

[South Africa]

## **General Terms and Conditions**

### **TomTom International B.V.**

**De Ruijterkade 154, 1011 AC Amsterdam, the  
Netherlands, and any affiliates (together,  
“TomTom”)**

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## 1 Scope

These Terms and Conditions apply:

- i. to any order for, purchase of or other form of obtaining:
  - Products and Services directly via TomTom; and
  - Apps via a Reseller; and
- ii. to your Account and the creation thereof; and
- iii. to the use and/or access of:
  - all Products, Services, Apps and User Contributed Data; and
  - Built-in Devices, except in the case that the terms and conditions from the Reseller or third party manufacturer of such Built-in Devices apply; and
- iv. to uploading, using and/or accessing your User Data.

By (i) submitting any order for the purchase of or other form of obtaining of a Product, Service, or App, and by (ii) using, and/or accessing any Platform, Service, or App and by (iii) creating an Account, you accept and are bound by these Terms and Conditions and any amendments and additions to it.

The list of definitions used in these Terms and Conditions can be found at the end of this document.

## 2 Your order directly via TomTom

### 2.1 How to place an order

TomTom offers Products and Services via TomTom Websites, Platforms and Apps. These Products and Services may contain or consist of TomTom Content and Third Party Material.

When you would like to order, purchase or in any other form obtain a Product or Service directly from TomTom, you can place an order via a Platform, a TomTom Website or an App.

Any order submitted is subject to acceptance by TomTom. An agreement is concluded upon acceptance by TomTom by way of an order confirmation. TomTom reserves the right to reject any orders in full or in part or to apply a maximum order amount. All orders for Products are subject to stock availability.

### 2.2 Price and payment

Some Products and Services are subject to payment. Prices indicated for Products and/or Services on the TomTom Websites and App include VAT and standard shipping costs and handling charges (if any). You are responsible for any local sales taxes, other taxes and government levies, if any, associated with the order. Prices are subject to change at any time (and subject to clause "Termination and alteration" in the section "TomTom's Rights" in the chapter "Your Usage" of these Terms and

Conditions) but will not affect orders for Products or Services made prior to the date of the change.

Some Services are offered free of charge. TomTom reserves the right to depart from or to cease offering such Services free of charge at any time. TomTom will inform you if a Service is to be offered for a fee in the future. In such an event, you may choose to either continue your use of the Services for such fee or to terminate your use of the Service.

All orders must be paid for through the payment service as made available by TomTom. In order to submit orders and use such a payment service you must supply details of your preferred payment method, billing and shipping address (if applicable) and/or any other details necessary to complete the order.

If, for whichever reason, collection through such a payment service should fail, TomTom will invoice you by post for the amount payable, which must be paid by cheque, postal order or credit card within fifteen (15) days from the date of invoice.

### **2.3 Delivery and risk of loss**

TomTom will aim to deliver the Product within thirty (30) days of order acceptance. If multiple Products are ordered, TomTom reserves the right to deliver each Product separately. Furthermore, TomTom aims to make Services available within twenty four (24) hours after the order acceptance.

A Product will be delivered to your delivery address. A Service will be downloadable or delivered and/or made available to you electronically. The risk of loss or damage to a Product will pass to you at the moment the Product is delivered to you. The risk of loss or damage to a Service will pass to you at the moment the Service is made either available to you or delivered to you electronically.

If you do not take delivery of the Product, TomTom reserves the right to charge you for the reasonable cost of storing the Product until delivery can be made.

If delivery to you should fail for any reason outside of TomTom's control, TomTom reserves the right to cancel the agreement and refund any monies paid.

If TomTom by mistake delivers a Product to you or delivers and/or by mistake makes available a Service to you, please contact TomTom in order to receive further return instructions (email via <http://www.tomtom.com/support>).

## **3 Your cancellation rights of orders**

For Products purchased via TomTom, you have a right to cancel the purchase agreement for any reason within a period of fourteen (14) days commencing on the date of delivery to your delivery address. TomTom will refund the purchase price and original shipping costs actually paid (with the exception of the additional costs resulting from the choice of a type of delivery other than the least expensive type of standard delivery offered by us, or where multiple Products were ordered and not all Products purchased are returned). TomTom will carry out such reimbursement using

the same means of payment as you used for your initial transaction, unless you have expressly agreed otherwise.

