

General Terms and Conditions

Article 1 - Definitions

“Platform”

means the IT platform made available by Kizy which enables to retrieve data via the API.

“API”

means a webservice that allows the Customer to retrieve data from The Platform.

“Front-End”

means the online front-end service to retrieve and visualize data from the platform.

Platform, API and Front-End commonly referred as “Service”

“Device”

means a hardware sold by Kizy. It can be a Tracker or an Accessory.

“The Tracker”

means a device with tracking functionality sold by Kizy.

“Accessory”

means a device sold or approved by Kizy to work in conjunction with a Tracker.

“Force Majeure”

means any cause beyond the reasonable control of the party affected, which affects the performance of the Service.

“Location Data”

means data on the geographical position of the Tracker.

“Agreement”

means the contract between Kizy and the Customer, consisting of the purchasing contract of the hardware and/or of the Service.

“Customer”

means the company having a business relationship with Kizy.

“User”

means a registered or non-registered person accessing data delivered by Kizy via the Service. It might include the customer.

Article 2 - Applicability

2.1 These General Terms and Conditions shall apply to and are expressly incorporated into the Agreement and all subsequent agreements entered into between Kizy and the Customer in connection with the Service and the Device. They govern the relationship between the Customer and Kizy. They apply to any use and to all transactions executed by Customers now or in the future.

2.2 Kizy provides to the Customer access to the Service subject to the provision that the Customer accepts these Terms and Conditions of Kizy.

2.3 The applicability of the Customer's general terms and conditions is hereby expressly excluded.

Article 3 - The Service

3.1 The Customer is granted a non-exclusive and non-transferable right to use the Service for tracking and tracing the Tracker.

3.2 The Customer may use the Service in connection with the Tracker provided the service fee is or will be paid for the Trackers he wishes to utilize. Each running Tracker requires a Service that is invoiced according to Chapter 7 of this agreement.

3.3 The Customer is responsible for:

- ensuring that a Device works properly before shipping it,
- ensuring that it has properly functioning browser software and internet access to the Service of sufficient capacity,
- the correct configuration of the Service.
- ensuring that the usage of the Service is made according to the local laws where the Device is in use.

3.4 Kizy makes the Service available exclusively for the purpose of allowing Customers to track and trace the position of goods exclusively. It is explicitly not allowed to track and trace persons.

3.5 Kizy uses mobile networks to localize and communicate with Trackers. Kizy does neither warrant the availability of these networks, nor that the Customer will be able to successfully use the Service for the intended use, as referred to in article 3.1, due to the fact that such use depends on third parties and its circumstances beyond Kizy's reasonable control, including those circumstances for which the Customer will be responsible pursuant to articles 3.3 or 7.1.

3.6 Kizy reserves the right to change the look and feel of the Front-End and the way the Location Data are displayed and introduce or remove features without previous warning.

Article 4 - Support

4.1 Kizy Offers support for the Devices. The following support possibilities are offered: email, phone and website.

4.2 Kizy support time is Monday to Friday from 8am to 5pm CET.

Article 5 - User names and passwords

5.1 Kizy will give to the Customer the necessary access data, such as usernames and passwords. For security reasons, the Customer must keep the access data confidential.

5.2 The Customer is responsible and liable for any use of the Service, even if the Customer did not consent to or was unaware of such use, unless such use takes place three (3) working days after Kizy has received a written request from the Customer to invalidate his access data.

Article 6 - Mobile Communication

6.1 Kizy will procure mobile network for the localization of Trackers. The Customer acknowledges and agrees that Kizy is dependent on the performance of the third parties providing these services, and therefore cannot warrant:

a. that the mobile network will be available on a continuous basis and at any place within the territory (for instance due to gaps in network coverage and to the fact that these providers reserve the right to suspend their services for maintenance purposes, for security reasons, under instruction of competent authorities etc.);

b. the speed at which the Location Data will be transmitted

c. the accuracy of the Localization Data.

