

# Terms of usage Realtime tracking Service

## Preamble

LCAG and the Customer conclude this Agreement to use a technical device for tracking with the help of GSM technology. The Agreement also includes data provision services and a logistics concept. It becomes valid with its confirmation at the time of order completion.

## § 1 Object of Usage

(1) The Customer receives several technical devices as specified in § 7 of this Agreement (hereafter also referred to as “Tracker”) from LCAG for tracking purposes. The property of the Tracker and the GSM SIM cards inside the Tracker devices are not transferred to the Customer as the usage constitutes a rental agreement for the duration of the trip only. The trip is considered to begin with the date of the signed delivery receipt of the Trackers by the Customer and ends on the day (stamp date) it is shipped back via mail to LCAG.

(2) The Trackers enable the Customer to track the position of the freight transported by LCAG via the worldwide system for mobile communication (so called GSM-standard). The Trackers are each delivered within an envelope containing the return stamp and user instructions. The Tracker is not to be removed from the envelope. The Customer may use the Trackers and may provide feedback to LCAG after the end of usage.

## § 2 Ordering Process

(1) The Customer may order one Tracker for one single shipment or piece tracking. The Agreement is valid for the amount of Trackers chosen by the Customer in the order. Orders can only be placed with a valid LCAG Customer data base number (CDB). The Customer is obliged to carefully read and accept the terms set out on this website and indicate the usage of a Tracker when booking the shipment which shall be tracked. When using eBooking, the Customer has to click the check box “Realtime tracking” on the entrance screen during the eBooking process. The service is available for companies only. Consumers in the sense of § 13 BGB (German Civil Code) are excluded from the services rendered in this Agreement.

(2) After the order is completed, LCAG will forward the Trackers to the delivery address indicated on the order form by courier services within 7 days.

### **§ 3 Mode of Usage**

(1) The Customer may attach the Tracker to future shipments with LCAG or within the LH group network. Doing so, the Customer has to follow the separately provided instructions of usage published on LCAG homepage ([Lufthansa-cargo.com/realtime](https://lufthansacargo.com/realtime)) and has to use the Trackers only in accordance with the provisions in this agreement, in particular under § 7.

(2) The Customer has to inform LCAG immediately in case of a defect or any other problems with the tracking device.

(3) The Customer is not allowed to use the Trackers for any other purposes but those stated in subsection 1. Particularly, the usage of the tracking device outside of the LH group network requires approval by third parties (e.g. the other airline) prior to usage. The Customer is responsible to inform the other airlines and to gain all necessary approvals for the use of the tracking device prior to its usage. LCAG is not liable for any consequences or damages arising from the usage of the Trackers on other airlines without prior approval.

### **§ 4 Usage Period**

(1) The usage period commences with the receipt of the Trackers and ends after their usage, but no later than three months upon delivery of the Trackers, or after termination of this agreement on the day it is mailed back to LCAG by the Customer according to subsection 2 (whatever is earlier).

(2) The Customer is obliged to return the provided Trackers to LCAG in proper condition (i.e. in operational state not deteriorated beyond reasonable wear and tear) after their usage or respectively after termination of this agreement. For this purpose LCAG provides to the Customer a prepaid and self-addressed envelope, which enables the return of the Trackers through the postal service of the respective country. The Customer fulfills his obligation by handing over the Trackers to a postal service.

### **§ 5 Collection of Data**

(1) LCAG provides the data collected by the Trackers to the Customer on a tracking portal. The tracking portal is being accessed via the LCAG homepage ([lufthansacargo.com/realtime](https://lufthansacargo.com/realtime)) and contains the respective data from the Customer as well as the so called raw data and a graphical visualization. The Customer receives a personal user account to access the data on a tracking portal provided by LCAG. The AWB will constitute the reference number during the registration process on the tracking portal. Tracking data will be made available to the Customer for 365 days after the first tracking event.

(2) The Customer has to register the Trackers on the tracking portal within three months after receipt of the Trackers. If the tracking device has not been activated and

used within the three month use period, the service expires without reimbursement. In this case the Customer is obliged to return the Tracker(s) to LCAG as set out under § 4 (2).

(4) The Customer agrees, that LCAG and the manufacturer of the Trackers have unlimited access to the collected data and have the right to use the entire collected data for their own purposes.

## **§ 6 Liability**

(1) If the Tracker at the time of delivery to the Customer has a technical failure so that it is not suitable for the contractually agreed use, or if such a defect arises during the rental period, even though it has been handled and turned on correctly according to the product description available on [lufthansa-cargo.com/realtime](http://lufthansa-cargo.com/realtime), the Customer has the sole remedy and right to seek reimbursement of the service fee. In that case the Customer is obliged to return the device to LCAG by mail as set out under § 4(2). LCAG will then reimburse the service fee for the affected Tracker within a reasonable time period. LCAG will not supply a compensating device. Service fees will only be reimbursed to the extent a technical failure of the tracking device occurs. LCAG is not liable for reimbursement if the tracker has been mishandled by the Customer or a third party or has not been operated according to this agreement. The Customer has no further claim regarding the other tracking devices that have been delivered in the same order. The agreement remains in full force for the remaining Trackers.

