

Terms of Trade

1. Definitions

- 1.1. In these Terms of Trade words and expressions are as defined in the Order or shall otherwise have the following meanings (unless the context requires otherwise):

Contract the contract between the Customer and Masternaut created by Masternaut's acceptance of the Order for the supply of the Equipment and/or Services and which shall comprise the Order, these Terms and the provisions of Schedules 1 and 2 attached;

Customer the individual, partnership or company named in the Order;

Customer Data all data, information, text, drawings, diagrams or images relating to the Customer embodied in any electronic or tangible medium and which are supplied or in respect of which access is granted to Masternaut by the Customer pursuant to this Contract;

Datasets any and all cartography, data and information regarding the location and/or availability of various landmarks and facilities including (but not limited to) points of sales for goods and services, graphical icons, geo-coded data and data files, including any and all updates, to be provided in conjunction with the Telematic Services or residing on the Equipment but excluding the Customer Data;

Defit / Refit the de-installation of Equipment from a Customer vehicle and installation of the same Equipment into another Customer vehicle.

Development any or all developments of, and/or improvements or modifications to the Software and results of any Professional Services, whether or not they are eligible for patent, copyright, trademark, trade secret or other legal protection;

DPA the Data Protection Act 1998, as amended or re-enacted from time to time;

Equipment the vehicle tracking devices and ancillaries and/or any other hardware in each case ordered by the Customer in the Order;

Excluded Circumstances (i) driver or other third party tampering with the Equipment or any alteration or addition to the Equipment by anyone other than Masternaut; (ii) improper use of the Equipment or operator error; (iii) a failure by the Customer to implement Masternaut's reasonable instructions as to the storage, use or maintenance of the Equipment; (iv) use of the Equipment with third party software or hardware other than that supplied by Masternaut; (v) provision of incomplete and/or incorrect information by the Customer (including its authorised users of the Equipment); (vi) accidental or intentional damage to the Equipment; (vii) incorrect installation, maintenance or repair of the Equipment by anyone other than Masternaut or its authorised installers; (viii) power failures and discharged batteries; (ix) any downtime or outages from any subcontractor, any communication error, interruption, deletion, defect, delay in operation or transmission or other communications line failure, theft or destruction or other lack of coverage of the mobile telecommunications network used by the Equipment, malicious interference or system attacks; (x) fair wear and tear; and/or (xi) any factor or event beyond Masternaut's control;

IPR all intellectual property rights including, without limitation, any patents, trade and services marks, database rights, registered and unregistered designs, copyright (including copyright in computer software), know-how and confidential, technical and commercial information and all other proprietary industrial rights, howsoever recorded, anywhere in the world for the full term of the rights concerned, whether registered or not and including any applications therefore, and all goodwill related thereto, as well as all reversions, extensions and renewals of such rights and all accrued rights of action in relation to such rights;

Kick Off Meeting a kick off meeting between the Customer and Masternaut at which either or both of Masternaut's Project Manager and/or Implementation Consultant are present;

Legacy Masternaut Products all Masternaut products, services and equipment other than the Telematic Services and Equipment listed in Part A of Schedule 2;

Masternaut Masternaut Limited, company number 7848318 of Priory Park, Great North Road, Aberford, Leeds, LS25 3DF or its successors in title or assigns;

Minimum Service Period an initial period of 4 years unless otherwise stated on the Order from the first day of the second month following the date of signature of the Order by the Customer and provided the Order is accepted pursuant to clause 2.1;

Monthly Service Fee the monthly fee payable by the Customer in respect of the Telematic Services;

Order the order form to which these Terms apply;

Personal Data personal data as defined in the DPA contained within the Customer Data;

Platform the vehicle satellite tracking hardware and software platform operated by or for Masternaut to which the Equipment will connect for the purpose of the provision of the Telematic Services, including the Server Software;

Professional Services any and all project management, initial set up assistance, training and/or consultancy services supplied by Masternaut under the Contract but excluding any development services;

Server Software the software programs owned by or subject to a licence granted to Masternaut that reside in the Platform, including any and all updates and new versions thereof;

Services any and all services supplied by Masternaut under the Contract including, without limitation, the Professional Services and the Telematic Services;

Software the Server Software and the Terminal Software;

Software Licence the Masternaut software licence in the form set out in Schedule 1;

Telematic Services the telematic services to be provided by Masternaut pursuant to this Contract;

Term the duration of this Contract from its commencement to termination pursuant to its terms;

Terminal Software the software and/or software programs owned by or subject to a licence granted to Masternaut that run on the Equipment, including any and all updates and new versions thereof; and

Termination Payment the termination payment as set out in clause 12.

- 1.2. Reference in these Terms to the singular shall be deemed to include the plural and vice versa. Headings to clauses are included for ease of reference and shall not affect the interpretation of these Terms.

2. Contract and Commencement

- 2.1. The Contract shall be made on Masternaut's acceptance of the Customer's signed completed Order. Provided that the Customer pays all sums due to Masternaut, Masternaut will provide the Customer with the Equipment and the Services detailed in the Order. Unless the Customer has asked to use Legacy Masternaut Products, the Telematic Services shall comply in all material respects with the description set out in Schedule 2, subject to the additional provisions set out therein. Part B of Schedule 2 shall apply to all Equipment and Services detailed in the Order. Where the type of Telematic Services is not specified in the Order, the Telematic Services ordered shall be deemed to be the Masternaut Live product.

