

SMARTNAV - TERMS AND CONDITIONS

1. Definitions

- 1.1 In these Terms and Conditions or any subsequent additions to these Terms and Conditions as published on the Smartnav internet site at www.smartnav.com
- “**Agreement**” means these Terms and Conditions together with the Order Form;
- “**Annual Subscription**” means payment for provision of a service for a twelve month period;
- “**Quarterly Subscription**” means payment for provision of service for a twelve month period, to be paid for by 4 equal quarterly instalments;
- “**Authorised User**” means any person lawfully authorised by the Customer to use the Vehicle;
- “**Commencement Date**” means the date on which Smartnav signs the Customer’s signed Order Form;
- “**Customer**” means the person, firm or company whose order for the Smartnav unit and the Service has been accepted by Smartnav; and
- “**Database**” means the Smartnav database of Safety Camera Sites used for Safe Speed Option;
- “**4 Year Service Subscription**” means payment for provision of a service for a forty eight month period;
- “**Emergency and Breakdown Service**” means the service to be provided by Smartnav pursuant to Clause 6 below;
- “**Order Form**” means the order form on the reverse of these Terms and Conditions;
- “**Service**” means vehicle navigation services and other services that may be varied at Smartnav’s discretion from time to time;
- “**Smartnav**” means Trafficmaster Plc (Company No. 2292714), whose registered office is at University Way, Cranfield, Bedfordshire MK43 0TR;
- “**Subscription Services**” means services which are paid for by time period rather than by event;
- “**The Smartnav Unit**” means the Smartnav Vehicle Navigation System to be supplied to the Customer and installed in the Vehicle pursuant to this Agreement;
- “**Usage**” means frequency of use by the Customer;
- “**Vehicle**” means the Customer’s Vehicle into which the Smartnav Unit is to be installed.

2. Order Form

- 2.1 The Order Form comprises an offer by the Customer to purchase the Smartnav unit and to subscribe to the Service.
- 2.2 Smartnav hereby agrees to:
- 2.2.1 sell the Smartnav Unit to the Customer and to organise installation in the Customer’s Vehicle. Installation shall be paid for by the Customer.
- 2.2.2 provide the Service in accordance with these Terms and Conditions. By signing the Order Form the Customer shall be deemed to have accepted these Terms and Conditions.

3. Installation of Smartnav Unit

- 3.1 Upon completion of the Order Form, Smartnav will arrange for installation into the Customer’s Vehicle by an authorised installation engineer.
- 3.2 The Customer will not permit installation to be carried out by any person other than an authorised Smartnav installation engineer.
- 3.3 Smartnav shall use reasonable endeavours to ensure that authorised Smartnav installation engineers are properly trained to carry out installation procedures, Smartnav will not be held liable for any direct or indirect loss caused by the installation process apart from any damage to the vehicle directly caused by negligence of the Smartnav installation engineer during the course of the installation.
- 3.4 The Customer undertakes not to tamper, modify, dismantle or otherwise interfere with the Smartnav Unit and not to remove, attempt to remove or permit the removal of the SIM Card from the Smartnav Unit. For the avoidance of doubt Smartnav reserves the right to charge the customer for any costs incurred by Smartnav as a result of a breach of this clause by the customer.
- 3.5 Smartnav may only be installed in passenger cars and light goods vehicles up to 3.5 tonnes.
- 3.6 Routing instructions do not allow for vehicles of abnormal length, height, width and weight. Smartnav will accept no liability for damage or loss incurred as a result of the user’s breach of these terms.

4. Title and Risk

- 4.1 The legal and beneficial ownership of the Smartnav Unit shall pass to the Customer upon payment in full of the price of the Smartnav Unit.
- 4.2 Risk in the Smartnav Unit shall pass to the Customer upon installation of the Smartnav Unit in the Vehicle and the Customer shall be responsible for insuring the Smartnav Unit from such time.

5. Provision of Service

Smartnav will use reasonable endeavours to provide Service 24 hours a day, 365 days a year, within the territory of mainland Great Britain only.