(2) LCAG is not liable to the Customer for any damages, futile expenses or loss of profit resulting from this agreement.

(3) LCAG's liability for damages caused by slight negligence, irrespective of its legal ground, shall be limited as follows:

(i) LCAG shall be liable for claims accrued in one calendar year up to the amount of 100% of the fees paid to LCAG under this agreement due to a breach of material contractual obligations.

(ii) LCAG shall not be liable due to a slightly negligent breach of any other duty of care applicable.

(4) The liability for gross negligence or willful intent and in case of culpable damage to life, body or health is hereby unaffected. The aforesaid limitations of liability (§ 6) shall also not apply to any mandatory statutory liability, in particular under the German Product Liability Act. In addition, such limitations of liability shall not apply if and to the extent LCAG has assumed a specific guarantee. For the avoidance of doubt, the liability of LCAG in respect of carriage of cargo shall be governed by all provisions of the Convention for the Unification of Certain Rules for International Carriage by Air (The Montreal Convention, 1999) and related international agreements where applicable.

(5) The Customer is liable for any loss or damage of the Trackers to the extent the Customer breaches his obligations under this agreement for the time of possession, in particular for breaches of his cooperation obligations, excluding those damages described in § 2.2, The time of possession commences with the receipt of the Trackers, it ends when the Trackers are mailed to LCAG in accordance with § 3.2..

(6) Nothing in this Agreement shall affect in any way the liability, rights, or obligations of Expeditors or of any shipper, freight intermediary, air, ground, or ocean carrier, or other entity under any applicable contract, air waybill or bill of lading, or terms and conditions or under any applicable United States federal, State, local, or foreign government's laws or treaties relating to air, ground, or ocean cargo security, cargo loss or damage, personal injury or property damage to third parties, freight charges and collection, hazardous materials/dangerous goods transportation, or other aspects of the handling of cargo.

(7) Strict liability (i.e. liability without fault) of LCAG for defects existing at the time of signing the agreement is excluded.

(8) The Customer shall be obliged to take adequate measures to avert and reduce damages.

(9) The regulations § 6 shall also apply to the benefit of possible representatives, vicarious agents, and employees of LCAG or third parties used by LCAG to perform the agreement. The Customer agrees and warrants that deployment of the Trackers is confined solely to quality-assurance purposes, and, in the event there is any contractual or statutory or regulatory obligation to retain this data, it shall be the exclusive responsibility of the Customer to retain same, without any cost or duty or liability imposed upon LCAG, its governing bodies, vicarious agents or insurers for same. In the event there is a demand for said data, the Customer undertakes to use the data of the Trackers for quality-assurance these purposes only and not for the filing or substantiating of claims against LCAG, its governing bodies, vicarious agents or insurers. Likewise, the Customer shall refrain from producing or using the Trackers or its data as evidence in judicial, arbitral or extrajudicial proceedings and from permitting third parties to use them as evidence.

(10) The Customer gives an assurance that it will derive no additional obligations to perform or duties to act for LCAG, its governing bodies, vicarious agents or insurers from the use of the Trackers. Specifically, it shall refrain from reproaching LCAG with infringing any duty of care (wrongful acts or omissions), unless the reproach would have been raised even without the use of the Trackers.

(11) The customer shall indemnify and hold harmless LCAG, its employees, staff members, representatives and associates as well as Lufthansa intra-group companies from and against any claims, actions, demands, proceedings, expenses and costs (including but not limited to legal fees and disbursements) of third parties which are fully or partially based on data produced, submitted or received under this agreement (in particular if such data shall be used as evidence and/or to substantiate

a liability claim) or which are caused by the Customers breach of any of his obligations under the agreement.

(12) The customer shall indemnify and hold harmless LCAG, its employees, staff members, representatives and associates as well as Lufthansa intra-group companies from and against any claims, actions, demands, proceedings, expenses and costs (including but not limited to legal fees and disbursements) in respect to any liability arising of the inaccuracy or incorrect or untimely transfer of data submitted to third parties or to LCAG with regard to tracked shipments under this agreement.

(13) In the event that a third party raises any claim against LCAG in contradiction to the distribution of liability according to this section, the Customer shall indemnify and hold harmless LCAG, its employees, staff members, representatives and associates as well as Lufthansa intra-group companies from and against any claims, actions, demands, proceedings, expenses and costs including but not limited to legal fees and disbursements in respect of any liability of the LCAG to the third party.

