

1. INTERPRETATION

- 1.1 The headings of the clauses herein are for the purpose of convenience and reference only and shall not be used in the interpretation, nor amplify the terms of these terms and conditions or any clause hereof. Unless contrary intention clearly appears, wording importing any one gender includes the other gender, the singular includes the plural and vice versa, and natural persons include legal entities and vice versa.
- 1.2 The following terms shall have the meaning assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
- 1.2.1.1 "Supplier" means SportsTrack Manufacturers CC (Registration Number 2004/096022/23);
- 1.2.1.2 "Customer" means any person or entity ordering Goods from SportsTrack as referred to in an Order Confirmation;
- 1.2.1.3 "the Contract" means the sale and purchase agreement of Goods which comes into existence upon SportsTrack's acceptance of an Order Confirmation, which acceptance needs not be communicated to the Customer;
- 1.2.1.4 "Goods" means goods to be supplied by SportsTrack to the Customer in the quantities and packaging as set out in the Contract;
- 1.2.1.5 "Order Confirmation" means the placing of an order by the Customer to purchase Goods from SportsTrack, whether same is conveyed to SportsTrack in writing or orally;
- 1.2.1.6 "prime rate" means the publicly quoted basic rate of interest per annum from time to time (as certified by any officer of Standard Bank of South Africa Limited whose appointment and authority it shall not be necessary to prove) at which the said bank lends monies in South African Rand on unsecured overdraft to first class corporate borrowers in general on the basis of such interest being compounded monthly in arrear and calculated on a 365 (three hundred and sixty five) day year factor, irrespective of whether or not the year is a leap year (and which said rate of interest is sometimes referred to as the prime commercial overdraft rate of interest);
- 1.2.1.7 "Software" means the embedded computer application software developed by or for SportsTrack and used in or in conjunction with the Goods, or any part thereof, including, without limitation, presently available and future upgrades, modifications and enhancements thereto and the documentation associated therewith, whether incorporated in humanly intelligible media or not.

2. PREVAILING TERMS & CONDITIONS

The Customer acknowledges that the party's relationship shall be governed solely by the terms and conditions contained herein, which shall apply to every Contract and shall prevail over any term and condition contained in any documentation of the Customer or in any other documentation.

3. QUOTATIONS AND CONTRACT

- 3.1 Any quotation given by SportsTrack is not an offer by SportsTrack to sell the Goods, but constitutes an invitation by SportsTrack to the Customer to place an Order Confirmation.
- 3.2 SportsTrack may accept or reject in whole or in part any Order Confirmation placed by the Customer.
- 3.3 The prices referred to in a quotation are subject to any variation in the prices charged for the relevant Goods as set out in SportsTrack's prevailing price list in force and effective on the date when the Contract comes into existence.
- 3.4 The descriptions and illustrations contained in any catalogue, price list and/or advertisement matter are intended to represent merely the general idea of the Goods describe therein and none of these shall form part of a Contract.
- 3.5 Each Order Confirmation accepted by SportsTrack shall constitute a separate agreement between the parties on the terms and conditions specified therein.