5.1 Usage

Subscription Services are provided by Smartnav on the basis that the Customer will make reasonable personal use of the Services. Smartnav reserves the right to transfer the customer to a high usage business subscription option or charge additional fees or suspend Services at its sole discretion in the event of exceptional usage by the customer or in the event of other abuse of the Service or Smartnav personnel by the Customer. For further details of Fair Play policy see www.smartnav.com.

5.2 Subscription

Smartnav reserves the right to change the Subscription charges or transfer the Customer to an alternative tariff by giving no less than 7 days notice in writing or by publication on the Smartnav website. Subscribing Customers may not transfer to Pay As You Go.

5.3 Pay As You Go Customers

Customers electing to pay for their ongoing usage of the Service by one off route charges shall be required to pay a minimum advance deposit at the rate specified by Smartnav from time to time prior to the provision of Service.

5.4 RAC Trackstar Service

Is available only to Customers who have paid for this additional Service feature.

- 5.4.1 Upon the theft of the Vehicle, the Customer shall be responsible for notifying the police as soon as reasonably possible that the Vehicle has been stolen and shall obtain a crime reference number in respect of the same. The Customer undertakes to provide this crime reference number to Smartnav without delay.
- 5.4.2 If the Trackstar Unit installed in the Vehicle is fitted with an automatic trigger, Smartnav shall be entitled to assume the Vehicle has been moved without the Subscriber’s consent on receipt of an activation and shall take the steps set out in clause 5.4.4 below. Where a signal is received via the automatic trigger system, the Smartnav Control Centre will endeavour to contact the Subscriber or his agent as soon as reasonably practicable using the contact details supplied.
- 5.4.3 The Customer acknowledges that nothing in this Agreement shall oblige the police to take action upon being notified that the vehicle has been stolen and that Smartnav cannot be held responsible for the acts or omissions of the police.
- 5.4.4 Upon notification of the theft as specified in Clauses 5.4.1 or 5.4.2, Smartnav shall as quickly as reasonably possible use reasonable endeavours to locate the Vehicle using Smartnav’s global positioning systems. If Smartnav is able to locate the Vehicle, Smartnav will inform the police of the Vehicle’s location and after the police have conducted their investigations, may procure that the Vehicle is recovered and delivered to a location nominated by the Customer or Authorised User at the risk of the Customer. The Customer will be fully responsible for all costs associated with such recovery and delivery.
- 5.4.5 Smartnav reserves the right to charge the Customer (in addition to the Subscription charges described in Clause 7) for any costs incurred by Smartnav in attempting to locate the Vehicle following a false alarm raised by the Customer or any Authorised User.

5.5 Safe Speed Service

- 5.5.1 The Safe Speed Service shall only be available to Customers who have paid a valid Subscription for this Service. Customers remain at all times responsible for observing all relevant laws and codes of safe driving and Smartnav will not in any event be liable for any fine, penalty, or punishment issued to any Customer.
- 5.5.2 Smartnav will make all reasonable efforts to procure the accuracy and completeness of the Database, but does not warrant the accuracy or completeness of the Database.
- 5.5.3 Smartnav will automatically update Customers Database of Safety Camera Sites once a month when the Customer next uses the Smartnav Navigation Service.
- 5.5.4 Smartnav does not warrant that Safe Speed Service will continue to be legal to use in the UK and will not be liable to the Customer should any changes occur to legislation which might prevent the use of the Service.

6. Emergency and Breakdown Service

The Customer may request such services by pressing the Smartnav button. Upon receipt of an Emergency or Breakdown call, the Smartnav Control Centre shall use reasonable endeavours to provide the relevant information to the Emergency or Breakdown service as applicable. Smartnav will accept absolutely no liability arising from the Customer electing to use this Service.

Customers who purchase the optional Smartnav Touch Screen may request the provision of Emergency and/or Breakdown services by pressing the appropriate button on the Smartnav Touch Screen.

