyer shall pay the Service Fees associated with the Communication Services (once the Buyer has been provided with all the free Communication Services as stated in the Service Specification) monthly in arrears.

- 6.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to: -
 6.4.1 Suspend or cancel any contract for the Services; and
 6.4.2 Charge the Buyer interest (both before and after judgement) on the amount unpaid, at the rate of 4 per cent per annum above the National Westminster Bank Plc base lending rate from time to time, from the due date until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

7. DELIVERY

- 7.1 Delivery of the Products shall be made by the Seller to the place or places specified in the Contract or as subsequently agreed. The Seller and the Buyer shall agree the date and time for delivery of the Products ("the Delivery Date"). Any dates for delivery quoted by the Seller prior to the date of the Contract or appearing in the order from the Buyer shall not be binding on the Buyer unless otherwise agreed in writing.
 7.2 Time for the delivery shall not be of the essence unless previously agreed by the Seller in writing.
 7.3 Where the Buyer refuses or is unable to take delivery of the Products on the Delivery Date then the Seller shall be entitled to invoice for the Products from the Delivery Date. The Seller will not accept any responsibility for the storage of the Products or any responsibility for any damage to the Products whilst in storage.
 7.4 Where the Seller has agreed to deliver the Products by separate instalments in accordance with an agreed delivery schedule, each separate instalment shall be invoiced and paid for in accordance with the provisions in these Conditions.
 7.5 The failure of the Buyer to pay for any one or more of the individual deliveries of the Products on the due dates shall entitle the Seller :
 7.5.1 without notice to suspend further deliveries of the Products pending payment by the Buyer; and/or
 7.5.2 to treat the Contract and any other Contract existing at the time as repudiated by the Buyer.
 7.6 Notwithstanding that the Seller may have delayed or failed to deliver the Products (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Products in full.
 7.7 If the Seller fails to deliver the Products for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar products to replace those not delivered over the price of the Products.

8. INSTALLATION

- 8.1 Where the Buyer has requested installation of the Products, the Buyer acknowledges that the Seller has appointed subcontractors for such installation and must provide the Seller with the following information:-
 8.1.1 the site address where the Products are to be installed (the "Site"), normal operating hours for the Site when the Products can be installed, layout plans of the Site, details of the use of the building and key contacts at the Site to enable installation, historic energy consumption, existing plant maintenance agreements and other relevant information requested by the Seller or which would be reasonable for the Buyer to provide.
 8.1.2 the details of appropriate personnel to liaise with any subcontractor to enable the installation of the Products and appropriate personnel to accompany any subcontractor representative who may be required and who would be authorised and able to liaise with the Seller or any subcontractor and provide any decision relating to the installation and the Site which may be required.
 8.2 In addition to Clause 8.1, the Buyer confirms that where requested and where reasonably possible it shall ensure the following:-
 8.2.1 a power- down of the Site;
 8.2.2 access to the Site pre installation, during installation and post installation where required by the Seller or any subcontractors;
 8.2.3 where any report on the Site has been provided by the Seller or its subcontractors, the Buyer must act on any recommendations stated therein or any other documentation which may be required before the installation.
 8.3 The Buyer acknowledges that the following may affect, terminate or mean that installation is not possible:-
 8.3.1 T-mac or any subcontractor will not be allowed to amend or alter any existing equipment, plant or machinery on Site unless this has been agreed in writing in advance;
 8.3.2 the Seller or any subcontractor will not undertake the installation where (1) any report has recommended certain works and those works have not been undertaken by the Buyer and/or (2) in the interests of health and safety it would not be advisable to do so;
 8.3.3 the installation may reveal pre-existing issues/faults with the Buyer's equipment, plant or machinery. Whilst the Seller or any subcontractor will identify those it comes across to the Seller and/or the end customer, the rectification of these issues/faults will not be undertaken by the Seller or any subcontractors as part of their services. It may be possible that the installation works will need to be postponed until such issues/faults are rectified; and
 8.3.4 the Seller or any subcontractor will not be required to revisit a Site without charge unless the same is due to incorrect or negligent installation or commissioning, and such fault has arisen within the first twelve months of installation.
 8.4 In addition to Clause [11] The Buyer acknowledges that the Seller or any subcontractor shall not be liable for the following:-
 8.4.1.1 all circuit labelling cannot be guaranteed to be correct and at the point of power down a test shall be undertaken to check or confirm labelling and as result if there is any error, failure or fault due to incorrect labelling the Seller shall not be held responsible;
 8.4.1.2 any third party equipment failing after the installation, except due to the Seller or the subcontractors negligence; and

