

## **Okappy Terms and Conditions of Sale**

### **Goods and services are supplied by Okappy subject to these Terms and Conditions of Sale**

#### **1 . General**

All descriptions of goods are general and not precise and shall not form any part of the contract between Okappy and the Customer. Okappy may correct and update product descriptions from time to time and the product shipped will be the latest specification without liability to the Customer. The advertising of products and services in the Okappy website merely constitutes an invitation by Okappy for the Customer to make an offer to purchase products and services.

#### **2 . Delivery**

Delivery will be by courier or Okappy installer not more than 28 calendar days from receipt of order by Okappy unless specifically advised by Okappy.

If by courier the Customer must inspect the products as soon as is reasonably possible after delivery but in any event within 48 hours and shall, within 72 hours of the date of delivery, advise Okappy if the product is in anyway incorrect or defective. If delivered by installer the customer should inspect the installation and sign the documents presented by the installer and notify Okappy if there are any issues with the installation, and the running of the system within 72 hours. If there is any defect in the product that is apparent on reasonable examination, Okappy shall, at its discretion, replace the products or refund the purchase price. In any event the Customer must refuse parcels delivered to it in a damaged condition.

#### **3 . Product and Availability Information**

Okappy reserves the right, without prior notice, to discontinue any product or to make design changes as part of its continuing programme of product improvement, or to assist product availability. Okappy reserves the right to change the specifications and price of any item listed or advertised without prior notice.

#### **4. Installation**

Installation will be carried out by the customer or by Okappy. If Okappy have made the installation and the system

does not work save for the reasons set out in paragraph 5 below it will send out an engineer on one occasion to check the system and ensure it is working. Subsequent engineer visits will be charged for unless it is established that the reason for non-operation is due to Okappy's incorrect installation. If the customer installs the system and it fails to work save for the reasons in paragraph 5 below, Okappy will send out an engineer to check the installation with the cost charged to the customer. If the system requires servicing or maintaining Okappy will send out an engineer and the cost will be charged to the customer.

#### **5 . Warranty**

Okappy warrants that if goods are defective, it will replace or repair them or refund the purchase price at its sole discretion. This warranty is subject to a claim being made in writing to Okappy within 12 months of the original date of dispatch.

These warranties shall not apply to any defect which arises from improper use or installation, failure to follow the product instructions, or any repair or modification made without the consent of Okappy. The Customer must return the products, or make them available for collection by Okappy, in accordance with Okappy's instructions. If returned they must be suitably packaged.

Returned goods must be accompanied by an advice note stating the original purchase date and customers name in respect of the products and the nature of any claimed defect. Where the Customer returns products otherwise than in accordance with these warranty provisions, Okappy may refuse such products and return them to the Customer at the cost of the Customer. Any products or parts which are replaced by Okappy are the property of Okappy. Title to replacement products shall pass to the Customer on delivery, and the period of the replacement product's warranty shall be calculated from the date of despatch of the defective product.

Okappy will not be liable to the Customer for any loss of any kind whatsoever which arises out of a breach of implied warranty, term or condition (statutory or otherwise) or breach of any other duty of

any kind imposed on Okappy by operation of law.

## **6 . Liability**

Okappy shall not be under any liability for damage, loss or expenses resulting from the failure to give advice or information or the giving of incorrect advice or information (including through the Okappy technical helpline) whether or not due to its negligence or that of its employees, agents or sub-contractors. Okappy shall not be liable for any failure to transmit data due to failure of a mobile phone network, failure of an internet connection or speed of an internet connection, failure of connection or speed of connection to a GPS satellite whether due to environmental conditions, technical error, or vehicle positioning. Okappy shall not be liable for intellectual property rights infringement, punitive damages, loss of revenue, loss of profits or expected future business, increased production costs, damage to reputation or goodwill, loss of any order or contract or any consequential or indirect loss or damage, all as may result from, or be connected with: (i) any express or implied terms of the contract between Okappy and the Customer, or of any order accepted by Okappy; (ii) any duty of any kind imposed on Okappy by law arising out of or in relation to the contract or order; or (iii) any defect in the products or services. If, notwithstanding clauses 5, any liability attaches to Okappy, Okappy's liability to the Customer in respect of one or more of (i) any express or implied terms of the contract between Okappy and the Customer, or of any order accepted by Okappy; (ii) any duty of any kind imposed on Okappy by law arising out of or in relation to the contract or order; or (iii) any defect in the products or services; shall be limited in the aggregate to £10,000.

