

Scania Fleet Management Terms & Conditions

1. Definitions

For the purpose of this agreement the following words and phrases shall have the meanings detailed below:

Agent: the authorised Scania dealer or other approved service provider as appointed by the Company

Agreement: means the contract for the supply of the FMP incorporating these terms and the relevant Subscription Agreement.

Authorised Signatory: means a person authorised by us to sign on our behalf.

Company: Scania (Great Britain) Limited (company registration number 831017) a company registered in England and Wales whose registered office is at Delaware Drive, Tongwell, Milton Keynes, Bucks, MK15 8HB.

Minimum technical Specifications: means those specifications for equipment as are available from the Company or www.scania.co.uk/fm

Nominated Contact: an email address for the Operator where notifications regarding the Services can be sent.

Operator: the Operator named in the Subscription Agreement. A reference to the Operator includes a reference to its authorised representatives, agents, employees and permitted assigns.

Subscription Agreement: means the "Agreement regarding subscription to the Fleet Management Portal" signed by the Operator.

Scania Fleet Management Portal ("FMP") the internet portals fmp.scania.com and digi.scania.com or others provided from time to time.

Services: the provision by the Company of

- (i) the Scania Fleet Management Portal which includes, but is not limited to, Monitor Reports, access to the web based portal, telematic data communications over GSM/GPRS mobile networks and Gateway connections using Windows™ services or SOAP protocols, communications services and such of the FMP options as are indicated in the Subscription Agreement together with the supply of any ancillary goods (including but not limited to hardware, interactor and communicator devices); and
- (ii) the maintenance services for the FMP set out in clause 5.

Vehicle: the vehicle equipped with Scania Fleet Management hardware and other equipment in accordance with the provision of the Services

We, Us and our: The Company or its authorised agents as specified above.

2. Services

2.1 The Company agrees to provide to the Operator the Services in consideration of the payment of the payments referred to in clause 6 on the terms described in this Agreement. The Company's standard terms of sale shall apply to this agreement save where there is any conflict with the terms set out in these Scania Fleet Management Terms & Conditions.

2.2 The Services will only be provided by the Company to the Operator on the basis that the Operator;

2.2.1 uses the appropriate equipment supplied by the Company including (but not limited to):-

- (i) Telematic equipment for the collection of vehicle data, position information via GPS and transfer of this data via public communication networks.
- (ii) Computers (including hand held computers) for use in Vehicles which are as a rule connected to telematic equipment or supplied with software for this purpose.
- (iii) Licensed software applications for use in those computers.

2.2.2 has access to the necessary and appropriate computer equipment (hardware and software) in accordance with the Minimum Technical Specifications.

2.3 Where licensed software is supplied or installed as part of the Service the terms and conditions of such License will form part of the Agreement.

3. Operator's Responsibilities

- 3.1 The Operator shall protect the security of the Services by ensuring password and access codes are at all times maintained safely and securely. In the event that such codes are no longer secure for any reason, the Operator shall advise the Company in writing within 24 hours of the event which renders such codes no longer secure.
- 3.2 In addition to the other obligations of the Operator as specified in the Agreement, the Operator shall be solely responsible for the following:
 - 3.2.1 the accuracy and content of any information provided by the Operator to the Company; and
 - 3.2.2 any reliance by the Operator on any information that the Operator receives as a result of use of the Services, together with any loss of data, breaches of security, viruses and disabling or harmful devices that the Operator may download or otherwise experience as a result of the Operator's use of the Services.
- 3.3 The Operator may use the Services only for lawful purposes and may not use the site;
 - 3.3.1 in any way that breaches any applicable local, national or international law or regulation;
 - 3.3.2 in any way that is unlawful, fraudulent or has any unlawful or fraudulent purpose or effect;
 - 3.3.3 to knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spy-ware, ad-ware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware;
 - 3.3.4 to reproduce, duplicate, copy or re-sell any part of the Services in contravention of the provisions of this Agreement;
 - 3.3.5 to access without authority, interfere with, damage or disrupt
 - 3.3.5.1 any part of the Services to be provided by the Company;
 - 3.3.5.2 any equipment or networks which the Company uses in connection with the provision of the Services;
 - 3.3.5.3 any software used in the provision of the Services; or
 - 3.3.5.4 any equipment or network or software owned or used by any third party.