4. PURCHASE PRICE AND PAYMENT

- 4.1 Order Confirmation are accepted by SportsTrack on the basis that the prices charged for the relevant Goods will be those as set out in SportsTrack's prevailing price list in force and effect on the date when the Contract comes into existence. The Customer, on request, may obtain a copy of SportsTrack's prevailing price list from SportsTrack. SportsTrack reserves the right to amend the price list at any time without notice to the Customer.
- 4.2 The purchase price for Goods to be delivered which is not included in SportsTrack's prevailing price list shall be the prices as contained in SportsTrack's relevant quotation.
- 4.3 The Customer shall be obliged to pay to SportsTrack in addition to the said purchase price -
- 4.3.1.1 the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force and effect after the date the Contract comes into existence;
- 4.3.1.2 any other additional costs of any nature whatsoever arising due to factors beyond the control of SportsTrack;
- 4.3.1.3 any expenses and costs arising as a result of or during the period of any delay caused by the Customer, avoiding SportsTrack to deliver the Goods to the Customer, including, but not limited to, the cost of storage of any Goods.
- 4.4 The purchase price in respect of any Goods sold by SportsTrack to the Customer shall be payable by the Customer to SportsTrack, at such place or into such bank account as SportsTrack may direct from time to time, in cash, in South African currency, without deduction or set-off and free of any exchange within 30 (thirty) days from date of invoice with respect to Goods therein contained.
- 4.5 The Customer has no right to withhold payment for any reason whatsoever and therefore the Customer is not entitled to set off any amount due to the Customer by SportsTrack against any debt owed by the Customer to SportsTrack, nor shall any payment be withheld by virtue of any alleged counterclaim against SportsTrack by the Customer.
- 4.6 Any amount due by the Customer to SportsTrack shall bear interest at the prime rate, calculated monthly in arrears on the amount due from the date such amount is due until payment thereof. Such interest shall be payable on demand or the date the amount due is paid by the Customer, whichever date is the earlier.
- 4.7 A certificate under signature of any Director, Financial Manager or Credit Manager of SportsTrack whose authority shall not be necessary to prove, shall be prima facie proof of the obligation of the Customer towards SportsTrack and also of the fact that the amount so stipulated is already due and payable with any interest payable thereon.
- 4.8 The Customer renounces the benefits of the legal exceptions, revision of accounts, non numerate petunia (no value received) error calculi (mistake in the calculation of outstanding amounts), and non causal debit (no cause of debt), the full force, meaning and effect of which the Purchase acknowledges to know and understand.

5. DELIVERY AND RISK

Delivery of Goods by SportsTrack to the Customer shall take place Ex Works. Any and all risk in and to the Goods shall pass to the Customer on delivery.

6. WARRANTIES & GUARANTEES

- 6.1 The Customer declares that it is fully acquainted with the quality and other attributes of Goods purchased and the Goods are sold and purchased "as is" and SportsTrack shall not be liable for any latent or patent defect in the Goods.
- 6.2 No warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth herein shall be binding on SportsTrack.
- 6.3 To the extent that Goods supplied by SportsTrack are in any ways defective, the Customer shall be entitled to claim within 24 (twenty four) months of the delivery of the relevant Goods, the replacement or repair of the Goods or any part thereof to eliminate any defect in workmanship or materials found in the Goods originally ordered to be due exclusively to any acts or omissions on the part of SportsTrack.
- 6.4 SportsTrack may in its discretion decide to repair the relevant Goods or replace the Goods with the same or similar Goods. SportsTrack shall however not be under any obligation to effect any replacement or repair until the Customer has paid the full amount due to SportsTrack in respect of the Goods concerned.
- 6.5 The warranty contained in this clause shall not extend beyond the respective periods stated in clauses 6.3 and 6.4 even if the Goods or parts thereof has been repaired or replaced by SportsTrack as set out above.
- 6.6 In order to be valid, a claim in terms of clause 6.5 must be submitted to SportsTrack in writing within 10 (ten) days after the defect arises, specifying the alleged defect, and supported by the original tax invoice and proof of date of on-selling. The Goods must further be returned by the Customer to SportsTrack at the Customer's expense, packaged in their original packaging.
- 6.7 In the event that a claim has not been validly submitted to SportsTrack in terms of clause 6.6, SportsTrack reserves the right to return the Goods to the Customer, without correction, at the cost of the Customer.
- 6.8 All risk in and to the Goods during transport if Goods are returned, replaced or repaired in terms of this clause 6.7 shall vest in the Customer.
- 6.9 All Goods or part/s thereof replaced or repaired by SportsTrack shall become the property of SportsTrack.
- 6.10 SportsTrack shall be relieved of all obligations in terms of clause 6.4, if-
- 6.10.1.1 repairs or modifications have been made by persons other than SportsTrack, unless such repairs or modifications are made with the prior written consent of SportsTrack;
- 6.10.1.2 any defect arises from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow SportsTrack's instructions (whether oral or in writing), improper use outside SportsTrack's specifications, damage to the Goods caused by improper maintenance, service or repair by untrained personnel or technicians, unauthorized alterations or modifications to the Goods, and incorrect installation;
- 6.10.1.3 in respect of parts, materials or equipment which are accepted in the industry to have a limited life expectancy or parts, materials or equipment, which need to be replaced at specified and/or published service intervals;
- 6.10.1.4 parts, materials or equipment other than those recommended for use by SportsTrack are fitted, attached or used on the Goods;
- 6.10.1.5 if the battery was short-circuited by the seals of battery enclosure or the cells being broken or showing evidence of tampering or by the fact that the batteries are being used in equipment other than the Goods;
- 6.10.1.6 if the Goods has been exposed to moisture, to dampness or to extreme thermal or environmental conditions or to rapid changes in such conditions, to oxidation, to spillage of food or liquid, or to influence from chemical products;
- 6.10.1.7 in respect of any error upon installation, variation in electric current beyond the normal limits, corrosion of any Goods or parts purchased.
- 6.10.1.8 Any repair or replacement time given by SportsTrack is merely estimates and SportsTrack shall not be bound thereby.
- 6.10.2 Notwithstanding the aforesaid the Customer shall only be entitled to such benefits as SportsTrack may be entitled to under any guarantee given by the manufacturer of Goods or parts thereof not manufactured by SportsTrack.
- 6.10.3 It is recorded that a third party independent operator provides the GSM Cellular sim card and/or other network or system on which the Goods operate. SportsTrack will not be liable for the operation, availability, coverage, service or range of the cellular or other network systems.

