

**BRITISH TRUST FOR ORNITHOLOGY - TERMS AND CONDITIONS FOR THE SALE OF GOODS**

The customer's attention is drawn in particular to the provisions of clause 10.

**1 Interpretation**

**1.1 Definitions:**

<b>Additional Charges</b>	<b>Data</b>	any charges notified to the Customer by the BTO in relation to the transfer of Data from the Goods to the Customer via the Satellite Feed.
<b>Business Day</b>		a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>BTO</b>		BTO Services Limited (registered in England and Wales with company number 02907282) whose registered office is at The Nunnery, Thetford, Norfolk, IP24 2PU.
<b>Conditions</b>		the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.
<b>Contract</b>		the contract between the BTO and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
<b>Customer</b>		the entity which purchases the Goods from the BTO.
<b>Data</b>		the information gathered through use of the Goods.
<b>Delivery Date</b>		the date notified to the Customer in the Order Confirmation or otherwise by the BTO (such as when Goods are made bespoke and the BTO informs the Customer that the Goods are ready for delivery) on which it is intended that the Goods shall be delivered to the Delivery Location.
<b>Delivery Location</b>		the location for Delivery specified by the Customer in the Order or such other location as the parties may agree.
<b>Deposit</b>		a non-refundable amount to be paid by the Customer to the BTO, prior to the Goods specified in an Order being manufactured, for the amount of 50% of the total value of the Order, as shall be set out in the BTO's Order Confirmation.
<b>Dispatch Date</b>		the date on which the Goods are collected from the premises of the BTO for delivery and leave the actual possession of the BTO.
<b>Failed</b>		to not be in a working condition to properly fulfil the purpose of the Goods (which shall be to collect the Data).
<b>Force Majeure</b>		an event or circumstance beyond a party's reasonable

<b>Event</b>	control.
<b>Goods</b>	the BTO's range of GPS (Global Positioning System)/ GSM (Global System for Mobile Communications) solar powered tracking devices which remotely transmit data via GPRS (General Packet Radio Service) using the mobile phone network, and any other goods (or any part of them) as may be set out in the Order.
<b>Initial Deployment</b>	the first use of the Goods by the Customer after the Delivery Date.
<b>Intellectual Property Rights</b>	any existing or future intellectual property rights including (but not limited to) any patent, trade mark, service mark, registered design, copyright, design right, (whether registered or unregistered), database rights, rights protecting confidential information, any applications for or rights to apply for any of the above and any other intellectual property right recognised in any part of the world, whether or not now existing or applied for, and all accrued rights of action in respect of any such rights.
<b>Order</b>	the Customer's order for the Goods, as set out in the Customer's purchase order form.
<b>Order Confirmation</b>	the BTO's confirmation that they accept the Customer's Order for the Goods which shall confirm the price of the Goods specified in the Order, the initial Delivery Date and the amount of the Deposit in relation to the Order.
<b>Product Handling Guidance</b>	shall have the meaning described in clause 3.3.
<b>Satellite Feed</b>	the method by which the Data is transmitted from the Goods to the Customer.
<b>Sterling</b>	means the currency of the United Kingdom, 'pound sterling'.
<b>Third Party</b>	any party that is not a party to this contract.

## 1.2 Interpretation:

- 1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.2 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3 a reference to **writing** or **written** includes emails.

## 2 **Basis of contract**

- 2.1 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.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the BTO issues an Order Confirmation, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by the BTO and any descriptions or illustrations contained in the BTO's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods given by the BTO shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue subject to clause 8.2.

## 3 **Goods**

- 3.1 The Goods are described on the Movetech Telemetry website.
- 3.2 The BTO reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 3.3 The BTO shall provide guidance to the Customer in relation to the Goods regarding the correct type of Goods for the Customer's projects and the correct procedure to set-up the Goods. This guidance shall also include the BTO:
  - 3.3.1 responding to all reasonable queries from the Customer in relation to the Goods within a reasonable amount of time (at the sole discretion of the BTO);
  - 3.3.2 making the Customer aware of options for data access; and
  - 3.3.3 updating the tag settings where necessary on appropriate Goods,(the "**Product Handling Guidance**"). For the avoidance of doubt, any further input by the BTO into the Customer's projects beyond that included in the Product Handling Guidance will be subject to additional costs which will be notified to the Customer when such support is requested. This includes for example, making harnesses for the Goods and providing detailed support for license applications.

