

StratumFive Ltd Terms & Conditions

Agreement made between StratumFive Ltd, with offices at Unit 12, Riverside Business Centre, Brighton Road, Shoreham By Sea, West Sussex, BN43 6RE England ("StratumFive Ltd") and the Subscriber named and at the address overleaf or as named within annual service agreement invoice (the "Subscriber") together the "Parties" Use of the services provided by StratumFive Ltd constitutes your acknowledgement and acceptance of the Terms and Conditions of Sale and Service. If you have any queries, please email us at accounts@stratumfive.com or telephone on +44 (0) 1273 462001.

Hardware Sale and Service

Terms inferring one gender shall include all other genders

The Parties agree as follows

1. DEFINITIONS

- 1.1** "Agreement" means this Agreement and any attachments.
- 1.2** "Basic Product" means the ship security alert and or tracking system product supplied by StratumFive Ltd.
- 1.3** "Documentation" means all accompanying documentation and media included with the Products.
- 1.4** "Basic Services" means transmission services from the Basic Product in relation to position reports.
- 1.5** "Bundle Agreement" means an agreement where the Subscriber elects to buy Credit Bundles to pay for network services.
- 1.6** "Credit Bundle" means the payment upfront by the Subscriber for credits towards Network Services, the combination, valuation and validity of which is determined in accordance with StratumFive Ltd's standard price list published from time to time.
- 1.7** "Fixed Term Agreements" means an agreement where the Subscriber agrees a fixed length for the provision of the Network Services pursuant to which the Subscriber makes regular payments to StratumFive Ltd at a frequency to be agreed by the parties.

- 1.8** "Network Services" means the provision by StratumFive Ltd of Basic and any Plug--In Services in each case as set out in the Services Specification.
- 1.9** "Plug---In Products" means additional products supplied by StratumFive Ltd under this Agreement for use in conjunction with the Basic Product and in relation to which StratumFive Ltd will supply the Plug---In services.
- 1.10** "Plug---In Services" means services supplied by StratumFive Ltd under this Agreement at the Subscriber's request in conjunction with Plug---In Products
- 1.11** "Prices" means the prices for the Products and Network Services provided.
- 1.12** "Products" means the products supplied by StratumFive Ltd under this Agreement including the Basic Product and any Plug---In Products or where, the context requires, a product supplied by a third party in relation to which StratumFive Ltd provides Network Services.
- 1.13** "Product Specification" means the specification setting out the functionality and use of a Product.
- 1.14** "Service Plan" the cover sheet summarising the order by the Subscriber for the Product, the Network Services and the Prices.
- 1.15** "Services Specification" means the specification for the provision of Network Services as agreed between the Parties from time to time.
- 1.16** "Warranty Policy" means the document supplied with the Product containing details of the warranty for the Product.

2. OBLIGATIONS

- 2.1** StratumFive Ltd will supply the Products and Network Services to the Subscriber as set out in the proposal or invoice.
- 2.2** StratumFive Ltd shall provide technical support services to the Subscriber for Products and Network Services via email, or telephone 24/7/365
- 2.3** The Subscriber agrees to pay StratumFive Ltd for all Network Services provided under this Agreement and StratumFive Ltd reserves the right to deactivate Products and cease providing the Network Services if payment is in arrears.
- 2.4** All amounts payable under this Agreement are exclusive of all taxes and duties and the Subscriber agrees to pay all taxes and duties assessed in connection with this Agreement.
- 2.5** Notwithstanding any technical support services provided by StratumFive Ltd or the warranty in respect of the Product, the Subscriber shall be responsible (at its own cost) for preparing and maintaining the Product for the supply of the

Network Services including siting the Products in accordance with the Product Specifications.

- 2.6** The Subscriber shall ensure that all equipment which may be used in conjunction with a Product and/or the Network Services are in good working order and suitable to use in connection with the Products and the Network Services.
- 2.7** The Subscriber acknowledges that the Network Services may be subject to local regulations.
- 2.8** The Subscriber shall obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Products, the receipt and use of any information supplied pursuant to the Services and the use of the customer's equipment in relation to the Products in all cases at all time during the Agreement.