To exercise your cancellation right you must inform TomTom about your decision by contacting TomTom during the fourteen (14) days following delivery by email via <http://www.tomtom.com/support> to obtain an authorisation number for the return of your order. You may use the Withdrawal Form [[www.tomtom.com/support](http://www.tomtom.com/support)]. Subsequently, you should without any delay return the Product, free of all interests, liens, or claims otherwise, to the address mentioned on the postage label that you receive when you obtain an authorisation number for the return of your order.

If you decide to cancel the purchase agreement and return the Product to TomTom, you will be liable for any diminished value of the Product resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the Product.

You accept that TomTom may charge you for any shipping or postage costs incurred directly associated with returning the Product.

For Services obtained via TomTom you agree that the performance of Services by TomTom will commence immediately – or at least as soon as possible - on TomTom's acceptance of your order and that you relinquish your cancellation right upon performance.

For Apps obtained via TomTom or a Reseller you agree that the performance of the Apps obtained by you will commence immediately – or at least as soon as possible – after you have downloaded the App and that you relinquish your cancellation right upon performance.

## **4 Your Account and your subscriptions**

### **4.1 Your Account: registration and management**

You may be required to create an Account and subsequently to log into the relevant Platform in order to:

- i. order a Product or Service;
- ii. access or use a Service, App and/or User Contributed Data (either obtained directly via TomTom or via a Reseller), and
- iii. be able to upload and/or download User Data and/or User Contributed Data

Notwithstanding your right to use a pseudonym (“alias” or “nickname”) when creating an Account, you agree to provide correct information about yourself when registering. Please keep your Account information up to date and promptly change your Account information in case any relevant changes occur.

Services, Apps, and User Contributed Data are intended solely for users who are eighteen (18) years of age or older. You represent and warrant that you are eighteen (18) years of age or older. Do not create an Account as another individual, group or entity without such party's consent, or sell or transfer your profile or Account.

You are responsible and liable for any activity that occurs on or via your Account. You are responsible for your own username and activities related thereto. TomTom is not responsible for any loss that results from the unauthorised use of your Account, with or without your knowledge.

You must notify TomTom immediately in the event you become aware of any access to or usage of Services, Apps, User Data and/or User Contributed Data by third parties under your Account that you did not authorize or any other possible breach in security.

## **4.2 Subscriptions**

A Service may be offered on a once-off basis or on a subscription basis. When you have a subscription, the Service will be provided to you either regularly or continuously.

Subscriptions will be entered into for an indefinite period of time, unless TomTom and you have agreed on a fixed period of time.

## **4.3 Termination of your Account and/or your subscriptions**

In case you wish to terminate your Account and/or subscription, you may do so by contacting TomTom via <http://tomtom.com/support> and choosing the option "contact us", observing a thirty (30) days notice period.

TomTom may also terminate your Account and/or subscription for neutral reasons (and notwithstanding its termination rights under chapter "Termination and Restrictions in case of Breach by You" of these Terms and Conditions). TomTom shall always try to inform you as far as is possible of any imminent termination, but - in any case - will notify you at least thirty (30) days before the actual termination of your Account.

In the event of termination of your Account and/or subscription, you must destroy all copies of the TomTom Content and all of its component parts.

After termination of your Account, you will not have access to any data including your User Data. It is your own responsibility to remove any User Data that you wish to keep before the termination is completed.

If your subscription is for a fixed period of time, it will automatically end upon expiration of such a period of time.

# **5 Your usage**

## **5.1 Your usage rights**

### **5.1.1 Services and Apps**

TomTom grants you permission to access and use the Services and Apps obtained directly via TomTom or via a Reseller in accordance with these Terms and

Conditions. In case a Service and/or App should be purchased, the permission to access and use of this paid Service and/or App will be granted to you after the purchase has been completed.

### **5.1.2 TomTom Content**

Services and Apps will contain TomTom Content. You are granted a licence to use the TomTom Content provided to you as part of and/or via your Product, Service or App, on the terms set out in this clause.

