

Terms and Conditions - General sales and delivery conditions

of Trackunit GmbH, on supplies and services

Last update: January 2017

These general sales and delivery conditions (“Conditions”) apply to all deliveries of products and/or services (“Products”) to any customer (“Customer”). These Conditions shall be mutually binding on Trackunit (“Trackunit”) and the Customer unless otherwise agreed in writing signed by an authorized officer of Trackunit. No additional or different terms or conditions will be binding upon Trackunit unless specifically agreed to in a writing signed by an authorized officer of Trackunit. Failure of Trackunit to object to conditions contained in any other writing or other communication from Customer shall not be construed as a waiver of these Conditions nor acceptance of any such other provisions. None of any past practice, industry standards, course-of-dealing or usage of trade shall constitute a modification of any term or condition contained herein, nor shall same add any term not contained herein. These Conditions also serve as notice of Trackunit’s objection to and express rejection of any terms and conditions of purchase included in Customer’s order or other writing that are different from or additional to these Conditions.

1. Order confirmation

All offers are submitted subject to the goods being unsold. Offers are only accepted when the Customer has received Trackunit’s written acceptance of the offer, including confirmation in electronic form, or Trackunit, before the expiry of the acceptance deadline, has received in writing, including electronically, identical acceptance from the Customer of an offer submitted by Trackunit. Cancellation of orders must be made in writing, and must be confirmed by Trackunit in writing. The Customer is, regardless of the reason for the cancellation, obliged to buy any goods commissioned for the order which cannot be cancelled. The goods in question shall be invoiced to the Customer, at the latest by the order’s originally planned delivery time, at Trackunit’s purchase price with the addition of any delivery costs.

2. Delivery and transfer of risk

The Products are delivered ex works Trackunit’s principal place of business – Pandrup, Denmark. If no details are forth-coming from the Customer regarding the mode of transportation, Trackunit can dispatch the Products to the Customer by a mode of transportation chosen by Trackunit. All Trackunit’s costs arising from this shall be paid by the Customer and transportation is at the risk of the Customer, including but not limited to, risk of loss and damage. Ex works shall be interpreted in accordance with the version of the Inco terms which is valid at the time of the order and/or order confirmation.

For US customers: The products are delivered ex works Trackunit’s principal place of business – Chicago, Illinois, but otherwise the delivery terms of this clause 2 shall apply as stated above.

3. Delay

The delivery time shall be stipulated by Trackunit in accordance with its best estimation in accordance with those conditions which exist when the offer was submitted/the agreement was signed. The estimated date of delivery shall never be regarded as a deadline. Unless specifically agreed otherwise, postponement of the delivery time by 14 days due to circumstances at Trackunit in any respect shall be regarded as a delivery being on time, and for this reason the Customer cannot make any claim against Trackunit. If Trackunit does not perform delivery in accordance with the above, the Customer can insist on the delivery and specify a final, reasonable deadline for this. If the delivery is not made by the deadline, the Customer is entitled to cancel the purchase. Beyond this, the Customer cannot make any demands on Trackunit as a result of the delay.

4. Prices

Trackunit reserves the right at any time to adjust the agreed prices for non-delivered Products, in the event of price increases from sub-suppliers, increases in the price of materials, in the event of exchange rate change, changes in wages, government intervention or similar circumstances. Further, Trackunit is entitled in all cases to adjust prices once a year, on 1 January, unless otherwise agreed in writing. Any tax, assessment, duty, custom or other fee of any nature imposed upon the Products, their sale, transportation, delivery, use or consumption imposed by any governmental authority, domestic or foreign, on or measured by the transaction between Trackunit and Customer shall be paid by Customer in addition to the price quoted or invoiced. In the event that Trackunit is required to pay any such tax, duty, fee or charge, Customer shall reimburse Trackunit therefore unless otherwise agreed upon in writing.

