

VESTATEC (UK) LIMITED - TERMS AND CONDITIONS

1. Definitions

1.1 In these Terms and Conditions:-

'Agreement' means these Terms and Conditions together with the Order Form;
'Authorised User' means any person lawfully authorised by the Subscriber to use the Vehicle;
'Commencement Date' means the date on which the Subscriber signs the Customer Subscription Agreement;
'The Cobra Unit' means the Cobra vehicle-tracking device to be supplied to the Subscriber and installed in the Vehicle pursuant to this Agreement;
'Customer Service Agreement' means the order form on the reverse of these Terms and Conditions;
'Service' means the vehicle tracking location service to be provided by Vestatec hereunder;
'Subscriber' means the person, firm or company whose order for the Cobra unit and the Service has been accepted by Vestatec; and
'Vehicle' means the Subscriber's vehicle into which the Cobra unit is to be installed.

2. Order Form

- 2.1 The Order Form comprises an offer by the Subscriber to purchase the Cobra Unit via an authorised Vestatec third-party dealer and to subscribe to the Service. No binding contract shall be formed until Vestatec has signed the Subscriber's signed Order Form to indicate its acceptance of the Subscriber's order.
- 2.2 Vestatec hereby agree to:-
- 2.2.1 Support the sale and installation of the Cobra unit by a Vestatec authorised third party-dealer and to provide the subscriber with the agreed subscription contract and relevant service.
- 2.2.2 Provide the Service in accordance with these Terms and Conditions. By signing the Order Form the Subscriber shall be deemed to have accepted these Terms and Conditions, which shall govern the Agreement to the exclusion of all other terms and conditions.
- 2.3 No variations to the Agreement shall be binding unless agreed in writing by an authorised representative of Vestatec.

3. Installation of Cobra Unit

- 3.1 Installation of the Cobra unit will normally be arranged directly between the subscriber and the Vestatec authorised third-party dealer. Upon acceptance of the Order Form by Vestatec, Vestatec will liaise with the installing dealership to activate the Cobra unit and process the subscription payment.
- 3.2 The Subscriber will not permit installation to be carried out by any person other than an authorised Cobra installation engineer.
- 3.3 Vestatec shall use reasonable endeavours to ensure that authorised Vestatec installation engineers are properly trained to carry out installation procedures. Vestatec will not be held liable for any direct or indirect loss caused by the installation process apart from any damage to the vehicle directly caused by negligence of the Cobra installation engineer during the course of the installation.
- 3.4 Vestatec shall provide the Subscriber with an operating manual containing sufficient information for the proper operation of the Cobra Unit.

4. Title and Risk

- 4.1 The legal and beneficial ownership of the Cobra Unit shall pass to the Subscriber upon payment in full of the price of the Cobra Unit and the subscription payment.
- 4.2 Risk in the Cobra Unit shall pass to the Subscriber upon installation of the Cobra Unit in the Vehicle and the Subscriber shall be responsible for insuring the Cobra Unit from such time.

5. Provision of Service

- 5.1 In the event that the Subscriber or any Authorised User reasonably believes that the Vehicle has been stolen, the Subscriber or the Authorised User (as applicable) shall promptly notify the Vestatec Control Centre without delay. Upon receiving any such notification, Vestatec shall take the steps set out in Clause 5.5 below.
- 5.2 Vestatec reserves the right to charge the Subscriber (in addition to the subscription charges described in Clause 6) for any costs incurred by Vestatec in attempting to locate the Vehicle following a false alarm raised by the Subscriber or any Authorised User.
- 5.3.1 Upon the theft of the Vehicle, the Subscriber shall be responsible for notifying the police as soon as reasonably possible that the Vehicle has been stolen and shall obtain a crime reference number in respect of the same. The Subscriber undertakes to provide this crime reference number to Vestatec without delay.
- 5.3.2 And the name, phone number and address of the relevant Police Station.
- 5.4 The Subscriber acknowledges that nothing in this Agreement shall oblige the police to take action upon being notified that the Vehicle has been stolen and that Vestatec cannot be held responsible for the acts or omissions of the police.
- 5.5 Upon the theft or unauthorised movement of the Vehicle, the Vestatec Control Centre shall as quickly as reasonably possible use reasonable endeavours to locate the Vehicle using the global positioning system. If Vestatec is able to locate the Vehicle, the Cobra Control Centre will inform the police of the Vehicle's location, on the condition that the vehicle has been recorded as stolen by the police.
- 5.6 In the event that the Vehicle cannot be moved from the location at which it is found without the use of special equipment, Vestatec or its authorised agents reserve the right to charge the Subscriber (in addition to the sums set out in Clause 6 below) for the cost of deploying such special equipment.
- 5.7 The Subscriber undertakes to notify Vestatec in advance if the vehicle, fitted with a Cobra Unit is to be carried on a ferry or other transportation devices such as trailers or transporters, etc. If the Subscriber fails to notify Vestatec in advance, he acknowledges that he will be responsible for any costs incurred by Vestatec caused by false alarms caused by such activity.