- 2.2. Masternaut offers, as part of its Professional Services under this Contract, to initiate a Kick Off Meeting with the Customer. The purpose of the Kick Off Meeting is for the parties to identify the Customer's requirements for the roll out and the installation of the Equipment and Telematic Services within the Customer's organisation. All requirements of the Customer identified in the Kick Off Meeting are to be agreed and documented. Professional Services are chargeable to the Customer at a daily rate per 8 hours working time during standard business hours and in accordance with the provisions of this Contract, where 1-4 hours of work are charged at a half day rate and 5-8 hours of work at a full daily rate.

3. Payment Terms

Masternaut Terms of Trade (Buy Service) – BSU20160209

- 3.1. The Monthly Service Fees will be payable from the commencement of the Minimum Service Period onwards in respect of all units of Equipment ordered, irrespective of when the Customer arranges installation. The first Monthly Service Fees and charges for installation, the Equipment and any Professional Services (if applicable) are due and payable and will be taken by direct debit or by credit card on the date on which the Minimum Service Period commences and thereafter for the Monthly Service Fees will be due and taken by direct debit or credit card quarterly in advance. If the Customer chooses another mode of payment or stops paying the Monthly Service Fees by direct debit or by credit card Masternaut may invoice the Customer for all future Monthly Service Fees and increase them by up to 10%.

- 3.2. Except as specified otherwise, all charges are due and payable within 30 days of invoice date.

- 3.3. The Customer agrees that Masternaut may issue invoices to it by electronic means and that invoices issued in this manner shall be valid. It is the Customer's responsibility to notify Masternaut of any change to the email address to which it would like invoices to be issued. In the event that any email address given by the Customer ceases to be valid the Customer agrees that Masternaut may place invoices in the Customer's self-service portal and that such placement shall be deemed to be a valid issue of such invoices.

- 3.4. The Customer agrees that Masternaut may take payment for any text messaging and excess data requested or consumed by the Customer while using the Telematic Services (including Equipment or Platform text alerting or excess two-way messaging) and all additional services and items provided by Masternaut to the Customer (that are not paid for by the Monthly Service Fees), at Masternaut's standard rate as applicable from time to time, by direct debit or by credit card. Masternaut will send the Customer an invoice notifying it in advance of the sums being taken by direct debit or by credit card.

- 3.5. Notwithstanding any other provision in this Contract all payments payable to Masternaut under this Contract shall become due immediately upon termination of this Contract, howsoever arising.

- 3.6. All payments and fees due under this Contract are subject to the addition of VAT and any other applicable taxes, duties or levies at the then prevailing rate. Any firm prices quoted are with errors and omissions excepted.

- 3.7. Masternaut will increase the Monthly Service Fees annually every January by the corresponding variation in the RPI for the 12 months period ending in the previous October plus 2%. In the event that such variation in the RPI is negative a 2% increase shall be applied.

- 3.8. Except as provided in this clause, the Customer shall make all payments due under this Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. If the Customer has a valid court order requiring an amount to be paid by Masternaut to the Customer or if the parties agree on any such amount, the Customer shall be entitled to set-off such sum against any monies the Customer owes to Masternaut under this Contract.

- 3.9. Without prejudice to any other rights Masternaut may have if the Customer fails to pay any sum due pursuant to this Contract on the due date then Masternaut may:

- 3.9.1. charge in addition to the amount overdue:

- 3.9.1.1 interest (both before and after any judgment) on the amount unpaid at the rate specified under the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until the date of payment;

- 3.9.1.2 an administration fee of £25 per month or part month, from the due date until the date of payment;

- 3.9.1.3 the cost of time spent pursuing payment and any travelling expenses incurred; and

- 3.9.1.4 the amount of all legal costs incurred by Masternaut in connection with the recovery or attempted recovery of the whole or part of any such monies due (on a full indemnity basis) whether or not proceedings are commenced or costs can be awarded by the court;

- 3.9.2 suspend the provision of the Services until such time as all such payments due including all interest accrued and any costs incurred have been paid in full; and

- 3.9.3 immediately and on reasonable notice recover the Equipment where title has not transferred to the Customer, or any part of the same and the Customer authorises Masternaut to enter upon the Customer's premises and/or work upon the Customer's vehicles, by its servants and/or agents, for that purpose.

- 3.10 This clause 3 shall survive termination of this Contract.

4. Delivery, Installation and Activation of the Equipment

- 4.1. If the Customer does not notify Masternaut as to when it wants delivery of the Equipment within 14 days of Masternaut's acceptance of the Order Masternaut will store the Equipment for the Customer. Risk in the Equipment shall pass to the Customer when the Equipment is delivered to the Customer or 14 days after Masternaut's acceptance of the Order, whichever is the sooner. Title in the Equipment will not pass to the Customer until Masternaut has received payment for the Equipment in full.

