

General Terms and Conditions

tractive GmbH,

Randlstrasse 18a, 4061 Pasching, Austria

FN 386930s,

Company registration number FN 386930 s Linz Regional Court

VAT: ATU67494749

(hereinafter called 'Tractive')

Valid from: 18 May 2018

Preamble and Definitions

1. Tractive offers paid interactive online and mobile services to record and analyze wirelessly recorded GPS data (referred to as "online tracking") and sells radio-based GPS trackers used for the online tracking of pets as well as related pet accessories in the online shop. With regard to data transmission via radio technology, Tractive works almost worldwide (see country survey at <https://tractive.com>) with various mobile operators.
2. In the future, these General Terms and Conditions (hereinafter referred to as "GTC"), in addition to the definitions given in parentheses, are subject to the following definitions:
 - a) "**Tractive app**": Software applications for mobile devices (smartphone / tablet) or web applications (<https://my.tractive.com>) which (partially) provide access to the services of online tracking within the framework of the selected subscription plan;
 - b) "**Website**": <https://tractive.com>;
 - c) "**User**" / "**Customer**": Contracting party of Tractive, whereby in the area of online tracking, the term "user" and in the area of the online shop the term "customer" will be preferred. Together, "users" and "customers" are also referred to as "contracting parties".
 - d) "**Tracker**": GPS tracking devices for determining the GPS location of a pet which leverages wireless radio-based technology to transmit the data and location.

I. Scope of these Terms and Conditions

1. The following terms and conditions apply to the future use of **online tracking** and the purchase of goods, including in the online shop. These terms and conditions are binding for all current and future business dealings with the contracting party, even if not expressly referred to. Agreements deviating from or additional to these terms and conditions - in particular general business or purchasing conditions of the contracting party - shall only become part of the contract if they have been expressly confirmed by Tractive in writing.
2. With registration according to Point II, the customer expressly accepts these terms and conditions and the privacy policy.

II. Online Tracking: Registration / Subscription Plan Contract

1. The **online tracking** requires both, the possession of a Tractive GPS tracker as well as the registration of the customer via the website and a subscription plan contract based on a variety of plan options shown at <https://tractive.com> (hereinafter "subscription plan").
2. The customer is obliged to provide true and complete information about the name and e-mail address when registering. Tractive reserves the right to verify the accuracy in specific cases. Pseudonyms are not allowed.
3. Tractive reserves the right, in the case of reasonable suspicion of misuse or misuse of purpose (in particular recording movement patterns of third persons), to block the customer's access to the online tracking temporarily or forever.
4. The selection of a subscription plan is part of the activation process via <https://tractive.com/> or as part of the activation process via the Tractive app.
5. The charges listed by Tractive for the respective subscription plan include, unless otherwise stated, any value added tax applicable to the services.
6. After registration or log-in and selection of the most applicable subscription plan (either by the customer or through Tractive in certain cases) by entering the serial number of the device, selecting the country of use of the GPS tracker and selection of the respective subscription plan - if necessary the payment interval and the payment method - in each case by clicking respective selection boxes or selection in a drop down menu, the user will be provided with the pre-contractual information in a summarized form according to Section 5a of the Austrian Consumer Protection Act ("KSchG") and Section 4 of the Austrian Act on Distance Contracts ("FAGG").

By clicking the "Order Now" button - after Tractive has provided the customer with the pre-contractual information for consumers according to Section 5a KSchG and Section 4 FAGG and the customer has confirmed receipt of this information – the customer provides a binding offer for the selected subscription plan (offer).

7. The subscription automatically renews at the end of the subscription period. It will be extended by the billing interval that was selected by the customer. If the customer has already cancelled the subscription before the end of the subscription interval, or if the renewal payment fails, the subscription ends automatically.
8. Tractive will confirm the receipt of the user's offer via e-mail.
9. In the case of a successful service activation, the acceptance of the contract takes place at the latest by granting unrestricted access to the services by Tractive.
10. As part of the subscription plans offered, it is possible to additionally secure GPS Trackers against damage, loss and theft.

III. Online Tracking / Scope

1. The scope of services, the price, and the contract duration as well as any extension options of the subscription plan result from the scope of services published at the time of signing of the contract at <https://tractive.com>, which is provided to and brought to the attention of the customer prior to the submission of the contract within the scope of the pre-contractual information for consumers Section 5a KSchG and Section 4 FAGG.

