

General Terms and Conditions

Schwarzmüller Intelligent Telematics (“SWIT”)

[Version: 27 May 2021]

1. Subject matter of the contract

- a) Schwarzmüller Intelligent Telematics (hereinafter also referred to as “SWIT”) is a telematics system supplied by Wilhelm Schwarzmüller GmbH, company registration number 364874f (hereinafter also referred to as “Schwarzmüller”); these General Terms and Conditions apply to software-related services only.

- b) The subject matter of the contract is therefore the following services provided by Schwarzmüller:
 - (i) Provision of telematics data (in the available data resolution in each case, in line with the selected service) in the SWIT portal;
 - (ii) Data link for the transmission of data to the SWIT portal or provision of data from terminal devices on a back-end interface (API) if included in the selected package; the bandwidth depends on the telematics terminal device selected in each case;
 - (iii) Provision (including maintenance and updates) of the SWIT portal;
 - (iv) Support in the event of disruptions in data transmission to the customer and/or purchaser (hereinafter referred to as “End Customer” or “Customer”), availabilities as set out in **Appendix.1**.

- c) The availability of SWIT is geographically limited to the national territories of EU 27 member states, the United Kingdom and Switzerland. The availability of SWIT also depends on the model, the model year and the features of the product and module in question. SWIT is only available for trailer products that are fitted with an EBS modulator; it is not available for trailers that are approved for the transport of hazardous goods.

- d) Developments in Schwarzmüller products and in other services occasionally can from time to time require the adjustment and further development of SWIT or other telematics services to adapt to new technical possibilities and/or changed user behaviour. Schwarzmüller reserves the right to adapt telematics services in the light of such developments.

2. Contract structure

- a) Schwarzmüller telematics services are aimed exclusively at businesspeople who, at the time the contract is concluded, use the telematics services in the exercise of their commercial or other independent professional activity.
- b) This contract, together with the appendices thereto, contains all agreements between the parties with regard to the subject matter of the contract to the exclusion of all other agreements. There are no verbal or written agreements outside of the contract. With effect from its commencement, the contract replaces and supersedes all previous verbal and/or written agreements relating to the subject matter of the contract.
- c) In the event of any conflict between provisions of this contract and provisions of the appendices, the provisions of this contract shall prevail.
- d) Other terms, including but not limited to general terms and conditions of the End Customer, shall not apply, even if otherwise stated in the relevant documents. This shall apply irrespective of whether or not such terms are in conflict with this contract.
- e) Changes and/or additions to this contract must be made in writing. The same shall apply to any deviation from this provision itself.

3. Formation of the contract

- a) The present General Terms and Conditions form the contractual basis for any and all provision of telematics services by Schwarzmüller to the End Customer.
- b) For each and every contract of sale between Schwarzmüller or a company affiliated with Schwarzmüller (sister, parent or subsidiary company) and the End Customer for a product for which SWIT is available in accordance with 1.c) (hereinafter referred to as "the Product"), the present General Terms and Conditions shall be deemed to have been agreed.
- c) For telematics services, the End Customer contracts solely with Wilhelm Schwarzmüller GmbH, company registration 364874f, Hanzing 11, 4785 Freinberg, Austria. The German-language version of these General Terms and Conditions is the authentic and binding version.

- d) In the first three months following the handover of the Product by Schwarzmüller or by the company affiliated with Schwarzmüller to the End Customer, the telematics services shall be made available to the End Customer free of charge.
- e) In the event that the end customer does not give notice of termination to Schwarzmüller within these three months from the handover of the given Product, the contract for the telematics services shall remain in force. However, the End Customer shall be liable to pay the contractually agreed fee from the beginning of the fourth month.
- f) Notice of termination is to be given in writing by e-mail to telematics@schwarzmueller.com and must be received seven calendar days before the end of the three-month period.
- g) In the event that notice of termination is given by the applicable deadline, the telematics services shall be restricted for those modules indicated by the End Customer in the notice of termination. Unless the Customer expressly states that no data is to be transmitted to Schwarzmüller, Schwarzmüller shall continue to be entitled to transmit, -process and store data for analysis purposes. Should the Customer subsequently wish to activate a module, this shall be possible in return for payment of the currently applicable fee and after the conclusion of a corresponding written agreement.
- h) If the Customer expressly objects by e-mail to telematics@schwarzmueller.com to further data processing by Schwarzmüller, final and permanent deactivation of the SIM card is required. Reactivation of the module is not possible.
- i) As an alternative to the permanent deactivation of the module, it is possible to activate "standby mode"; in this case, no data transmission takes place but the SIM card remains active, for which reason the Customer is therefore required to pay a monthly contribution to cover costs.
- j) For the avoidance of doubt, it is noted that if the contract is not terminated in due time or form, it shall remain in full force and effect.