This licence is non-exclusive and non-transferable. This licence does not include any right to obtain future upgrades, updates, supplements, or any support or technical assistance relating to the Service, App or TomTom Content, unless TomTom has specifically indicated that obtaining these is an integral part of the Product, Service or App.

If upgrades, updates or supplements to the Service, App or TomTom Content are obtained, the use thereof will be governed by these Terms and Conditions or such other terms and conditions and may be subject to additional payments, as you shall be informed and asked to accept prior to TomTom supplying you with the relevant upgrade, update or supplement.

In addition the following applies in particular to TomTom Maps (one of TomTom's Services):

- i. with respect to the data for China: you agree that any Service which contains data for China may be subject to additional terms and conditions which shall be provided to you when available to TomTom. Data for China may not be exported from China.
- ii. with respect to the data for India: you agree that any Service which contains data for India may be subject to additional terms and conditions which shall be provided to you when available to TomTom.
- iii. with respect to the data for South Korea: you agree that any Service which contains data for Korea may be subject to additional terms and conditions which shall be provided to you when available to TomTom. Data for Korea may not be exported from South Korea.

### **5.1.3 User Data and User Contributed Data**

TomTom grants you permission to (i) upload, use and modify User Data, and (ii) upload and use User Contributed Data, all in accordance with these Terms and Conditions.

By uploading any User Data, you will retain all rights you may have therein.

By uploading your User Contributed Data, you will retain all rights you may have therein but you hereby grant TomTom a worldwide, perpetual, irrevocable, non-exclusive, royalty-free, transferable license to use, upload, modify, distribute, sublicense, reverse engineer, decompile or disassemble and display such User Contributed Data or links thereto in any form and through any media.

If you believe that your work has been improperly copied and posted on Services, Apps, or TomTom Websites, such that it constitutes infringement, please provide us with the following information: (i) name, address, telephone number, email address and an electronic or physical signature of the copyright owner or of the person authorised to act on his/her behalf; (ii) a description of the copyrighted work that you claim has been infringed; (iii) a description of where on the Services, Apps, or TomTom Websites the material that you claim is infringing is located; (iv) a written statement that you have a good faith belief that the disputed use is not authorised by the copyright owner, its agent, or the law; and (v) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorised to act on the copyright owner's behalf. These requirements must be followed to give TomTom legally sufficient notice of the infringement. Send copyright infringement complaints to: [illegalproduct@tomtom.com](mailto:illegalproduct@tomtom.com).

With respect to User Contributed Data of other users, TomTom grants you the right to use and modify and upload such User Contributed Data in accordance with these Terms and Conditions.

## **5.2 Your usage responsibilities and obligations**

### **5.2.1 Your ownership of User Data and User Contributed Data**

TomTom does not claim any ownership in the User Data or User Contributed Data. You affirm and warrant that you own or have the necessary licenses, rights, consents, and permissions to upload the User Data and User Contributed Data and to grant TomTom all the rights granted in these Terms and Conditions including the right to grant other users of the Services, Apps and TomTom Websites permission to use and modify and upload your User Contributed Data in accordance with these Terms and Conditions.

### **5.2.2 Restriction to alter Products, Services and Apps**

Other than as permitted by applicable legislation or as expressly permitted through any technology or means made available by TomTom through the Products, Services and Apps, you will not, and will not allow any person to alter, distort or modify the Products, Services and Apps or any part thereof (either obtained directly via TomTom or via a Reseller), to analyse it by means of reverse engineering, to decompile or disassemble the Products, Services and Apps, to make other products derived from it, or to break or circumvent encryption or to allow or enable third parties to do so.

### **5.2.3 Reporting and refraining from misuse**

Please be informed that TomTom assumes no responsibility for regularly monitoring any of the Services, Apps, and User Contributed Data. If you become aware of any misuse of or on the Services, Apps or User Contributed Data by any user, please report such misuse to TomTom by contacting TomTom support via <http://www.tomtom.com/support>.