Nothing in this clause shall exclude or limit the liability of Okappy for death or personal injury caused by the negligence of Okappy or its employees, agents or sub-contractors, or for fraud.

## **7. Cancellations and Returns**

Okappy accepts no responsibility for any loss or damage to products in transit or for any items received by them. Products to be returned to Okappy must be adequately packaged and despatched freight paid and clearly labelled to CUSTOMER RETURNS DEPARTMENT,

Okappy Limited, 229 Rotherhithe Street, London, SE16 5XW.

The customer may only return products to Okappy, and receive a credit or refund, on the following conditions:

- The Customer must contact Okappy and obtain the prior consent of Okappy.
  - Return must be made within 30 days of the date of delivery (as stated on the delivery documentation). Products must be returned to Okappy in their original condition and packaging and in a condition which will enable them to be immediately fit for re-sale.
  - The Customer must quote the invoice details or the Okappy reference number on the Okappy Customer Returns Form from the original despatch note.
- Okappy reserves the right to charge an administration fee to cover inspection, handling, administration, postage and packaging.

## **8. FORCE MAJEURE**

Okappy shall be under no liability for any failure to perform any of its obligations under this Agreement if and to the extent that the failure is caused by act of God, governmental restriction, condition or control or by reason of any act done or not done pursuant to a trade dispute, shortages of labour or materials or breakdown of machinery, strike, traffic congestion, inability to procure services, materials or articles required for the performance of the contract or any other matter (whether or not similar to the foregoing) outside the control of Okappy. If the event continues for a period longer than 14 days, Okappy may cancel the affected order or cancel the whole or any part of the agreement with the customer without any liability.

## **9. Cancellation, renewal and suspension**

If the contract is renewed it will be renewed upon the same terms and conditions save for any that are or have been amended and notified by Okappy to the customer.

If payment is made late by more than 14 days Okappy may in its sole discretion suspend and/or cancel the service.

Payments due for the remainder of the contract term will become payable forthwith upon notice served by Okappy and it will be entitled to recover payment of the full contractual sum together with interest whether or not payment is otherwise due plus any other costs incurred in collecting payment.

If in its sole discretion Okappy agrees to reactivate the service for the customer it will make a charge for reactivation. If the customer wishes to break or end the contract it will be liable for all of the remaining payments due under the contract. No disputes arising under this agreement, nor delays, shall interfere with prompt payment in full by the customer.

#### **10 . Rights to Content**

The Customer acknowledges that Okappy and its licensors own the intellectual property rights in any Okappy WEB sites, WAP site, smartphone application or marketing collateral. Their whole or partial reproduction without Okappy's prior written consent is prohibited.

The customer acknowledges that Okappy owns the data that is transmitted from the system.

#### **11. Law and Jurisdiction**

All contracts made between Okappy and the Purchaser shall be constructed in accordance with and governed in all respects by English Law and the Purchaser agrees to submit to the exclusive jurisdiction of the English courts.

#### **12. Dispute Resolution Procedure**

1. If any dispute arises under or in connection with this Agreement, the Parties will at the first instance use reasonable endeavours and act in good faith to resolve any disputes or claims that may arise in connection with this Agreement through negotiation.

2. If after 28 working days, any dispute having arisen between the Parties in connection with this Agreement remains unresolved, then it shall be referred in the first instance to the remainder of this Dispute Resolution Procedure as set out below.

3. If agreed the Parties may attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. To initiate mediation a Party shall give notice in writing (a "Mediation Notice") to the other Parties requesting mediation of the dispute and shall send a copy thereof to CEDR asking CEDR to nominate a mediator if the Parties shall not be able to agree such appointment by negotiation. The mediation shall commence within 28 days of the Mediation Notice being served. Neither

Party will terminate such mediation until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour. Thereafter paragraph 14 of the Model Procedure will apply. Neither Party will commence legal proceedings or any other form of dispute resolution against the other until 7 days after such mediation of the dispute in question has failed to resolve the dispute.

4. The Parties will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and such Party will pay his costs, as he shall decide.

#### **13. Methods of Payment**

Payment may be made by variable direct debit, BACS transfer, cheque or postal order (made out to Okappy Ltd and crossed) or cash.