4. Commencement and term of the contract

- a) The contract shall commence upon handover of the Product by Schwarzmüller or a company affiliated with Schwarzmüller to the End Customer.

- b) The Service Level Agreement has a minimum term of 36 months (“Basic Term”); for the avoidance of doubt, the three-month test phase is included in the duration of the Basic Term. The contract may be terminated with effect from the end of the contractual term by giving 6 months’ notice. In the event that notice of termination is not given in due time, the contract shall be extended by a further 12 months every 12 months. This shall not affect the right to extraordinary termination without notice for cause.
- c) Schwarzmüller shall be entitled to extraordinary termination in circumstances including but not limited to the following:
 - (i) a serious breach of an obligation by the End Customer (for example 7. e); 14 i));
 - (ii) a substantial deterioration in the financial situation of the End Customer;
 - (iii) a network failure for which Schwarzmüller is not responsible;
 - (iv) technical changes to mobile networks or other technical systems that become necessary;
 - (v) mandatory public law requirements;
 - (vi) the end of the legal basis for Schwarzmüller’s use of the telematics system.

In the event of extraordinary termination by Schwarzmüller for one of the above reasons or other grounds for extraordinary termination, the End Customer shall not be entitled to bring claims for damages or any other claims against Schwarzmüller.

In the event of extraordinary termination resulting from fault on the part of the End Customer, which is assumed in the event of extraordinary termination pursuant to (i) and (ii) (reversal of the burden of proof), Schwarzmüller shall be entitled to at least the fee until the next possible date on which ordinary termination would have become effective (termination compensation) as compensation for the loss. This shall not affect the right to bring further claims for damages.

- d) Notice of termination must be by registered letter and in advance by e-mail.

5. Service provision

- a) Service provision is possible as of activation in the SWIT portal of the user account of the given End Customer. Performance by Schwarzmüller is only possible and due after activation of the user account. However, this shall not affect the term of the contract (4. a)).

- b) Activation of the user account is possible within two working days after handover.

- c) Service provision is conditional upon a functioning module in the product in question, a mobile connection, a sufficient Internet connection and other hardware-related prerequisites. As already mentioned in 1. Subject matter of the contract, the services offered by Schwarzmüller are only available in the member states of the EU 27 and in the United Kingdom and Switzerland.

6. Prices and price changes

- a) The prices are set out in the order confirmation.

- b) Unless separately stated or separately agreed, the prices stated or agreed are exclusive of statutory VAT and exclusive of other charges and any fees that may be incurred.

- (c) Prices shall remain unchanged during the Basic Term. For periods thereafter, Schwarzmüller reserves the right to adjust the prices for the given term extension. The Customer shall be entitled to contact Schwarzmüller to find out about forthcoming price adjustments.

7. Payment, default and set-off

- a) The contractual services are to be paid for monthly in advance, with a payment term of 14 days.

- b) If the End Customer does not object to invoices issued within 14 days of receipt of an invoice, the invoice shall be deemed to have been approved.

- c) The Customer hereby consents to its payment obligations arising from this contract being collected by Schwarzmüller by SEPA direct debit.

- d) The End Customer shall automatically be in default without receiving a reminder if the invoice issued is not paid within a period of five days beyond the agreed payment term. In the event that the End Customer is in default, Schwarzmüller shall be entitled to charge interest at a rate of 9.2 percentage points above the base rate. This shall not affect Schwarzmüller's right to claim further damages for default.

- e) In the event that the End Customer defaults on the payment of remuneration or a not insignificant part of the remuneration on two consecutive occasions or defaults on payment of the remuneration for a period extending over more than two payment dates to an amount that is as much as remuneration for two months, Schwarzmüller shall be entitled to extraordinary termination of the contract with immediate effect after issuing a reminder and setting a 10-day grace period.
- f) The End Customer may only set off claims that are undisputed or have been established by a court of law.