7. Payment

- 7.1 The price of the Smartnav Unit shall be Smartnav’s list price current on the date of the Customer’s order or other price agreed on the Order Form.
- 7.2 Smartnav will have no obligation to commence the provision of the Service until the Customer has paid a valid Subscription payment or an advance deposit in respect of one off route charges.
- 7.3 If any sums due from the Customer to Smartnav remain unpaid for more than 7 days from the due date then, Smartnav will be entitled to:
- 7.3.1 interest on the outstanding sum at the rate of three percent above the base lending rate of Barclays Bank Plc, which interest shall accrue on a daily basis until payment is received in full by Smartnav;
- 7.3.2 suspend the provision of the Service until full payment has been received; and/or
- 7.3.3 terminate this Agreement. The Customer shall reimburse Smartnav on demand in respect of all costs and expenses incurred by Smartnav in tracing the Customer and in taking steps to enforce payment of any such sums due.
- 7.4 If the Customer’s bank fails to honour any direct debit, cheque or other method of payment, the Customer shall reimburse Smartnav in respect of any costs incurred in re-presenting the same.
- 7.5 If you pay your Subscription by an automatic continuous payment and you no longer require cover at renewal, it is your responsibility to ensure the Agreement is cancelled as no refunds will be made. For payments made by Direct Debit, this should be done BOTH with the bank and with Smartnav.

8. Smartnav Unit Warranty

- 8.1 Smartnav warrants that the Smartnav Unit will be free from defects in materials and workmanship for 12 months from the date of installation. If Smartnav receives written notice of any breach of this warranty then Smartnav shall at its own expense and within a reasonable time of receiving such notice repair or, at its option, replace the Smartnav Unit.
- 8.2 Smartnav shall have no liability under this warranty:
- 8.2.1 unless it has received written notice of the defect in question no later than the expiry of the 12 month warranty period; or
- 8.2.2 if the defect is caused as a result of the Smartnav Unit having been tampered with, modified or repaired (other than by a Smartnav approved engineer), or otherwise misused or damaged.
- 8.3 Smartnav shall have no obligation under this warranty other than to remedy breaches of the warranty by provision of materials and services (excluding Vehicle installation and de-installation) within a reasonable time and free of charge to the Customer. If Smartnav shall fail to comply with such obligation its liability for such failure shall be limited to a sum equal to the price of the Smartnav Unit.
- 8.4 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise provided that where the Customer deals as a consumer, nothing in this Agreement shall affect his or her statutory rights.

9. Liability

- 9.1 Notwithstanding any other provision of this Agreement, Smartnav does not seek to exclude or restrict its liability for fraud, or for death or personal injury caused by its negligence.
- 9.2 In respect of all other liability hereunder, Smartnav’s liability in respect of each event or series of connected events shall not exceed an amount equal to the sum of the total charges paid by the Customer during the 12 months prior to any claim.
- 9.3 Smartnav shall not be liable to the Customer for the loss of profits or contracts or any other indirect or consequential loss whether arising from tort (including negligence) or breach of contract otherwise. In particular but without limitation, Smartnav shall not be liable for any loss or damage caused to the Customer as a direct or indirect result of the Vehicle being stolen.
- 9.4 The Smartnav Unit and Services must not be used in any way which would or may affect the ability of the driver of the Vehicle to drive safely and in accordance with the Highway Code. Smartnav shall not be liable for any loss or damage caused by the acts or omissions of the driver of the Vehicle.
- 9.5 The Customer acknowledges that, owing to the nature of the technology comprised in the Smartnav Unit, the operation of the Service may from time to time be adversely affected by physical features such as underpasses, atmospheric conditions and other causes of interference beyond Smartnav’s control. As such, Smartnav can give no guarantee that the Vehicle will be successfully navigated or that Services will work in adverse conditions or in the event of force majeure. In particular, the operation of the Smartnav Unit and, therefore, the provision of the Service in accordance with this Agreement, depends to some extent upon the operation of the digital cellular telecommunications technology with which the Smartnav Unit operates, and this technology is not operative in all parts of the UK.
- 9.6 The Customer acknowledges that the purchase of the Smartnav Unit does not in any way mitigate his or her duty to obtain adequate insurance for the Vehicle.