IV. Online Tracking / Obligations and Behavioral Rules

1. In order to use the services of Tractive to the full extent, the user must use current (browser) technologies or enable their use (e.g. activation of Javascript, cookies, pop-ups) and always use an up-to-date Tractive app. When using older technologies, outdated apps or outdated devices, the user may not be able to use the services completely or not at all. Tractive will ensure that all services of the Tractive app can be used with the latest two major version updates for Android and iOS.
2. The user must treat the access data / credentials (the combination of email address and password) as strictly confidential and protect them from unauthorized access by third parties. The password must not be shared with anyone, including employees of Tractive. If the user has reason to believe that the credentials have been compromised in any way, the user is obliged to change the respective password immediately.

3. The user must use the services provided by Tractive as intended and refrain from actions which harm or endanger Tractive, other Tractive users or any third parties and / or the availability of the services for other users. Proper use also includes compliance with all instructions, recommendations and the like that Tractive carries out at the time the subscription plan is activated or anytime thereafter on its homepage, in operating instructions and / or other documents made available to the user. The GPS trackers are designed specifically for pet tracking and should therefore only be used for this purpose. In some countries and regions, there are laws on location tracking of animals, persons and / or objects. Only the customer or user of the Tractive GPS tracking device, but not Tractive, is responsible for complying with such laws or regulations.
4. Tractive provides users with the ability to post content in databases, communicate and interact with other users. The user warrants not to misuse the services of Tractive. The user must comply with the following rules in particular:
 - a) The entry of any personal data in the public profile of the user is at the user's own risk.
 - b) The publication of data of third parties (e.g. the creation of a profile for a third party) without the third party's consent or the uploading of an image which shows a third person without his consent is also inadmissible.
 - c) The user is solely responsible for the content stored in his profile. The user agrees to comply with all relevant statutory provisions (such as Criminal Code [StGB], Pornography Act, Youth Protection Act, Prohibition Act, Telecommunications Act 2003 [TKG 2003], E-Commerce Act [ECG], Media Act, Copyright Act [UrhG], Act against Unfair Competition [UWG], Data Protection Act 2000 [DSG 2000], any personal rights arising from other laws such as the ABGB, etc) when posting content in his profile. In particular, they must not distribute any content, material, information and/or pictures that are immoral, pornographic, obscene, racist, glorify or trivialize violence, distribute radical right-wing or left-wing ideas or that are identified as offensive or unlawful in any other way.
 - d) The user also undertakes not to threaten or harass third parties or other users and / or violate their (personal) rights.
 - e) The use of Tractive's services for commercial purposes (e.g. promotion and offering of goods and services) is prohibited.

5. Regardless of any civil and criminal consequences, the user will hold Tractive harmless for any kind of damage whatsoever and any third-party claims of whatever nature resulting from the breach of the user's obligations under this clause.
6. Tractive reserves the right - in the event of violations of this agreement or parts of this agreement, to:
 - a) warn the user,
 - b) delete part or all of the content provided by the user,
 - c) to temporarily or permanently block the user and / or
 - d) dissolve the contractual relationship prematurely and to delete the user's profile.
7. **LIVE Tracking:** The user has the possibility to retrieve the location data in any of the Apps in real time (slight time delay possible) in order to determine and track the location of the user's pet. Even if this option is basically unlimited for the customer, Tractive reserves the right to terminate any running live tracking session, if the current live tracking session is not being continued; this to prevent abuse and to reduce the energy consumption of the GPS tracker.
8. In case a user interferes with the operation of the services through manipulation of the software, proprietary software or gains automated access to the Tractive software, Tractive is entitled to cancel the services immediately and terminate the subscription plan or contractual relationship without notice. A claim for reimbursement for already paid service fees cannot be made in this case. The same applies if the user accesses any of the GPS devices tracking functions or data via means other than those made available to the user within the scope of the respective subscription plan.

V. Online Tracking Availability / Warranty / Liability

1. Tractive does not guarantee the constant availability of its services. Downtimes due to maintenance, software updates, and circumstances (such as mobile data transmission technical issues, network coverage issues, connectivity issues, availability issues with one or more mobile service providers) are outside Tractive's direct control and, therefore, permanent availability cannot be guaranteed. The user declares not to assert claims for damages and / or warranty claims for non-culpable downtime. Even if a potential downtime (of at least 24 hours) is caused by Tractive, the user is only entitled to a proportionate fee reduction claim.