4. Use of the Service

- 4.1 The Company grants to the Operator a non-exclusive, non-transferable (subject to the provisions of clause 11) licence to use the Services for the duration of the Agreement for the Operator's normal business purposes.
- 4.2 The licence granted under clause 4.1 is personal to the Operator and the Services may only be used directly by the Operator and the Operator is not permitted to sub-contract, sub-licence, assign or otherwise dispose of any rights licensed by the Agreement to any third party without the prior written consent of the Company.
- 4.3 The Company makes no statement about the suitability of the Services for a given situation and the Operator acknowledges that it is its sole responsibility to determine and ensure that the Services are relevant for its particular business needs.
- 4.4 The Operator is responsible, for all actions taken by all parties to whom the Operator has allowed access to use the Services.
- 4.5 The Operator is responsible for ensuring that its use of the Services complies with all relevant legislation including (without limitation) communications licensing and dangerous goods transport, and will indemnify the Company against any damages, claims, losses and costs resulting from any such incorrect or illegal use.
- 4.6 The Operator shall be responsible for acquiring and maintaining all licences and permissions necessary in respect of any third party software it may use in connection with the Services including (without limitation), the software used in connection with the Scania order support and the Scania driver log functions offered as optional parts of the Services.
- 4.7 The Operator shall be responsible for the safekeeping of all user identities, passwords and other information provided to it as part of the Services and for maintaining validation, error correction, back up and reconstruction of its own data input to or output by the FMP.

- 4.8 The Operator shall indemnify the Company against any damages, claims, losses costs resulting from
- (i) the improper access, use or misuse of the Services by the Operator or its employees agents, or permitted assigns.
 - (ii) any unauthorised access to or use or misuse of the Services by any third party if such use or misuse was permitted or facilitated by the Operator or any of its employees agents, or permitted assigns

5. Maintenance

- 5.1 The Company reserves the right at its own discretion, as part of a continuous development process, to upgrade, modify or substitute any equipment, software or communications services used in connection with the Services or to carry out routine maintenance and error correction to the web site or the FMP (the "**Works**") without notice.
- 5.2 Without prejudice to clause 4.1, reasonable notice of planned Works that will materially affect the performance of the Services will where possible be posted on the sites fmp.scania.com or digi.scania.com and communicated to the Nominated Contact. While every effort will be made to minimise disruption the Company will not be liable for any consequential loss suffered by the Operator. If such Works materially prevent (or where notice of such works is given in advance of such works) are predicted to materially prevent the Operator from using the Services for a period in excess of 30 consecutive days, the Operator may terminate this Agreement by giving 30 days written notice to the Company. The Company may suspend the Services without notice in the event of any emergency Works.
- 5.3 The Operator will provide access to the Company and its Agent to the Vehicle and/or systems using the Services in a timely manner where this is necessary for installation, repair, maintenance, diagnosis or termination of the Service.
- 5.4 Maintenance of the on-board hardware and software in connection with the Works will be carried out during normal working hours (Monday-Friday 9.00-17.00 excluding bank and public holidays) unless otherwise specified in writing. Additional costs for maintenance done outside normal working hours shall be borne by the Operator.
- 5.6 For the avoidance of doubt the Company shall not be responsible or liable for maintaining any of the items referred to in clause 2.2, which shall be maintained in good working order at the sole responsibility and cost of the Operator. The Company shall have no liability for any inability of the Operator to use any element of the Services resulting from the failure of the Operator to maintain all such equipment in good working order

6. Payments

- 6.1 The Operator will pay the monthly subscription costs to the Company by variable Direct Debit Mandate unless a previously authorised pre-payment has been made.

Subscription costs may include, but are not limited to:

- (i) the fixed communication element, plus
- (ii) variable elements related to usage, e.g. SMS messages to and from the portal, excess data traffic not specifically covered in the Agreement, etc, plus
- (iii) those services which the Operator has elected to utilise as shown in the Subscription Agreement (as may be amended from time to time in writing between the parties).