3. PRICE, PAYMENT AND SHIPMENT

- 3.1** Unless StratumFive Ltd previously agrees in writing payment for Products by the Subscriber to StratumFive Ltd is due prior to shipment of the Products to the Subscriber.
- 3.2** For Fixed Term Agreements the total price for the Services shall be the amount set out in the proposal and invoice. At the start of each period specified in the proposal, the Supplier shall invoice the Customer in advance for the charges, together with expenses, the costs of materials and VAT, where appropriate.
- 3.3** For Bundle Agreements, the Subscriber will buy Credit Bundles prior to StratumFive Ltd providing the Network Services.
- 3.4** When the subscription for a vessel is finalised before the given renewal date, the Subscriber will be able to add a new vessel or the remaining subscription will be credited pro-rata to the Subscriber's account.
- 3.5** The Subscriber shall pay each invoice submitted to it by StratumFive Ltd, in full and in cleared funds, within 30 days of receipt.
- 3.6** All payments must be made in United States dollars or Pounds Sterling or Euros as determined by StratumFive Ltd.
- 3.7** Without prejudice to any other right or remedy that it may have, if the Subscriber fails to pay StratumFive Ltd on the due date, StratumFive Ltd may:
 - (i) charge interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of [HSBC PLC], accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - (ii) suspend all Network Services until payment has been made in full.

- 3.8** Time for payment shall be of the essence of this Agreement.
- 3.9** All sums payable to StratumFive Ltd under this Agreement shall become due immediately on its termination, despite any other provision. This condition 3.9 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 3.10** StratumFive Ltd may, without prejudice to any other rights it may have, set off any liability of the Subscriber to StratumFive Ltd against any liability of StratumFive Ltd to the Subscriber.
- 3.11** StratumFive Ltd shall be entitled to change, modify or discontinue the production and/or price of Products and/or Network Services on thirty days prior written notice or earlier where required to do so by a court or regulatory authority
- 3.12** StratumFive Ltd reserves the right to increase or decrease its charges and/or introduce new charges from time to time and if it invokes this right StratumFive Ltd will notify the Subscriber giving at least 14 days prior written notice

4. STRATUMFIVE LTD WARRANTY

- 4.1** StratumFive Ltd warrants to the Subscriber that
- 4.1.1.** The Products will perform substantially in accordance with StratumFive Ltd specifications for such period as stated in the Warranty Policy from the date of receipt of the Products by the Subscriber
- 4.1.2.** The Products will be free from defects in material and workmanship under normal use and services for such period as stated in the Warranty Policy from date of shipment to the Subscriber
- 4.2** Under this warranty StratumFive Ltd shall either repair or replace any Products which prove to be defective in workmanship or material or fail to meet StratumFive Ltd's specifications or StratumFive Ltd shall refund the purchase price of the defective Products to the Subscriber as StratumFive Ltd determines and no other obligation under this warranty shall apply
- 4.3** The Subscriber shall submit warranty claims to StratumFive Ltd with supporting documentation stating the basis for the claim and within the warranty period
- 4.4** If StratumFive Ltd replaces or repairs Products during the original warranty period, the warranty period on the replacement or repaired Products shall terminate on the expiry of the original warranty, or thirty days from the repair or replacement whichever is longer
- 4.5** Subject to condition 4.6, the Subscriber will pay shipping costs to return

Products to StratumFive Ltd and for StratumFive Ltd to send Products to the Subscriber.

- 4.6** If StratumFive Ltd identifies that the defect in the Product is covered by the Warranty Policy, StratumFive Ltd will reimburse the Subscriber for reasonable shipping costs incurred in sending the product to StratumFive Ltd and will pay shipping costs back to the Subscriber.
- 4.7** The foregoing warranty is exclusive and in lieu of all other warranties expressed or implied written or oral and StratumFive Ltd does not represent or warrant that the products will meet any or all of the Subscriber's particular requirements, that the Products will operate or the Network Services will be provided error free or uninterrupted or that all errors in the Products or Network Services, can be identified and corrected

5. TERMS AND TERMINATION

- 5.1** This Agreement shall commence on the date of remittance against the applicable invoice and or services activated and or on first access to online software.
- 5.2** Fixed Term Agreements shall be in effect for twelve months and shall be automatically renewed for subsequent periods of twelve months unless either party notifies the other in writing [3 months] prior to the expiry of the term that it does not wish to renew the Agreement for a further twelve month term
- 5.3** Credit and Bundle Agreements will continue unless associated Fixed Term Agreement terminated.
- 5.4** Notwithstanding the foregoing StratumFive Ltd may terminate this Agreement in the event of any of the following conditions
- 5.4.1.** If the Subscriber defaults in any payment due to StratumFive Ltd and if such default continues for a period of fifteen days following the Subscriber's receipt of written notice of such default;
- 5.4.2.** If the subscriber commits a breach of any material term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so.
- 5.5** This Agreement is automatically terminated if the Subscriber becomes bankrupt or insolvent. On termination of this Agreement for any reason the Subscriber shall immediately pay to StratumFive Ltd all of StratumFive Ltd's outstanding unpaid invoices and interest and, in respect of Network Services but for which no invoice has been submitted, StratumFive Ltd may submit an invoice, which shall be payable immediately on receipt.

