

**DEFINITIONS**

<b>Authorised Installer</b>	An individual employed by the Customer who has completed the installation training and has been certified by TyreWatch to install the Equipment to Vehicles
<b>Business Day</b>	A day (other than a Saturday, Sunday or public holiday) when banks in London are open for business
<b>Commencement Date</b>	Has the meaning set out in clause 1(b)
<b>Conditions</b>	These terms and conditions as amended from time to time in accordance with clause 17
<b>Contract</b>	The contract between TyreWatch and the Customer for the supply of Services in accordance with these Conditions
<b>Customer</b>	The person or firm who purchases the Services from TyreWatch as set out in the Order Form
<b>Equipment</b>	The equipment including the Software which is provided and installed on the Customer's Vehicle(s)
<b>Equipment Fee</b>	The fee payable by the Customer to TyreWatch for replacement Equipment as set out in TyreWatch's published price list
<b>De-Install Fee</b>	The fee charged for any de-installation of the Equipment from the Vehicle(s) as set out in TyreWatch's published price list
<b>Five Year Maintenance Fee</b>	The fee charged to replace Equipment (if necessary) after the Contract has been in place for five years as set out in TyreWatch's published price list
<b>Initial Install Fee</b>	The fee charged for the initial installation of the Equipment on the Vehicle(s) as set out in the Order Form
<b>Install Fee</b>	The fee charged for any subsequent installation of the Equipment on the Vehicle(s) as set out in TyreWatch's published price list
<b>Installation Date</b>	The date set out in clause 4(e)
<b>Installation Manual</b>	The manual supplied by TyreWatch with the Equipment providing details of the installation of the Equipment
<b>Intellectual Property Rights</b>	Patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world
<b>Minimum Term</b>	The term shown on the Order Form
<b>Order</b>	The Customer's order for Services as set out in the Order Form
<b>Services</b>	The information service and Web-enabled Service provided by TyreWatch through the Equipment as set out in the User Manual which includes the supply of the Equipment and the licence of the Software
<b>Software</b>	The computer programs supplied separately or pre-installed in the Equipment which enable the Equipment to operate in accordance with the User Manual
<b>Training Fee</b>	The fee payable by the Customer for the installation, training and certification for the approval of an Authorised Installer as set out in TyreWatch's published price list
<b>TyreWatch</b>	TyreWatch.com Limited of Unit D Park 34, Southmead Industrial Estate, Didcot OX11 7WB
<b>User Manual</b>	The manual supplied by TyreWatch which sets out the operational aspects of the Equipment and the Services and may be updated from time to time
<b>Vehicle</b>	The vehicles or trailers to which the Equipment is to be installed and the Service is to be provided as set out in the Order Form
<b>Web-enabled Services</b>	The part of the Services which are reliant on mobile, Wi-Fi technology and RF sensor transmission and allow information from the Equipment to be transmitted to the Customer by TyreWatch

## 1. BASIS OF CONTRACT

- a. The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- b. The Order shall only be deemed to be accepted when TyreWatch issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- c. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of TyreWatch which is not set out in the Contract.
- d. Any samples, drawings, descriptive matter or advertising issued by TyreWatch, and any descriptions or illustrations contained in TyreWatch's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- e. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- f. Any quotation given by TyreWatch shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

## 2. TERM

- a. The Contract shall come into force on the Commencement Date and unless terminated earlier in accordance with clause 11 or this clause, this agreement shall continue for the Minimum Term and shall automatically extend for a further 12 months ("Extended Term") at the end of the Minimum Term and at the end of each Extended Term. The Customer may give written notice to TyreWatch, not later 90 days before the end of the Initial Term or the relevant Extended Term, to terminate this Contract at the end of the Initial Term or the relevant Extended Term, as the case may be.