6.2 The Customer shall indemnify, defend and hold Kizy and its affiliates harmless from and against any losses, damages, fines, costs or expenses (including legal fees) arising from or in connection with claims from third parties that the (content of the) Location Data sent to or from the Platform violates applicable laws and regulations, infringes the rights of such third parties or is otherwise unlawful toward third parties. To obtain indemnification, Kizy shall: (i) give written notice of any such claim promptly to the Customer; (ii) give the Customer, at Customer's option, sole control of the defense and settlement of such claim, provided that the Customer may not, without the prior consent of Kizy (which consent shall not unreasonably be withheld), settle any claim unless it unconditionally releases Kizy of all liability hereunder; (iii) provide to the Customer all available information and assistance; and (iv) not take any action that might compromise or settle such claim.

Article 7 - SIM Cards

7.1 Each Tracker contains a SIM-card. This SIM-card can solely be used:

a. in combination with the Tracker and

b. for localizing the Tracker and transmitting information between the Tracker and the Platform.

7.2 Kizy is the sole owner of the SIM-cards provided by Kizy, and the Customer must return or destroy such SIM-cards upon expiry or termination of the Agreement.

7.3 The Customer shall indemnify, defend and hold Kizy and its affiliates harmless from and against any losses, damages, fines, costs or expenses (including legal fees) arising from or in connection with claims from third parties, in particular the underlying wireless service carrier, that the Customer's use of the SIM-cards provided by Kizy is not in conformity with the Agreement. To obtain indemnification, Kizy shall: (i) give written notice of any such claim promptly to the Customer; (ii) give the Customer, at Customer's option, sole control of the defense and settlement of such claim, provided that the Customer may not, without the prior consent of Kizy (which consent shall not unreasonably be withheld), settle any claim unless it unconditionally releases Kizy of all liability hereunder; (iii) provide to the Customer all available information and assistance; and (iv) not take any action that might compromise or settle such claim.

Article 8 - Fees and Payment

8.1 The Customer will pay Kizy for the usage of the Trackers as defined in the price list. All costs are exclusive of

a. VAT and any other sales taxes and incidental costs and expenses and

b. costs in relation to the purchase, lease or use of the Devices and other Services (unless otherwise agreed).

8.2 Kizy will invoice the number of Trackers to invoice at 00:00am CET at the first day of each month .

8.3 All Trackers with a monthly subscription will be invoiced if they have been active during the previous month. This means that any monthly subscriptions are invoiced at full month.

8.4 All Trackers with a yearly subscription and active during the previous month will be listed on the invoice. The total count of Trackers is compared to the number of running yearly subscriptions and additional Trackers are invoiced as new yearly subscription.

8.5 Kizy can offer different classes of Services (for example Service or Service+) with different pricing. The template used to activate the Tracker will define which Service class is used by the Tracker. If a Tracker is used with different classes of Services during one month, the Tracker is invoiced only once, at the price of the Service class with the highest price used by the Tracker.

8.6 Kizy sends a list of invoiced Trackers with the invoice.

8.7 The Customer is the sole responsible to select with which Service class shall a Tracker be used. Kizy cannot be held responsible for usages with unintended Service class.

8.8 Unless otherwise agreed, and if applicable, the volume pricing will be calculated the following way:

- for Trackers with monthly subscription, on the number of invoiced Trackers during the billing month.

- for Trackers with yearly subscription, on the number of active yearly subscriptions.

The volume pricing cannot be applied retroactively.

8.9 Unless otherwise agreed, the Customer will pay per bank transfer.

8.10. If Kizy and the Customer agree to use credit or debit card, the Customer hereby authorizes Kizy to collect the payments due from the Customer's credit card account or bank account as specified on purchase.

8.11 Unless otherwise agreed, if Kizy sends an electronic invoice to the customer, it shall be paid within 15 days. In case a customer wishes a paper invoice, Kizy is allowed to invoice additional 20 CHF per invoice to cover the additional efforts.

8.12 If the debit appears to be unsuccessful, or the invoice is not paid within the defined payment period:

a. the Customer shall be in breach of this Agreement, and all of Kizy's claims against the Customer shall become immediately due and payable,

b. the Customer shall pay an interest rate of 7% per annum for commercial debts on the outstanding amount, and all judicial and extra-judicial costs incurred by Kizy relating to the recovery and collection of any overdue amount,

c. Kizy is allowed to invoice 20 CHF of dunning fees

d. Kizy reserves the right to suspend the Customer's access to and use of the Service until all outstanding amounts (including interest and costs) are settled, and

e. the costs of suspending and reactivating shall be borne by the Customer.