- 5.6** Where StratumFive Ltd takes over the provision of Network Services from a third party to a Product, the Subscriber may elect within 30 days of [issue of notification by StratumFive Ltd of such takeover] to terminate this Agreement upon three month's written notice to StratumFive Ltd and, provided that it pays StratumFive Ltd's standard release charge for each active basic product (currently £350 + VAT) and pays all outstanding sums, StratumFive Ltd will cease to supply Network Services in respect of that Product and [will release that Product from its network].
- 5.7** Where StratumFive Ltd and the Subscriber agree that StratumFive Ltd will provide the Subscriber with a discount in relation to the prices payable by the Subscriber for the Product and/or the Network Services on the basis that the Subscriber will not terminate the Agreement prior to the expiry of a specified period, upon termination by the Subscriber prior to such specified period the Subscriber agrees that it will pay to StratumFive Ltd the discount as shown on the Service proposal or invoice, if not shown, the amount of the discount as notified from StratumFive Ltd for the purposes of this clause.

6. LOSS OF PRODUCTS & THIRD PARTY USE

- 6.1** The Subscriber is responsible for providing insurance protection for the replacement value of the Products including cover against transmissions made if it is lost or stolen.
- 6.2** If the Basic Product is lost or stolen the Subscriber shall contact StratumFive Ltd immediately so that StratumFive Ltd can prevent further transmissions being made from it.
- 6.3** The Subscriber will be liable for all charges for transmissions up to the time the Subscriber notifies StratumFive Ltd and the Subscriber will be liable for the monthly (or other periodic) Network Service charges thereafter until this Agreement is ended.
- 6.4** The Subscriber shall be liable for all charges for Network Services incurred by unauthorised use of the Products

7. FORCE MAJEURE

- 7.1** If the performance of this Agreement or any obligation arising hereunder is prevented restricted or interfered with by reason of any acts of war insurrection fire flood tornado natural calamity strike or other labour activities shipping or transport delays material or labour shortage or because of any law or government regulation or because of any acts beyond the reasonable control of StratumFive Ltd then StratumFive Ltd shall be excused from such performance to the extent of the "force majeure".

- 7.2** StratumFive Ltd shall use its best efforts to avoid or remove the “force majeure and shall further continue to use its best efforts to complete full performance of this Agreement when such causes are removed

8. LIMITATIONS AND LIABILITY

- 8.1** The Subscriber warrants that he will not use the Products and Network Services for marine safety and distress systems and life support services in which the failure of the Products or Network Services could result in death or injury and the Subscriber understands that these applications will not be accepted or supported by StratumFive Ltd.

- 8.2** This condition 8 sets out the entire financial liability of StratumFive Ltd (including any liability for the acts or omissions of its employees, agents and sub---contractors) to the Subscriber in respect of: (i) any breach of this Agreement; (ii) any use made by the Subscriber of the Network Services or any information or reports supplied as part of the Network Services; and (iii) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

- 8.3** Nothing in this Agreement limits or excludes StratumFive Ltd’s liability for: (i) death or personal injury resulting from StratumFive Ltd’s negligence; or (ii) any damage or liability incurred by the Subscriber as a result of fraud or fraudulent misrepresentation by StratumFive Ltd; or (iii) any liability incurred by the Subscriber as a result of any breach by StratumFive Ltd of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

Subject to condition 8.3, StratumFive Ltd shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for: loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss of corruption of data or information, any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

- 8.4** Subject to condition 8.3, StratumFive Ltd’s aggregate liability to the Subscriber in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising out of or in connection with the performance or contemplated performance of this Agreement in no circumstances will exceed [150% of] the total amount paid by the Subscriber to StratumFive Ltd pursuant to this Agreement

9. CONFIDENTIALITY AND STRATUM FIVE LTD’S PROPERTY

- 9.1** The Subscriber shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Subscriber by StratumFive Ltd, its employees, agents or sub---contractors and any other confidential

information concerning StratumFive Ltd's business or its products which the Subscriber may obtain. The Subscriber shall restrict disclosure of such confidential material to such of its employees, agents or sub---contractors as need to know the same for the purpose of discharging the Subscriber's obligations to StratumFive Ltd, and shall ensure that such employees, agents or sub---contractors are subject to obligations of confidentiality corresponding to those which bind the Subscriber.