- 4.2. The Customer agrees to be responsible for arranging with Masternaut for the installation of the Equipment in its vehicles. Masternaut will provide the Customer with access credentials for the Platform within 14 days of Masternaut's acceptance of the Order.

- 4.3. Upon receipt of all completed documentation and a request from the Customer Masternaut will deliver, install and activate the Equipment on the number of vehicles in respect of which it is ordered at a mutually convenient time in accordance with the following terms:

- 4.3.1 the Customer will provide Masternaut with all the vehicle information that Masternaut reasonably requests relating to the vehicles in which it wishes Masternaut to install the Equipment;

- 4.3.2 Masternaut shall install the Equipment, subject to the payment of the applicable installation fees, and the Customer will make its vehicles available for Masternaut to install the Equipment in each case at the location(s) and in accordance with the timetable agreed in writing (including agreement by email) by the parties;

- 4.3.3 installation of the Equipment may only be performed by Masternaut employees or its authorised sub-contractors; and

- 4.3.4 Masternaut reserves the right to charge travel expenses for installations at remote locations. A remote location is any installation location more than 50 miles away from an installation point which can be either a Masternaut office or the location of a Masternaut sub-contractor.

- 4.4. Should installation not take place on the dates and times arranged due to the unavailability of the Customer's vehicles at the agreed location (without the Customer having given Masternaut at least 24 hours' prior written notice) Masternaut reserves the right to make an additional installation charge at the rate specified in the Order for the cancelled installation(s) or, if no rate is specified in the Order, at the rate set out in Masternaut's then applicable current price list.

- 4.5. Following installation of the Equipment the Customer agrees that to inspect it and notify Masternaut in writing within three working days of any defect. If Masternaut fails to receive any such notification, it shall be presumed that the Equipment is in good working order and condition, satisfactory to the Customer and fit for the purpose for which it is required.

- 4.6. Masternaut shall input the Customer's initial vehicle data into the Platform following installation. The Customer may request Masternaut to assist with changes and modifications to the vehicle data subject to clause 4.7.

- 4.7. Masternaut will charge the Customer at its standard rates from time to time for any assistance requested pursuant to clause 4.6, for any services requested in relation to the Equipment including but not limited to Defits and Refits of the Equipment and for all replacement parts that are fitted to or on the Equipment.

- 4.8. Where the Customer requests Masternaut to perform a Defit and Refit of the Equipment Masternaut reserves the right, at its discretion and at its standard charges, to deactivate the existing item of Equipment (and not Defit it) and to fit a new replacement item of Equipment in the new vehicle, title to which will transfer to the Customer on Masternaut's receipt of payment for the Defit/Refit.