By accessing or using Services and Apps, and by uploading or using User Data or User Contributed Data, you agree to refrain from any improper behaviour which shall include but is not limited to the following:

- i. Promotional use and payments: Use of Services and Apps and/or User Data or User Contributed Data for advertising, promotional purposes, marketing and/or sales purposes, posting a solicitation or any other commercial content whatsoever via the Services and Apps. Additionally, you also agree to refrain from directly or indirectly charging any third party for the use of the Services and Apps and/or User Contributed Data, or from accepting payment from a third party to this end. Furthermore, you agree to refrain from framing or mirroring any Services, Apps or User Contributed Data;
- ii. Electronic assaults: taking any action on the Services and Apps designed to circumvent, interfere, disrupt, damage, disable, overburden or limit the functionality of any software or hardware, telecommunications equipment, (security) technology, Services and Apps. You agree not to post User Data or User Contributed Data that contains software viruses, programs or other computer code. Additionally you agree not to upload User Data or User Contributed Data which would involve sending or otherwise making available any material that contains viruses, Trojan horses, worms, time bombs, or any other similar software that may damage the operation of TomTom's servers, computers or networks or a user's Account, computers, networks or Product. Additionally, you also agree to refrain from using or launching any automated system, including but not limited to, "robots" and "spiders" that access Services and Apps in a manner that sends more messages or requests to the TomTom servers than any regular, private user of Services and Apps can reasonably be expected to produce in a similar period of time by using a conventional system. Additionally, you also agree to refrain from trying to gain access to or disrupt another user's Accounts, computers or networks without authorisation;
- iii. Spamming or harassing: posting any User Contributed Data that involves the transmission of "junk mail," "chain letters," or unsolicited mass mailing or "spamming";
- iv. Suggesting involvement of TomTom: displaying User Contributed Data in a manner that implies a relationship or affiliation with, sponsorship, or endorsement of the User Contributed Data by TomTom, that is misleading, offensive, illegal, harmful, tortuous, abusive, defamatory, obscene, vulgar, hateful, that infringes any third party right, is otherwise unlawful, or impairs TomTom's intellectual property rights;
- v. Mislead: uploading User Contributed Data that promotes information that you know is false or misleading;
- vi. Harming, violating laws or rights of others: posting any User Contributed Data that infringes or violates anyone else's rights, including copyright, trademark, patent, trade secret, privacy, publicity or other personal or proprietary rights. Additionally, you agree not to post any User Contributed Data, take any action or use Services and Apps in a way that violates any law or promotes illegal activities. Furthermore, you agree not to post content either directly or through a link, that is illegal, offensive, libellous, defamatory, infringing, inflammatory, deceptive, inaccurate, misleading, malicious, fraudulent, false, indecent, harmful, harassing, intimidating, threatening,

- hateful, abusive, vulgar, obscene, pornographic, violent, sexually explicit, invasive of privacy, publicity, intellectual property, proprietary or relates to contractual rights, offensive in a sexual, racial, cultural, or ethnic context, will harm or threaten the safety of others, or entails using or posting personal information (including telephone numbers, home or e-mail addresses, names or last names), photos or other images from or concerning other users or other third parties without their explicit consent, or is otherwise objectionable;
- vii. Collecting or publishing data: please be aware of what personal information you share. You will refrain from obtaining or trying to obtain data through any Services, Apps or User Contributed Data except if TomTom intends to provide such data or makes it available to you. Furthermore, you agree not to upload any User Contributed Data containing restricted or password only access pages or hidden pages or images;
  - viii. Any other unlawful or unwanted use: using the Services, Apps and User Contributed Data in an unlawful way or in violation of any of these Terms and Conditions. Additionally, you also agree to refrain from violating any code of conduct or other guidelines which may be applicable to the Services, Apps and/or User Contributed Data.

#### **5.2.4 User Interaction Disclaimer**

You are solely responsible for your interactions with other people, whether online or in person. TomTom is not responsible or liable for any loss or damage resulting from any interaction with other users, persons you meet through Services and Apps or persons who find you because of information posted on, by or through Services and Apps. You agree to take reasonable precautions in all interactions with other users on Services and Apps, and conduct any necessary investigation before meeting another person. TomTom is under no obligation to become involved with any user dispute, but may do so at its own discretion.