2. Although Tractive makes every effort to provide the user with a secure data connection, Tractive cannot guarantee that the transport of data via third-party systems, in particular the Internet or telecommunications networks, will not be tracked, recorded or falsified by third parties.
3. The use of Tractive is explicitly voluntary and exclusively at the user's own risk. This is applicable to:
 - a) the usage of any hardware by the user, including (but not limited to) the respective smartphone or browser;
 - b) the downloading of his own content or the content of a third-party; as well as
 - c) any usage of content, data or information provided by Tractive. The user expressly acknowledges that such data could potentially be erroneous and Tractive, to the extent permitted by law, assumes no responsibility for the accuracy of such data.
4. Furthermore, Tractive makes no warranties for external links, banners or other information and promotional offers that can be placed for the user. Legal transactions that occur between the user and a third-party provider (e.g. via linked pages or banners) lead to contractual relationships exclusively between the user and the third-party provider. Tractive assumes no responsibility for the services of third parties.
5. Except as required by law, Tractive will not be liable for any damages that may result from the use of content made available through the online and mobile services or other forms of use of the online services. This also applies to damage caused by errors, technical problems, viruses or data loss.
6. The User indemnifies Tractive from all claims that third parties make against Tractive for any violation of their rights by content posted by the user within the Tractive network or through any other use of available applications on Tractive's network. The user assumes the costs of a necessary or appropriate legal defense of Tractive including all court and legal fees as prescribed by law. This does not apply if the infringement is not attributable to the behavior of the user.
7. In the event of a third-party claim, the user is required to promptly, truthfully and completely disclose to Tractive any information that is necessary for an examination of the claims and a defense. Further compensation claims of Tractive against the user remain unaffected.

VI. Online-Shop / Orders

1. The presentation of the goods in the online shop does not constitute a binding offer by Tractive to conclude a purchase contract. The customer is hereby merely requested to submit an offer by placing an order.
2. The order is made in the following steps:
 - a) Selection of the desired goods
 - b) Entering the shipping address / contact details (first name, last name, street and house number, zip code, city, country, e-mail address, telephone number to make contact possible for the deliverer) and, if applicable, an alternative billing address, choice of shipping and payment method
 - c) Verification of the goods selected
 - d) Visualization of the pre-contractual information for consumers according to Section 4 FAGG
 - e) Confirmation of the contract by clicking the button "Order Now"
 - f) By confirming the order in the online shop, the customer makes a binding offer directed to the conclusion of a purchase contract for the goods in the shopping cart. By sending the order the customer accepts that the pre-contractual information provided to consumers and these terms and conditions alone shall govern the legal relationship with Tractive. Regarding business-to-consumer transactions the provisions of the KSchG and FAGG further apply.

Tractive confirms the receipt of the customer's order by sending a confirmation email. This order confirmation does not represent the acceptance of the offer by Tractive. It serves only to inform the customer that the order has been received by Tractive. The acceptance of the contract offer takes place either by the delivery of the goods or an express declaration of acceptance.

VII. Prices, Shipping Costs / Online Shop

1. The prices for the individual products are listed in the online shop. All prices quoted by Tractive include, unless expressly stated otherwise, any applicable sales tax for these products, but exclude any import duties to countries outside the EU.
2. The prices quoted in the online shop do not include shipping costs, but the shipping options are listed separately before completing the order.

3. The shipping costs will be announced separately during the ordering process.

VIII. Online-Shop - Terms of Delivery

1. Tractive only ships the payment after the customer has fulfilled all his obligations, in particular the payment of the purchase price including any shipping costs.
2. Unless otherwise stated in the order confirmation, Tractive will ship the goods within 1-4 working days after receipt of payment. In case of pre-orders or unavailable / out-of-stock products, the delivery takes place immediately after availability of the respective product. Tractive reserves the right to make partial deliveries of available products before this date.
3. Tractive is entitled to exceed agreed deadlines and delivery times by up to one week. Only after this period has expired, the customer is entitled to withdraw from the contract after setting a reasonable grace period.