- 4.9 All units of Equipment shall be deemed to be activated and Masternaut shall make the Telematic Services available to the Customer in each case on the date of installation or when the Minimum Service Period commences, whichever date is the earlier.
- 4.10 The Customer agrees to inform Masternaut without any unreasonable delay if the Customer Defits a unit of Equipment. The Customer will notify Masternaut immediately if any Equipment is lost, stolen or damaged.
- 4.11 The Customer will be responsible for ensuring that the Equipment is used properly and safely.
5. **Support**
- 5.1 In the event that the Customer encounters any problems using the Equipment and/or the Telematic Services the Customer will undertake basic network, hardware and service checks in order to attempt to diagnose and resolve the problem. If any such problem cannot be resolved by the above action the Customer will contact the Masternaut helpdesk via email or via the Customer's self-service portal (if available) and provide full details of the problems encountered.
- 5.2 If a problem cannot be solved remotely Masternaut may arrange a site visit. Such visits will be arranged as quickly as possible and will normally be within five working days. Masternaut will charge for all such visits and the cost of the repair or replacement of Equipment and its installation at Masternaut's then standard rates plus return carriage (if applicable) where:
- 5.2.1 there is found to be no defect in the Equipment;
- 5.2.2 this is required as a result of any of the Excluded Circumstances; and/or
- 5.2.3 where the Equipment is no longer covered by the initial twelve months' warranty referred to in clause 6.1.
- 5.3 To enable Masternaut to provide the support Services detailed in this clause 5 the Customer agrees to make available to Masternaut free of charge access to the Equipment and all information, facilities and services reasonably required by Masternaut for the performance of its obligations under this Contract.
- 5.4 The support provided in respect of the Equipment and the Telematic Services does not include helping the Customer or a third-party with legal action, eg against an employee, or acting as an expert witness and Masternaut reserves the right to charge for such assistance at its applicable rates in force from time to time.
6. **Warranties and IPR Indemnity**
- 6.1 Masternaut warrants that the Equipment will be of satisfactory quality during the initial twelve month period of the Minimum Service Period and that it will provide the Services using reasonable skill and care and will exercise the level of skill, diligence and judgment that would reasonably be expected from a leading company within the vehicle tracking industry. Masternaut provides no further warranty in respect of the Equipment, Telematic Services or any other Services. Masternaut specifically does not warrant that the operation or use of the Equipment and/or the Telematic Services will be uninterrupted, completely secure or error free except that security for the Platform shall be provided by Masternaut in accordance with good industry practice.
- 6.2 Except as specified otherwise in this Contract, if the Equipment is or becomes defective during the initial twelve months period of the Minimum Service Period Masternaut will (at its option) repair or replace the Equipment free of charge subject to the terms of this Contract as soon as reasonably possible after it is notified that the Equipment is not working. For the avoidance of doubt, this remedy in clause 6.2 shall not apply to any Equipment that is not defective on delivery in the event that the defect(s) or non-performance is caused by any of the Excluded Circumstances. The aforementioned liability of Masternaut will be the Customer's sole remedy in respect of the provision of defective Equipment and will be in full and final settlement of and represents the entire liability of Masternaut for the Equipment arising under or in connection with this Contract. Accordingly, Masternaut shall not be liable to the Customer in connection with the Equipment for any other losses, claims, damages, liabilities or expenses arising to the Customer either direct or indirect (and including without limitation direct loss of profits and replacement and renewal costs) whether in contract, tort (including negligence) or otherwise however arising all of which are fully excluded.
- 6.3 Except as expressly provided in this Contract, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from this Contract.
- 6.4 Where the Equipment is battery operated, Masternaut does not warrant and is not responsible for the life of the battery unit, which such life will be determined by its level of use. Masternaut will replace such battery units as and when required at its then standard rates.
- 6.5 The Customer warrants that Masternaut's provision of the Services shall not breach any contract of the Customer with any of its employees, sub-contractors or otherwise. The Customer will indemnify Masternaut against any loss or damages which it may sustain or incur as a result of any breach by the Customer of this warranty.
- 6.6 Subject to clause 6.7 below, and provided that the Customer complies with clause 6.8: (i) if the Customer's use of the Equipment and/or Telematic Services is held by a court of competent jurisdiction to constitute an infringement of a third party's IPR; or (ii) if in Masternaut's reasonable opinion the use of the Equipment and/or Telematic Services is likely to constitute such an infringement (any such event being an "Infringement") Masternaut shall:
- 6.6.1 indemnify the Customer against all liability, loss, damages, reasonable costs and expenses finally awarded against or incurred or paid by the Customer as a result of or in connection with any such Infringement; and
- 6.6.2 Masternaut shall promptly at its own expense and at its own option: (i) procure for the Customer the right to continue to use the Equipment and Telematic Services in accordance with the terms of this Contract; (ii) modify or replace (with non-infringing replacement software (if applicable)) the Equipment and/or Telematic Services, provided that any such modification and/or replacement shall not materially adversely affect or reduce the functionality offered by the Equipment and Telematic Services, so as to avoid the Infringement; or (iii) if Masternaut reasonably determines that none of the actions detailed in sub-clauses (i) and (ii) of this clause are commercially feasible, Masternaut may terminate this Contract and the Software Licences granted to the Customer and shall refund fees prepaid by the Customer in respect of the Telematic Services on a pro rata temporis basis and all sums paid by the Customer in respect of the Equipment capped at its then depreciated value.
- 6.7 Masternaut will not be liable for any Infringement where such Infringement arises as a result of:
- 6.7.1 the use of the infringing item in conjunction with software and/or hardware and/or other materials not supplied or licensed by Masternaut;
- 6.7.2 use of the Equipment and/or Telematic Services in a manner not permitted by this Contract; or
- 6.7.3 modification of the Equipment and/or Telematic Services by the Customer or any third party.
- 6.8 The Customer will:
- 6.8.1 give notice to Masternaut of any Infringement as soon as possible upon becoming aware of the same;
- 6.8.2 give Masternaut the sole conduct of the defence to any claim or action in respect of any Infringement and shall not at any time admit liability or otherwise attempt to settle the said claim or action subject to Masternaut providing to the Customer's reasonable satisfaction security for any reasonable costs or liabilities the Customer may incur by reason of Masternaut's conduct of such defence;
- 6.8.3 at the request of Masternaut, afford to Masternaut all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Customer and/or Masternaut in connection with an Infringement; and
- 6.8.4 use all reasonable endeavours to mitigate any loss or damages that it may suffer as a result of an Infringement.