- 3.4 The Customer acknowledges that the BTO may choose to alter the design, hardware or software of the Goods which are made available to the Customer by the BTO. The BTO agrees to keep the Customer informed of any changes to the Goods and the Customer reserves the right to cancel any Order where they are notified of such change to the Goods after the Order has been placed.
- 3.5 The Customer shall be responsible for meeting any licensing requirements in relation to the use of the Goods in each country in which they are deployed.
- 3.6 The Customer agrees to indemnify the BTO against all reasonable losses, damages or costs (including any indirect or consequential losses) that the BTO suffers or incurs in connection with the Customers failure to comply with clause 3.5 above.
- 3.7 In the event that the Goods are recoverable after use by the Customer, the Customer may return such Goods to the BTO for refurbishment. The BTO agrees that reusable components from the Goods returned for refurbishment by the Customer will offset the additional cost of the refurbished Goods if the Customer elects to purchase such refurbished Goods. The Customer acknowledges that the parts from recovered Goods may not always be reusable and therefor such offset against the price of refurbished Goods may not always be possible.

#### **4 Satellite Feed and Data Transfer**

- 4.1 The BTO shall procure a Satellite Feed for use with the Goods which the Customer may use for the sole purpose of transferring Data collected through use of the Goods to the Customer.
- 4.2 The Customer shall own all the Intellectual Property Rights in relation to the Data and grants to the BTO a non-exclusive, irrevocable, royalty free licence to use the Data for the purpose of monitoring the performance of the Goods through which the Data was collected.
- 4.3 The Customer shall pay any Additional Data Charges notified to them in full and cleared funds within thirty (30) days of receiving an invoice for such Additional Data Charges.
- 4.4 The BTO may stop the transfer of Data with immediate effect in the event that the Customer fails to pay the Additional Data Charges in accordance with clause 4.3.
- 4.5 The BTO excludes all liability to the Customer in relation to the Satellite Feed and provides no warranty, representation, conditions or other terms, either express or implied to the Customer of any kind as to the Satellite Feed's accuracy, satisfactory quality, fitness for particular purpose or reliability. The BTO does not warrant that the data feed is:
  - 4.5.1 error free; or
  - 4.5.2 will operate without interruption.

#### **5 Delivery**

- 5.1 The BTO shall ensure that:
  - 5.1.1 each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), the Product Handling Guidance, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - 5.1.2 if the BTO requires the Customer to return any packaging materials to the BTO, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the BTO shall reasonably request. Returns of packaging materials shall be at the BTO's expense.
- 5.2 The BTO shall deliver the Goods to the Delivery Location on the Delivery Date after the BTO notifies the Customer that the Goods are ready for Delivery either in the Order Confirmation or otherwise.
- 5.3 Delivery is deemed to have occurred on the completion of unloading of the Goods at the Delivery Location.
- 5.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The BTO shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the BTO with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5 If the BTO fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The BTO shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the BTO with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.6 If the Customer fails to take delivery of the Goods at the time notified to the Customer by the BTO, then, except where such failure or delay is caused by a Force Majeure Event or the BTO's failure to comply with its obligations under the Contract:
  - 5.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the Delivery Date; and
  - 5.6.2 the BTO shall store the Goods until actual delivery takes place, and shall charge the Customer for all related costs and expenses (including insurance).
- 5.7 If 10 Business Days after the Delivery Date the Customer has not taken delivery of the Goods, the BTO may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

- 5.8 The BTO may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.9 The BTO shall arrange delivery of the Goods by courier to the Customer unless other arrangements are made by the Customer and are communicated to the BTO in the Order. The Customer shall pay all costs associated with such delivery and, if such costs are initially paid by the BTO, the BTO shall issue the Customer an invoice and the Customer shall reimburse the BTO for the delivery costs in accordance with clause 8.6 and clause 8.7.

## 6 Quality

- 6.1 The Customer acknowledges that the performance of the Goods will vary depending on the conditions in which they are used and that any performance details advertised, communicated or set out by the BTO in accordance with clause 3.1 are based on the BTO's best understanding at the time such performance details were published.
- 6.2 Subject to clause 6.1, the BTO warrants that on the Dispatch Date the Goods shall:
  - 6.2.1 conform in all material respects with their description; and
  - 6.2.2 be free from material defects in design, material and workmanship.
- 6.3 Subject to clause 6.4, if:
  - 6.3.1 the Customer gives notice in writing to the BTO within seven (7) days of the Delivery Date that some or all of the Goods are missing or do not comply with the warranty set out in clause 6.2; or
  - 6.3.2 the Goods are mutually agreed in writing between the BTO and the Customer to have Failed either before or after the Initial Deployment,and:
  - 6.3.3 the BTO is given a reasonable opportunity of examining such Goods; and
  - 6.3.4 the Customer (if asked to do so by the BTO) returns such Goods to the BTO's place of business at the Customer's cost,the BTO shall, at its option, repair or replace the defective Goods, refund the Customer or issue a credit note for the full price of the defective Goods.
- 6.4 The BTO shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.2 or any ongoing loss or damage caused by broken or Failed Goods (including loss of time and/or data) and the Customer shall lose any right to a replacement, refund or credit note under clause 6.3 in any of the following events:

- 6.4.1 the Customer fails to give notice in writing to the BTO within seven (7) days of the Delivery Date to notify the BTO that some or all of the Goods are missing or do not comply with the warranty set out in clause 6.2;
  - 6.4.2 the Customer makes any further use of such Goods after giving notice in accordance with clause 6.3.1;
  - 6.4.3 the defect arises because the Customer failed to follow and adhere to the Product Handling Guidance, the BTO's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - 6.4.4 the Customer alters, repairs or otherwise tampers with such Goods without the written consent of the BTO;
  - 6.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 6.4.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.5 Except as provided in this clause 6, the BTO shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.2.
- 6.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.7 These Conditions shall apply to any repaired, refurbished or replacement Goods supplied by the BTO.