#### **5.2.5 Physical Activity Notice Disclaimer**

Services and Apps may include features that promote physical activity. Consider the risks involved and consult with your medical professional before engaging in any physical activity or using the Products or TomTom Services. TomTom is not responsible or liable for any injuries or damages you may sustain that result from your use of, or inability to use, the features of the Products, Services and Apps.

### **5.3 TomTom's Rights**

#### **5.3.1 Communication and information**

By creating an Account, you agree that TomTom may communicate with you by electronic means and that certain information about your use of Services and Apps, User Data and/or User Contributed Data may be shared with us.

#### **5.3.2 Termination and alteration**

TomTom reserves the right, with or without notice, to discontinue, limit, alter, update, upgrade and supplement Services, Apps and User Contributed Data provided to you or made available to you through the use of a Product, Services and Apps

(either obtained directly via TomTom or via a Reseller), unless the provision of such updates, upgrades or supplements forms an integral part of the Product, Services and Apps, as indicated by TomTom at the time of sale.

TomTom reserves the right to change the prices for Services, (either on a once-off basis or subscription basis) and Apps, subject to giving you reasonable prior notice thereof (either via email, TomTom Websites, Services, Apps or otherwise). If such change will result in higher prices or otherwise works to your disadvantage (but not in the case the higher prices result from higher government levies or taxes), you may terminate your subscription prior to and against the date such change comes into effect by sending an e-mail via <http://www.tomtom.com/support>.

### **5.3.3 User Data and User Contributed Data**

TomTom may, at its sole discretion, collect and process usage statistics related to the User Data and User Contributed Data to improve its products, Services and/or Apps, provided it has obtained the necessary consent from you and as long as the statistics cannot be linked to you by any third party.

With respect to User Data, in the event you upload such data you consent to and grant TomTom a worldwide, perpetual, irrevocable, royalty-free licence to use and copy such User Data for TomTom's own use - without displaying the User Data to any third party without your consent - and consent furthermore to the transfer of your personal information (if at all) outside of the borders of South Africa, in so far that this use is necessary for TomTom to be able to provide you with the ordered Product and/or requested Service.

With respect to User Contributed Data, you hereby grant TomTom the right to grant permission to other users to use, modify and upload any User Contributed Data that you may upload through the Services and Apps in accordance with these Terms and Conditions.

TomTom may use such information as it deems fit, anywhere in the world, without obligation for compensation, and free of moral rights, intellectual property rights and/or other proprietary rights in or relating to such information.

When notified that any User Contributed Data may violate any part of these Terms and Conditions or infringes any other third party right, TomTom may remove such User Contributed Data without prior notice. TomTom may terminate your access to and use of Services and Apps for uploading such User Contributed Data.

## **6 Termination and restrictions in case of a breach by you**

TomTom reserves the right at its sole discretion without prejudice to any other rights, to immediately -without notice of default being required and without liability to you or anyone else - terminate your Account and/or your subscriptions, delete your profile and any of your User Data and/or User Contributed Data, and restrict your use of all or any part of your Account, Services and Apps if (i) you fail to comply

with or breach any material term of these Terms and Conditions, (ii) collection of payment for your Services and/or subscriptions should fail after a second attempt.

In such an event, you must return or destroy all copies of the TomTom Content and all of its component parts.

Furthermore, upon termination, your licences and rights as granted to you by TomTom will terminate simultaneously.

## **7 Limited warranty with respect to your Product**

### **7.1 Limited warranty**

TomTom offers a limited warranty that the Product (obtained either directly via TomTom or via a Reseller) will be free from defects in workmanship and materials under normal use for a period of two (2) years from the date the Product was purchased, or from the date of purchase until such date as you breach any of these Terms and Conditions, whichever is the shorter period. During this period, the Product will be – at the sole discretion of TomTom – either repaired or replaced by TomTom without charge for either parts or labour. Additionally, TomTom will be responsible for the transport and/or shipping costs related to the repair or replacement. If the Product is repaired after this Period has expired, the period for the repair will expire six (6) months after the date of repair. This limited warranty is not transferable.

### **7.2 What this limited warranty does not cover**

This limited warranty does not cover damage caused by normal wear and tear or as a result of the Product being opened or repaired by someone not authorised by TomTom, and does not cover damage caused by: misuse, moisture, liquids, proximity or exposure to heat and accident, abuse, non-compliance with the instructions supplied with the Product, neglect or misapplication. The limited warranty also does not cover physical damage to the surface of the Product.