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- 8.4.1.3 any loss of power following or during installation and the Buyer should take such steps to mitigate.
- 8.5 The Buyer acknowledges that the Seller shall have no liability in relation to installation if the Buyer fails to provide any information or breaches any of this clause 8.
- 8.6 The Buyer shall be liable for abortive fees as stated in the Purchase Order if the Seller or any subcontractors are unable to install due to a breach of this clause 8 or if the Seller or the subcontractor's safety is put at risk on Site.
9. **ACCEPTANCE**
- 9.1 The Buyer shall be deemed to have accepted the Products 24 hours after delivery to the Buyer.
- 9.2 After acceptance the Buyer shall not be entitled to reject the Products.
- 9.3 Notwithstanding 7.1 above, any delivery acknowledgement document signed by or on behalf of the Buyer shall be conclusive proof of the quantity of the Products delivered and that the Products are free from any defects that would be apparent from a reasonable inspection of the Products by the Buyer (notwithstanding that no such inspection shall have occurred).
- 9.4 Where the Buyer properly rejects the Products, which are not in accordance with the Contract then the contract for the provision of the Services, shall be cancelled.
10. **RISKS AND PROPERTY**
- 10.1 Risk of damage to or loss of the Products shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Products, the time when the Seller has tendered delivery of the Products.
- 10.2 In spite of delivery having been made property in the Products shall not pass from the Seller until:
- 10.2.1 the Buyer shall have paid the Price plus VAT in full; and
- 10.2.2 no other sums whatever shall be due from the Buyer to the Seller.
- 10.3 Notwithstanding that the Products (or any of them) remain the property of the Seller the Buyer may use the Products in the ordinary course of the Buyer's business at full market value for the account of the Seller.
- 10.4 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Products has not passed from the Seller.
- 10.5 Until such time as property in the Products passes from the Seller the Buyer shall upon request deliver up such of the Products as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Products are situated and repossess the Products. On the making of such request the rights of the Buyer under clause 9.3 shall cease.
- 10.6 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Products, which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 10.7 The Buyer shall insure and keep insured the Products to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Products passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
11. **WARRANTIES AND LIABILITY**
- 11.1 The Seller warrants that the Products will correspond with their description.
- 11.2 The seller warrants that the Products will be free of defects associated with the manufacture of the same for a period of 12 months from the date of purchase subject to the following provisions of this clause 9.
- 11.3 The Seller shall be under no liability in respect of any defect arising from wilful damage to, negligence of the Buyer, failure to follow the Seller's instructions (whether oral or in writing) or misuse of the Products or the Services.
- 11.4 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products or the Services has not been paid by the due date for payment.
- 11.5 The Products and Services are not designed or suitable for the sole control, monitoring or other purpose associated with any human safety equipment including (without limitation) medical equipment.
- 11.6 Where any valid claim in respect of any of the Products or the Services which is based on any defect in the quality or condition of the Products or failure to properly provide the Services is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Products (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Products (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 11.7 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the buyer by reason of any representation, or any implied warranty condition or other term, or any duty at common law, or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise), costs, or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents, or otherwise) which arise out of or in connection with the supply of the Products or their use by the Buyer or the provision of the Services.
- 11.8 The Seller shall not be liable to the Buyer caused by
- 11.8.1 the misuse of the Products;
- 11.8.2 any failure by the Buyer (or any other person responsible) to earth the Products or to disconnect the power supply prior to the removal of the casing to the Products;
- 11.8.3 The fault of the Buyer or any third party in the installation of Products
12. **SERVICES**
- 12.1 The Seller shall provide the Services in accordance with the Service Specification, though the Seller shall not have any liability to the Buyer for any interruption in or failure of the Services due to circumstances beyond the control of the Seller including but not limited to the following:
- 12.1.1 Any delays or failure of the Services attributable to third parties;
- 12.1.2 Any failures of third party hardware or software;
- 12.1.3 Any incorrect reading not caused by the Products;
- 12.1.4 Any misuse of the Products by the Buyer or any third party;
- 12.1.5 The failure of the Buyer or any third party the set up of the Services
- 12.1.6 Any losses of data or Services through power failure to the Products;
- 12.1.7 Any EMF interference or RAM corruption;
- 12.1.8 Any failure by the Buyer to observe these terms and conditions.
- 12.2 The Seller does not monitor and will have no liability for the contents of any communications or data transmitted by virtue of the Services and the Buyer shall indemnify the Seller and keep the Seller indemnified against any liability associated with the processing or collection of such communications or data.
- 12.3 The Buyer grants to the Seller a non-exclusive, royalty free licence to use store and maintain any data supplied as part of the Services on a server for the purposes of providing the Services in accordance with these Conditions. On termination the Seller shall destroy all copies of such data.
- 12.4 The Seller shall use its reasonable endeavours to use a secure server in the provision of the Services and to prevent any person from gaining access to the data collected pursuant to the Services whilst it is on the server. But shall not be responsible for default on behalf of the Buyer to keep access details and passwords secret or any other default by the Buyer.
- 12.5 The Seller shall use its reasonable endeavours to use the latest version of any software associated with the Services and will advise the Buyer of any such changes or any changes to the Service Specification by giving the Buyer at least one month's notice of any change.
- 12.6 It is the Buyer's responsibility to ensure that it has the correct software and hardware to use the Services and have access to the server.
- 12.7 Where the Seller has contracted with the Buyer to supply to the Buyer Hosting Services then the minimum term of the Contract shall be 12 months and thereafter shall be terminable (subject to the other provisions in these terms and conditions) on either party giving the other at least 1 month's notice in writing.
- 12.8 The Seller shall use its reasonable endeavours when providing the Hosting Services to keep any server downtime to a minimum. The Seller will use its reasonable endeavours to inform the Buyer of any planned downtime.
13. **TRADEMARKS**
- 13.1 No right or license is granted under this contract of sale to the Buyer under any patent, trademark, copyright, registered design or other intellectual property right except the right to use of the Products.
14. **DETERMINATION**
- 14.1 If the Buyer shall make default in or commit breach of any Contract with the Seller or of any other of his obligations to the Seller, or if any distress or execution shall be levied upon the Buyer's property or assets, or if the Buyer shall make any arrangement or composition with creditors or commit any act of bankruptcy, or if a petition or receiving order in bankruptcy shall be presented or made against him or if the Buyer is a limited company and any resolution or petition to wind up (other than for purposes of amalgamation or present reconstruction) shall be passed, or if a receiver of the Buyer's undertaking property or assets or any part thereof shall be appointed, the Seller shall have the right forthwith to determine any Contract then subsisting and upon written notice of such determination without prejudice to any claim or right the Seller may otherwise make to exercise and without compensation to the Buyer.
15. **GENERAL**
- 15.1 No waiver by the Seller of any breach of a Contract by the Buyer shall be considered as a waiver of any subsequent breach of the Contract or any subsequent Contract.
- 15.2 In order to ensure the continuing quality of the Seller's Products, the Buyer will permit a representative of the Seller to inspect and sample any Products remaining in the Buyer's possession and control.
- 15.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 15.4 The parties agree and declare that none of the provisions of these Conditions are intended to be enforceable pursuant to The Contract (Rights of Third Parties) Act 1999 by any person who is not a party thereto.
- 15.5 Any notice under or in connection with a Contract shall be in writing and shall be served by first class post or by hand on the party or sent by recorded delivery or e-mail at or to the address of the party set out in the Contract or at or to such other address as may be subsequently notified by one party to the other. In the absence of evidence of earlier receipt any notice shall be deemed to be duly served; if delivered personally when left at the address; if sent by recorded delivery 3 days after posting; if sent by e-mail, when received.
- 15.6 The Contract shall be governed by the laws of England and Wales.