- 6.9 These clauses 6.6 to 6.8 state the entire liability of Masternaut and the exclusive remedy of the Customer with respect to any alleged infringement by the Equipment and/or Telematic Services or any part thereof.
- 6.10 The Customer shall indemnify, defend and hold Masternaut harmless from all and any losses and damages resulting from any claim or action brought against Masternaut and based on any of the causes set out in clause 6.7 under the same conditions as those set forth in clauses 6.6, 6.8 and 6.9.
- 6.11 The Datasets are provided "as is" and Masternaut makes no representations or warranties regarding them. To the maximum extent permitted by law Masternaut expressly excludes all implied warranties or conditions of any kind including, without limitation, any warranty or condition of quality (including satisfactory quality), performance, fitness for a particular purpose or non-infringement. Except as specifically set forth in the Contract, Masternaut does not give or make any warranties or representations regarding the use, or the results of the use, of the Datasets or warrant or represent that the Datasets will accurate, up to date or error free.
7. **Limitations of Liability**
- THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THIS CLAUSE 7**
- 7.1 As Masternaut cannot know the effects of any failure in the provision of the Telematic Services on the Customer's business, the Customer agrees that it will put in place its own business continuity measures.
- 7.2 The Customer is solely responsible for using the Equipment and Telematic Services in a manner that is safe and complies with any relevant health and safety or other legislation. The Customer warrants to Masternaut that it will give all appropriate instruction to its employees and any other users of the Equipment and Telematic Services to ensure that all appropriate legislation is complied with. Subject to clause 7.6, Masternaut will not in any circumstances be liable whether in contract, tort (including negligence) or otherwise for any use of the Equipment and/or Telematic Services by the Customer, its employees or other users: (i) in contravention of any relevant legislation; or (ii) in a manner that may cause accidents or damage.
- 7.3 Without prejudice to the remaining provisions of this clause 7, the aggregate liability of Masternaut whether in contract, tort (including negligence), misrepresentation or otherwise for any loss or damage suffered by the Customer as a result of any breach of this Contract, any use of the Equipment and/or the Telematic Services, any delay, defect or other failure in relation to the Equipment, the Telematic Services and/or any other Services and/or arising as a result of Masternaut's performance of the Services (including, without limitation, where Masternaut has given an indemnity in respect of such loss or damage) shall be limited to a sum equal to the sums paid by the Customer to Masternaut during the period of twelve months prior to the event giving rise to the claim and, where there is more than one event giving rise to a claim, during the period of twelve months prior to the last event giving rise to such claim.
- 7.4 Masternaut shall not be liable for any breach or any loss or damage arising from any of the Excluded Circumstances or for any failure to supply the Services or delays in the provision of the Services that are caused by the Customer, its agents or suppliers or any other third party acting for and on behalf of the Customer or that are due to circumstances beyond Masternaut's reasonable control. Under such circumstances Masternaut shall be entitled to a reasonable extension of time for the fulfilment of its obligations.
- 7.5 Masternaut shall not in any circumstances be liable to the Customer whether in contract, tort (including negligence) or otherwise for any loss of profits, business or revenues, loss of anticipated savings, loss of contracts, loss of business opportunity, loss of goodwill or damage to reputation or for any special, indirect or consequential loss, in any case whether suffered by the Customer or any other person as a result of Masternaut's breach of this Contract and the parties agree that the categories of loss as referred to at this clause 7.5 shall be distinct and severable.
- 7.6 NOTHING IN THIS CONTRACT SHALL AFFECT THE STATUTORY RIGHTS OF A CONSUMER. Nothing in this Contract shall limit Masternaut's liability for personal injury or death resulting from its negligence or fraudulent misrepresentation.
8. **Data**
- 8.1 The Customer agrees that the Customer has complied and will continue to comply with the provisions of the DPA in relation to the Personal Data and that use of the Telematic Services will be entirely consistent with and appropriate to the specific and lawful purposes (if any) for which the Customer has registered under the DPA in respect of the Personal Data.
- 8.2 The Customer will indemnify Masternaut in respect of any loss or damages which it may sustain or incur as a result of any breach by the Customer of the provisions of this clause 8.
- 8.3 Masternaut agrees that it will process the Personal Data as a data processor of the Customer in accordance with the DPA and the instructions of the Customer and for no other purpose except with the prior consent of the Customer. Masternaut will retain the Customer Data on the Platform for three months. If the Customer requires Masternaut to retain the Customer Data for any longer period Masternaut will charge the Customer and the Customer agrees to pay for such at its then standard rates. Masternaut reserves the right to transfer data to third parties that perform services for Masternaut under this Contract or to companies forming part of the Masternaut group. Masternaut will use Personal Data only for the purpose of performing the Services.
- 8.4 Masternaut will indemnify the Customer against any loss or damages which it may sustain or incur as a result of any breach by Masternaut of the provisions of this clause 8.
- 8.5 Customer Data obtained while a 'privacy button' is activated will not be displayed to the Customer or released by Masternaut for general viewing but will be retained by Masternaut. The Customer agrees to obtain its employees' consent to the retention of such Customer Data.
- 8.6 In the event that the Customer wishes to access historical data following termination of this Contract, Masternaut will allow such access on the terms of this Contract and charge the Customer for such access and the Customer agrees to pay for such at a rate equal to the last Monthly Service Fee paid under the Contract for each month during which it continues to require access to such historical data.
- 8.7 Each party agrees to use its reasonable endeavours to mitigate any loss arising as a result of these provisions.
9. **Confidentiality**
- 9.1 Masternaut and the Customer shall keep confidential the contents of this Contract and all information of the other party designated as confidential, including without limitation all information of Masternaut relating to pricing, its product roadmap and general technological information regarding Masternaut's products and services, and which is obtained under or in connection with this Contract and shall not divulge the same to any third party without the prior written consent of the disclosing party.
- 9.2 Masternaut and the Customer may divulge confidential information of the other party only to those employees bound under equivalent conditions of confidence who are directly involved in the use or provision of the Equipment and Services, and shall ensure that such persons are aware of and undertake to comply with these obligations of confidentiality.
- 9.3 The provisions of this clause shall not apply to any information which:
- 9.3.1 is or becomes public knowledge otherwise than through the default or negligence of the receiving party;
- 9.3.2 the receiving party can prove was in the possession of the receiving party without restriction before the date of receipt from the disclosing party;
- 9.3.3 is obtained from a third party who is lawfully authorised to disclose the same; and/or
- 9.3.4 and to the extent only that such information is required to be disclosed by law or a regulatory authority.