8.13 All payments to be made by the Customer must be executed without set-off or suspension.

8.14 Any money transaction fees are held by the Customer.

8.15 Test Kit conditions: trackers delivered with test-kit conditions include 3 month of Service. After this period, the Customer must pay for the Service starting from the month following the end of the test period, unless he deactivated all Trackers.

Article 9 - Liability

9.1 Information, software, products and services published on the website and the Service may contain inaccuracies, calculation or spelling errors. In no event, whether in contract, tort (including in either case negligence), misrepresentation (other than fraudulent misrepresentation), breach of statutory duty or otherwise pursuant to the Agreement, Kizy shall be liable for any loss of profits, anticipated savings, revenue, business, loss or corruption of data, loss of use, loss of goodwill, loss due to delay or any indirect or consequential loss or damage whatsoever.

9.2 Subject to article 9.1, Kizy's aggregate liability, whether in contract, tort (including in either case negligence), misrepresentation (other than fraudulent misrepresentation), breach of statutory duty or otherwise pursuant to the Agreement, shall be limited to the net price paid or to be paid by the Customer in the previous twelve (12) months of when the loss or damage occurred.

9.3 Any claim for loss or damages must be notified to Kizy within three (3) months as from the date on which the damage was caused, failing which such claim is deemed to be waived.

9.4 All warranties, conditions or other terms implied by statute that are not expressed in this Agreement are, to the fullest extent permitted by law, excluded from the Agreement.

Article 10 - Devices

10.1 The Customer shall

- a. act as a decent user of the Device;
- b. only use the Device for its purpose and in a careful and proper manner in compliance with Kizy's instructions and specifications;
- c. be held responsible to source the Accessory, and ensure it is used correctly with the Tracker if the Tracker requires an Accessory to work according to the Service definition.

10.2 Delivery by Kizy shall be deemed to have taken place at the moment where the goods leave Kizy's premises. Transport and its insurance liability shall be borne by the Customer. Kizy is entitled to carry out the delivery in stages and each stage of the delivery may be invoiced separately.

10.3 All offers and orders placed by the Customer are subject to stock being available. An agreed delivery date is not a final deadline, unless expressly agreed otherwise in writing. Kizy will use its best endeavors to timely deliver the Devices.

10.4 If the Customer refuses the delivery of the Devices, it nevertheless remains obliged to fulfill its payment obligations. In such case, the Devices will be stored at the risk and expense of the Customer.

Article 11 - Warranty

11.1 Kizy offers a two (2) years limited warranty on the Devices sold by Kizy against defects in materials and workmanship of the Device and its accessories sold in the Kizy original packaging, provided that they are used according to Kizy's user manuals, technical specifications and other Kizy published guidelines. The Warranty starts on delivery date.

11.2 The following events are explicitly excluded from the warranty (non-exclusive list):

- a. humidity and water damages
- b. storing a Device with battery at 0%
- c. attempts to open or self-repair the Device

11.3 If a Device is defective, Kizy will instruct the Customer on how to behave. Kizy will either attempt to repair the Device or replace it with a refurbished Device or a similar Device. Kizy might refund the Device only if several unsuccessful repair or replacement attempts took place.

11.4 Devices defective within fourteen (14) days upon delivery are considered as Dead on arrival (DOA). DOA are replaced free of charge with new Devices according to Kizy's instructions.

11.5 If Kizy cannot reproduce the defect on repair attempt, the Device shall be considered as Not Fault Found (NFF). Kizy might invoice to the Customer the NFF at Device list price to cover the repair investigation costs.

11.6 Only Kizy or qualified repair centers might attempt to repair the Device. Failing to do so will immediately void any warranty.

11.7 A replacement part or product or a repaired Device assumes the remaining warranty of the original Device or ninety (90) days from the date of replacement or repair, whichever provides longer coverage.

11.8 In case of Device shipment, the Customer pays for costs of shipment to Kizy.

Article 12 - Device End of life

12.1 Devices that have not generated any traffic for more than 2 years will be considered as unused. As such, Kizy is allowed to definitely deactivate these Trackers without previous warning to the Customer. Customer has no right of compensation for deactivated Devices.

