

SmartWatch Solutions Ltd Terms & Conditions



1 Definitions & Content	
1.1	In these Conditions:
“Company”	means the service or product supplier SmartWatch Solutions Ltd (Company Reg No. 6799532)
“Client”	means the person, firm or company whose name, address or project reference is set out within the quotation or contract
“Conditions”	means the conditions of supply set out in this document and unless specified includes any special terms and conditions agreed in writing between the Company and the Client
“Confidential Information”	means information relating to our business, services and agreements which may from time to time be, or be treated by the Company, as confidential. This will include all trade secrets and intellectual property including without limitation processes, methods, inventions, technical data and know-how
“Contract”	means the contract between the Company and the Client for the supply of Services and/or Products, including these Conditions and signed schedule of services
“Force Majeure”	means any circumstances beyond the reasonable control of the Company including (without limitation) any breakdown of plant and machinery, any loss of power (howsoever caused), any strike, extreme weather conditions, lockout or other industrial action or any civil or military unrest or conflict, any failure, disruption or failure of mobile data network providers and their associated facilities
“Premises”	means the premises at which the Products are to be installed and/or in respect of which the Services are to be provided for the duration agreed as detailed on the quotation or signed schedule of services
“Products”	means the CCTV and other security equipment (including any instalment of them) which the Company are to supply in accordance with these Conditions, including the Virtual Products and the Manned Products
“Quotation”	means the written quotation prepared by the Company and sent to the Client containing details of the Products and/or Services which the Company will provide and/or supply, the manner in which the Products and/or Services will be provided and the price
“Services”	means the installation of the Products and/or the maintenance, security and monitoring services which the company are to supply in accordance with these Conditions
“Virtual Products”	means any product or service where technology or automated systems are the primary source of information and/or service delivery
“Manned Products”	means any product or service where a security guard, cleaner or other member of SmartWatch Solutions’ staff, representative or sub-contractor is the primary source of information and/or service delivery
“Website”	means the web domain www.smartwatchesolutions.co.uk and related web based resources provided by the Company
“Privacy Policy”	means the smartwatch privacy policy located at http://www.smartwatchesolutions.co.uk/privacy-policy/

This document sets out the terms and conditions upon which the Company provides security services and associated products and services to its clients. These Conditions govern our service provision to the Client to the exclusion of any other terms and conditions implied by the placement of a Clients order for said products or services

1.2 The headings and format of these Conditions are for convenience only and shall not affect their interpretation.

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1.3	No verbal, email variation of these Conditions shall bind the Company unless agreed it in writing and signed by a senior member of the board of the Company.
1.4	Employees or agents of the Company are not authorised to make any representations concerning the Products or Services unless confirmed by the Company in writing. The Client acknowledges that they do not rely on any representations which is not confirmed in writing and signed by a senior member of the Company's board. Advertising and other promotional material issued by or on behalf of the Company do not form part of the Contract nor is any statement therein a representation or warranty on which the Client have relied on in entering into the Contract.
1.6	If the Company waive any breach of the Contract, it should not be considered by the Client to be a waiver of any further breach.
1.7	If any provision of these Conditions is held to be invalid or unenforceable in whole or in part the remainder of these Conditions shall continue to apply.
1.8	The Contract shall be governed by the laws of England and Wales, and any dispute arising hereunder (including non-contractual disputes) shall be referred to the courts of England, which shall have exclusive jurisdiction.

2 Quotation & Specifications

2.1	The Company will submit a Quotation which will be valid for acceptance by the Client in writing for 3 months of its date. If (and only if) the Client accepts in writing (without condition or amendment) the Quotation in that 3 month period, a Contract will come into effect between the Client and the Company. If the Client does not, the Quotation shall lapse and shall no longer be capable of acceptance.
2.2	The Client is responsible to the Company for ensuring the accuracy of the description of the Products and/or Services it requires will be set out in the Quotation and for giving the Company any necessary information relating to the Products and/or the Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
2.3	The Client must not vary the terms set out in the Quotation once it is issued. If the Client attempts to do so, the Quotation will automatically become invalid.
2.4	The Client may not cancel any order for either Products or Services once a Quotation has been accepted in accordance with Condition 2.1 unless the Company agrees to such cancellation in writing, and the Client indemnifies the Company in full against any loss (including loss of profit), costs (including the cost of all labour used), damages, charges and expenses incurred as a result of the cancellation.
2.5	Excluding proven negligence on behalf of the Company in performing the Services to the agreed standards set out in the Quotation and/or the Contract (as applicable), the Client may not terminate the Contract for the provision of Services prior to the end date stated in the Quotation unless the Company agrees to such termination in writing and/or the Client pays the Company the price which it would have otherwise received under the Contract had it not been so terminated, and the Client indemnifies the Company against all loss (including loss of profit) costs, damages, charges and expenses which it suffers as a result.
2.6	The Company reserves the right to unilaterally make any changes in the specification or packaging of the Products and/or in the type of the Services, without prior consultation with the Client, which are required to conform with any applicable safety or other statutory requirements or which do not materially affect the quality or performance of the Service or Products supplied, and such changes shall not impact the content of these Conditions, unless otherwise confirmed in writing by the Company.