## 3. SUPPLY OF SERVICES

- a. TyreWatch shall supply the Services to the Customer in accordance with the User Manual in all material respects.
- b. TyreWatch shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and TyreWatch shall notify the Customer in any such event.
- c. The Customer acknowledges that the Services are provided using mobile and internet technology. TyreWatch will endeavour to ensure that the Web-enabled Services are available at all reasonable times however TyreWatch shall not be responsible if the Web-enabled Services are unavailable.

## 4. DELIVERY AND INSTALLATION OF THE EQUIPMENT

- a. The Equipment must be installed on the Vehicles by an Authorised Installer or a representative of TyreWatch.
- b. TyreWatch shall provide the installation training to an employee of the Customer upon payment of the Training Fee to enable the employee to become an Authorised Installer.
- c. Following certification by TyreWatch of the Authorised Installer the Customer acknowledges that the Authorised Installer will be responsible for the installation of the Equipment which must be done in accordance with the Installation Manual.
- d. If the Customer does not have an Authorised Installer the Customer shall pay to TyreWatch the Initial Installation Fee in accordance with clause 8 and the parties shall arrange the installation of the Equipment on the Vehicles. Any installation times estimated by TyreWatch will be reasonable estimates and time of installation shall not be of the essence.
- e. The Equipment shall be deemed to be installed on either:-
  - i. the completion of the installation of the Equipment by TyreWatch; or
  - ii. the notification to TyreWatch of the completion of installation of the Equipment by the Authorised Installer ("Installation Date")

## 5. SOFTWARE LICENCE

- a. As part of the Services TyreWatch grants to the Customer a non-exclusive licence for the term of the Contract to use the Software in conjunction with the Equipment on the Vehicles.
- b. In relation to scope of use or the purposes of clause 5(a), use of the Software shall be restricted to use of the Software in connection with the Services.
- c. The Customer may not use the Software other than as specified in clause 5(a) without the prior written consent of TyreWatch, and the Customer acknowledges that additional fees may be payable on any change of use approved by TyreWatch.
- d. Except as expressly stated in this clause 5, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless TyreWatch is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request TyreWatch to carry out such action or to provide such information (and shall meet TyreWatch's reasonable costs in providing that information) before undertaking any such reduction.
- e. The Customer may not use any such information provided by TyreWatch or obtained by the Customer during any such reduction permitted under clause 5(d) to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- f. The Customer shall not:
  - i. sub-license, assign or novate the benefit or burden of this licence in whole or in part;
  - ii. allow the Software to become the subject of any charge, lien or encumbrance; and
  - iii. deal in any other manner with any or all of its rights and obligations under this Contract,

## 6. CUSTOMER OBLIGATIONS

- a. The Customer shall:
  - i. ensure that the terms of the Order are complete and accurate;
  - ii. co-operate with TyreWatch in all matters relating to the Services;
  - iii. maintain all Equipment in good condition in accordance with the User Manual.
  - iv. maintain the Vehicles in accordance with good industry practice.
  - v. comply with all terms relating to the Services and the Equipment contained in the User Manual and the Installation Manual.
  - vi. advise TyreWatch immediately as soon as the Customer becomes aware that the Equipment is lost, damaged or stolen. In the event that any part of the Equipment is lost, damaged or stolen TyreWatch will provide replacement Equipment at the appropriate Equipment Fee and clause 4 shall apply to the installation of such replacement Equipment.
  - vii. advise TyreWatch immediately as soon as the Customer becomes aware that any part of the Equipment or Web-enabled Services are not functioning in accordance with the User Manual;
  - viii. provide TyreWatch, its employees, agents, consultants and subcontractors, with access to the Vehicles as reasonably required by TyreWatch from time to time;
  - ix. provide TyreWatch with such information and materials as TyreWatch may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - x. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
  - xi. keep and maintain all materials, Equipment, documents and other property of TyreWatch ("TyreWatch Materials") in safe custody at its own risk, maintain TyreWatch Materials in good condition until returned to TyreWatch, and not dispose of or use TyreWatch Materials other than in accordance with TyreWatch's written instructions or authorisation.
- b. If TyreWatch's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):
  - i. TyreWatch shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays TyreWatch's performance of any of its obligations;
  - ii. TyreWatch shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from TyreWatch's failure or delay to perform any of its obligations under the Contract; and
  - iii. the Customer shall reimburse TyreWatch on written demand for any costs or losses sustained or incurred by TyreWatch arising directly or indirectly from the Customer Default.