12.2 Kizy can at any time declare a Device as End-of-life. Kizy will communicate on its website at least 6 months in advance what types of devices will be declared as End-of-Life. End-of-Life means that the devices can be used, as long as Kizy supports the service for the device, but neither support, nor warranty, swap or repair will be offered.

However, this do not apply as long as warranty on the Device is running.

12.3 Kizy can terminate the Service for End-of-life devices at any time, and without warning. The Customer cannot claim any compensation for Service termination of End-of-Life Devices.

Article 13 - Force Majeure

13.1 If a party is prevented or delayed in the performance of any of its obligations under the Agreement by Force Majeure, then that party will be excused from the performance or punctual

performance, as the case may be, of its obligations, to the extent that such Force Majeure continues and agrees to use all reasonable endeavors to overcome or work around the Force Majeure so as to be able to perform its obligations under the Agreement.

13.2 Force majeure includes:

- a. break-down of telecommunication;
- b. break-down of electric current;
- c. natural disasters, wars, riots, unforeseeable strikes;
- d. late and/or stagnation of deliveries by Kizy's suppliers;
- e. incomplete deliveries by Kizy's suppliers and
- f. failure to obtain all Products and/or (third party) services required for the proper fulfillment of the Contract by Kizy caused by circumstances that cannot in fairness be attributed to Kizy.

Article 14 - Data Protection

14.1 According to the art 3.4 of these GTC, Kizy does not allow collecting data related to persons. However, if nevertheless personal data shall be collected, the following rules apply.

14.2 The parties will observe all provisions of the relevant data protection laws and regulations, insofar as the violation of such provisions affects the interests of the other party. Each party shall indemnify the other party against claims resulting from or in connection with the indemnifying party's non-observance or insufficient observance of the aforementioned provisions.

14.3 Kizy is free to collect, process, store and use personal data, more specifically the Location Data, to the extent that such is necessary for enabling the Customer to use the Service or for invoicing purposes. Kizy hosts the data in third party's data centers under the strict terms of a data processing agreement, compliant to the European Data Protection Directive and the Swiss Federal Data Protection Act (FADP). Kizy might use and/or resell anonymized data to third parties.

14.4 The Customer agrees to the collection, processing, storage and use by Kizy of their Location Data. The Customer must inform its employees, relatives and all the persons in contact with a Device and connected to the Platform about the type of data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to third parties for the purpose of providing the Service. Moreover, the Customer must inform these employees, relatives and other persons about their rights regarding the data processed.

14.5 The Customer warrants that it holds the written consent from its employees, relatives and all the persons in contact with a Device and connected to the Platform, to pass on personal data, and that it explicitly instructs Kizy to provide the Service by using and storing such data, and to pass on such data to the third parties that Kizy uses for the provision of the Service. The Customer shall present the relevant consent or an appropriate operating agreement to Kizy on request.

14.6 The Customer may revoke its consent for the collection, processing, storage and use of their Location Data at any time. Such revocation must be presented to Kizy in writing and shall not affect the Agreement and will leave the Customer's payment obligations under the Agreement intact. The Customer acknowledges that as a result of such revocation, Kizy may not be able to provide the Service.

14.7 Kizy complies with the General Data Protection Act entered into force in 2018. All communicated personal data (such as name, address, date of birth, e-mail, phone number, fax number, bank details) will be exclusively collected, processed or used pursuant to the applicable conditions under data protection law.

14.8 Any data protection related questions or complaints must be directed to privacy@kizytracking.com or contacting Kizy by phone.

Article 15 - Intellectual Property

15.1 Kizy retains all intellectual property rights vested in the Service and the Device. The Customer shall not at any time acquire any rights, title or interest in these intellectual property rights by virtue of any use that the Customer may make thereof pursuant to the Agreement.

15.2 The Customer will not at any time contest Kizy's ownership of the intellectual property rights, nor assist anyone else to do so, nor do anything that would jeopardize or diminish Kizy's rights to the Service or the value of the intellectual property rights vested therein.

Article 16 - Terms and Termination

16.1 Unless otherwise agreed, the Agreement commences on the order date and shall expire after the initial term. Following the Initial Term, the Agreement shall automatically renew for consecutive additional periods of one (1) year each, unless either party gives the other party written notice of its intention not to renew at least three (3) months prior to the date on which the Agreement would otherwise renew.