5. Payment conditions

Payment shall be made by the date indicated on the invoice as the last date for payment for it to be regarded as on time. If no such date is indicated, payment shall be made in cash upon delivery. If the delivery is postponed due to the Customer's circumstances (claimant's default), the Customer – unless Trackunit notifies the Customer in writing otherwise – is still obliged to make any payment to Trackunit, as though the delivery was made at the agreed time. Trackunit is entitled to charge default interest from the time the payment falls due of 8% per year of the outstanding payment at any given time, if lower, the maximum rate permitted by applicable law. When sending payment reminders, Trackunit is entitled to make a dunning charge of DKK 100.00 on each occasion, if permitted by applicable law. In the case of default of payment, Trackunit is entitled to request that collection costs are paid in full. All invoices will be sent by electronic communication unless Customer requests the invoice to be sent by ordinary mail. A fee of 49.00 DKK (\$ 10) will be added to the invoices sent by ordinary mail. The Customer is not entitled to offset any counterclaims against Trackunit which are not recognised by Trackunit in writing and is not entitled to withhold any part of the purchase sum due to offsetting of any type. Any assignment of Customer's counter-claims to a third party without Trackunit's prior written consent shall be void. Customer agrees to reimburse Trackunit for any costs and expenses (including reasonable attorneys' fees or costs of collection agencies) in connection with the collection of any amounts owed to Trackunit under these Conditions or transaction contemplated hereby.

6. Trackunit Manager™ license

Subscription to the Trackunit Manager™ is prepaid. Unless otherwise agreed in writing, the subscription is calculated from delivery and until the turn of the year. In January, a charge for the subscription shall be made for the current year, i.e. prepayment for 12 months is made. The subscription can be cancelled by either party with a notice period of the current month plus 3 months. However, the subscription cannot be cancelled in the first 12 months. No repayment is made of the pre-paid subscription, even if cancelled earlier than the end of the pre-paid period. (Trackunit reserves the right to invoice additional costs for the subscription if a SIM card is used outside the Trackunit Manager™.)

Customer understands that the Trackunit Manager and related Trackunit Hardware shall not be used for any purpose other than equipment managing and tracking. Trackunit prohibits the use of Trackunit Manager and Trackunit Hardware in any way that is unlawful.

7. Data Protection and privacy

Trackunit is dedicated to proper data protection and privacy. As Trackunit is a part of the Trackunit group based in Denmark, Trackunit is considered a data processor and Customer is the data controller in accordance with the Danish Act on Processing of Personal Data and General Data Protection Regulation in the EU and Trackunit shall act only on instructions from the Customer. In accordance with, U.S. Danish and EU laws and regulations, Trackunit shall implement appropriate technical and organizational security measures to protect data against accidental or unlawful destruction, loss or alteration and against unauthorized disclosure, abuse or other processing in violation of such laws and regulations. Upon request, Trackunit shall within reasonable time provide the Customer with sufficient information enabling the Customer to ensure compliance with the requirements for adequate technical and organizational security measures. Trackunit and Customer undertake to handle any information as confidential, including but not limited to documents, source code, e-mail correspondence, etc., pursuant to Section 9 below. After expiration or termination of these conditions, such information shall remain confidential for five years. The only exception shall be information characterized as general knowledge. Ownership of data follows the ownership of the Trackunit Hardware. Trackunit shall retain the right, but not the obligation to access to data generated by Customer for purposes of (a) processing such data on behalf of Customer, and (b) for Trackunit's internal statistical purposes on an anonymized basis. Trackunit shall also retain the right, but not the obligation, to store data indefinitely while at all times acting in accordance with all applicable laws and regulation. Trackunit shall not sell or disclose any data unless pursuant to written direction from the rightful owner(s) of such data or pursuant to court order. However, Trackunit retain the right to analyse and disclose market statistics which, among other sources are based on anonymous operating data from Trackunit Hardware installed on Customer's equipment. Trackunit shall retain the right, but not the obligation to make use of subcontractors with regard to the data processing, and to make use of Standard Model Clauses if needed to uphold applicable data protection legislation and regulation. Trackunit shall upon request from the Customer, produce a list of subcontractors to the Customer. Trackunit shall at all times insure, that the subcontractor meets the same standards as required by these Conditions between Trackunit and the Customer. For any questions please see our privacy policy at www.trackunit.com or contact our DPO at dpo@trackunit.com.