9.2 All materials, equipment and tools, drawings, specifications and data supplied by StratumFive Ltd to the Subscriber (including Products) shall, at all times, be and remain as between StratumFive Ltd and the Subscriber the exclusive property of StratumFive Ltd, but shall be held by the Subscriber in safe custody at its own risk and maintained and kept in good condition by the Subscriber until returned to StratumFive Ltd, and shall not be disposed of or used other than in accordance with StratumFive Ltd's written instructions or authorisation.

9.3 This condition 9 shall survive termination of this Agreement, however arising.

10. GENERAL TERMS

10.1 All notices or other communications shall be in writing and shall be effective and deemed received upon delivery of registered and/or certified mail to the address provided on the cover sheet of this Agreement, or to such other address as may be provided in accordance with this Agreement.

10.2 StratumFive Ltd reserves the right to make changes to these terms from time to time and/or to introduce new terms from time to time if there are changes to the law or amendments to the terms and conditions upon which StratumFive Ltd is able to obtain services from the networks or carriers that StratumFive Ltd is using or otherwise if StratumFive Ltd considers it necessary.

10.3 StratumFive Ltd reserves the right to transfer this Agreement to any third party at any time.

10.4 The Subscriber may not transfer this Agreement to a third party without StratumFive Ltd prior written agreement which shall not be unreasonably withheld but if the sale of the vessel or vehicle occurs during the term of this Agreement the Subscriber shall remain liable for costs incurred in relation to the Product prior to StratumFive Ltd's contractual relationship being established with any new owner of the vessel or vehicle or until the end of this Agreement whichever shall occur earlier.

10.5 The Subscriber shall not give or transfer StratumFive Ltd data or software access to any other organisation or person employed by any third-party entity without the explicit consent of StratumFive Ltd.

10.6 This Agreement and any matter relating thereto shall be governed, construed and interpreted in accordance with the laws of England and Wales

Additional Terms Relevant To - Inmarsat Sat C Tracking Service And Other Onboard Equipment

All salient points detailed in the above HARDWARE SALE AND SERVICE terms still apply to the provision of tracking under INM-C (or any other installed hardware NOT supplied by StratumFive Ltd)

11. GENERAL TERMS CONTINUED

a. In these conditions:

- (i)** "we", "us" or "our" means StratumFive Ltd our successors and assignees;
- (ii)** "Goods" means the goods specified or implied in any order placed with us;
- (iii)** "Services" means the services specified or implied in any order placed with us;
- (iv)** "you" means the purchaser or lessee of the Goods and/or Services;
- (v)** "the Software" means the website located at www.stratumfive.com or any subsequent URL that may replace it, at this time the website software is known as OTiS.

b. Any contract between you and us will incorporate these terms and conditions that we may, at our absolute discretion, amend from time to time and you agree to be bound by such amendments. **c.** Any description or illustrations in our brochures, website, price lists or other advertising materials are intended merely to present a general idea of the Goods and Services and shall not form representations or be part of the contract.

d. Any concession or waiver made by us at any time shall not prejudice the exercise of our rights hereunder. **e.** No waivers, alterations or modifications of these terms and conditions shall be valid unless made in writing signed by the duly authorized representative of the party against whom the same shall be sought to be enforced. **f.** We reserve the right to correct any clerical errors made by our employees at any time.

12. APPLICATION FOR BARRING

It is the recommendation of the International Telecommunications Union that application for barring should be made in respect of any unit for which airtime charges remain outstanding after 90 days from invoice for land terminals or 180 days from invoice for marine terminals. In these circumstances we will request either a Discretionary Barring, a DB002, of the offending terminal from the Land Earth Station ("LES") and/or appropriate Accounting Authority, or, if the debt is considered to be irrecoverable, we will request from two LESs a proposed mandatory bar, a PMB003. Once the second LES has placed the PMB, the customer has 14 days' notice in case of maritime termination.

13. CUSTOMER LIABILITY FOR COSTS AND DISBURSEMENTS

All additional costs incurred by us in the application for barring in 12.0 above and all collection litigation or other expenses in which we are involved will be to your account and claimable in addition to the invoice sums.

14. FAIR USE POLICY

(i) Where StratumFive Ltd brings a service to market with a fixed fee, StratumFive Ltd will charge the flat fee subscription as contracted.