16.2 Each party may, without prejudice to any of its other rights arising hereunder, upon giving written notice, terminate the Agreement with immediate effect, if:

a. the other party fails to observe or perform any material term or condition hereof, including in any event non or late payment, and such default or breach (if capable of remedy) shall not be remedied within twenty (20) calendar days after notice in writing, specifying the breach and requiring the same to be remedied, has been given,

b. any of the following events occur: (i) the presentation of a petition for winding up of the other party; (ii) the other party is the subject of an order or an effective resolution is passed for winding up the other party; (iii) the application for an order or application for the appointment of a receiver (including an administrative receiver), administrator, trustee or similar officer in respect of the other party; (iv) if a receiver, administrative receiver, administrator or similar office is appointed over all or any part of the assets or undertaking of the other party; (v) the other party making a composition or arrangement with its creditors generally or an assignment for the benefit of its creditors or other similar arrangement; (vi) the other party goes into liquidation; (vii) the other party becoming unable to pay its debts or otherwise becoming insolvent, or (viii) the other party ceasing, or threatening to cease, to carry on business, or

c. there has been any delay or failure in performance under the Agreement resulting from any event of Force Majeure, which delay or failure shall have continued for a period of three (3) months.

Article 17 - Miscellaneous

17.1. The Service may contain links or references to other websites that are not operated by Kizy. Kizy is not responsible for the content of these websites and is not liable for damage or injury resulting from the content of these websites.

17.2 Neither party may assign, sub-contract, transfer or dispose of any of its rights and obligations under the Agreement (the Transfer), either in whole or in part, without the prior written consent of the other party, unless this party is an affiliate of the transferring Party. Any Transfer will be notified to all Parties.

17.3 The illegality, invalidity or unenforceability of any provision of the Agreement shall not affect the legality, validity or enforceability of the remainder of the Article or paragraph that contains the relevant provision or any other provision of the Agreement. If the remainder of the provision is not affected, the parties shall use all reasonable endeavors to agree within a reasonable time upon any lawful and reasonable variations to the Agreement which may be necessary in order to achieve, to the greatest extent possible, the same effect as would have been achieved by the Article, or the part of the Article, in question.

17.4 No amendment to the Agreement is valid or binding unless made in writing.

17.5 Nevertheless, Kizy is entitled to amend these General Terms and Conditions. These amendments enter into force within 2 weeks from the date that the Customer is notified thereof, provided that the customer didn't object to such change within this timeframe.

17.6 Each dispute arising under the Agreement shall, in first instance, be settled by an arbitrary court in Switzerland, which will have exclusive jurisdiction in respect of any such disputes. The Agreement is subject to Swiss law. The place of Jurisdiction is Neuchâtel. The communication will be held in English or French.

Article 18 - Fair Use Policy

18.1 By accepting our General Terms and Conditions, the Customer agrees to be bound by the Fair Use Policy below. Kizy's Fair Use Policy is designed to make sure that the Service is of great value, high quality and reliable whenever a Customer uses them.

18.2 Kizy has a Fair Use Policy because at peak times, many Kizy Customers use the shared network bandwidth of Kizy's Platform. The Fair Use Policy is the following. The vast majority of Kizy Customers use the Services considerately and their usage levels do not disproportionately affect the shared network capacity. It might happen that a Customer uses the Services inappropriately, for example units that are consuming a large amount of data due to automated systems that generate large messaging traffic through the platform. As a result of this excessive use the quality of the Services for all users may be affected. Our Fair Use Policy manages inappropriate and/or excessive use and makes sure the Services can be used by everyone.

18.3 Kizy's Fair Use policy works in the following way. If the Customer regularly uses the Services inappropriately and/or excessively and Kizy believes this is affecting the Service, Kizy will notify the Customer about this usage and will ask the Customer to change or decrease this kind of usage. If the Customer continues to use the Services inappropriately, Kizy reserves the right to suspend

whole or part of the Services, or end any agreement with the Customer, with prior notice.

Contact information

Kizy Tracking SA
Pierre-à-Mazel 39
2002 Neuchâtel
Phone: +1 844 438 5499
Email: info@kizytracking.com

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Commercial registry No. CHE-114.920.611
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Board of directors: Niels Delater, Ulrich Krings, Mark Gieben

CEO: Niels Delater

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