8. Product information

Any product information – regardless of whether it stems from Trackunit or one of Trackunit’s business associations –including information regarding weight, dimensions, capacity or other technical data, description, prospectus, advertisement etc. which is regarded as providing information, is only binding to the extent that Trackunit specifically refers to it in the order and/or order confirmation. Specific requirements from the Customer are only binding to the extent they are confirmed in writing by Trackunit. Trackunit reserves the right to revise and discontinue Products at any time and without prior notice. Trackunit will ship Products that have the same or similar functionality and performance of Products ordered, but changes, including, but not limited to, changes with regard to measurements and weight, due to technical requirements between what is shipped and what is described in specification sheets, catalogues, or the like, are possible.

9. Protected and confidential information

Any type of information which is not publicly available, including drawings and technical documents, transferred by Trackunit to the Customer (“Confidential Information”), shall remain the property of Trackunit and shall be treated as confidential by the Customer. Such Confidential Information has been developed at substantial expense and contains trade secrets that are the exclusive property of Trackunit. Confidential Information thus must not, without Trackunit’s written consent, be copied, reproduced or forwarded to a third party or used for any purpose other than the one for which it was intended when transferred. Confidential Information shall be returned to Trackunit upon request. For the avoidance of doubt, Confidential Information supplied by Trackunit does not include information that (a) was generally available to the Customer from public or published sources, provided publication did not take place in violation of these Conditions or through fault or omission of the Customer, (b) was lawfully obtained from a source under no obligation of confidentiality, directly or indirectly, to either the Customer or Trackunit, or (c) was disclosed to the general public with the written approval of Trackunit shall be received in confidence, and the Customer shall exercise due diligence and reasonable care to hold such information in confidence.

10. Product changes

Trackunit reserves the right to make changes without notice to its Products if this can be done without substantially changing agreed technical specifications and without any substantial change to the Products’ shape or function.

11. Retention of title

Trackunit reserves to right, with the restrictions imposed by fixed legal regulations, to ownership of the goods sold until the full purchased sum has been paid to Trackunit, with the addition of accrued costs, or to the entity to which Trackunit has transferred its rights. If the goods are sold in preparation for subsequent incorporation into, or amalgamation with, other objects, the sold goods are not covered by the right of retention if the incorporation or amalgamation has taken place. In the event the goods sold are converted or processed, the right of retention remains in force to the effect that it covers the converted or processed object to an extent equalling the value represented by the sold article at the time of its sale.

For US customers: Customer hereby grants to Trackunit a security interest in Products sold hereunder together with the proceeds therefrom to secure payment of the purchase price of such

Products and agrees, and appoints Trackunit its agent, to take all such action and to execute and file all such documents and instruments (including, but not limited to, UCC-1 financing statements) as may be necessary or reasonably requested by Trackunit to perfect and continue Trackunit's security interest hereunder.

12. Limited warranties and Inspection

The Customer is obliged to check the Products immediately upon receipt. If there is any difference in terms of quantity or any other defect is noticed, the Customer shall, immediately after receipt, without unfounded delay, inform Trackunit in writing of the defect. Trackunit warrants that Products produced by Trackunit shall be free from defects in material and workmanship for a period of two (2) years from the date of delivery although not for defects which should have been noticed during the Customer's check upon receipt of the Products, cf. above. If there are no objections to it doing so, the Customer shall send the Product which the Customer claims to be defective to Trackunit, after prior agreement with the latter and shall also enclose a completed complaint form from Trackunit's website. Freight and insurance shall be paid by the Customer. The Product shall be returned to the Customer if Trackunit's examination shows that the Product is not defective. Freight and insurance shall be paid by the Customer. Trackunit also reserves the right to invoice the Customer for the technician's time for investigating the fault. If Trackunit discovers defects, Trackunit shall send the repaired Product or a replacement Product to the Customer. Trackunit shall choose the mode of dispatch and shall pay for freight and insurance. For parts which are replaced or repaired, Trackunit has the same obligations as those which applied to the original Product. Trackunit is not responsible for defects which are due to normal wear and tear, lightning, fire, overloading, water, improper maintenance, incorrect installation or faults with repairs carried out by anyone other than Trackunit. THE LIMITED WARRANTY EXPRESSED HEREIN SHALL BE IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WHICH ARE EXPRESSLY DISCLAIMED, AND IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITY ON TRACKUNIT'S PART.