Furthermore, this limited warranty does not cover any Services, Apps, User Contributed Data or Third Party Material that may accompany or be installed on the Product or obtained by you via the Services, Apps or TomTom Websites. The limited warranty does not cover the installation, removal or maintenance of the Product or any costs related herewith.

TomTom does not provide any commercial or other warranties in respect of the Products in addition to the limited warranty stated in these Terms and Conditions. This limited warranty is the only express warranty made to you and is provided in place of any other express warranties or similar obligations (if any) created by any advertising, documentation, packaging, or other communications.

The provisions of this clause do not affect any of your legal rights under applicable mandatory national legislation, including but not limited to your legal guarantee of conformity for goods.

### **7.3 How to make a warranty claim**

In order to make a claim under the limited warranty, you must notify TomTom about the defect and explain the defect to TomTom by contacting TomTom within the one (2) year warranty period via <http://www.tomtom.com/support> in order to obtain an authorisation number for the return of your order. The Products must be returned to TomTom as soon as possible following your notification of the defect, along with an explanation of the defect and the authorisation number provided to you by TomTom, to the address mentioned on the postage label you receive when you obtain an authorisation number for the return of your order. You must comply with such other return procedures as TomTom may stipulate, if any.

## **8 Limited warranty with respect to Services, Apps, User Contributed Data and Third Party Materials**

TomTom may be dependent on third parties for the provision of some (part of) Services, Apps and User Contributed Data.

You should be particularly aware of the fact that calculation errors may occur when using navigation systems or when using, uploading or modifying, as applicable, navigation systems, such as those caused by local environmental conditions and/or incomplete or incorrect data.

Services, Apps, User Contributed Data or any Third Party Materials are provided "as is" and without warranties of any kind.

To the fullest extent permitted by law, TomTom does not make any warranties or representations - express or implied- regarding the purchase (either directly via TomTom or via a Reseller), access and use of Services, Apps, User Contributed Data or any Third Party Materials including, but not limited to (i) correctness, errors and accuracy (ii) adequacy, (iii) usefulness, satisfactory quality, and fitness for a particular purpose (iv) reliability, defects, operation and availability (v) implied warranties of title and non-infringement, (vi) security, the risk of interception of information, viruses or anything else harmful, (vii) workmanlike effort, support, information or services, (viii) offensive, threatening, defamatory, unlawful or otherwise objectionable character.

The provisions of this clause do not affect any of your legal rights under applicable mandatory national legislation, including but not limited to any mandatory statutory warranties. If any part of this limited warranty is held to be invalid or unenforceable, the remainder of the limited warranty shall nonetheless remain in full force and effect.

## **9 Limitation of liability and indemnification by you**

### **9.1 Limitation of liability**

To the maximum extent permitted by applicable law neither TomTom nor its suppliers, its subcontractors, its affiliates, officers, directors, employees, or agents shall be liable to you or to any third party for any damages - either direct, special, incidental, indirect or consequential (including but not limited to damages for the inability to use or access the Products, loss of data, loss of business, loss of profits, business interruption or the like) arising out of or related to:

- i. the use of, the inability to use or access, or otherwise the performance of a Product, Service, App, User Data, User Contributed Data, or Third Party Material, even if TomTom has been advised of the possibility of such damages; or
- ii. your conduct or that of other users (whether online or offline) or attendance at a TomTom event or any User Contributed Data, even if TomTom has been advised of the possibility of such damages. You assume total responsibility for your use of the Services, Apps, User Data and User Contributed Data; or
- iii. any fraudulent misrepresentation on the part of users of Services, Apps, and/or User Contributed Data; or
- iv. any violation of these Terms and Conditions; or
- v. any law or the rights of any third party.

Furthermore, TomTom does not endorse any User Contributed Data or any opinion, recommendation, or advice expressed therein, and TomTom expressly disclaims any and all liability in connection with your access to and use of such User Contributed Data. TomTom is merely acting as a passive channel for the distribution of User Contributed Data and is not undertaking any obligation or liability relating to any User Contributed Data or activities of users. Even in the event TomTom chooses to monitor any User Contributed Data, TomTom assumes no responsibility for, or any obligation to monitor or remove, such User Contributed Data.