- 9.4** Unless notified in writing to the contrary, Masternaut may use the name of the Customer in its publicised list of customers.
- 9.5** Masternaut may render the Customer Data anonymous and generate statistical data for general commercial use.
- 10. IPR**
- 10.1** The Customer acknowledges and agrees that, as between the parties, all the IPR in any and all Software, Developments, Datasets, databases within the Platform and any user documentation provided by Masternaut and any copies and merged portions thereof (together the “Masternaut Intellectual Properties”) shall at all times remain the sole property of Masternaut or its third party licensors (together the “Licensor”). All rights and all rights of Masternaut not specifically granted under this Contract or the Software Licence are reserved by the Licensor.
- 10.2** The Customer acknowledges and agrees that copyright in the screen, the reports and other information available via the Platform belongs to Masternaut. The database containing the data collected during the performance of the Telematic Services is the sole property of Masternaut and the Customer shall not retain, acquire or assert any right, title or interest in or to such database or in or to the IPR thereto based on the transfer of such information to Masternaut.
- 10.3** As between the Customer and Masternaut, the Customer shall be responsible for any and all material and/or content that is provided or procured by the Customer and for compliance with all applicable laws and regulations in respect thereof and for any and all licence fees, royalty payments, rental right payments, union payments, author royalties and any other third party payments payable in respect of the use of such material or other content.
- 10.4** The Customer agrees not to copy or incorporate into any other work any of the material available through access to the Platform although the Customer may print or download extracts from the material for its own internal use.
- 10.5** On the date that Masternaut provides the Customer with access credentials in accordance with clause 4.2 Masternaut will grant the Customer for the remaining duration of the Term a Software Licence to use the Software for the number of items of Equipment purchased by the Customer pursuant to this Contract and the Customer agrees to be bound by the terms of the Software Licence which shall prevail over any conflicting or inconsistent terms in these Terms of Trade.
- 11. Term and Termination**
- 11.1** This Contract will endure until the expiry of the Minimum Service Period and shall be renewed automatically thereafter for successive 12 month periods (each such period being a “Renewal Period”) unless or until terminated by either party on giving to the other at least three months’ written notice to expire at the end of the Minimum Service Period or any Renewal Period, subject always to the Contract being terminated earlier in accordance with its terms (eg on account of breach).
- 11.2** Either party may terminate this Contract by giving written notice to the other if the other party is in material breach of its obligations under this Contract (other than a failure to pay sums due) and, in the event of a breach capable of being remedied, fails to remedy the breach within 30 days of receipt of written notice specifying the nature of the breach.
- 11.3** Masternaut may terminate this Contract with immediate effect on giving the Customer written notice if:
- 11.3.1** the Customer has failed to pay any sum due to Masternaut under this Contract or any other agreement for more than 30 days after the due date;
- 11.3.2** the Customer has made any untrue statement or given any false information to Masternaut in connection with this Contract;
- 11.3.3** the Customer breaches the terms of the Software Licence.
- 11.4** Either party may terminate this Contract with immediate effect on giving the other party written notice if the other party shall convene a meeting of its creditors or if a proposal shall be made for a Voluntary Arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other scheme or arrangement with or assignment for benefit of its creditors, or if the other party shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) in respect of the other party.
- 11.5** If Masternaut terminates this Contract pursuant to clause 11.2, 11.3 or 11.4 or the Customer terminates this Contract other than pursuant to clause 11.1, 11.2 or 11.4 the Customer agrees to pay the Termination Payment to Masternaut as agreed damages which the Customer agrees are a true reflection of the loss Masternaut will have suffered. The Customer will pay to Masternaut on demand any costs and expenses Masternaut may incur in enforcing the terms of this Contract following a breach by the Customer.
- 11.6** Notwithstanding any other provision of this Agreement, Masternaut reserves the right, at any time, to modify or terminate any parts of the Telematic Services that are provided by third parties. If the Customer does not wish to accept the modified or reduced Telematic Services where any such modification/termination has materially adversely affected or reduced the functionality offered by the Telematic Services, the Customer will have the right to terminate this Contract for convenience by written notice to Masternaut at any time during a 10-day period from the date of receipt of a notification from Masternaut regarding the above-mentioned modification or termination
- 11.7** All provisions intended to have continuing effect shall survive the termination of this Contract including, but not limited to, the relevant provisions of clauses 3 (Payment Terms), 7 (Limitations of Liability), 8 (Data), 9 (Confidentiality), 10 (IPR), 11 (Term and Termination) and 12 (The Customer’s Liability on Termination).
- 12. The Customer’s Liability on Termination**
- 12.1** The Termination Payment referred to in clause 11.5 will be calculated as follows:
- 12.1.1** all Monthly Service Fees, interest and other payments due to be paid before the termination date but not yet paid;
- 12.1.2** the rest of the Monthly Service Fees which would be payable (but for early termination) to the end of the Minimum Service Period (or any applicable Renewal Period); and
- 12.1.3** all damages and other sums that Masternaut may be entitled to claim pursuant to contract law and the other provisions of this Contract.
- 12.2** The Customer shall continue to be liable to pay the Monthly Service Fees at a rate equal to the last Monthly Service Fee paid under the Contract for each month (or part month) during which it continues to access and use the Telematic Services following termination of this Agreement and the terms of this Agreement shall continue to apply to the provision and use of such Telematic Services.
- 13. Force Majeure**
- Except in relation to the Customer’s obligations to pay Masternaut for the Equipment and the Services, neither party shall be liable for any delay in performing any of its obligations or any failure of the Equipment or the Platform to perform any of their functions under the Contract caused by force majeure including, but not limited to:
- 12.1** emergency, acts or omissions of Government, highway, telecommunications operators, regulatory or other competent authority, unofficial or otherwise unlawful industrial action of any kind, riot, civil unrest, environmental conditions, severe inclement weather, inability to obtain supplies of power, fuel or transport;
- 13.2** breakdown or malfunctioning of the world wide web or other communication links between the Equipment and Masternaut and/or between Masternaut and the Customer’s computer network;