8. End Customer duty of cooperation

- a) The End Customer undertakes to use the products, modules and telematics services provided in accordance with the contract and with the law at all times. The End Customer shall take suitable and reasonable measures to ensure that third parties do not use the deliverables and services of Schwarzmüller in breach of the contract or of the law.
- b) If the End Customer has set up a user account, the End Customer has an obligation to keep its details in the SWIT portal up to date. The End Customer shall notify Schwarzmüller without delay of any change in data relevant to the contract, including but not limited to name, legal form, registered office, bank details, e-mail address, contact person and financial circumstances.
- c) The End Customer has an obligation carefully to store all login details and passwords for the SWIT portal, not to share those data with third parties and to prevent misuse by third parties. The End Customer alone shall be liable for any loss resulting from misuse.
- d) The End Customer shall notify Schwarzmüller without delay of any damage to or defects in the Product or the module, insofar as these could have an impact on the telematics services, as well as of the loss of the Product or the module itself. In the event of a breach of this reporting obligation, Schwarzmüller and the companies affiliated with Schwarzmüller shall not be liable for any resulting loss.
- e) Removal of the module from the Product or the SIM card installed in the module is not permitted unless Schwarzmüller has given its explicit written consent to such removal.
- f) The Customer shall be responsible for the storage of data outside the SWIT portal.

- g) The End Customer shall be responsible for ensuring that the technical devices used are in perfect technical condition and are functional and compatible with the services provided by Schwarzmüller, and for any power supply required and the connection.
- h) The End Customer shall itself maintain, inspect and, if necessary, repair both the Product and the module.
- i) The End Customer shall assist Schwarzmüller and the third parties engaged by Schwarzmüller in the performance of the contract, the execution of the contract and in the event of a need for improvement if and to the extent that this is required.
- j) The End Customer shall be liable to Schwarzmüller for any loss caused by contravention of the above or other contractual or statutory obligations. If and to the extent that a claim is made against Schwarzmüller in connection with a breach by the End Customer or by a third party for which the End Customer can be held responsible, the End Customer shall indemnify Schwarzmüller against all claims, costs, damage and loss (including the costs of reasonable legal action and defence) in connection therewith.

9. Toleration of disruption in the event of necessary interventions

- a) The End Customer may not have access to the SWIT portal for the duration of an intervention at the End Customer's premises ordered by the End Customer or otherwise required, for example for maintenance work or to remedy technical faults. The End Customer shall tolerate any resulting disruptions, including but not limited to disruptions to the SWIT portal.
- b) Schwarzmüller shall endeavour to design and organise said interventions in such a way as to cause as little disruption as possible to the End Customer's operations. Schwarzmüller shall give the End Customer as much advance notice as possible of any visits or interventions that may be required.
- c) In the event of disruptions to the back-end system or the SWIT portal of less than two calendar days at once that do not result from force majeure (13.), the End Customer shall still have an obligation to pay. In the event of prolonged disruptions, the End Customer shall be entitled to a pro rata price reduction. Should the disruption last for longer than five calendar days, the Customer shall have a special right of termination in relation to the individual order(s) concerned. This shall not affect the Service Level Agreement (**Appendix./1**).