6. Payment

- 6.1 The price of the Cobra Unit shall be that agreed between the subscriber and the Vestatec authorised third-party dealer. The Vestatec subscription prices current on the date of the Subscriber's order shall apply. The Subscriber shall pay the subscription by credit or debit card direct to Vestatec on submission of the Subscription Agreement. For company purchases, a company cheque is acceptable in advance of the activation of the system.
- 6.2 Vestatec will have no obligation to commence the provision of the Service until the relevant subscription payment has been received.
- 6.3 All sums payable hereunder are exclusive of Value Added Tax (unless otherwise stated) which shall be payable by the Subscriber at the rate and in the manner from time to time prescribed by law.
- 6.4 If any sums due from the Subscriber to Vestatec hereunder remain unpaid for more than 28 days from the due date for payment then, without prejudice to any other rights or remedies of Vestatec, Vestatec will be entitled to:-
- 6.4.1 Interest on the outstanding sum of the rate of three percent above the base lending rate of Barclays Bank Plc, which interest shall accrue on a daily basis from the due date for payment until payment is received in full by Vestatec together with all interest that has accrued;
- 6.4.2 Suspend the provision of the Service until full payment has been received; and/or
- 6.4.3 Terminate the Agreement.
- 6.5 The Subscriber shall reimburse Vestatec on demand in respect of all costs and expenses incurred by Vestatec in tracing the Subscriber and in taking steps to enforce payment of any such sums due.
- 6.6 If the Subscriber's bank fails to honour any cheque or other method of payment, the Subscriber shall reimburse Vestatec in respect of any costs incurred in re-presenting the same.

7. Unit Warranty

- 7.1 Vestatec warrants that the Cobra Unit will be free from defects in materials and workmanship for 36 months from the date of installation. If Vestatec receives written notice of any breach of this warranty then Vestatec shall at its own expense and within a reasonable time of receiving such notice repair or, at its option, replace the Cobra Unit.
- 7.2 Vestatec shall have no liability under this warranty:-
- 7.2.1 Unless it has received written notice of the defect in question no later than the expiry of the 36 month warranty period; or
- 7.2.2 If the defect is caused as a result of the Cobra Unit having been tampered with, modified or repaired (other than by a Cobra approved engineer), or otherwise misused or damaged.
- 7.3 Vestatec shall have no obligation under this warranty other than to remedy breaches of the warranty by provision of materials and services within a reasonable time and free of charge to the Subscriber. If Vestatec shall fail to comply with such obligation its liability for such failure shall be limited to a sum equal to the price of the Cobra Unit.
- 7.4 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise provided that where the Subscriber deals as a consumer, nothing in this Agreement shall affect his or her statutory rights.

8. Liability

- 8.1 Notwithstanding any other provision of this Agreement, Vestatec does not seek to exclude or restrict its liability for fraud, or for death or personal injury caused by its negligence.
- 8.2 In respect of all other liability hereunder, Vestatec's liability in respect of each event or series of connected events shall not exceed an amount equal to the sum of the subscription charges paid by the Subscriber.
- 8.3 Vestatec shall not be liable to the Subscriber for the loss of profits or contracts or any other indirect or consequential loss whether arising from tort (including negligence) or breach of contract otherwise, in particular but without limitation, Vestatec shall not be liable for any loss or damage caused to the Subscriber as a direct or indirect result of the Vehicle being stolen and it is agreed and declared that if any limitation in this clause should prove to be unenforceable such finding shall not affect the enforceability of the other exclusions.
- 8.4 The Cobra Unit (together with any optional extras supplied by and installed in the Vehicle) must not be used in any way, which would or may affect the ability of the driver of the Vehicle to drive safely. Vestatec shall not be liable for any loss or damage caused by the acts or omissions of the driver of the Vehicle to drive safely. Vestatec shall not be liable for any loss or damage caused by the acts or omissions of the driver of the Vehicle.
- 8.5 The Subscriber acknowledges that, owing to the nature of the technology comprised in the Cobra Unit, the operation of the Service may from time to time be adversely affected by physical features such as underpasses, atmospheric conditions and other causes interference beyond Vestatec's control (e.g. failure of GPS or GSM network's telephone). As such Vestatec can give no guarantee that the Vehicle will be successfully located or recovered. In particular, the operation of the Cobra Unit and, therefore, the provision of the Service in accordance with this Agreement depends to some extent upon the operation of the digital cellular telecommunications technology with which the Cobra Unit operates, and this technology is not operative in all parts of the UK and Ireland.
- 8.6 The Subscriber acknowledges that the purchase of the Cobra Unit does not in any way mitigate his or her duty to obtain adequate insurance for the Vehicle.