## **§ 7 Device specifications**

(1) The hardware will have the following specifications according to product description:

- Location technology: GSM CellID based location
- Location accuracy: minimum 2 km, but depending from local GSM infrastructure, LCAG has no influence of the GSM infrastructure
- Location frequency: 24 times / day as long as tracker is not moving
- Size (W x L x H): 61 x 89 x 8 mm
- Weight: 46g
- IP rating: IP54
- Battery lifetime up to 30 days
- Battery type: Lithium Ion/Polymer
- The battery meets the requirement in the UN Manual of Tests and Criteria, Part III, subsection 38.3
- EASA airplane certificates: EASA Form 1 (EPA P/N1033911)
- Standards compliance: RoHS CE1313
- IATA DGR compliance: Meets IATA DGR Packing Instruction 967 Section II - requirements. Does not belong to Class 9 of dangerous goods. Can be classified as “NOT RESTRICTED”

(2) The hardware will have the following operating conditions:

- Temperature: -25 degree Celsius to +55 degree Celsius (ETSI EN 300 019-13 Class 3.3)
- Humidity: 10-100%
- Impact: Stands fall from 1,5m without functional damage
- Pressure: Static pressure of 100kg

- Vibration: According to Radio Technical Commission for Aeronautics (RTCA) DO-160 section 8 category R or U, Environmental conditions and test procedures for airborne equipment “Robust Vibration test”.
- Tracking accuracy: minimum 2 km accuracy on airports and cities. The worldwide coverage includes all areas of GSM infrastructure availability (green)
- Tracking results will be provided every 60 minutes if the tracker is in movement.

## **§ 8 Modifications on the Trackers**

The Customer is prohibited to remove the Tracker from the envelope. The Customer is prohibited to undertake any modifications – including any modifications regarding repairs – on the Tracker. The Customer is particularly prohibited to link the Tracker with any other device – even if temporarily – or to remove the material substance – even if temporarily or partly – of the Trackers.

## **§ 9 Fees and Payments**

(1) For the above mentioned service (§ 1-5), the following fees apply:

- 89,- Euro per Tracker (excluding VAT) or
- USD 115,- per Tracker (excluding VAT)

(2) For orders of less than 20 pieces, a shipping fee of 60,- Euro or USD 80,- per delivery applies.

(3) After delivery of the ordered tracking devices the order will be invoiced and sent out to the Customer. Upon receipt of the invoice, payments must be done within 30 days. Payments shall be done by bank transfer only.

## **§ 10 Confidentiality**

The Customer declares his confidentiality regarding these terms of usage, the technology and any other confidential data and features of the Tracker, irrespective of whether the manufacturer or a third party has any intellectual property rights. The Customer is prohibited to use the data for other purposes but those laid out in the agreement. Furthermore, the Customer shall not gain any economic advantages over LCAG by using the Trackers for competitive purposes or by passing them on to a third party. Any information provided to the Customer, on the occasion of this agreement, remains in the property of LCAG. This agreement will not transfer licenses, rights of exploitations or any other rights.

## **§ 11 Termination**

(1) The parties have the right to terminate this agreement as a whole or any of the attachments by written notice and with immediate effect, if any of the parties becomes insolvent or is unable to pay its debts or fails or admits its inability generally, to pay its debts as they become due or institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy law or insolvency law or other similar law affecting creditor's rights. The parties may also have the right to terminate this agreement if for a period exceeding three months a situation of Force Majeure exists and one of the parties is not able to fulfill its duties due to Force Majeure. Force Majeure shall be defined as all circumstances outside the control of either party such as however without limitation war, civil war, civil unrest, strike and labor dispute, natural catastrophes, fire, epidemics, quarantine, governmental measures and governmental acts. In case of Force Majeure the contractual obligations affected hereby shall be suspended for the duration of such Force Majeure. The parties will notify any case of Force Majeure to the other Party without undue delay.

(2) LCAG has the right to terminate this agreement as a whole or any of the annexes by written notice and with immediate effect if the Customer violates essential regulations of the agreements. After termination, the Customer has to return any objects or documents which he received by LCAG.

(3) The agreement cannot be terminated by the Customer before the activation and use of the ordered and received amount of the tracking devices. The right to immediate termination for good cause remains unaffected by this regulation.

(4) When terminating the agreement the service fee cannot be refunded in any other case than technical failure of the tracking device described in § 7.

## **§ 12 Other**

(1) Any obligation under this agreement shall be carried out by the Customer only and shall not be transferred to other agents. Any other arrangements regarding this matter shall be invalid.

(2) Amendments and additions to this agreement can only be made with prior approval in writing by LCAG.

(3) The agreement becomes effective with its confirmation at the time of order completion. The obligation under § 4 (2) will remain valid for three years after signing.

(4) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of the Agreement and the invalid or unenforceable provision shall be replaced by a valid and enforceable provision, which, from an economic standpoint, is the closest to the invalid and unenforceable provision.



(5) The Customer shall only have the right to set-off or to execute a right of retention with claims that are undisputed between the Parties and / or recognized by Court as legally binding.

(6) This Agreement shall be governed by and construed in accordance with the substantive laws of Germany excluding international rules of collision.

(7) The exclusive place of jurisdiction for all legal disputes arising from or in connection with this Agreement shall be Frankfurt/Main, Germany.

Frankfurt, November 2014