## **7 Title and risk**

- 7.1 The risk in the Goods shall pass to the Customer on the Dispatch Date.
- 7.2 Title to the Goods shall not pass to the Customer until the BTO receives payment in full (in cash or cleared funds) for the Goods.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
  - 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the BTO's property;
  - 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 7.3.4 notify the BTO immediately if it becomes subject to any of the events listed in clause 9.1; and

- 7.3.5 give the BTO such information relating to the Goods as the BTO may require from time to time.
- 7.4 The Customer shall only use the Goods for its own purposes and shall not resell the Goods to a Third Party.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1, then, without limiting any other right or remedy the BTO may have, the BTO may at any time:
  - 7.5.1 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
  - 7.5.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **8 Price and payment**

- 8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the BTO's published price list in force as at the date of delivery.
- 8.2 The BTO may, by giving notice to the Customer at any time up to 20 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
  - 8.2.1 any factor beyond the BTO's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 8.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
  - 8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the BTO adequate or accurate information or instructions.
- 8.3 The price of the Goods:
  - 8.3.1 excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the BTO at the prevailing rate, subject to the receipt of a valid VAT invoice;
  - 8.3.2 excludes the amount of any paid Deposit (as provided in clause 8.4); and
  - 8.3.3 excludes the costs and charges of packaging, insurance, transport of the Goods and delivery including (but not limited to) bank charges and import duties, which shall be invoiced to the Customer.
- 8.4 The Customer shall pay the Deposit to the BTO as directed in the Order Confirmation within 10 Business Days of receipt of the Order Confirmation.

The Customer acknowledges that the manufacture of any Goods specified in the Order will not begin until the Deposit is paid.

- 8.5 The BTO may invoice the Customer for the Goods on or at any time after the Delivery Date.
- 8.6 The Customer shall pay any invoice relating to the Contract in full and in cleared funds within thirty (30) days of the Delivery Date or such other date as specified in the invoice.
- 8.7 All payments made by the Customer shall be made in Sterling to the bank account nominated in writing by the BTO. Time for payment is of the essence.
- 8.8 If the Customer fails to make any payment due to the BTO under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The BTO may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the BTO to the Customer.

## 9 Termination

- 9.1 Without limiting its other rights or remedies, the BTO may terminate this Contract with immediate effect by giving written notice to the Customer if:
  - 9.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
  - 9.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 9.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 9.1.4 the Customer's financial position deteriorates to such an extent that in the BTO's opinion the Customer's capability to adequately

fulfil its obligations under the Contract has been placed in jeopardy.

- 9.2 Without limiting its other rights or remedies, the BTO may suspend provision of the Goods under the Contract or any other contract between the Customer and the BTO if the Customer becomes subject to any of the events listed in clause 9.1.1 to clause 9.1.4, or the BTO 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.
- 9.3 Without limiting its other rights or remedies, the BTO may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the BTO all of the BTO's outstanding unpaid invoices and interest.
- 9.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 10 Liability

- 10.1 Nothing in these Conditions shall limit or exclude the BTO's liability for:
  - 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 10.1.2 fraud or fraudulent misrepresentation;
  - 10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 10.1.4 any matter in respect of which it would be unlawful for the BTO to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
  - 10.2.1 the BTO shall under no circumstances whatsoever 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;
  - 10.2.2 the BTO shall under no circumstances whatsoever be liable to the Customer for any damage to the Goods following the Dispatch Date; and

10.2.3 the BTO'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 price of the Goods.

10.3 The Customer agrees and acknowledges that any insurance taken out by the BTO in relation to the Goods shall be limited to the price of the Goods.

## 11 Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for [four (4)] weeks, the party not affected may terminate this Contract by giving [fourteen (14)] days' written notice to the affected party.

## 12 General

### 12.1 Assignment and other dealings.

12.1.1 The BTO may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the BTO.

12.2 **Confidentiality.** The Customer shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients, suppliers or products of the BTO.

### 12.3 Entire agreement.

12.3.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.3.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

12.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further

exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 12.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.7 **Notices.**
- 12.7.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing, in English, in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- 12.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.7.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am (GMT) on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed or, if sent by email, one Business Day after transmission.
- 12.7.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 12.8 **Third party rights.** No one other than a party to this Contract shall have any right to enforce any of its terms.
- 12.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 12.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.