These costs will be identified separately on each invoice.

- 6.2 The Company reserves the right at its sole discretion to amend prices. Notification of price changes will be sent to the Nominated Contact no less than 30 days before the new pricing structure takes effect. If the increase in charges or charge rates exceeds 10% of the cost of the identical services immediately prior to the increase the Customer will be entitled to terminate the Agreement by giving the Company 30 days notice in writing to the Company's registered office. If no such notice is given before the new charges come into effect, the Operator will be deemed to have approved the amended pricing structure.
- 6.3 The services will be charged per calendar month for every month, or part thereof, that the services are supplied.
- 6.4 In the event that the Operator's Direct Debit payment fails, the Company reserves the right to raise an administration charge of £35.00 for every occasion on which the Company is unsuccessful in a reasonable attempt to collect payment from the Operator together with interest at the rate of 2% above the base lending rate of Barclays Bank PLC per annum from the date the payment was originally due to be taken until such sum is actually received by the Company. Such interest shall be payable on demand and shall be added to each direct debit (in the amount due in interest at the date of such attempted collection) which the Company subsequently attempts to collect from the Operator until the whole sum (including ongoing interest payments) is recovered.

7. Term and Termination

- 7.1 This Agreement shall be effective commencing on the date of activation of the Services for an initial period of one year subject to earlier termination as provided for by this Agreement the agreement shall continue after the initial period unless and until either party gives to the other not less than 60 days notice in writing such notice not to be given before the end of the initial period.
- 7.2 The Company may terminate this Agreement immediately at any time by written notice to the Operator if the Operator:
- 7.2.1 ceases to trade (either in whole or as to any part or division involved in the performance of this Agreement); or
 - 7.2.2 becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable the Operator; or
 - 7.2.3 a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of the Operator, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court; or
 - 7.2.4 the ability of that Operator's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of the Operator's creditors accept by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or
 - 7.2.5 any process is instituted which could lead to the Operator being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction); or
 - 7.2.6 fails punctually to make payment of any sum which may from time to time become due under this agreement, whether legally demanded or not; or
 - 7.2.7 commits any material breach of its obligations under this Agreement which (if remediable) is not remedied within 30 days after service of written notice specifying the breach and requiring it to be remedied.
- 7.3 Termination of this Agreement in accordance with its provisions shall be without prejudice to any claim which the Company may have against the Operator for sums due and payable or damages for breach pursuant to this Agreement, including any claim for interest.

8. Warranties and Limitations

- 8.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform this Agreement.
- 8.2 This Agreement sets out the full extent of the Company's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this Agreement or any collateral contract (whether by statute or otherwise) are hereby excluded.
- 8.3 The Company shall be under no obligation to store any Operator specific data. Where Operator specific data e.g. trip reports, position information, etc is stored on the Service by the Company this data will be stored for a maximum period of three years subject to an agreement remaining in force continuously, unless the Operator has previously deleted this data.
- 8.4 The Services are dependant upon public communications systems and the Company will not be liable for any loss or damage of any kind whatsoever caused by a failure of such systems to perform or any downtime associated with any failure of any such public communications systems.
- 8.5 Any claims for damage made by the Operator must be confirmed in writing to the Company within 3 months of the alleged cause of damage becoming apparent to the Operator.
- 8.6 The total liability of the Company for any actual damages for any cause whatsoever regardless of the form of the action arising in any year of this agreement shall be strictly limited to the charges payable for the previous 12 months.
- 8.7 In no event (death or personal injury excepted) will the Company be liable to the Operator for any indirect, incidental or consequential damages, or loss of profit arising out of the performance of the Services, even if the Company has been advised of the possibility of such damages.

8.8 The Company does not guarantee that the Operator or any third parties will be able to access the website created by the Company at any particular time. The Company Services are provided on an 'as-is, as-available' basis. The Operator acknowledges that the need for routine maintenance and error correction may result in down time and that the Company cannot control the timing or volume of attempts to access the Company's server.