10. Assignment

This Agreement is personal to the Customer and relates exclusively to the Vehicle and may not be assigned.

11. Term and Termination

- 11.1 This Agreement shall commence upon the Commencement Date or installation in the Vehicle, whichever is the later, and shall continue indefinitely whilst Annual, 4 Year Service or Route payments are being made to Smartnav unless terminated by either party giving seven days written notice. Unless;
- 11.2 Subject to Clause 11.1, if the Customer chooses the Quarterly Subscription payment option this Agreement shall commence upon the Commencement Date and shall continue for a minimum fixed period of 12 months, and thereafter shall automatically be renewed for a further minimum period of 12 months on each anniversary of the Commencement Date unless terminated by either party giving 7 days notice prior to the next anniversary of Commencement Date.
- 11.3 The customer may terminate this Agreement on provision of one month’s written notice, such notice not to expire until 12 months after the Commencement Date. Notice of cancellation to be sent to: Subscription Cancellations, Customer Service, Trafficmaster Plc, University Way, Cranfield, MK43 0TR.
- 11.4 Either party may, by written notice to the other party, terminate this Agreement in the event that:
- 11.4.1 the other party is in material or persistent breach of this Agreement; or
- 11.4.2 the other party becomes insolvent or bankrupt, enters into liquidation, whether voluntary or compulsory, passes a resolution for its winding up; has a receiver or administrator appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffering any similar action in consequence of its debt.
- 11.5 Smartnav may terminate this Agreement with immediate effect on written notice to the Customer in the event that:
- 11.5.1 any government or other regulatory approvals for the use of the Smartnav Unit are withdrawn, suspended or amended at any time;
- 11.5.2 in the opinion of Smartnav the Customer or any Authorised User persistently raises false alarms in circumstances where he or she had no reasonable grounds on which to believe that the Vehicle had been stolen or that genuine Emergency or Breakdown conditions exist or by abuse of the Services.

Upon termination of this Agreement the accrued rights and liabilities of the parties shall not be affected.

Smartnav Subscriptions are valid only against the named Customer on the signed Subscription Agreement and can not be transferred to another Customer.

Terminated Subscriptions are non-refundable unless agreed in writing by Smartnav prior to termination.

12. General

- 12.1 The Customer acknowledges that for security reasons and training telephone calls may be recorded between Smartnav and the Customer. The Customer consents to the recording of such calls and agrees that the recordings may be used and supplied to the police for the sole purpose of detection and prevention of crime.
- 12.2 The Customer acknowledges that authorised Smartnav personnel can track the Customers vehicle for test purposes.
- 12.3 Smartnav shall not be liable for any delay in performing or for failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control (hereinafter, “event of force majeure”). Smartnav shall notify the Customer upon becoming aware of the event of force majeure and shall indicate the manner and extent to which its obligations are likely to be prevented or delayed. If any event of force majeure occurs, the date(s) for performance of the obligation(s) affected shall be postponed for so long as is made necessary by the event of force majeure provided that if any event of the force majeure continues for a period of or exceeding three (3) months, either party shall have the right to terminate this Agreement forthwith on written notice to the other party. Each party shall use its reasonable endeavours to minimise the effects of any event of force majeure.
- 12.4 All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered or transmitted to the intended recipient’s address as specified above or such other address as either party may notify to the other for this purpose from time to time. Any notice shall be treated as having been served on delivery if delivered by hand, four (4) working days after posting if sent by pre-paid registered mail, two (2) working days after despatch if sent by courier and on confirmation of transmission if sent by facsimile.
- 12.5 The failure of either party to enforce or to exercise at any time or for any period of time any term or of any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party’s right later to enforce or to exercise it.
- 12.6 If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.
- 12.7 This Agreement or any subsequent additions to these Terms and Conditions as published on the Smartnav internet site at www.smartnav.com contains all the terms agreed between the parties regarding its subject matter and supersedes any prior Agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that party’s only remedies shall be for breach of contract as provided in this Agreement.
- 12.8 The construction, validity and performance of this Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English and Welsh courts to resolve any disputes between them.