13. Online purchase

If you have purchased any hardware or service on our online platform, and you are not satisfied with your product, you have the possibility to make a complaint on the Online Dispute Resolution website. <https://webgate.ec.europa.eu/odr/>. It is a free independent online dispute resolution located in the EU.

14. Indemnity

Customer agrees to indemnify, defend and hold harmless Trackunit, its officers, directors, employees, agents and insurers of each of them, from and against any and all third party claims, demands, actions, damages, expenses, costs, claims, judgments and liabilities (including, without limitation, interest, penalties and reasonable attorneys' fees and investigative costs) incurred by Trackunit, arising from, in connection with or as a consequence of (a) any negligent, or wrongful act or omission by Customer; (b) Customer's transfer, use or sale of any Product, except to the extent that such suit or demand arises out of the failure of such Product to meet Trackunit's express warranties; and/or (c) Customer's possession, operation, maintenance, delivery or return of any

Product. Such protection shall include, without limitation, claims for personal injury or death or property damage arising out of any act or omission of Customer or its customers. This Section 13 shall survive the termination or expiration of these Conditions.

15. Limitation of liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANY PROVISION IN THESE CONDITIONS OR ELSEWHERE TO THE CONTRARY, EXCEPT FOR DAMAGES FOR BODILY INJURY (INCLUDING DEATH), DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY, AND THE INDEMNIFICATION OBLIGATIONS UNDER THESE CONDITIONS: (a) IN ANY ACTION UNDER OR RELATED TO THESE CONDITIONS, WHETHER ARISING IN CONTRACT, TORT, (INCLUDING NEGLIGENCE) OR OTHERWISE, NEITHER PARTY, OR ITS AFFILIATE, SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATE FOR ANY OF THE FOLLOWING EVEN IF INFORMED OF THEIR POSSIBILITY AND WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE: (i) THIRD PARTY CLAIMS FOR DAMAGES; (ii) LOSS OF, OR DAMAGE TO, DATA; (iii) SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES; OR (iv) LOSS OF PROFITS, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS; AND (b) THE MAXIMUM CUMULATIVE LIABILITY OF EITHER PARTY AND ITS AFFILIATES TO THE OTHER PARTY AND ITS AFFILIATES FOR ALL ACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, SHALL IN NO CASE EXCEED THE TOTAL PRICE PAID BY CUSTOMER FOR THE PRODUCTS SOLD BY TRACKUNIT WHICH GIVES ARISE TO THE CLAIM. If applicable, Customer agrees to cause its customers and anybody in the chain of manufacturing supply and distribution including the end customer to be bound by limitations of liability substantially equal to those contained in these Conditions. This Section 14 shall survive the termination or expiration of these Conditions. Furthermore, Trackunit renounces all liability for any installation costs in connection with a defective Product. Any costs in this respect shall be borne by the Customer. Trackunit renounces liability for any operational problems at the chosen tele-operator and supplier of digital grids. Trackunit renounces all liability for any repairs to damage which the Product or use thereof may entail.

Trackunit's liability towards the Customer for loss or damage arising from defective quality or for any other non-conformity is limited to the purchase price of the Trackunit equipment claimed to be defective.

Trackunit shall only be liable towards the Customer for product liability, if such product liability cannot be derogated from under the mandatory Danish law, and if the Customer – in addition to the otherwise applicable requirements under mandatory Danish law – can prove that the defect having caused the damage is a result of Trackunit's negligence.

16. Intellectual rights

If a product is supplied with accompanying software, the Customer acquires a non-exclusive software licence in the form of a right to use the software for the purpose made clear in the accompanying product specifications. The License is only applicable for the contract period, and will terminate, when the contract expires or is terminated. Over and above this, the Customer acquires no rights in the form of licences, patents, copyrights, trademarks of other intellectual rights connected with the Product. The Customer acquires no rights to the source code of the software.