9. Force Majeure

9.1 The Company shall not be liable the Operator or deemed to be in breach of the Agreement by any delay in performing or failure to perform any of our obligations in relation to the Services arising from any cause beyond our reasonable control. If we are unable to perform our obligations under the Agreement due to a cause beyond our reasonable control we shall give you written notice of this fact as soon as reasonably practicable after discovering it. If our inability to perform our obligations under the Agreement due to a cause beyond our reasonable control continues for six months after you receive our notice then either you or we may give written notice without liability to the other to terminate the Agreement.

10. Data Protection

10.1 The Services are offered to facilitate the transmission of data over public networks.

10.2 The Company gives no undertaking regarding the legality of the use of the Services in any given situation, nor accepts liability for the correctness or otherwise of data transmitted via the Services.

10.3 The Operator acknowledges and agrees that it is entirely responsible for all data (including any Personal Data) input, created or used by the Operator in its use of the Services ("**Operator Data**") and that any use that it or any third party may make of it for any purposes and that the Company shall have no responsibility for any such Operator Data or such use. Without prejudice to the generality of the foregoing the Operator undertakes:

- (i) to inform itself concerning, and in performing its obligations under this agreement fully to comply with all laws, regulations, licences or binding codes or standards of practice relevant to Personal Data, including without limitation the Data Protection Act 1998) and in particular (without limitation) to ensure that it has obtained all requisite consents to the processing of any such Personal Data as envisaged by the operation of the Services;
- (ii) to inform the Company of any such laws, regulations, licences or binding codes or standards of practice relevant to any element of the Operator Data (including any Personal Data forming part of the Operator Data) which are binding on the Company in connection with the performance of the Services for the Operator and to indemnify the Company against any direct or indirect costs incurred by the Company in complying with such requirements and to further indemnify the Company against any damages, claims, losses and costs resulting from any failure on the part of the Operator to so inform the Company in respect of any such laws, regulations, licences or binding codes or standards of practice;
- (iii) not to provide any Operator Data or upload, transmit or download any Operator data or message that:
 - (a) is defamatory, racist, sexist, threatening, menacing to any person or group of people or contains any obscene elements or anything which in the reasonable opinion of the Company is likely to cause annoyance or distress to any person;
 - (b) infringes the copyright or any other intellectual property right of any person, company or other party anywhere in the world.

10.4 The Operator warrants that to the extent it processes any Personal Data it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

10.5 The Company may process any Data which may include Operator Data in order to provide statistical analysis, promotion, product evaluation, advice, marketing or for other purposes and, where necessary provide this information to suppliers, or group companies or other parties in the distribution chain from time to time. The Operator may specifically request that Vehicle information not be used for such purposes by the Company by writing to the Company's registered office.

10.6 In this clause 10, **Personal Data** has the meaning given in the Data Protection Act 1998.

11. Transfer of Equipment, Assignment, etc.

11.1 The Operator may in connection with the acquisition of a new or replacement vehicle, transfer the equipment and Services subscription from the old Vehicle to the new vehicle registered in the name of the Operator. Charges for the transfer of equipment will be payable by the Operator, together with an administration charge of £35 per subscription which will be payable to the Company on successful transfer of the subscription. In the event that it is not possible to successfully transfer either the equipment or subscription for any reason the agreement will be terminable by the Company in accordance with clause 6.2.

- 11.2 Transfer of the Services subscription to a third party who has taken over the Operator's vehicle may take place with the Company's prior written consent subject to (i) payment of an administration charge equal to two months subscription and settlement of any outstanding costs up to the date of transfer and (ii) The new Operator entering into a novation agreement in respect of the subscription subject to a new minimum 12 month initial term commencing on the date of the novation. If such a transfer or novation is not possible for any reason the agreement will be terminable by the Company in accordance with clause 6.2.
- 11.3 The Company reserves the right to use a sub-contractor or third party to comply with its obligations pursuant to this Agreement and further reserves the right to transfer it's rights according to the agreement to a third party at its sole discretion upon reasonable notice to the Operator.

12. Governing Law

- 12.1 This agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.