7. LOSS / DAMAGE

- 7.1 The Customer accepts the guarantee referred to in paragraph 6 to the exclusion of any other remedy available to the Customer and SportsTrack's liability shall be limited to what is set out in paragraph 6.4.
- 7.2 SportsTrack shall not be liable to the Customer by reason of any representation or implied warranty, condition or other term or any duty at common law, or under the express terms of this agreement, for any loss or damage (direct, indirect or consequential, for loss or profit or otherwise and whether occasioned by the negligence of SportsTrack or its employees or agents or otherwise) arising out of or in connection with any act or omission of SportsTrack relating to the supply of the Goods, their use, inability to use or resale by the Customer or any third party.

8. OWNERSHIP

Ownership of the Goods shall not pass to the Customer until the purchase price (including interest if any) in respect of the Goods in question has been paid. The provisions hereof shall apply notwithstanding the fact that the Goods may be incorporated into or form part of other Goods or may have changed their essential character.

9. INTELLECTUAL PROPERTY

- 9.1 The Customer acknowledges that any and all of the intellectual property used or embodied in or in connection with the Software and/or any Goods are and will remain the sole property of SportsTrack. The Customer shall not question or dispute the ownership of such rights at any time.
- 9.2 The Customer shall not copy the whole or any part of the Software and/or any Goods, save as otherwise provided herein; reverse engineer, disassemble, translate, adapt, modify, alter or in any way decode the whole or any part of the Software and/or the Goods; convert the whole or any part of the Software from object code to source code; merge or combine the whole or any part of the Software with any other computer software or documentation; part with possession of, lend, assign, lease, sub-licence, transfer or otherwise provide electronically any part of the Software and/or the Goods or any copy or part thereof to any other person; use any of the data or other confidential information of SportsTrack contained in or derived from the Software and/or the Goods or to develop or market any software which is substantially similar in its function or expression to any part of the Software; or use the Software for the business needs of another person or entity.

10. GENERAL

- 10.1 These terms and conditions together with a relevant Contract constitutes the whole agreement between the parties and no amendment or consensual cancellation of these terms and conditions or other document issued or executed pursuant to or in terms of this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of the Contract or document issued pursuant to or in terms of a Contract shall be binding on SportsTrack unless recorded in a written document signed by a director of SportsTrack.
- 10.2 SportsTrack shall have the right to institute any action in either the relevant Magistrate's Court or the High Court at its sole discretion.
- 10.3 Each paragraph or clause in these terms and conditions and/or a Contract is severable the one from the other and if any paragraph or clause is found by any competent court to be defective or unenforceable for any reason whatever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force and effect.
- 10.4 The parties choose domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the payment of any sum, serving of any process and for any other purpose arising from this agreement at their addresses and telefacsimile numbers as referred to in the Order Confirmation or SportsTrack's invoice.
- 10.5 These terms and conditions and every Contract shall be governed by and construed in accordance with the laws of the Republic of South Africa.

11. COSTS

The Customer shall be liable for all costs incurred by SportsTrack in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs of an attorney and own client scale and costs of counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.