3 Pricing & Additional Costs

3.1	The price of the Products / Services shall be as set out in the Quotation.
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- 3.2 The Company reserves the right, by giving notice at any time before delivery of the Products and/or the commencement of the performance of the Services, to increase the price of the Products and/or the Services to reflect any unforeseen increase in the costs of the Products or provision of the Services due to any factor beyond the Company's control, for example any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, Products or other costs of manufacture, any change in delivery date or quantities requested by the Client or any delay caused by the Client's instructions or failure to provide adequate information or instructions.
- 3.3 If, during the provision of the Services, the Company installs any extra telecommunications lines (or similar), the Client shall:
a) not, and shall ensure that all other persons do not, use such lines other than as the Company directs and as is required for the provision by the Company of the Services; and
b) indemnify the Company from and against any and all telephone installation charges, rental charges and/or call charges incurred as a result of any breach of paragraph (a) above.
- 3.4 The Company reserves the right to charge additional sums to the Client should any of its personnel be called out to correct, maintain or repair any damage caused to the Products (excluding Virtual Products) as a result of any Force Majeure or as a result of any act or omission of the Client, or its agents, representatives or employees or as a result of any variation of the Services or any reinstallation or modification of the Products or the original design and/or layout of the installation of the Products which are made at the Client's request, at the following rates:
(a) Minimum charge of £140 for engineer attendance to site including the first hour on site;
(b) £45 per additional hour or part thereof on site; and
(c) Any extra products/equipment or materials which the Company supplies in connection with providing the services outlined in this Condition 3.4 will be charged at the then applicable rate. All such sums shall be invoiced and payable in line with Condition 4.
- 3.5 The Company reserves the right to make further charges should any of its personnel be called out to correct, maintain, inspect or arm/disarm any Virtual Product as the result of any Force Majeure or as a result of any act or omission of the Client, or its agents, representatives or employees at the following rates:
(a) Arming of Virtual Products for which the responsibility lies with the Client, or its agents, representatives or employees is £65 per visit
(b) Attendance to site following a loss of power, internet connection, damage to Virtual Products within the Client's control is £65 per visit
(c) Attendance to site as a result of act or omission of the Client, your agents, representatives or employees' failure to notify the Company of out of hours access is £65 per visit
(d) Attendance to disarm fire alarms, intruder alarms or other third party equipment causing a disturbance or complaint from the public which is beyond the control of the Company as a result of act or omission of the Client, your agents, representatives or employees' is £65 per visit
- 3.6 If the Client, or its agents, employees or representatives require additional security services, whether in respect of the Manned Products or Virtual Products, during the duration of the Contract, these will be charged at an additional agreed rate and shall not affect the nature or duration of the existing Contract or Services, unless agreed in writing by the Company.
- 3.7 All prices quoted by the Company will be exclusive of VAT at the current rate, which is payable to the Company.

4 Invoicing and Payment Terms

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- 4.1 The Company will invoice the Client at the agreed price of the Products and/or the Services on or at any time after commencement of the performance of the Services (including commencement of the installation of the Products) and, in the case of Services which are to be provided over a period in excess of one month, the Company shall render interim invoices at such reasonable intervals of not less than one month. If the Company is temporarily unable, due to any fault of the Client or of any third party, to perform the Services, the Company is entitled to invoice the Client for the price at any time after the Company notifies the Client that it is now ready to perform the Services (including installing the Products) in accordance with the Contract.
- 4.2 The Client must pay the price for the Products and/or the Services within 30 days of the date of the invoice notwithstanding that installation of the Products may not have taken place and/or that property in the Products has not passed to the Client or (as the case may be) that performance of the Services may not have been completed. The time of payment of the price shall be of the essence of the Contract.
- 4.3 If the Client fails to make any payment to the Company on the due date for that payment then, without prejudice to any other right or remedy available to us, the Company shall be entitled to:
- (a) cancel the Contract and/or repossess the Products or suspend any further performance of the Services (as the case may be);
 - (b) appropriate any payment made by the Client to such of the Products and/or Services (or to Products supplied or Services performed under any other contract between the parties) as the Company sees fit (notwithstanding any purported appropriation by the Client); and
 - (c) charge the Client interest (both before and after any judgment) on the amount unpaid at the maximum rate provided for under the Late Payment of Commercial Debts (Interest) Act 1998 together with compensation for late payment under the Late Payment of Commercial Debts (Interest) Act 1998 and the Regulations made thereunder.
- 4.4 All time sheets (whether signed by hand or approved digitally), delivery notes and engineering site visit reports signed by the Client, its employees or representatives at the Premises will deem works and Products for the period acceptable unless otherwise stated to the Company in writing prior to submission by the Client, its employees or representatives.
- 4.5 All annual Contracts including but not limited to CCTV monitoring, CCTV maintenance, keyholding services and any other fixed term contract shall be automatically renewed on the annual renewal date for the full 12 month period. All annual fees are payable in full on the date of renewal at the Client's agreed payment terms. Should the Client not wish to renew the Contract, notice should be given no less than 90 days before the date of renewal to prevent any additional charges or renewal of the service. Failure to do so will result in the renewal of the Contract for a 12 month period.
- 4.6 Subject to Condition 7, the Contract may be terminated upon 3 months' prior written notice by either party, save for the case of annual fixed term Contracts, which shall be governed by the terms of Condition 4.5.

