

# JabbaTalk Limited Terms and Conditions of Sale – TrustTrack Vehicle Tracking

## GENERAL

These terms and conditions of sale (“Terms”) shall apply to all orders for products and/or services sold, rented or supplied by JabbaTalk Limited (“JabbaTalk”) (registered in England and Wales no. 07260162) on the TrustTrack, IVMS or Hikvision platforms and shall supersede any terms and conditions that previously applied to such orders. If the customer has not signed an order incorporating these terms or accepted these terms by “ticking to I agree” on our customer information form (CIF), the customer shall be deemed to have accepted these terms on payment of the first invoice to which these terms are attached. Each order for products and/or services supplied by JabbaTalk shall constitute a separate agreement between the parties, subject in each case to these terms and the term agreement shall be construed accordingly.

For the purposes of this document: (i) the term product shall include any vehicle tracking systems and terminals, antennae, cables and any ancillary equipment and accessories, and sim cards (including cameras and camera consumables), either specified on the order or otherwise provided to the customer, (ii) the term services shall include any delivery, installation, customisation, repair, replacement or hosting of products or provision of data, reports or other information by any medium, either specified on the order or otherwise provided to the customer, (iii) the term SIM Card shall mean any subscriber identity module used in any of the products, (iv) the term customer shall mean any company, partnership, association or individual entering into a contract for the purchase or rent of products or services from JabbaTalk. If any part of the terms should be found to be invalid or unenforceable by a court or other competent authority, then the rest shall not be affected. The titles for the sections of these terms are used only for convenience of reference and organisation and shall not be used to modify, explain, or interpret any of the provisions of the agreement each of the parties agrees that the content of the order and these terms (including terms expressly incorporated herein) represent the entire agreement and understanding between them in relation to the subject matter of the agreement. Any notice to be given in respect of these terms by either of the parties shall be in writing and delivered to the registered office or principal place of business of the other.

Should these terms or any other part of the agreement be translated into a language other than English, this will be for convenience only. To the extent that the meaning in the translated version differs from that of the English version, the English version shall prevail and be regarded as definitive for all purposes.

## **PRICES AND PAYMENT TERMS**

Price quotations are only valid if expressed in writing by JabbaTalk and only for the quantity of products and/or type of services and time period stated in its quotation. If not stated, the validity period of any price quotation is 30 days.

Prices shall apply as specified in the order and are payable in Sterling and subject to VAT and any other applicable taxes at the applicable rate. JabbaTalk reserves the right to increase such prices on an annual basis as specified in this section.

Unless otherwise agreed in writing, payment of all invoiced amounts shall be made within 30 days of the date of invoice or before any due date for payment shown on the invoice. If any payment is not made by the customer by the due date, JabbaTalk reserves the right to charge interest at the rate of 4% above the NatWest Bank Plc base rate until payment is received in full. Unless otherwise agreed in writing, payment is to be made by direct debit and the customer agrees to maintain a valid direct debit mandate with JabbaTalk. An administration charge of £20 will be made in the case of each failed or cancelled direct debit in addition to interest charges. If the customer agrees to lease or hire the products from a third party such as a finance company, it is the customer's responsibility to ensure that all lease or hire agreements, payment guarantees, acceptance notes and initial payments are completed satisfactorily within 7 days of delivery. If the customer fails to comply with this requirement or the 3rd party fails to pay JabbaTalk within 30 days from delivery, then JabbaTalk shall invoice the customer directly for the products at its published prices and such invoice shall be payable by the customer within 7 days.

JabbaTalk may at its discretion, on an annual basis, increase any then-current prices as follows: the increased prices shall be the higher of 2% and the percentage increase in the UK RPI All Items Index ('RPI') as published by the Office for National Statistics, based on the year ending two months prior to the month of price increase. In no event shall this calculation result in a decrease in pricing.

## **DELIVERY AND INSTALLATION**

All delivery times and dates are approximate, but JabbaTalk shall use its reasonable endeavours to respect them. Time shall not be of the essence, and JabbaTalk shall not be liable for any loss or damage resulting from late delivery or from its failure to respect an appointment for installation.

If the customer delays the installation of any products beyond 30 days from the date of the first product installation for that order, JabbaTalk shall be entitled to deliver the remaining products to the customer's delivery address and installation shall be deemed to be complete.

In the event that installation is carried out by the customer, or a person appointed by the customer, JabbaTalk shall not be liable for any loss or damage whatsoever, arising directly or indirectly, as a result of any negligence or failure to follow JabbaTalk's written instructions in installing the Products.

## **TITLE AND RISK**

Title in products purchased by the customer passes upon the later of full payment or delivery and until then the customer must (if they have taken possession of the products prior to payment) insure and store the products separately and maintain them in good order. Title in products rented by the customer shall remain vested in JabbaTalk and these products must be returned to JabbaTalk at the expense of the customer in good working order at the end of such rental and the customer must have maintained them in good and substantial repair during the period of such rental.