That said, if TomTom is found to be liable to you for any damage which is in any way connected with your (inability to) use and/or access of or otherwise the performance of a Product, Service, App, User Data, User Contributed Data and/or any Third Party Material, TomTom's liability shall (i) in the case of a paid Product, Service or App be limited to the amount actually paid by you for the Product, Service or App concerned, and (ii) in the case of free-of-charge Service, App, User Contributed Data and your User Data be limited to the amount of US \$350.00.

Notwithstanding any of the above or anything else contained in these Terms and Conditions, nothing in these Terms and Conditions shall limit either party's liability for death or personal injury resulting from its own negligence.

Applicable mandatory national legislation may not allow the limitations or exclusions of liability as set out in these Terms and Conditions. The above limitation of liability does not affect your rights under the applicable mandatory national legislation. For more information on rights under the applicable mandatory national legislation,

please contact your national Consumers Association or the relevant national authority.

## **9.2 Indemnification**

You agree to indemnify, defend, and hold harmless TomTom, its affiliates, officers, directors, employees, agents, licensors and suppliers from and against all claims, losses, liabilities, expenses, damages and costs, including, without limitation, attorneys' fees, arising from or relating in any way to your use of and/or your conduct in connection with a Product, Service, an App and/or your User Contributed Data and your conduct in connection with other users, or any violation of these Terms and Conditions, any law or the rights of any third party.

## **10 Third Party Materials and Third Party Websites**

Products, Services and Apps may make use of Third Party Materials. The use of Third Party Material included in the Products, Services and Apps may be subject to other terms and conditions. The official copyright notices and specific licence conditions of these Third Party Materials are to be found on or via our website <http://www.tomtom.com/legal>.

You hereby agree that the submission of any order implies that you have read and accepted the terms and conditions for any Third Party Material included in a Product, Service or App ordered, if any.

Where TomTom provides links and/or access to third party websites, and/or Third Party Material it is only as a convenience to you, and the inclusion of any link or access does not imply an endorsement by TomTom of the third party site, or Third Party Material. TomTom is not responsible for Third Party Materials and the content of any third party websites, services or functionalities, any links contained in third party websites or services, or any changes or updates to third party websites or services.

## **11 Force Majeure**

Force majeure means circumstances that impede the fulfilment of TomTom's obligations under these Terms and Conditions which are not within TomTom's reasonable control, including late and/or delayed deliveries and incomplete deliveries by TomTom and temporary or partially unavailability of your Account, Services, Apps, User Data and/or User Contributed Data caused by circumstances beyond TomTom's reasonable control. In a force majeure situation all of TomTom's obligations shall be suspended. Should the period in which TomTom cannot fulfil its obligations as a result of force majeure continue for longer than ninety (90) calendar days, both parties shall be entitled to dissolve the purchase agreement in writing and TomTom shall be entitled to dissolve the agreement for the Services or Apps without there being an obligation to pay any compensation whatsoever arising out of or in connection with that dissolution.

## **12 Privacy**

In order to deliver the Products and Services to you, TomTom needs to use personal information about you. TomTom adheres to European Union and other local privacy and data protection laws. Based on this, TomTom will only use your information for the purpose and duration for which it was obtained. You can find our applicable privacy statement on [www.tomtom.com/privacy](http://www.tomtom.com/privacy)

## **13 Third Party Rights**

Third parties have no rights under applicable legislation to rely upon or to enforce any term of these Terms and Conditions but that does not affect any right or remedy of a third party which exists or is available apart from such applicable legislation.

## **14 Change**

TomTom reserves the right to make amendments or additions to these Terms and Conditions at any time. You can find the most recent version on the TomTom Websites. Please refer back to the TomTom websites regularly.