#### **14. Late Payment**

1. If there is a late payment by the Customer from due date as shown in the Invoice, Okappy may charge interest on the overdue sum at the rate of 8% per annum above the Bank of England base rate from time to time. Interest will accrue on a daily basis from the due date for payment until the actual date of payment of the overdue sum, whether before or after judgment and without prejudice to any other right or remedy of Okappy. The interest due must be paid when paying an overdue sum.

2. The provisions of clause 14.1 will not apply if the Customer has promptly contacted Okappy to dispute an invoice in good faith. No interest will accrue while such a dispute is ongoing.

#### **15. Limitation**

Goods sold by Okappy may not be used in equipment and or products for use in any life support systems, nuclear installations, aircraft, military services or public transport without prior written consent of the company.

#### **16. Provision of Service**

The Okappy service is provided via GPRS, GPS, Web and other mobile technologies. The customer is responsible for ensuring their mobile telephone and their computer, browser and internet connection meets the minimum requirements as stated by Okappy.

Charges may be levied by the customers' network operator.

The service is not available in all parts of the United Kingdom, nor in all other countries and may be restricted to certain areas within those countries where access to the service is possible. Okappy may use its reasonable skill and care exercise its discretion to refuse to provide any part of the service. Service is not fault free and may be impaired by geographic, atmospheric or other conditions or circumstances beyond Okappy's control.

#### **17. Status of Parties**

Nothing in this Agreement shall be construed as establishing or implying a partnership or joint venture between the Parties or shall be deemed to constitute either Party as the agent of the other or to allow either Party to hold itself out as acting on behalf of the other.

#### **18. ASSIGNMENT**

1. The Agreement is entered into between Okappy and the Customer as principals and the Customer shall not be entitled to assign the benefit or burden of it or of any interest in it without the prior written consent of the Supplier.
2. Okappy shall be entitled to carry out its obligations under this Agreement through any agents or subcontractors appointed by it in its absolute discretion.

#### **19. Personal Information (Data Protection)**

1. All personal information that Okappy may collect (including, but not limited to, vehicle location details, job details, and invoice details) will be collected, used and held in accordance with the provisions of the Data Protection Act 1998 and the purchaser's rights under that Act.
2. Information under clause 19.1 will only apply if the Customer's account is valid and is a valid subscriber to Okappy.
3. Okappy may use personal information to:
  - (a) provided Okappy's Services; and
  - (b) inform purchaser of new products and services available from Okappy. Okappy may

send to the Customer and its employees details of other products and services offered by its group that may interest the Customer. If the Customer or its employees do not want to receive details of these offers then they should contact the Okappy Marketing Department either in writing at 229 Rotherhithe Street, London, SE16 5XW by fax on 0207 099 5078, by telephone on 0207 394 7457 or by e-mail at [sales@okappy.com](mailto:sales@okappy.com).

4. Okappy will not pass personal information to any other third parties without first obtaining the Customer's express permission. However Okappy may disclose the Customer's and its employees' details to organisations working on behalf of Okappy anywhere in the world (for example, credit reference agencies, mailing houses and call centres).

#### **20. Entire Agreement**

1. Each Party acknowledges that this Agreement together with all documents entered into or to be entered into under its terms (a) together constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and (b) in relation to such subject matter supersedes all prior discussions, understanding and agreements between the Parties and their agents.
2. Each Party agrees that in entering into this Agreement and the documents referred to in it, it is not relying on any statements, warranties or representations given or made (whether negligently or innocently and whether express or implied), or any acts or omissions by or on the part of any Party in relation to the subject matter of this Agreement, except those expressly set out in this Agreement.
3. Nothing in this Clause shall operate to limit or exclude any liability for fraud.

**21. Severability**

In the event that any term, condition, provision or Clause of this Agreement shall be nullified or made void by any statute, regulation or order or by the decision or order of any court having jurisdiction, the remaining terms, conditions and provisions shall remain in full force and effect.

**22. Waiver**

1. A failure by Okappy to exercise, or a delay in exercising, any right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies which Okappy may otherwise have and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

2. Any waiver of a breach of any of the terms of this Agreement or of any default under this Agreement shall not be deemed a waiver of any subsequent breach or default and shall not affect the other terms of this Agreement.