Title in the SIM Card shall remain vested in JabbaTalk, or its provider of SIM Cards, in all circumstances. The SIM Card is provided to the customer inclusive of the monthly service charge.

Risk in the products passes to the customer upon their delivery to the customer's designated delivery address, regardless of whether installation has been completed or not.

## PRODUCT USE

The customer shall use the products and services exclusively for the commercial purposes of its business and not for the private use of the customer (or any person(s) associated with the customer) or for any other purpose.

JabbaTalk grants to the customer a non-exclusive, non-transferrable licence to use the products and services specified in the order during the term of the relevant agreement, subject to these terms. The customer is not permitted to sub-license or alter the products or services in any way.

The customer shall: (i) not sell, rent or otherwise make the products and services available to any third party without the prior written consent of JabbaTalk; (ii) not reproduce, modify, adapt, disassemble, decompile, recompile or reverse engineer the products or create derivative works from them, except to the extent necessary to use the products in accordance with these terms; (iii) not use the product to create any product that is substantially similar in its expression to the product; (iv) not use the product in any unlawful manner or transmit any material as part of its use of the products and services that is unlawful, defamatory, obscene, infringing, harassing, discriminatory or similar; (v) not act in such a way that the operation of the Services, or the operation of any network through which the services are made available (a "Network") may be jeopardised; (vi) not be involved in any fraudulent or other unauthorized use of the network or any services; and (viii) comply with all applicable laws and regulations with respect to its activities..

The customer shall use the products and services only in the country in which the products were originally delivered or in which they were originally installed. The customer shall not transport the products to a different country than the country of their original delivery / installation, unless JabbaTalk gives such written permission. In the event that the customer does use the products or services in another country, or otherwise transfers the products to another country, JabbaTalk shall have the right to take such action as is necessary to protect its legitimate business interests (to be determined in JabbaTalk's sole discretion), including but not limited to increasing the price or terminating the Agreement.

The customer agrees that it shall limit its use of those products and Services which involve the potential for significant transfers of data (the "Variable Data Products and Services") to a reasonable level. The Variable Data Products and Services include but are not limited to the alert's functionality, the JabbaTalk web service, the integrated cameras and the JabbaTalk mobile application. The customer shall not overuse the Variable Data Services and shall limit the transfer of data through such Products and Services to a reasonable level. In the event that JabbaTalk, acting in its sole discretion, determines the customer to be overusing or transferring too much data through any of its Variable Data Products or Services, JabbaTalk shall have the right to take such action as is necessary to protect its legitimate business interests (to be determined in JabbaTalk's sole discretion), including but not limited to increasing the price, limiting the use of the Variable Data Products and Services or terminating the agreement. For

the avoidance of doubt, the maximum level of use of the alert's functionality shall be deemed to be 60 alerts per device per month and the maximum use of the integrated cameras shall be deemed to be 200MB per camera per month.

The customer acknowledges that it is solely responsible for the content of the data generated by the Products, including but not limited to vehicle tracking data and camera footage. The customer shall indemnify and hold harmless JabbaTalk and its officers, employees and agents, to the fullest extent permitted by law, against any and all losses, costs, claims and liabilities whatsoever arising in any way directly or indirectly out of or in connection with the content of such data, including without limitation investigations and prosecutions, and claims for libel, slander, infringement of copyright, breach of data protection legislation, breach of other applicable laws, personal injury or death. JabbaTalk shall be under no obligation to mitigate any of the above.

To the extent the customer makes use of addressing information as part of the services, the customer shall be bound by Google's terms of service, available at <https://policies.google.com/terms?hl=en>

## **WARRANTIES**

JabbaTalk warrants to the customer that the purchased vehicle tracking products for TrustTrack and will be free from defects for a period of 12 months from delivery unless otherwise stated in the order. Should any devices become defective within this period, JabbaTalk will repair or replace them within a reasonable time using components or replacements that are new, or equivalent to new. In the case of devices rented from JabbaTalk this guarantee will continue for the duration of the product rental. This warranty shall not apply in respect of normal wear and tear to a product or in the event that any defect, deterioration or malfunction of a product arises due to misuse, negligence or lack of maintenance or supervision by the customer, or due to any shock, fall or other accident involving the Product, or in the event of technological obsolescence outside of JabbaTalk's reasonable control, or due to the shutdown of a generation of Network by JabbaTalk's provider.

Where a product is not covered by warranty and JabbaTalk agrees to issue a free of charge replacement, the customer agrees to maintain the services associated with that product for a minimum period of 12 months.