## 7. TITLE AND RISK

- a. Risk in the Equipment shall pass to the Customer on completion of the installation of the Equipment by TyreWatch or delivery of the Equipment to the Customer for installation by the Authorised Installer.
- b. Title to the Equipment shall remain with TyreWatch throughout the duration of the Contract and the Customer shall:
  - i. not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
  - ii. maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - iii. notify TyreWatch immediately if it becomes subject to any of the events listed in clause 11(c); and
  - iv. provide TyreWatch such information relating to the Equipment as TyreWatch may require from time to time.

## 8. CHARGES

- a. The Customer shall pay to TyreWatch:-
  - i. the Initial Install Fee (if applicable) on the Commencement Date.
  - ii. the Training Fee (if applicable) on the Commencement Date
  - iii. the Monthly Charge by direct debit on the 1st day of each month in advance. The Monthly Charge for the period from the Installation Date to the 1st day of the following month as set out in the Order shall be payable on the Installation Date.
  - iv. all data roaming charges accrued on the SIM card which is provided as part of the Equipment to the extent that the data roaming charges are not incurred in the provision of the Services. TyreWatch shall invoice the Customer of such charges from time to time and the invoice shall be paid within 30 Business Days of the date of invoice.
  - v. where applicable the Five Year Maintenance Fee which shall be invoiced by TyreWatch and payable within 30 Business Days.
  - vi. where applicable the Equipment Fee, Install Fee and De-installation Fee which shall be invoiced by TyreWatch and payable within 30 Business Days.
- b. If the Customer fails to make any payment due to TyreWatch under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the base rate of the Barclays Bank plc. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. The Customer will also be liable to pay a £25 administration cost. The Customer shall pay the interest together with the overdue amount and administration cost.
- c. TyreWatch reserves the right to increase the Monthly Charges provided the Monthly Charges cannot be increased during the Minimum Term and no more than once in any Extended Term. TyreWatch will give the Customer written notice of any such increase 30 Business Days before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify TyreWatch in writing within 2 weeks of the date of TyreWatch's notice and TyreWatch shall have the right without limiting its other rights or remedies to terminate the Contract by giving 90 days written notice to the Customer.

## 9. SERVICE CREDITS

- a. In the event that the Services are unavailable for a consecutive period of seven days or more which is not a result of:-
  - i. a Force Majeure Event;
  - ii. a Customer Default;

TyreWatch will credit the Customer's account for the Monthly Charges for the Services for the period the Services were unavailable up to a maximum of 30 days. After 30 days either party will have the right to terminate the Contract with immediate effect and the provisions of clause 11(d) shall apply.

## 10. SUSPENDING SERVICES

- a. TyreWatch may suspend or restrict the Customer's use of any of the Services if:
  - i. the Customer has breached any of the terms of this Contract;
  - ii. the Customer has advised TyreWatch that the Equipment has been lost or stolen;
  - iii. there is a Customer Default;
  - iv. there is a Force Majeure Event;
  - v. the Customer becomes subject to any of the events listed in clause 11(c)(i) to clause 11(c) xi, or TyreWatch reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- b. The Customer will remain liable for the Monthly Charges during any period when the Services are suspended or restricted subject to clause 10 a(iv) where the Customer shall not be responsible for the payment of the Monthly Charges and the provisions of clause 13 shall apply.