(ii) Where a unit generates excessive airtime costs to the extent that the over-reporting takes the customer's airtime charges over the flat fee subscription; StratumFive Ltd will contact the user and inform them of the situation and suggest actions to remedy the situation

(iii) Should the user ignore the advice offered by us, StratumFive Ltd reserves the right to charge the additional costs to the user.

(iv) Should the user continue to ignore the advice offered by us, StratumFive Ltd reserves the right to terminate the service.

(v) This clause shall be applicable to ALL services rendered by StratumFive Ltd.

15. NO WARRANTY WITH SOFTWARE

The contents of the Software are provided "as is" and "as available" without warranty of any kind, whether express or implied. In no event shall StratumFive Ltd be liable for any special, indirect or consequential loss or damages or any loss or damages whatsoever resulting from loss of use, data, revenue or profits, arising out of or in connection with the use or performance of software, provision of or failure to provide services, or information available from the Software. We do not warrant that the information contained on this web Software is complete or timely, or that the Software will be uninterrupted or free of errors and/or viruses.

16. PASSING OF RISK AND PASSING OF TITLE

a. Risk in the Goods shall pass to you on delivery of the Goods.

b. The title in the Goods shall remain ours until we have received payment of the price of the Goods and all other charges associated with the delivery of the Goods.

c. Notwithstanding the retention of title by us you are hereby authorized to carry out any operations to the Goods in the normal course of your trade.

17. COPYRIGHT INFRINGEMENT

a. You shall be solely responsible for obtaining all appropriate licenses and consents and for the consequences of any patent, trademark, design, copyright or other infringement of commercial rights resulting from your specification, design or use of the Goods and Services and you shall fully indemnify us in respect of all claims, demands, liabilities, costs, charges and expenses incurred by us as a result of such infringement or alleged infringement.

b. All software programs supplied as part of the Goods and Services belong to us and all commercial rights remain with us. You only have a nonexclusive right to use the software as part of your contract with us and in conjunction with any other terms and conditions, which apply to that software. You will be liable to us for any loss caused by any attempt to use the software otherwise than for the specific service for which it was supplied.

18. STORAGE OF DATA

You hereby authorize us to process, store and disseminate data received from you in connection with the Services supplied. All data is stored under Stratum Five's Data Warranty and Confidentiality Statement (available on request)

19. SEPARABILITY

Each of the clauses of these terms and conditions and every part thereof shall be separate and severable to the intent that if any provision shall be deemed unlawful, void or for any reason unenforceable, this will neither prejudice nor affect the validity or enforceability of the remainder.

20. YOUR UNDERTAKINGS

You undertake to keep any passwords or user names which you select in connection with the Goods and Services confidential and only use them in conjunction with the operation of the Goods and Services. You will be liable for any loss caused to us by deliberate or negligent failure to protect such passwords or user names. We will monitor your use and in such connection will keep a database of your email address from the registration screen for our internal records. Where our Goods and Services involve the provision of asset tracking services, you undertake, where you are not the owner of the relevant asset, to obtain the appropriate owner's consent.

You undertake not to use our Goods and Services for any unlawful purposes nor in furtherance of any activity which is, or may be, unlawful. You undertake to set up the relevant Notifications and update them as required. Any malfunction of the transceiver including excessive generation of position reports, Alerts, Warnings and Messages will be reported to you and your designated recipients via the Notifications function. It is your responsibility to monitor all Notifications and Messages and to act on them accordingly. Any malfunction of the equipment which generates excessive or unexpected amounts of traffic must be notified to us. Failure to monitor Notifications and Messages or failure to notify us of any malfunction will be your responsibility and all costs incurred as a result of failure to notify us will be your liability.

21. INDEMNITY

You agree to be fully responsible for all claims, liability, damages, losses, legal fees, costs and expenses incurred by us arising out of any breach of these Terms and Conditions by you or by any other person accessing the Software using your account.

22. ARBITRATION

If at any time any dispute shall arise between you and us in connection with this contract we may give notice in writing of the existence of such dispute to you and require the same to be referred to the arbitration of a person mutually agreed upon or failing agreement to some person appointed by the President for the time being of the Law Society. The submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts. All parties shall be responsible for their own costs should this occur.

23. JURISDICTION

This contract shall be interpreted according to English law and you hereby accept the jurisdiction of such Courts, whether in England or elsewhere, as we may nominate to try any action arising out of this contract and in the absence of such nomination only the English Court shall have jurisdiction.