JabbaTalk does not warrant that the products or services are fit for any particular purpose, nor that the services will be without disruption, nor that any products or services will generate any financial saving or benefit for the customer, nor that any reports, data or information provided as part of the Services will be free from errors, omissions, inaccuracies or nonconformities, and JabbaTalk shall have no liability or obligation to the customer in this respect except as provided hereunder. Subject to

JabbaTalk's data protection obligations under the agreement, JabbaTalk shall not be liable and makes no warranty for the security or integrity of any connection or transmission used in the provision of the services. JabbaTalk shall not be liable for and provides no warranty for any damage caused by the customer or his representative or any unauthorised 3rd party through incorrect installation, use, modification or repair of the Products, nor for any accidental or other damage to the Products caused by any party or external force.

All Products that are not manufactured by JabbaTalk (including, without limitation, the cameras) are subject to the terms of the warranty of the manufacturer of the Products and JabbaTalk does not provide any warranty in respect thereof.

Whilst JabbaTalk uses reasonable endeavours to minimise the risk of any security vulnerability in its systems, the customer acknowledges that its use of the Products and Services, and its communications with JabbaTalk, present a level of inherent cyber risk, particularly where the customer does not itself implement adequate cyber security measures. As such, subject at all times to its data processing obligations under the Agreement, JabbaTalk shall not be liable for any loss incurred by the customer as a result of any virus, malware or other harmful software introduced to the customer's information systems, or any third-party access unlawfully gained to the customer's information systems, where such events take place beyond the reasonable control of JabbaTalk.

## **HIGH-RISK DISCLAIMER**

JabbaTalk's products and services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life support machines or any other application in which the failure of the products or services could lead directly to death, personal injury or severe physical or property damage (collectively, "High-Risk Activities"). JabbaTalk expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

## **INTELLECTUAL PROPERTY RIGHTS**

JabbaTalk retain all copyright, rights in inventions, rights in designs, database rights and other intellectual property rights in the Products and Services and the results of the Services. Nothing transfers or shall oblige JabbaTalk to transfer to the customer any such intellectual property rights, and all rights thereunder that are not expressly

granted to the customer in these Terms are reserved to JabbaTalk. All intellectual property rights subsisting in the database accessible via the services and each and every piece of information provided through the services (the 'Information') is owned by JabbaTalk or the providers of such information. The customer may use Information retrieved from the services only for its own purposes which means (without limitation) that the customer may not sell, resell, retransmit or otherwise make the Information retrieved from the services available in any manner or on any medium to any third party unless the customer has obtained JabbaTalk's prior written consent. JabbaTalk may use the Information, in an aggregated form, with data from other vehicles, to monitor road usage, provide information regarding traffic flow and journey times and to analyse general driving behaviour. This aggregated data, which shall contain no personal data or confidential information of the customer, may be shared with or supplied to third parties by JabbaTalk.

## **SIM CARDS**

The customer shall not remove, or permit or allow others to remove, any SIM Card from any of the Products. The customer is responsible for the loss or theft and any consequent (including fraudulent or improper) usage of the SIM Cards. In the event that JabbaTalk has reasonable grounds to believe that the customer may be in breach of the provisions of this clause, JabbaTalk may, at its sole discretion, discontinue the provision of services to the customer on any one or all of the Products supplied to the customer.

## **CONFIDENTIALITY**

Both JabbaTalk and the customer must treat all information received from the other marked 'Confidential', or which a reasonable person would understand to be confidential, as it would treat its own confidential information. For the avoidance of doubt, information which has lawfully entered the public domain or is required to be disclosed by law shall not be considered confidential information. Information that is to be considered confidential may include, but not be limited to: business plans, lists of customers, operational and technical data and product plans. The provisions of this clause shall survive the termination of any contract between the customer and JabbaTalk by three years.

## LIABILITIES

Nothing in the Agreement shall exclude or limit JabbaTalk's liability for death or personal injury caused by JabbaTalk's negligence nor its liability for fraudulent misrepresentation or otherwise insofar as such exclusion or limitation of liability is void, prohibited or unenforceable under applicable law; and any term that has the object or effect of excluding or limiting JabbaTalk's liability is subject to this sentence. Subject to the other terms of this section, JabbaTalk's total liability for any one claim or for the total of all claims arising from one act of default on JabbaTalk's part arising under or in connection with the Agreement (whether in tort, contract, negligence, under indemnity or otherwise) shall not exceed the total amount paid by the customer for the products or services in respect of which the relevant claim is made and, in any event, JabbaTalk's total liability in respect of all claims brought during any calendar year shall not exceed the total amount paid by the customer in that calendar year . In the case of any claim made against JabbaTalk for disruption to the services or any errors in the Information provided, JabbaTalk's liability shall not exceed the total price paid by the customer for the services in relation to the period of time during which such disruption or errors subsisted and only in respect of those Products for which the Services were affected. JabbaTalk shall not be liable to the customer under or in connection with the agreement (whether in tort, contract, negligence, under indemnity or otherwise) for any direct or indirect loss of revenues, profits, contracts, business, anticipated savings or other economic loss, or for loss of data, or for any special, indirect or consequential losses.