17. Force majeure

Trackunit is entitled to cancel orders or defer the agreed delivery of Products, and is otherwise free from liability for any lack of delivery, or defective or delayed deliveries, which are wholly or partially due to circumstances which are outside the reasonable control of Trackunit, such as any act of God, embargo, rebellion, unrest, war, terrorism, fire, state regulations, strikes, lockout, go-slows, lack of means of transportation, scarcity of goods, sickness, delay in or lack of supplies from suppliers, accidents in production or testing, lack of energy supplies, inability to obtain necessary labor, manufacturing facilities or delays by sub-contractors. All the Customer's rights are suspended or are discontinued in such cases. In the event of cancellation or delayed implementation, the Customer cannot request compensation from or assert any other claim against Trackunit.

18. Partial invalidity

If at any time any one or more of the provisions of these Conditions become invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions of these Conditions shall not be in any way impaired.

19. Transfer of rights and obligations

Trackunit is entitled to assign and transfer, in whole or in part, its rights and obligations under this agreement to a third party. Customer may not assign or transfer its rights and obligations hereunder without the prior written consent of Trackunit.

20. Governing law

The parties agree that these Conditions, any sales hereunder, or any claim, dispute or controversy between Trackunit and Customer arising from or relating to these conditions, its interpretation, or the breach, termination or validity thereof, the relationships which result from these Conditions or any related sale shall be governed by the laws of Denmark, without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

For US customers: These Conditions or any related sale shall be governed by the laws of the State of Illinois, without regard to its conflicts of law provisions.

21. Arbitration

Any dispute, claim or controversy arising out of or relating to these Conditions or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitration, shall be determined by arbitration in Aalborg, Denmark before one (1) arbitrator, the arbitrator is appointed by the Danish Institute of Arbitration. The arbitration shall be administered by the Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by the Danish Institute of Arbitration and in force at the time when such proceedings are commenced. Judgment on the award may be entered in any court having

jurisdiction. The arbitrator's decision shall be reduced to writing. Further, the award by the arbitrator shall be final and binding on the parties. All judgments are confidential, and shall not be disclosed to the public.

Notwithstanding the immediately preceding paragraph, the parties expressly acknowledge and agree that either party may seek from a court any interim or provisional relief, including, but not limited to, temporary or permanent injunctions, restraining orders, or a decree of specific performance that may be necessary to protect their rights or property. In particular, but not in limitation of the aforesaid, the parties acknowledge that the covenants contained in Sections 9 and 15 are unique and integral to these Conditions and that monetary damages would be an inadequate remedy at law in the event of a breach. The remedies provided in this section shall be cumulative and not exclusive and are in addition to any other remedies, which either party may have under these Conditions or applicable law.

For US Customers: Any dispute, claim or controversy arising out of or relating to these Conditions or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Chicago, Illinois before one (1) arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures or, if eligible, pursuant to JAMS' Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. The arbitrator's decision shall be reduced to writing. Further, the award by the arbitrator shall be final and binding on the parties. All judgments are confidential, and shall not be disclosed to the public. Notwithstanding the immediately preceding paragraph, the parties expressly acknowledge and agree that either party may seek from a court any interim or provisional relief, including, but not limited to, temporary or permanent injunctions, restraining orders, or a decree of specific performance that may be necessary to protect their rights or property. In particular, but not in limitation of the aforesaid, the parties acknowledge that the covenants contained in Sections 9 and 15 are unique and integral to these Conditions and that monetary damages would be an inadequate remedy at law in the event of a breach. The remedies provided in this section shall be cumulative and not exclusive and are in addition to any other remedies, which either party may have under these Conditions or applicable law.

22. Survival

Section 9, 13, 14, 19 and 20 shall survive the termination or expiration of these Conditions.

23. Complete agreement

These Conditions and Trackunit's written acceptance constitute the complete and exclusive statement of the agreement between the parties hereto. It supersedes all prior written and oral statements, including prior representations, statements, conditions, or warranties with respect to the Products.