- 13.3** viruses introduced to the Platform by the Customer’s computer network or otherwise;
- 13.4** external hacking of information within the Platform; and/or
- 13.5** any other cause beyond such affected party’s reasonable control.
- 14. Notices, Waiver and Assignment**
- 14.1** Any notices given under the Contract shall be in writing and shall be sent by recorded delivery or delivered by hand to the address given in the Order or subsequently notified to the other party for such purpose and shall be deemed to have been duly given or made: (i) if sent by recorded delivery two clear business days after posting; and (ii) if delivered by hand, on the day of delivery.
- 14.2** Failure or delay by either party to exercise any right in this Contract shall not be a waiver of any such right nor operate so as to bar the subsequent exercise of it or of any other right and no single or partial exercise of any right or remedy under this Contract shall prevent any further exercise of the right or remedy or of any other right or remedy. A waiver of a breach of any of the terms of this Contract or of a default under this Contract does not constitute a waiver of any other breach or default and shall not affect the other terms of this Contract.
- 14.3** The Contract is personal to the Customer and may not be assigned by the Customer to any third party without Masternaut’s prior written consent. Masternaut or its successors and assigns shall be entitled to assign the Contract, or any part of it, to any third party.
- 15. General**
- 15.1** This Contract contains the entire agreement and understanding between the parties. No other terms (including any specified in any purchase orders), representations or misrepresentations whether made negligently or otherwise apply to or are incorporated into the Contract and no variation shall be binding unless set out in writing and signed by the duly authorised representatives of both parties.
- 15.2** If any provision of the Contract shall be held illegal or unenforceable such provision shall be severed and the remainder of the Contract shall remain in full force and effect unless the business purpose of the Contract is frustrated thereby.
- 15.3** Each of the parties acknowledges and agrees that in entering into this Contract, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Contract or not) other than as expressly set out in this Contract. The only remedy available for breach of warranty shall be for breach of contract under the terms of this Contract. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.
- 15.4** No term of this Contract shall be enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999. This does not affect any right of a third party that exists other than pursuant to that Act.
- 15.5** The Customer will (and will procure that its employees, subcontractors and agents will) comply with all applicable laws, standards and regulations (including, without limitation, environmental laws) from time to time in force in relation to the ownership and use of the Equipment and Services.
- 15.6** Each party acknowledges that any breach of this Contract (other than a failure to make payment) may injure the other party irreparably and that money damages alone may not be a sufficient remedy for such a breach. Accordingly, it is agreed that (apart from in the case of a failure to make payment) each party shall be entitled to specific performance and/or injunctive relief without proof of damage, from any court, in addition to all other remedies available under the terms of this Contract.
- 16. Governing Law**
- The Contract shall be governed by English law and the parties submit to the jurisdiction of the English courts.