5 Delivery, Commissioning & Provision of Services

- 5.1 The Company will perform the Services at the times and places agreed with the Client.
- 5.2 Any dates quoted for performance of the Services are approximate only and the Company shall not be liable for any loss or damage due to its failure to perform the Services promptly, or at all, howsoever caused. Time for performance shall not be of the essence of the Contract unless previously agreed with the Client in writing. Where possible, the Company shall be entitled to perform the Services in advance of the quoted date, upon giving the Client reasonable notice.

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5.3	If the Company fail to perform the Services for any reason other than any cause beyond our reasonable control or the Client's fault, and the Company is accordingly found to be liable to you, the Company's liability shall be limited to the excess (if any) of the cost to the Client (in the cheapest available market) of obtaining those services from a third party in substitution for those not performed by the Company over the price of the Services.
5.4	The Client must provide the Company, or its employees, agents and representatives with all information which it reasonably requires to enable the effective provision of the Services.
5.5	The Client must make available or have made available to the Company, its employees, agents and representatives such access to the Premises and facilities as the Company, its employees, agents and representatives may in each case request to enable the Services to be performed promptly, properly and safely.
5.6	The Company carries out individual risk assessments on a daily basis to ensure its staff work safely on the Premises. The Company do work at height and for certain tasks the Company considers ladder work to be acceptable and safe, this is assessed continually on a job-by-job basis. If the Client's policy on safety restricts or totally bans ladders from site, and in order for the Company to work in line with the Client's policy, alternative arrangements may have to be made, the Company reserves the right to charge the Client accordingly.
5.7	Title in the Products shall not pass to the Client and the Company shall at all times retain ownership of the Products. Any transfer of ownership can only be agreed in writing by the Company's then Managing Director.
5.8	Risk of loss or damage to the Products shall pass to the Client at the time of supply or (if the Client fails to take delivery of the Products) the time when the Company attempted to make delivery.
5.9	Where the Company supplies the Client with Products under the terms of the Contract, the Client shall: (a) use the Products only for their intended purpose and in accordance with any guidelines which the Company or any relevant third party may produce in respect of them; (b) be responsible for loss of or damage to or caused by the Products, and replace or repair the Products if so required by us; (c) insure the Products to their full replacement value with a reputable insurer and produce a copy of any such insurance policy upon reasonable request; (d) immediately give notice in writing to the Company of any material loss of or damage to the Products; (e) not charge or otherwise encumber the Products or permit any lien to be created or exercised on them; (f) allow the Company access to the Premises (or to any other premises upon which the Products may from time to time be situated) to inspect the Products at all reasonable times; (g) if so required, allow the Company to indicate its ownership of the Products in any manner which it sees fit; (h) keep the Products in the Client's sole possession at the Premises in which the Company installs them and not to sell, assign, sub-let or otherwise dispose of the Products or any interest in them or the benefit of any Contract nor remove or permit the removal of the Products; (i) indemnify the Company in respect of any claims made against the Company and all damages, costs and expenses suffered or incurred by the Company as a result of a third party claim arising out the state, condition or use of the Products; (j) if the Products shall become liable under any statutory enactment (whether local or public) to be altered or modified, immediately make the required alterations or modifications at the Client's own expense;

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(k) be responsible for any loss or damage caused to the land and/or buildings to which the Products are affixed whether caused by such affixation or by their removal (whether the Company or the Client affixes or removes them) and the Client shall indemnify the Company against any claim made in respect of such damage.

5.10 On the termination (for any reason) of any Contract under which Products are supplied, the Client shall forthwith return to the Company the relevant Products or allow the Company immediate, continued and unrestricted access to the Premises (or such other premises at which the Products may be situated) to enable the Company to repossess the same in each case in the same condition as they were supplied in, and the Client will indemnify the Company from and against any loss which the Company suffers or incurs as a result of failure to do so.