## REFUNDS AND CANCELLATIONS

Once paid, fees for products and services are non-refundable unless JabbaTalk chooses, acting in its sole discretion, to refund the payment or it is legally obliged to do so.

The following charges are applicable to JabbaTalk's products and services on cancellation of a product rental, a Service or the Agreement:

<b>Table of Charges</b>	<b>Cost per Device</b>
Termination prior to any minimum term specified in the Customer information form or as defined in the relevant order	The equivalent value of the minimum term
Lost, damaged, sold or non-returned products (on-loan)	£150.00
Removal and re-installation of each device (Discounts for higher quantities)	£95.00
Removal only of each device (Discounts for higher quantities)	£95.00
Reconnection of disconnected devices	£30.00
Installation appointment cancellation within 24 hours of the agreed installation date/time	£85.00

On cancellation, rented Products must be returned to JabbaTalk in good working order and rental charges shall apply until such Products are returned.

In the case of products purchased by the customer, the customer shall be fully responsible for financing and implementing the environmentally sound disposal (or a suitable alternative) of the products when they are no longer required and it shall do so in full compliance with all applicable laws and regulations, including but not limited to the Waste Electrical and Electronic Equipment Regulations 2013 ('WEEE').

Alternatively, the customer and JabbaTalk may mutually agree for the Products to be sent to JabbaTalk (at the customer's cost) and for JabbaTalk to arrange for the environmentally sound disposal (or a suitable alternative) of the Products.

## CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **FORCE MAJEURE**

JabbaTalk shall not be liable to the customer for non-performance or delay in performance of any of its obligations under the Agreement or loss or damage of any Products due to acts of God, war, riot, civil commotion, embargo, strikes, fire, theft, delay in delivery or services of subcontractors or sub-suppliers or the non-performance of a subcontractor or sub-supplier due to a force majeure event, a cyber-attack on JabbaTalk's systems, shortage of labour or materials, confiscation or any other unforeseen event (whether or not similar in nature to those specified) outside the reasonable control of JabbaTalk.

## **TERMINATION**

The customer may not cancel or terminate the agreement until the minimum period specified in the CIF has expired, following which either the customer or JabbaTalk may give one month's notice to terminate.

JabbaTalk may also terminate any agreement with the customer at any time (whether within the Minimum Period or not) if (i) the customer commits a material or persistent breach of one or more Agreements and fails to remedy this within 30 days of written notice, or (ii) the customer does any act that might jeopardise the continuance of the Services.

Any provision of the agreement which is expressly or by implication intended to survive expiry or termination of this Agreement shall survive and continue in full force and effect.

## **ASSIGNMENT**

The customer shall not assign its rights or obligations under the Agreement, in whole or in part, to any third party without JabbaTalk's written approval. JabbaTalk may assign its rights or obligations under the Agreement, in whole or in part, to any third party without

the customer's approval, provided that it gives the customer no less than 30 days' notice of such assignment.

## **DATA PROTECTION**

JabbaTalk's Data Processing Terms, covering JabbaTalk's processing of personal data, form part of these Terms and are available from [https://jabbatalk.com/wp-content/uploads/jabbatalk\\_terms\\_and\\_conditions.pdf](https://jabbatalk.com/wp-content/uploads/jabbatalk_terms_and_conditions.pdf)

In the event of any discrepancy between these terms and JabbaTalk's Data Processing Terms, these terms shall take precedence. For the avoidance of doubt, the exclusions and limitations of liability expressed in these terms shall also apply to all liability arising under or in connection with JabbaTalk's data processing terms.

## **VARIATION**

To the extent permitted by law, JabbaTalk reserves the right, in its sole discretion, to revise or modify these Terms (including JabbaTalk's data processing terms) from time to time without notice to the customer, provided that in doing so it acts reasonably and any revisions or modifications do not materially change the overall substance of the agreement. Such revision or modification shall take effect when posted onto JabbaTalk's website at the following addresses:

Terms and Conditions of sale - [https://jabbatalk.com/wp-content/uploads/jabbatalk\\_terms\\_and\\_conditions.pdf](https://jabbatalk.com/wp-content/uploads/jabbatalk_terms_and_conditions.pdf)

The customer's continued use of the relevant products and services shall constitute its acceptance of such revised or modified terms.

## **GOVERNING LAW AND JURISDICTION**

The Agreement shall be construed in accordance with English law and shall be subject to the exclusive jurisdiction of the courts of England and Wales for the resolution of any disputes.

JabbaTalk Limited - 02/01/2024