IX. Compensation

1. Tractive is only liable for damages in all cases of intent or gross negligence. In case of slight negligence Tractive is liable only for personal injury. Regarding business-to-business transactions the liability lapses in 6 months, regarding business-to-customer from the knowledge of the customer / user of the damage and the party at fault. Regarding business-to-business transactions the maximum liability shall be three times the total net turnover of Tractive (goods and services) in the last 12 months before the damage occurred.
2. Tractive is not liable for indirect damages, lost profits, interest losses, omitted savings, consequential and financial losses, damage from claims of third parties as well as for the loss of data and programs and their restoration, each occurring from slight negligence. Tractive is not liable for damages caused by improper use of the tracker or services and/or use of the tracker for purposes other than those for which it is intended.

X. Right of Withdrawal

1. All goods delivered by Tractive remain solely the property of Tractive until full payment is received. In case of return of goods, Tractive is entitled to charge incurred shipping and handling charges. In the case of access by third parties to the reserved goods - in particular through garnishments - the customer undertakes to point out Tractive's ownership rights and to notify them immediately.
2. In the event that the customer is in default of acceptance or in case of other reasons, such as late payment by the customer or user, Tractive is entitled to withdraw from the contract. In the case of withdrawal at the customer's fault, Tractive reserves the right to charge a compensation fee of 15% of the gross invoice amount or to seek compensation for the damage actually incurred. In the event of default of payment by the customer / user, Tractive is released from all further delivery obligations and is entitled to withhold outstanding deliveries or services and / or to withdraw from the contract after setting a reasonable grace period.

XI. Right of Withdrawal of the Consumer according to Section 11 FAGG

1. The customer, who is a consumer within the meaning of the Consumer Protection Act (KSchG), can withdraw from a contract concluded outside the business premises of the company or from a distance contract - if no statutory exception applies - within fourteen days.
2. The withdrawal period regarding the delivery of goods (online shop) begins on the day on which the consumer (customer) or a third party appointed by him, who is not the carrier, obtains possession of the goods. in the case of a contract for several goods ordered in a single order but delivered separately, the withdrawal period begins on the date on which the consumer (customer) or a third party designated by him, who is not the carrier, obtains possession of all goods.
3. When purchasing a subscription (service), the withdrawal period begins on the day the contract is concluded, or on the day the subscription is automatically renewed.
4. It is sufficient if the consumer (customer) announces the withdrawal within the withdrawal period. The declaration of withdrawal can also be made electronically by means of a sample withdrawal form, available at (<https://tractive.com/gen/l/widerruf.pdf>).

- a) If the consumer withdraws from a contract of sale (online shop), Tractive shall refund the payments made by the consumer (customer) step by step after the return of the goods or appropriate proof of the return of the respective goods. The refund amount will be the original costs including shipping costs (with the exception of the additional costs arising from the fact that the consumer has chosen a different kind of delivery than the cheapest standard delivery offered by Tractive).
- b) The consumer (customer) must send back the goods and Tractive is entitled to reduce the refund amount by a reasonable amount to account for damages, usage marks, or other reasons which might decrease the intrinsic value of the returned product. For delivery addresses outside the EU, Tractive is allowed to further deduct any excise duties / customs duties which were triggered by the return and collected from Tractive by customs or the carrier.
- c) The consumer (customer) has to bear the direct costs of the return shipping (if shipping from outside the EU also any excise duties / customs duties) in any case. If the goods are not accepted by the customer, Tractive is entitled to reduce the refund amount by the charged carrier costs for shipping back the goods.

XII. Terms of Payment, Default Interest; Dunning and Collection Charges

1. The payment of goods (online shop) and services (subscription plan) may vary depending on the delivery address / destination country.
2. In case of default of payment by the contracting party, Tractive is entitled to claim compensation for the damages incurred or to claim default interest at the statutory rate, which is currently 4 % per annum for consumers and 9.2 % above the base rate per annum for entrepreneurs.
3. In case of default of payment, the contracting party commits to reimburse the dunning and collection charges incurred by Tractive as far as they are necessary for the purpose of legal prosecution. This includes a flat fee of EUR 40.00 net in the case of business-to-business transactions as compensation for costs of operation according to Section 458 of the Austrian Commercial Code ("UGB"). The assertion of any further damage remains unaffected. In the area of consumer business, Tractive is entitled, without prejudice to further statutory claims, to at least charge the debtor fees for reminders mentioned in the Ordinance of the Federal Minister for Economic Affairs on the maximum rates of debt collection institutes.