## 11. TERMINATION

- a. The Customer may not terminate the Contract during the Minimum Term.
- b. If the Customer becomes subject to any of the events listed in clause 11(c), TyreWatch may terminate the Contract with immediate effect by giving written notice to the Customer.
- c. For the purposes of clause 11(b), the relevant events are:
  - i. the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
  - ii. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - iii. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - iv. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
  - v. (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
  - vi. a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
  - vii. (being an individual) the Customer is the subject of a bankruptcy petition or order;
  - viii. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - ix. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11(c)(i) to clause 11(c)(viii) (inclusive);
  - x. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - xi. the Customer's financial position deteriorates to such an extent that in TyreWatch's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- d. On termination of the Contract for any reason the Customer shall:-
  - i. immediately pay to TyreWatch all of TyreWatch's outstanding unpaid invoices and interest.
  - ii. return to TyreWatch the Equipment which has been de-installed by the Authorised Installer or pay to TyreWatch the applicable De-installation Fee for the removal of the Equipment from the Vehicles. If the Customer does not return the Equipment to TyreWatch in good working order TyreWatch reserves the right to charge the Customer the applicable Equipment Fee for the damaged or non returned Equipment.
- e. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- f. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.



## 12. LIMITATION OF LIABILITY

- a. Nothing in these conditions shall limit or exclude TyreWatch's liability for:
  - i. death or personal injury caused by TyreWatch's negligence or the negligence of TyreWatch's employees, agents or subcontracts
  - ii. fraud or fraudulent misrepresentation
  - iii. breach of the terms implied by section 2 of the Supply and Goods and Services Act 1982;
  - iv. any matter in respect of which it would be unlawful for TyreWatch to exclude or restrict liability
- b. Subject to clause 12(a):-
  - i. TyreWatch shall under no circumstance whatever be liable to the Customer whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- c. TyreWatch's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the Monthly Charges paid by the Customer for the Services for the previous 12 month period for each claim or series of related claims.
- d. This clause 12 shall survive termination of the Contract.

## 13. FORCE MAJEURE

- a. For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of TyreWatch including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of TyreWatch or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- b. TyreWatch shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- c. If the Force Majeure Event prevents TyreWatch from providing any of the Services for more than 30 days, TyreWatch shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer and the provisions of clause 11(d) – (f) shall apply.

## 14. DATA

- a. TyreWatch may use the data generated by the Equipment in course of providing the Services to:
  - i. provide the Customer with Web-enabled Services including data analysis
  - ii. manage the Customer account
  - iii. provide information for marketing purposes
  - iv. provide data to third parties
- b. TyreWatch will not provide personal information to any third parties.

## 15. CONFIDENTIALITY

- a. A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 15 shall survive termination of the Contract.

## 16. INTELLECTUAL PROPERTY

- a. All Intellectual Property Rights in the Equipment and the Software or arising out of or in connection with the Services are owned by or licensed to TyreWatch.

## 17. VARIATION OF TERMS

- a. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by TyreWatch.
- b. TyreWatch may from time to time update the User Manual and will provide the Customer of notification of such update. The current version of the User Manual will be available at [www.tyrewatch.com](http://www.tyrewatch.com).

## 18. NOTICE

- a. Any notice or other communication given to a party in connection with this Contract shall be in writing addressed to that party at its registered office and shall be delivered personally or sent by prepaid first class post or email.
- b. A notice or other communication shall be deemed to have been received; if delivered personally, when left at the registered office; if sent by prepaid first class post at 9.00am on the second working day after posting; if sent by email, one working day after transmission.

## 19. ASSIGNMENT

- a. TyreWatch may at any time assign or transfer all or any of their rights under this Contract and may subcontract or delegate in any manner any or all of their obligations under this Contract to any third party.
- b. The Customer shall not, without the prior written consent of TyreWatch assign or transfer all or any of their rights or obligations under the Contract.

## 20. THIRD PARTY

- a. A person who is not a party to this Contract shall not have any rights to enforce its terms.

## 21. GOVERNING LAW

- a. This Contract and any dispute or claim arising out of it or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

## 22. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).