10. Rights of use and quality

- a) The End Customer shall be granted a non-exclusive, non-transferable, non-sublicensable right to use the telematics services provided by Schwarzmüller via the SWIT portal. The End Customer's right of use applies exclusively to the agreed contractual term and is geographically limited to use within the member states of the EU 27 as well as the United Kingdom and Switzerland.
- b) The software applications provided by Schwarzmüller for the use of the telematics services may not be modified, edited, decompiled, stored or reproduced by the End Customer or other third parties. The End Customer is not permitted to sell, lease, lend, distribute, make publicly available or otherwise make available (even free of charge) software applications to third parties or to tolerate any other use by third parties.
- c) When using SWIT outside the EU 27, the United Kingdom and Switzerland, the End Customer shall have an obligation to check itself whether the delivery or application of the subject matter of the contract gives rise to any infringements of property rights or other infringements of rights at the place of use or application. Neither Schwarzmüller nor the companies affiliated with Schwarzmüller shall be liable to the End Customer or any other third party for the use of SWIT outside the EU 27 or the United Kingdom or Switzerland, on any legal grounds whatsoever. In the event that a claim is made against Schwarzmüller on the grounds of a breach of the obligations incumbent upon the End Customer, the End Customer shall indemnify and hold Schwarzmüller harmless.
- d) Irrespective of the underlying contract type, the End Customer shall notify Schwarzmüller in text form of obvious defects without delay and no later than six working days after receipt of the goods, and of any hidden defects or defects that can only be detected by functional testing no later than three working days after discovery. Complaints must specify the defect in question. The provisions of section 377 of the Austrian Commercial Code (UGB) or art. 38f of the UN Convention on Contracts for the International Sale of Goods shall apply mutatis mutandis.

11. Liability provisions

- a) The End Customer shall be liable to Schwarzmüller and the companies affiliated with Schwarzmüller in accordance with statutory provisions for any and all loss caused by an infraction on the part of the End Customer or a third party for which the End Customer can be held responsible.
- b) If and to the extent that claims are made by a third party against Schwarzmüller or a company affiliated with Schwarzmüller, the End Customer shall indemnify Schwarzmüller or the company affiliated with Schwarzmüller against all claims, costs, damages and

losses (including the costs of reasonable legal prosecution and defence) when first requested to do so.

- c) Schwarzmüller shall not be liable for services provided by third-party providers such as mobile network operators, GPS system operators, Internet providers, etc.

Schwarzmüller shall not accept liability for other third parties; this exclusion of liability excludes, but is not limited to, the condition of the back-end system and data centre operation by third parties used by Schwarzmüller.

- d) Schwarzmüller shall not accept any liability whatsoever for the usability or durability of the module battery; this exclusion of liability includes, but is not limited to, the effects of prevailing outside temperatures or high levels of data transfer.
- e) Schwarzmüller shall not be liable for the data displayed as part of the telematics services provided; this exclusion of liability includes, but is not limited, to the correctness and timeliness of the data, traffic data, and security-related services.
- f) Schwarzmüller shall not be liable for terminal devices used by the End Customer. The End Customer itself is responsible for the use of terminal devices.
- g) Schwarzmüller shall not be liable for loss arising from incorrect use by the End Customer.
- h) Schwarzmüller shall not be liable for direct damage, indirect damage or consequential damage, unless the damage was caused by Schwarzmüller intentionally or through gross negligence.
- i) The burden of proof for a relevant fault on the part of Schwarzmüller shall lie with the End Customer.
- j) The above limitation of liability shall not apply in the event of injury to life, limb or health.
- k) Claims for damages by the End Customer against Schwarzmüller shall become statute-barred within 12 months of the damage becoming known; there shall be an absolute limitation period of two years from the occurrence of the damage, irrespective of when it became known.

12 Service Level Agreement (SLA)

- a) The Service Level Agreement, **Appendix./1**, is an integral part of the contract.
- b) First-level support, as described in **Appendix./1** , shall be provided directly by Schwarzmüller to the End Customer.
- c) Should further support be necessary, Schwarzmüller shall endeavour to rectify the problem by involving third parties. Schwarzmüller shall not be liable for the services provided by the third party in question.
- d) The Customer has a duty of cooperation in remedying problems both vis-à-vis Schwarzmüller and vis-à-vis third parties named by Schwarzmüller.

13. Force majeure and other disruptions

- a) As long as and to the extent that force majeure (e.g. lawful strikes or lockouts; lack of labour, energy or raw materials through no fault of Schwarzmüller; measures taken by public authorities through no fault of Schwarzmüller; corresponding impediments to performance on the part of Schwarzmüller suppliers for which Schwarzmüller and the suppliers are not responsible) prevents the deliverables or services to be provided by Schwarzmüller, the mutual contractual obligations to perform shall be suspended.
- b) In the event that the impediment due to force majeure is not only temporary in duration, each of the two parties shall be entitled to withdraw from the contract or to extraordinary termination with respect to the services affected by the impediment.
- c) The party directly affected by the force majeure shall notify the other party without delay of the beginning and end of the force majeure.
- d) Force majeure shall not be deemed to exist if and to the extent that disruptions do not fundamentally prevent the deliverables and services of Schwarzmüller, but only restrict their usability or quality.
- e) Such disruptions are, for example, if reception and transmission ranges are geographically limited to the radio stations operated by the network operator in question,

or if radio, atmospheric, weather, geographical or topographical conditions or natural or structural obstacles (bridges, tunnels, buildings, etc.) affect the reception and transmission ranges or trigger radio interference and/or failure. The use of the Internet may also be restricted by additional impairments (e.g. network overload); this does not constitute force majeure either.