6 Warranty & Liability of the Company

6.1 Subject to the Conditions set out below, the Company warrants that the Products will be of satisfactory quality at the time of delivery and that the Services will be provided using reasonable care and skill.

6.2 Nothing in these Conditions is designed to, or will, exclude any liability which the Company have for any death or personal injury caused by the Company's negligence.

6.3 Subject to the terms of Condition 6.2, the Company shall be under no liability under the warranty contained in Condition 6.1 (or any other warranty condition or guarantee) if:

- (a) any part of the price for the Products and/or Services is not paid by the due date for payment;
- (b) for any defect in the Products or from any failure to provide satisfactory Services arising from any specification which the Client provides;
- (c) by reason of any representation or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products or their use or resale by the Client or the provision of the Services;
- (d) (nor shall the Company be deemed to be in breach of the Contract) by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Products and/or the Services if the delay or failure was due to any cause beyond its reasonable control;
- (e) in respect of any failure to provide the Services due to the Client's failure adequately to fulfil the requirements of these Conditions particularly, without prejudice to the generality of the foregoing, Conditions 5.3 and/or 5.4;
- (f) for any loss of or damage to the Service and/or Products if the Client is in breach of its obligations under Condition 5.

6.4 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

6.5 The Client must notify the Company within 7 days from the date of delivery or (whether defect or failure was not apparent on reasonable inspection) within 7 days after discovery of any defect or failure of any of the Products, of any claim which the Client bases on any defect in the quality, quantity or condition of the Products or their failure to correspond with specification (whether or not delivery is refused by the Client) or within 7 days of the date of completion or performance of the Services of any claim which the Client may have based on any defect in the Services. If delivery is not refused and the Client does not notify the

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Company accordingly, the Company shall not be entitled to reject the Products or the Services and shall be bound to pay the price as if the Products had been supplied and/or the Services provided in accordance with the Contract.

- 6.6 Where any valid claim in respect of any of the Products or the Services arises in accordance with these Conditions, which is based on any defect in the quality or condition of the Products or their failure to meet specification or in any defect in quality of the Services, the Company shall be entitled to replace the Products (or the part thereof in question) or (as the case may be) remedy any defective Services free of charge or, at our sole discretion, to refund to the Client the price for the Products and/or (as the case may be) the Services (or a proportionate part of the price), and the Company shall have no further liability to the Client.
- 6.7 Without limiting the generality of the remaining provisions of this Condition 6, the Products and the Services are not designed to, and the Company does not warrant or guarantee that they will, eliminate any risk to the Client or any other person, to the Clients or any other person's property or to the Premises. In particular:
(a) the Company does not warrant, represent or guarantee that the Products or the Services or any part of them are unable to be and will not be bypassed, compromised, neutralised or otherwise rendered inoperative by trespassers, intruders, the Client or the Client's employees, agents or representatives or any other unauthorised persons or by an event of Force Majeure or by any other event outside our control. The Company shall not be liable for any loss or damage suffered by the Client or any other person as a result of any such bypass, compromise, neutralisation, in operation or notified isolation of cameras and:
(b) Virtual Products do not include the provision of personnel at the Premises or any other premises at which the Products may be installed and will be limited to remote monitoring by motion alarm notification for risks where applicable. The Company will not be liable for any loss or damage suffered or incurred by any person which is caused following or as a result of any circumstance about which the Company notifies the emergency services and/or nominated keyholders and/or any other authorised person (as the case may be).
- 6.8 The Client is solely responsible for insuring the Premises and all items of whatever nature at the Premises from time to time. The Company will not be liable for any loss or damage caused to any property as a result of your failure to insure it, whether adequately or at all.
- 6.9 Without limiting the generality of Condition 6.8, the Client shall ensure that there are in place in respect of the Premises product, employer's and public liability insurance policies in such amounts and on such terms necessary to cover:
(a) any employees, agents and/or representatives of the Company who may attend the Premises to perform the Services or to install, remove, maintain, check or otherwise deal with the Products; and
(b) loss or damage to any property of the Company (including the Products) left on the Premises.
- 6.10 Notwithstanding the provisions of any other Condition, the Client will indemnify and keep the Company indemnified from and against all loss, liability, costs, damages, costs and/or expense which the Company may suffer or incur as a result of any death or injury to any of the Company's employees, agents or representatives while attending the Premises and/or loss or damage to the Company's property (including the Products) at the Premises.
- 6.11 Where a broadband connection or Company network is provided by the Client for Virtual Products, responsibility lies with the Client to ensure there is no delay in alarms being received due to Company firewalls, internal networks or other security settings which may impede, delay or block the receiving of alarms by the Company monitoring station.