Schedule 1 - Masternaut Software Licence

1. Except as expressly permitted herein or strictly required for the purpose of this Software Licence or any Contract with Masternaut or permitted by mandatory applicable law, the Customer shall not: (i) sell, lease, license, sub-license, duplicate, copy (except for back-up purposes), modify, reproduce, decompile, disassemble, or reverse engineer any part of the Masternaut Intellectual Properties, nor permit any part of the Masternaut Intellectual Properties to be combined with or become incorporated in any other programs, nor attempt to discover any source code or algorithms of any part of the Masternaut Intellectual Properties, nor otherwise engage in any activities designed to replicate the functionality of any part of the Masternaut Intellectual Properties nor attempt to do any such things save only to the extent that such cannot be precluded by section 296A of the Copyright, Designs and Patents Act 1988; (ii) use any part of the Masternaut Intellectual Properties for the purpose of making improvements or modifications to products or the services; (iii) create any derivative works of the Masternaut Intellectual Properties; (iv) do anything which might bring into question the Licensor's ownership of the IPR in the Masternaut Intellectual Properties or their validity; (v) in any jurisdiction gain or claim any title, right or interest in the Masternaut Intellectual Properties or the IPR subsisting therein by virtue of the rights granted to it under this Software Licence; (vi) do anything which is likely to prejudice the Licensor's rights in and to the Masternaut Intellectual Properties or which may reduce the value of the Masternaut Intellectual Properties; (vii) remove, obscure or alter any copyright notice, trade marks or other proprietary rights and notices displayed, affixed to or contained within the Equipment or any supporting user documentation provided by Masternaut; or (viii) violate any applicable export control laws or regulations.
2. This Software Licence is granted pursuant to the Contract. Subject to compliance with the terms of this Software Licence and to payment of the charges due to Masternaut pursuant to the Contract, Masternaut hereby grants to the Customer for the duration of the Term a limited, non-exclusive, non sub-licensable and non-transferable licence to:
 - 2.1 use the Terminal Software in object code, and, if applicable, the Datasets residing on the Equipment solely for the purpose of using the Telematic Services for the number of items of Equipment ordered by the Customer pursuant to this Contract; and
 - 2.2 access and use the Server Software in object code and any Datasets residing on it as necessary for the purpose of the using the Telematic Services as set out in this Contract.

Schedule 2 (Description of Telematic Services and Equipment and Additional Provisions)

Part A. The Telematic Services and Equipment listed below are available under this Contract:

1. Masternaut Lite

Track and trace monitoring of location and movements:

- Map based visualization of vehicle positions and journeys
- Resource visibility (vehicle, drivers & assets)
- Real-time & historic information
- 2 reports

2. Masternaut Live

Masternaut Live provides features for the monitoring of vehicles:

- Map based visualization of vehicle positions and journeys
- Configurable alerting
- Standard set of reports
- Administration of vehicles and drivers through groups

3. Masternaut ecoDrive

Masternaut ecoDrive provides features to monitor driver behaviour and vehicle/fleet fuel economy trends:

- Benchmark and monitor driver behaviour
- Provide relative trend information on MPG & emissions (subject to CAN compatibility)

4. Masternaut Tax & Expense Manager

Masternaut Tax & Expense Manager provides driver journey private/business classification and mileage claim & approval workflow and reporting

5. Masternaut Pro

Masternaut Pro is an in-cab navigation device which provides navigation and other integrated telematics features with Live and ecoDrive

6. Tachofresh Services (3rd party Service)

TACHOfresh is a web-based solution for secure archiving and analysis of driver and vehicle data, online display of driving and rest times and automatic remote download.

7. LIST OF TELEMATIC DEVICES (Masternaut Equipment)

- Masternaut MT400

Part B. Additional Provisions Relating to the Telematic Services

1 Masternaut will provide the Telematic Services to the Customer for use in the United Kingdom and Eire during the Term to:

- 1.1 record the information transmitted by the Equipment;
- 1.2 analyse such information and prepare reports; and
- 1.3 send the Customer the requested reports, from those that Masternaut offers, during the Term.

2 The Equipment and Telematic Services are subject to the following limitations:

- 2.1 information is sent from the Equipment to the Platform through the GSM Network and will not work at places and times when the network used by the Equipment is not available; and
- 2.2 the Telematics Services will not be available during scheduled maintenance outages of the Platform of which the Customer will receive prior notification nor during unscheduled outages which may occur from time to time.

3 The Customer understands that there are a number of factors outside Masternaut's control (such as vehicle configuration or vehicle malfunctioning) that may affect the performance of the Telematic Services and render information recorded and/or produced by the Telematic Services incorrect or missing. The Customer agrees that if it wishes to use or rely on any data, the use or reliance on which could cause damage to the Customer, the Customer should verify such data before use. Further, because the collection of some data will depend upon the vehicle configuration, the level of data that may be collected will depend on the equipment available on the relevant vehicle(s). The information that Masternaut provides regarding the types of data that will be provided from the CANBus system of vehicles is a guide only as the availability of this data can vary from vehicle to vehicle depending upon manufacturers' specifications. Masternaut is not responsible for and shall not be liable for any unavailability of data from a vehicle's CANBus.

4 The installation of the Equipment may impact third party contracts of the Customer including vehicle warranties. It is the Customer's responsibility to check whether any third party contract is so affected and by entering into this Contract the Customer accepts any consequent effect on third party contracts. Any Equipment that connects to the Controller Area Network (CAN BUS) is only designed to operate with vehicle interfaces that are fully compliant with the standard CAN BUS specification (ISO 11989 (1-6)). It is the Customer's responsibility to check that its vehicle interfaces are so compliant. Any use of the Equipment with vehicle interfaces that do not comply with such specification is at the Customer's own risk.

5 The Platform can only be accessed, for the purpose of the Telematic Services, via a compatible browser. The Customer should liaise with its Masternaut sales representative in order to obtain a list of functional software that is currently available from which to access the Platform.

6 Masternaut reserves the right from time to time to modify the design, operation and/or performance of the Telematic Services as it considers necessary or appropriate provided that, except where Masternaut is required to make any such modification in order to comply with any applicable law, any such modification(s) shall not materially adversely affect or reduce the functionality offered by the Telematic Services