- f) Such disruptions, unless caused intentionally or by gross negligence on the part of Schwarzmüller, shall not entitle the End Customer to claim damages, bring warranty claims or claim a price reduction, or to withdrawal or extraordinary termination (9. c)). In such cases, the End Customer shall also remain obliged to pay the agreed remuneration in full.

14. Data protection and use

- a) The end customer hereby agrees that Schwarzmüller is entitled to collect, process and use personal data required to establish or amend the contract, including its content, and personal data for the provision of deliverables and services by Schwarzmüller.
- b) The End Customer is aware that Schwarzmüller may have the data collected in the course of SWIT processed by third-party contractors and consents to such processing; Schwarzmüller has concluded a corresponding agreement on processing for this purpose.
- c) Processing by third-party contractors shall be carried out in accordance with art. 28 GDPR and the applicable national data protection laws.
- d) The End Customer is aware that the storage and processing of all locations of a vehicle and of communication data is required to allow provision of the deliverables and services requested by the End Customer, and hereby consents to said storage and processing.
- e) The End Customer is aware that Schwarzmüller and the companies affiliated with Schwarzmüller use the data collected in the course of SWIT for their own business purposes, including but not limited to the analysis of products and geo-positions, quality control, the improvement and development of telematics services, the development of new services, etc., and hereby agrees to such use. The End Customer grants Schwarzmüller, the companies affiliated with Schwarzmüller and any other service providers employed by Schwarzmüller a corresponding right of use.

- f) The data controller for employees of the End Customer and other authorised third parties is the End Customer in question. Employees and other third parties may not bring any claims directly against Schwarzmüller, unless otherwise stipulated by mandatory law.
- g) The parties hereby agree an agreement on processing, which is **Appendix./2** to and an integral part of the contract.
- h) The End Customer consents to being contacted to be offered services and for marketing purposes.
- i) The End Customer has a duty to provide personal data which Schwarzmüller does not process on its behalf pursuant to the processing agreement (**Appendix./2**) in such a pseudonymised form (SWIT portal) that Schwarzmüller is not able to obtain any information about natural persons from the data transmitted. Schwarzmüller shall only process contact and login details as personal data and shall be entitled to use the technical data, including commercially, for its own purposes (cf. e))

15. Provision of data

- a) The provision of data depends on the service selected.
- b) Any further data backup shall be carried out by the End Customer itself and at its own expense. The End Customer alone is responsible for the operation and availability of data connections to the interface and the correct receipt of data from the interface.
- c) With an external power supply, data transfer from the product hardware to the server takes place every 15 minutes or is event-triggered. If expressly specified by the Customer in the order, this frequency may be increased to 5 minutes or to 1 minute; shortening the interval incurs additional costs. The Customer shall bear all associated costs and risks.
- d) Schwarzmüller and the companies affiliated with Schwarzmüller or other third parties commissioned by Schwarzmüller shall be entitled to store and evaluate the data in anonymised form, in a form that cannot be traced back to the Customer, for analysis purposes for a maximum period of 10 years.
- e) Schwarzmüller shall be entitled to provide the data in the form agreed in 15. d) to carefully selected service providers.

16. Intellectual property rights

- a) All copyrights, registered designs, trademarks, patent rights, utility models and other protective rights to the concepts, texts, drafts and comparable documents developed by Schwarzmüller shall remain exclusively with Schwarzmüller. The same principle shall apply to corresponding rights of the End Customer.
- b) The End Customer undertakes not to assert any rights in respect of applications for industrial property rights, prior use or licensing from the documents, knowledge or information provided to it by Schwarzmüller, nor to pass on any such knowledge or information to third parties. The same principle shall apply with regard to the documents, knowledge and information provided to Schwarzmüller by the End Customer.