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6.12 Where the Company supplies a 3G/4G connection, the Company will endeavour to supply the best service provider in that area. The Company cannot be held responsible for any loss resulting from the connection speed or any failure in connection from the 3G/4G supplier which could result in a delayed alarm or lost connection.

7 Liquidation or Financial Instability

- 7.1 This Condition applies if:
- (a) the Client makes any voluntary arrangement with its creditors (whether formal or informal) or become bankrupt or goes into liquidation; or
 - (b) a receiver or administrator is appointed over any of the Client's property or assets; or
 - (c) the Client cease to carry on business; or
 - (d) the Company reasonably believes that any of the events mentioned above is about to occur and notifies the Client accordingly.
- 7.2 If this Condition applies then:
- (a) the Company shall be entitled to cancel the Contract and/or repossess the Products or to suspend any further deliveries of the Products and/or performance of the Services under the Contract without any liability to the Client;
 - (b) if the Products have been delivered or Services have been performed but not paid for, the price (or such price as reflects the value of the Products or Services supplied) shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary;
 - (c) the Client shall immediately return the Products and/or allow the Company onto the Premises to remove them.

8 Assignment of Contract

- 8.1 The Client shall not assign the Contract or any rights accruing under it without the prior written consent of the Company's then Managing Director.
- 8.2 The Company shall be entitled at its sole discretion and without giving the Client any prior notice to:
- (a) assign, transfer or otherwise dispose of our rights under any Contract; and
 - (b) delegate, sub-contract or outsource any or all of the Services (or any part of them) in each case to any person as the Company shall see fit at any time.

9 Intellectual Property

- 9.1 All and any documents and other materials, data, or other material (including the copyright, design right or other intellectual property in them) (the "Company's Property") provided by the Company to the Client during the provision of and/or relating to the Services shall, unless otherwise agreed in writing between the Company, remain the property of the Company. The Client may not:
- (a) assign, sublicense, distribute or more generally transfer the rights pertaining to the Company's property to a third party, in whole or in part and by any means whatsoever; or
 - (b) reproduce or copy the Company's Property without the prior written consent of the Company.
- 9.2 All specifications, photographs, illustrations and other material produced by the Company in the supply of the Products or in the provision of Services and all reference to weights, measurements and other technical details contained in such Products are all provided for identification purposes only and are intended to be approximate. The Company shall not be liable for loss suffered by the Client as a result of its reliance on such Products or details.

10 Terms of Notification

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10.1	Any notice to be given under these Conditions shall be delivered by hand or sent by first class post to the usual address or registered office of the addressee or to such other address in Great Britain as the intended recipient may from time to time have notified the other party for the purpose of this Condition, or sent by facsimile transmission.
10.2	Notice shall be deemed to have been received: (a) if sent by first class post 24 hours after posting; (b) if delivered by hand on the day of delivery; (c) if sent by facsimile at the time of transmission.
10.3	The Client must notify the Company in the event of the engagement of a current or former security officer, rail worker or cleaner introduced by the Company. This notification is applicable: (a) whether for a definite or indefinite period; and (b) where applicable, the security officer, rail worker, cleaner has become incorporated under a limited company. The engagement of that individual or limited company renders the Client subject to payment of an introduction fee (18.5% based on the annual gross taxable employment payable by the Client to the individual or limited company provided that the engagement takes place within a period of six months of the introduction of the individual or limited Company, whichever is later); No refund of the introduction fee will be made by the Company to the Client in the event of the subsequent termination of any such engagement where the ability and suitability of the individual or limited company is already proven.

11 Force Majeure

11.1	The Company shall not be in breach of the Contract or otherwise liable to the Client by reason of any delay in performance or any non-performance of any of our obligations under the Contract to the extent that such delay or non-performance is due to any event of Force Majeure and the time of performance of that obligation shall be extended accordingly.
11.2	The Client accepts that due to the nature of Services in respect of Manned Products, such as keyholding and mobile response, are shared Services and as such the Company cannot be held liable for any delay in incident attendance caused whilst engaged on another Client's site for the same Service.
11.3	The Company reserves the right to vary any of the Manned Products or Services which it is obliged to supply under the Contract in accordance with special circumstances including (but not limited to) illness, holidays, unsociable hours, geographical or other circumstances giving rise to exceptional difficulty. The Company will only change the labour service if the persons are qualified to undertake the tasks, activities or work they are required to carry out.
11.4	If the event of Force Majeure in question prevails for a continuous period in excess of 2 months, then either party shall have the right to terminate the Contract in writing with immediate effect. For the avoidance of doubt, termination of the Contract as per this Condition 11.4 shall not have any effect on sums due by either party to the other, and such sums shall become immediately due and payable upon termination.