XIII. Financing via Klarna Bank AB

1. In cooperation with Klarna Bank AB (publ), Sveavägen 46, 111 34 Stockholm, Sweden, we offer you the following payment options. Payment is to be made to Klarna:
 - a) Get first. Pay later (in 14 days): The payment period is 14 days from shipment of the goods or tickets/ availability date of the service. The complete terms and conditions for deliveries to Germany can be found via https://cdn.klarna.com/1.0/shared/content/legal/terms/EID/en_de/invoice?fee=0 and the complete terms and conditions for deliveries to Austria can be found via https://cdn.klarna.com/1.0/shared/content/legal/terms/EID/en_at/invoice?fee=0.
 - b) Slice it (only available for Germany): With the financing service from Klarna you can pay your purchase in flexible monthly instalments of at least 1/24 of the total amount (at least 6.95 €) or else according to the conditions stated in the checkout. The respective instalment payment is due at the end of each month after submission of a separate monthly invoice by Klarna. Further information regarding part payment including terms and conditions and Standard European Consumer Credit Information can be found via https://cdn.klarna.com/1.0/shared/content/legal/terms/EID/en_de/account.
 - c) Pay Now (Sofort direct banking): Your account will be debited directly after placing your order.
 - d) Direct Debit: Your account will be debited after shipment of the goods. You will be notified about the date by email.

2. The payment methods invoice, part payment and direct debit are only available in case of a positive credit assessment. For this purpose, during the order process and handling of your purchase, we forward your data for an address and credit check to Klarna. We can only offer you the payment methods available based on the result of the credit check. Further information and Klarna's user terms for Germany can be found via https://cdn.klarna.com/1.0/shared/content/legal/terms/EID/en_de/user and for Austria via https://cdn.klarna.com/1.0/shared/content/legal/terms/EID/en_at/user. General information on Klarna can be found via <https://www.klarna.com/de/>. Your personal data is handled in accordance with applicable data protection law and in accordance with the information in Klarna's privacy statement for Germany via http://cdn.klarna.com/1.0/shared/content/legal/terms/0/de_de/privacy and for Austria via <https://www.klarna.com/at/datenschutz/>.

XIV. Change of Address

The contracting party is responsible to notify Tractive about any changes to its shipping or billing address, as long as the contractual transaction is not mutually fulfilled. If no notice is given, declarations shall be deemed to have been received even if they are sent to the last known address.

XV. Right of Retention / Prohibition of Set-Off

1. If it is not a consumer business and a claim is justified - except in cases of reversal - the customer is able to hold back not the entire but rather an appropriate part of the gross billing amount.
2. Any set-off against claims of Tractive with counterclaims whatsoever is excluded, as long as these have not been expressly recognized or have been declared legally valid by court.

XVI. Place of Fulfillment, Contract Language, Choice of Law, Place of Jurisdiction

1. Place of fulfillment is Linz.
2. Contract language is German.
3. The contracting parties agree on Austrian jurisdiction. If the transaction is not a business-to-customer transaction, any claim or dispute arising in connection with these Terms and Conditions shall be decided exclusively by a court of competent jurisdiction located in Linz, Austria
4. These Terms and Conditions shall be governed by the laws of the Federal Republic of Austria, without giving effect to (i) its conflict of laws principles (e.g. EVÜ, ROM I-VO) and (ii) the United Nations Convention on Contracts for the International Sale of Goods. This choice of law applies to a consumer only if it does not restrict any mandatory statutory provisions of the state in which the consumer has his/her domicile or habitual residence. Regarding business-to-consumer transactions, the law of the consumer's state of domicile or habitual residence shall apply.

XVII. Partial Nullity

Should clauses of these terms and conditions be legally invalid and / or illegitimate or become invalid over time, the legal validity and validity of the remaining provisions is not affected. In this case the contracting parties commit to replace the invalid / illegitimate provision by one that is effective in law and valid and corresponds in its economic impact with the replaced provision - as far as possible and legally permissible.

XVIII. Final Provisions

1. All declarations of a legally binding nature based on these terms and conditions must be sent to the last known address of the other contracting party. If a declaration is forwarded to the last known address, it is deemed to have been received by the respective contracting party.
2. The transfer of individual rights and obligations from these terms and conditions is only allowed with the written consent of the other contracting party.