17. Items of the end customer

- a) Schwarzmüller shall treat the documents and material made available to Schwarzmüller by the End Customer for the performance of the contract with care.
- b) Schwarzmüller shall return the End Customer's items as soon as Schwarzmüller ceases to require them for the performance of the contract. As long as the End Customer does not pay the remuneration owed, Schwarzmüller shall have a right of retention in this respect. The End Customer shall inspect any items returned to it without delay and notify Schwarzmüller without delay of any complaints. The provisions of section 377 UGB apply accordingly.

18. Cessation of contractual performance in the event of breach of duty by the End Customer

- a) Schwarzmüller shall be entitled temporarily to suspend Schwarzmüller deliverables and services in the event that the End Customer violates a contractual or legal obligation; violations shall include, but are not limited to, use by the End Customer in violation of the contract or the law.
- b) The End Customer's payment obligation shall continue for the duration of the cessation, unless the End Customer is not responsible for the cessation of deliverables and performance by Schwarzmüller.

19. Installation

- a) In the event that the End Customer is to install deliverables or services from Schwarzmüller in order to use them, the End Customer shall be obliged to install the goods at its own expense. Installation is not included in the agreed price.
- b) Prior to the installation by Schwarzmüller of the deliverables or services, the End Customer shall ensure the technical conditions required for installation and for making the deliverables or services ready for operation, as indicated to the End Customer with sufficient advance notice by Schwarzmüller.

20. Transfer of rights and entitlements and use of subcontractors

- a) Schwarzmüller shall be entitled to transfer rights and entitlements to third parties.

21. Changes to the subject matter of the contract; End Customer right of termination without notice

- a) In the event that changes to the subject matter of the contract become necessary as a result of changes in the service environment, including but not limited to the Internet or mobile or fixed networks, Schwarzmüller shall notify the End Customer in good time of the manner and time of the changes to the subject matter of the contract. The changes shall become binding following receipt of notification and at the time of the required change.
- b) In the event that the End Customer cannot reasonably be expected to accept the changes, the End Customer may, within one month of receipt of the change notification, terminate the contract with effect from the date of the required change without notice and without stating the reason, unless the End Customer is responsible for the changes.

22. Place of performance, place of jurisdiction and applicable law

- a) The place of performance for all deliverables and services shall be the registered office of Schwarzmüller. If and to the extent that the deliverables and services owed by Schwarzmüller under the contract are to be performed on operating equipment or at the business premises of the End Customer, the place of performance shall be the place in which the operating equipment or the business premises are located as agreed.

- b) The court of jurisdiction shall be the competent court at the place of the registered office of Schwarzmüller.
- c) The business relationship between Schwarzmüller and the End Customer shall be governed exclusively by Austrian law; conflict of law rules and the UN Convention on Contracts for the International Sale of Goods shall not apply.

23. Final provisions

- a) Should any individual provisions of this contract be or become invalid or unenforceable, this shall not affect the validity of the remaining contractual provisions. In such a case, the parties undertake to replace the invalid or unenforceable provision with one that comes as close as possible to the intended purpose in a legally permissible manner. The same shall apply in the event of gaps or omissions.
- b) Schwarzmüller reserves the right to make changes and additions to these General Terms and Conditions, provided that they are to the benefit of the End Customer or the End Customer can reasonably be expected to accept them. Schwarzmüller reserves the right to expand the functionality of telematics services and to add new functions at any time and to amend or supplement these General Terms and Conditions accordingly. The End Customer shall be notified of other changes and amendments to the detriment of the End Customer in text form (e.g. e-mail) in good time and at least three months before they come into force. Such changes shall be deemed to have been approved if the End Customer does not raise an objection in writing within six weeks of receipt of the notification of the change. In the event of an objection, the provisions of the existing General Terms and Conditions shall continue to apply. In this case, Schwarzmüller shall have the right to terminate the contract with the End Customer with one month's notice.
- c) The End Customer shall be responsible for compliance with (re-)export control law. Schwarzmüller and the companies associated with Schwarzmüller shall not be liable in this respect.

Appendix./1 Service Level Agreement

Appendix./2 Agreement on Processing