12 Digital Resources

12.1	The content of the pages of the website is for the Client's general information and use only. It is subject to change without notice.
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12.2	Neither the Company nor any third parties provide any warranty or guarantee as to the accuracy, timeliness, performance, completeness or suitability of the information and materials found or offered on this website for any particular purpose. The Client acknowledges that such information and materials may contain inaccuracies or errors and the Company expressly exclude liability for any such inaccuracies or errors to the fullest extent permitted by law.
12.3	The Client's use of any information or materials on the website is entirely at its own risk, for which the Company shall not be liable. It shall be the Client's own responsibility to ensure that any products, services or information available through this website meet its specific requirements.
12.4	The Company's website contains material which is owned by or licensed to the Company. This material includes, but is not limited to, the design, layout, look, appearance and graphics. Reproduction is prohibited other than in accordance with the copyright notice, which forms part of these Conditions.
12.5	All trademarks reproduced in this website, which are not the property of, or licensed to the operator, are acknowledged on the website.
12.6	Unauthorised use of the website may give to a claim for damages and/or be a criminal offence.
12.7	From time to time, the Company's website may also include links to other websites. These links are provided for the Client's convenience to provide further information. The links do not signify that the Company endorse the website(s). The Company has no responsibility for the content of the linked website(s).
12.8	The Client may not create a link to the Company's website from another website or document without prior written consent of the Company.
12.9	Access to Virtual Products via the website is done so at the Client's risk. No guarantee of availability is given by the Company and such access may be restricted, removed or altered at any time by the Company.

13 Third Party IT Support & Network Connections

13.1	If a client chooses not to take an Internet Service provided by Smartwatch, but instead wants to use an existing internet connection on site, the following must be taken into consideration. a) Smartwatch will not access routers, switches or firewalls belonging to a client. b) A static, public facing IP address or a DDNS address is required in order to provide monitoring services c) A static, private IP must be allocated to our device(s) as necessary. d) We will request various port forwards and other network tasks in order to obtain a connection to our equipment e) Any delay in network changes may result in your services being billed before we are able to monitor the system
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Any involvement on our part over and above that deemed to be reasonable will be charged at a rate of £60+Vat per hour or part thereof. A reasonable amount of time in a typical situation would be 45 minutes.

14 Confidentiality

Neither party will use, copy, adapt, alter or part with possession of any information of the other which is disclosed or otherwise comes into its possession under or in relation to this Agreement and which is of a confidential nature. This obligation will not apply to information which the recipient can prove was in its possession at the date it was received or obtained or which the recipient obtains from some other person with good legal title to it or which is in or comes into the public domain otherwise than through the default or negligence of the recipient or which is independently developed by or for the recipient.

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In the event that there is a breach of this Condition 14 by one party, that party shall notify the other party immediately and use reasonable endeavours to ensure that its policies and procedures are improved so that such a breach is unlikely to occur in the future.

This Condition 14 continues for a period of 2 years following termination of the Contract.

15 Data Protection

The parties agree that the provisions of this Condition 15 shall apply where the parties process any Shared Personal Data and the parties process any other personal data in connection with the performance of the Contract.

Processing by Controller

Where either of the parties process:

- (a) any Shared Personal Data as data controllers in common; and/or
- (b) any other personal data as data controllers; in connection with the performance of this Contract, the following shall apply.

Each party shall comply with all applicable controller obligations under the Data Protection Law and shall provide assistance in respect of the other's compliance with such obligations, in particular in relation to the Shared Personal Data, where reasonable and permitted by Data Protection Law including notification of and consultation and co-operation with the other party over fair processing notices for, and where necessary consents and compliance with rights requests from, data subjects, as well as responses to any actual or suspected personal data breach and any contact with or from any supervisory authorities or regulators.

When disclosing any Shared Personal Data to the other party, the disclosing party shall ensure that it has compliant fair processing notices, and where necessary consents, in place to enable the lawful transfer to and processing (including any onward transfer) by the other party and the Permitted Recipients of the Shared Personal Data for the Agreed Purposes.

Without limitation to the above, when receiving any Shared Personal Data from the other party, the receiving party shall:

- (a) process, and procure that Permitted Recipients process, the Shared Personal Data only for the Agreed Purposes;
- (b) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients except as permitted by the Data Protection Law;

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(c) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by the Contract;

(d) ensure that it has in place appropriate technical and organisational security measures, in accordance with the Data Protection Law; and

(e) not transfer any Shared Personal Data outside the European Union unless the transfer is to a country approved by the European Commission, or there are appropriate safeguards in place or an applicable derogation for a specific situation, as provided for under the Data Protection Law.