## **15 Entire agreement**

These Terms and Conditions (including any addendum or amendment to them which is included with the accompanying package of the Product), and any other terms and conditions, if applicable, is the entire agreement between you and TomTom relating to the Products including the support services (if any), Services, Apps, User Contributed Data, and/or User Data and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the software or any other subject matter covered by these Terms and Conditions. To the extent that the terms of any TomTom policies or programmes for support services conflict with the terms of these Terms and Conditions, the terms of these Terms and Conditions shall apply. If any provision of these Terms and Conditions is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

## **16 Survival**

Any provisions in these Terms and Conditions which by their nature extend beyond the termination or expiration of any sale or license of your Account, Service, App, User Data, and User Contributed Data will remain in effect after the termination of these Terms and Conditions.

This includes but is not limited to TomTom's license to use, upload, modify, distribute, sublicense, reverse engineer, decompile or disassemble and display User Contributed Data generated by you.



## 17 Severability

If any provision of these Terms and Conditions is deemed to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect. In case of any such invalid provisions, TomTom will present new terms and conditions in substitution for such invalid provisions. These new terms and conditions shall be interpreted, as regards their contents and effect, as closely as possible to the original text as written but in such a way that rights can indeed be derived from them.

## 18 Governing law and competent court

These Terms and Conditions and any disputes related to these Terms and Conditions or to the purchase and use of the Products, Services, Apps, User Data, User Contributed Data or otherwise are subject to South African law. The United Nations Convention on Contracts for the International Sales of Goods is hereby excluded from application to these Terms and Conditions.

The High Court of South Africa shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Terms and Conditions (including any non-contractual disputes or claims).

## 19 Translations

The English version of these terms and conditions is the prevailing version for your purchase. Any translations are provided for convenience only.

## 20 Questions and complaints

Should you have any questions, suggestions or complaints concerning your order, your purchase, these Terms and Conditions, or if you desire to contact TomTom for any reason, please do so by email via <http://www.tomtom.com/support>. TomTom will take careful note of your email and will process any complaints as soon as possible and will send you a reply within one (1) week.

## 21 Definitions

**Account:** your TomTom account created via a Platform or an App.

**App:** any mobile apps developed by TomTom, downloadable via a Reseller.

**Built-in Device:** any built-in Product in a vehicle and sold via a third party to you.

**Platform:** any platforms made available by TomTom via which you will be able to receive Services. Such platforms include, but are not limited to:

- TomTom MyDrive
- TomTom Home

- MyTomTom
- TomTom MySports
- TomTom discussion forum
- and any other online platforms

**Product:** any hardware, items and accessories, including but not limited to:

- all navigation devices (excluding the Built-in Devices)
- sports devices
- accompanying items and accessories

**Reseller:** any online or offline Reseller selling Products, Built-in Devices, Services and Apps including but not limited to third party (car) dealers and third party app stores.

**Service:** any paid or free-of-charge service provided by TomTom, by electronic means, either on a subscription basis, continuous basis or once-off basis, including but not limited to:

- maps (either pre-installed or downloaded)
- safety camera information
- traffic information
- points of interest
- weather information
- fuel price information
- voices
- TomTom Content
- Platforms

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**Third Party Material:** content, software codes, data, information, functionality, other content and algorithms licensed or otherwise made available by parties other than TomTom.

**TomTom Content:** all information, text, files, scripts, graphics, photos, sounds, music, videos, interactive features, functionalities or other similar materials, made available by TomTom.

**TomTom Websites:** all websites made available by TomTom, which are accessible by you without prior registration or logging in, including, but not limited to:

- [www.tomtom.com](http://www.tomtom.com)
- [www.routes.tomtom.com](http://www.routes.tomtom.com)
- [www.places.tomtom.com](http://www.places.tomtom.com)



**User Data:** content that you upload on or via an App, a Platform, a Product, or a Service, including communications, materials, information, data, opinions, photos, profiles, messages, notes, website links, music, videos, designs, graphics, sounds, and any other content, except to the extent the intellectual property rights relating to the aforementioned content are with TomTom or the aforementioned content is otherwise owned by TomTom, its affiliates or licensors.

**User Contributed Data:** any User Data contributed to TomTom via the use of an App, a Platform, a Product or a Service, **but only in case TomTom has the right to use this data** according to your approval, the relevant product information, these Terms and Conditions, and/or TomTom's privacy statement made available to you by TomTom.