9. Agreement

- 9.1 This Agreement is personal to the Subscriber and relates exclusively to the Vehicle and may not be assigned.

10. Terms and Termination

- 10.1 Subject to clause 10.02 this Agreement shall commence upon the commencement date and shall continue for a minimum fixed period of twelve months (in accordance with the subscriber's choice) of the ("Original Period") and thereafter shall automatically be renewed for a further minimum period equivalent to the Original Period from the expiration date of each preceding period unless terminated by either party giving thirty days written notice to the other expiring on the next expiration date of a period.
- 10.2 Without exception, all subscriptions that are taken out must be terminated at the time the Subscriber disposes of the original Vehicle. Subscription agreements are non-transferable.
- 10.3 Either party may, by written notice to the other party, terminate this Agreement in the event that:-
- 10.4.1 The other party is in material or persistent breach of this Agreement; or
- 10.4.2 The other party becomes insolvent or bankrupt, enters into liquidation, whether voluntary or compulsory, passes a resolution for its winding up, has a receiver or administrator appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffering any similar action in consequence of its debt.
- 10.5 Vestatec may terminate this agreement with immediate effect on written notice to the Subscriber in the event that:-
- 10.5.1 Any government or other regulatory approvals for the use of the Cobra Unit are withdrawn, suspended or amended at any time;
- 10.5.2 The Subscriber or any Authorised User persistently raises false alarms in circumstances where he or she had no reasonable grounds on which to believe that the Vehicle had been stolen or that genuine Emergency or Breakdown conditions exist.
- 10.6 Upon termination of this Agreement the accrued rights and liabilities of the parties shall not be affected.

11. General

- 11.1 The Subscriber acknowledges that for security reasons telephone calls may be recorded between Vestatec personnel and the Subscriber. The Subscriber consents to the recording of such calls and agrees that such recording may be used and supplied to the police for the sole purpose of the prevention and detection of crime.
- 11.2 Vestatec shall not be liable for any delay in performing or for failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control (here in after 'event of force major'). Vestatec shall notify the Subscriber upon becoming aware of the event of force major and shall indicate the manner and extent to which its obligations are likely to be prevented or delayed. If any event of force major occurs, the date(s) for performance of the obligation(s) affected shall be postponed for so long as is made necessary by the event of force major provided that if any event of the force major continues for a long period of exceeding three (3) months, either party shall have the right to terminate this Agreement forthwith on written notice to the other party. Each party shall use its reasonable endeavours to minimise the effects of any events of force major.
- 11.3 All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered or transmitted to the intended recipient's address as specified above or such other address as either party may notify to the other for this purpose from time to time. Any notice shall be treated as having been served on delivery if delivered by hand, four (4) working days after posting if sent by prepaid registered mail, two (2) working days after dispatch if sent by courier and on confirmation of transmission if sent by facsimile.
- 11.4 The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such terms or right and shall in no way affect that party's right later to enforce or to exercise it.
- 11.5 If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such terms shall, insofar as it is severable from the remaining terms be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.
- 11.6 This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to this agreement (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in this Agreement.
- 11.7 The construction, validity and performance of this Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English and Welsh courts to resolve any disputes between them.
- 11.8 The Subscriber acknowledges that authorised Vestatec personnel can track the Subscriber's vehicle for test purposes.
- 11.9 The Cobra unit and service is intended for personal/individual use and is not intended as a fleet management service.