Processing by Processor

Where either party processes any Shared Personal Data as data processor (the **Processor**) acting on behalf of the other party as data controller (the **Controller**), in connection with the performance of the Contract, the following shall apply.

The Controller shall ensure that it has compliant fair processing notices, and where necessary consents, in place to enable the lawful transfer to and processing by the Processor of the Shared Personal Data for the Agreed Purposes.

The Processor shall in relation to the Shared Personal Data processed by it in connection with the performance of the Contract:

(a) process the Shared Personal Data only on the written and lawful instructions of the Controller (unless the Processor is required by the Data Protection Law to process the Shared Personal Data in which case it shall promptly notify the Controller before doing so unless prevented by the Data Protection Law);

(b) ensure that all personnel who have access to and/or process the Shared Personal Data are obliged to keep the Shared Personal Data confidential;

(c) ensure that it has in place appropriate technical and organisational security measures as required by the Data Protection Law;

(d) be generally authorised to appoint third party sub-processors on terms which are substantially similar to those set out here including any sub-processors identified in the Contract;

(e) assist the Controller in responding to any request from a data subject and in ensuring compliance with the Controller's obligations under the Data Protection Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

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(f) notify the Controller without undue delay on becoming aware of a personal data breach and assist the Controller with its Data Protection Law obligations in respect thereof taking into account the nature of the processing and information available to it;

(g) at the written direction of the Controller, delete or return the Shared Personal Data and copies thereof to the Controller on termination of the Contract unless required by the Data Protection Law to store the Shared Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with the above and allow for audits by the Controller or the Controller's designated auditor.

The Processor shall not transfer any Shared Personal Data outside the European Union without the prior approval of the Controller.

In respect of the Shared Personal Data:

(a) the scope, nature, purpose and duration of processing;

(b) the types of personal data and

(c) the categories of data subject; are as set out in this Clause or in, or agreed under, the Contract.

Both parties shall be responsible for responding to all data subject requests in accordance with Article 12 of GDPR in relation to the Shared Personal Data which each party holds. Each party hereby agrees to assist the other party, without undue delay, with all applicable data subject requests which may be received from the data subjects to which the Shared Personal Data relates.

In this Condition:

(a) **Agreed Purposes:** means the processing necessary for the performance of the Contract as identified herein;

(b) **Controller, data subject, personal data, personal data breach, processor and processing:** are as defined in the GDPR (and **process** and **process** shall be construed accordingly);

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(c) **Data Protection Law:** means the General Data Protection Regulation (EU) 2016/679 (**GDPR**), the UK Data Protection Act (as amended or replaced) and any other applicable data protection or electronic privacy laws, regulations and decisions in force from time to time;

(d) **Permitted Recipients:** means the parties to the Contract and (as necessary) the employees, personnel and advisers of each party and third parties engaged to perform obligations in connection with the Contract; and

(e) **Shared Personal Data:** means the personal data to be shared between the parties as necessary for the performance of the Contract as identified herein.

16 Plant Hire

Acceptance of Plant: Acceptance of the Plant or any personnel supplied by the Owner on site implies acceptance of all terms and conditions herein unless otherwise previously agreed in writing.

Unloading and Loading: The Hirer shall be responsible for the unobstructed access and egress to the site, and where applicable any access road to the site and, unless otherwise agreed in writing, for unloading and loading of the Plant at the site or on the access road; and any personnel supplied by the Owner for such unloading and/or loading shall be deemed to be under the direction and control of the Hirer. Such personnel shall for all purposes in connection with their employment in the unloading and/or loading of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of the Hirer's Responsibility for Loss and Damage) who shall be solely responsible for all claims arising in connection with unloading and/or loading of the Plant by, or with the assistance of, such personnel.

Ground and Site Conditions:

(a) The Hirer is deemed to have knowledge of the site, the site's access road, the property or land where the Plant is to be delivered or collected, loaded or unloaded, to work on, travel over, be transported over, be erected or dismantled on is suitable for the use of such Plant, and any electronic interference which may affect the Plant.

(b) Subject to (a), if, in the opinion of the Hirer, the ground (including any private access road or track) is soft or unsuitable for the Plant, then the Hirer shall supply and lay suitable support in a suitable position for the Plant.

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(c) Any suitable support supplied by the Owner is provided solely to assist the Hirer under their duties within clause (b) and expressly not to relieve the Hirer of their legal, regulatory, or contractual obligations to ensure adequate stability of the Plant.

(d) The Hirer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels, and roadways on or adjacent to the site and the Hirer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

Limitation of Liability: Except for liability on the part of the Owner which is expressly provided for in the Contract (including these clauses):

(a) the Owner shall have no liability or responsibility for any loss, or damage of whatever nature due to or arising through any cause beyond the Owner's reasonable control;

(b) the Owner shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the hire, for any of the Hirer's loss of profit, loss of use of the Plant or any other asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and/or any other financial or economic loss or indirect or consequential loss or damage of whatever nature; and

(c) whenever the Contract (including these clauses) provides that any allowance is to be made against hire charges, such allowance shall be the Hirer's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of hire charges which would otherwise be or become due if the allowance in question had not been made.

(d) For the avoidance of doubt, nothing in these conditions limits or seeks to exclude the Owner's liability for claims of death or personal injury caused by the Owner's negligence, fraud or for any other liability for which it is not permitted to seek to limit or exclude by operation of law.

Hirer's Responsibility for Loss and Damage:

(a) For the duration of the Hire Period (which for the avoidance of doubt includes the time Plant is left on site during a Holiday Period) the Hirer shall, subject to the provisions referred to in sub paragraph (a) be liable for all loss of or damage to the Plant, and shall also fully and completely indemnify the Owner and any personnel supplied by the Owner in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Plant during the continuance of the Hire Period, and in connection therewith, whether arising under statute or common law. In the event of loss of or damage to the Plant, hire charges shall be continued at idle time rates until the settlement has been agreed. Payment of the settlement must be made within 21 calendar days of the date of the agreement or idle time charges can be reinstated from the date of that agreement. Should idle time charges be re-instated, the agreed settlement figure remains payable in full.

(b) For the avoidance of doubt, notwithstanding any agreement by the Owner to waive hire charges after any agreed period of use of the Plant, the Hirer's obligations specified under clause (a) shall continue for the duration of the Hire Period.

(c) Notwithstanding the above the Hirer shall not be responsible for damage, loss, or injury, subject to the Hire Period and Ground / Site Conditions:

(i) prior to delivery of any Plant to the site (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to it leaving such highway) where the Plant is in transit by transport of the Owner or as otherwise arranged by the Owner,

(ii) during the erection and/or dismantling of any Plant where such Plant requires to be completely physically erected/dismantled on site, provided always that such erection/dismantling is under the exclusive control of the Owner or their agent,

(iii) after the Plant has safely been removed from the site, and until it is in transit on a highway maintainable at the public expense (or where the site is not immediately adjacent to a highway maintainable at the public expense including the site's access road, after it has safely joined such highway) to the Owner by transport of the Owner or as otherwise arranged by the Owner (excluding always on such occasion that the Plant is on a Public Highway (or access road) during the currency of the hire and is being utilised by the Hirer)

(iv) where the Plant is travelling to or from a site on a highway maintainable at the public expense (or, where the site is not immediately adjacent to a highway maintainable at the public expense including the site's access road, prior to its leaving or after its joining such highway) under its own power with a driver supplied by the Owner (excluding always on such occasion that the Plant is on a Public Highway (or access road) during the currency of the hire and is being utilised by the Hirer).

Hirer's Liability During the Notice of Termination of Contract:

a) Where the intended duration of the hire of the Plant is indeterminate or having been defined becomes indeterminate the Contract shall be terminable by 7 working days' notice in writing given by either party to the other except in cases where the Plant has been lost or damaged. Notwithstanding that the Owner may have agreed to accept less than 7 working days' notice of termination, the Hirer's obligations under clause 13 shall continue until the Plant is returned to the Owner or until the Owner has collected the Plant within the 7 working days following the acceptance of short notice. Oral notice given by the Hirer to the Owner's driver or operator shall not be deemed to constitute compliance with the provisions of this clause.

b) Without prejudice to clause (a), should the Hirer fail to make the Plant available for collection by the Owner before the end of the 7 working days' notice, the Hirer's obligations under clause Hirer's Responsibility for Loss and Damage shall continue for a further 3 working days or until such time as the Plant is made available for collection and the Owner has collected the Plant. For the avoidance of doubt, where the Hirer gives a notice pursuant to clause (a) but subsequently and with the consent of the Owner, withdraws such notice, the obligations of clause Hirer's Responsibility for Loss and Damage shall continue to apply and the requirements of clause 24 will apply to any later termination of the Contract.

c) If the Hirer terminates the Contract before the Hire Period commences, then the Hirer is liable for all reasonable costs and charges incurred by the Owner or to which the Owner is committed at the time of termination.

d) Should the Hirer terminate the Contract once the Hire Period has commenced, the Owner reserves the right to charge the Hirer the balance of the Contract. Where the Hire Period has not commenced but insufficient notice of cancellation is provided by the Hirer to allow the Owner to

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mitigate the effects of late cancellation, the Owner reserves the right (at its absolute discretion) to charge the Hirer the full balance of the charges for the Hire Period.

e) The Hirer may off-hire the Plant by written notification via an electronic device or application (app.). This off-hire will only be accepted by the Owner, provided the Owner issues an off-hire confirmation to the Hirer.

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