

ChartCo Services Terms and Conditions



1. Definitions and Interpretation

In these Terms and Conditions, the following words shall have the following meanings:

Affiliates	means in relation to either Party, its parent company and its subsidiaries, or all other subsidiaries of its parent company.
Agent	means any Person appointed in writing by the Company to promote and seek Subscribers for the ChartCo Service.
Broadcast Hardware Package	means a package of services, purchased together for the purpose of obtaining a discounted ChartCo Receiver
Broadcast Service Package	means a package of services, purchased together for the purpose of obtaining discounted services
Bundle	means a promotional package of hardware and selected services, or selected services, offered at discounted rates, compared to the aggregated individual prices for the same items, ordered individually. Bundle packages may be offered, at the Company's discretion, from time to time, typically with defined time limits for take up.
ChartCo Service	means the electronic delivery of Data Services to End Users or any part of the ChartCo Service where the context so requires.
ChartCo Receiver	means the receiver or decoder supplied by the Company to End Users that enables the Broadcast ChartCo Service to be accessed.
ChartCo Service Schedule	means the schedule at the front of the Contract listing the Data Services to which the Contract applies.
ChartCo 24 Hour Support Desk	means the technical and operational support facility provided by the Company as part of the ChartCo Service.
Company	means ChartCo Limited.
Contract	means a Contract for the provision of the ChartCo Service, as set out in the ChartCo Service Schedule, and subject to these terms and conditions.
Data Services	means the services set out in the ChartCo Service Schedule which may be amended from time to time by agreement in writing between the Parties.
Data Supplier	means the Person from whom the Company obtains data for one of the Data Services forming part of the ChartCo Service.
End User	means the Subscriber's authorised user including but not limited to a sea going vessel using the ChartCo Service and the ChartCo Receiver during the term of the Contract.
Goods	means physical items including the ChartCo Receiver and Proprietary Items.
FMA	means the fitting and maintenance agent authorised by the Company or the Company acting as a fitting and maintenance agent to perform the installation, commissioning and repair of the ChartCo Receiver and Proprietary Items.
Force Majeure	means any act, event or circumstance beyond the reasonable control of the party to perform and which results in or causes the failure of that party to perform any of its obligations under the Contract including act of God, strikes, lockout or other industrial disturbance, war or threat of war, terrorist act, blockade, riot, sabotage, act of vandalism, lightning, fire storm, flood, earthquake, explosion, fault or failure of plant or machinery including, for the avoidance of doubt, any significant computer software and/or hardware failure.
Incoterms 2000	means the International Chamber of Commerce (ICC) official rules 2000 for the interpretation of trade terms.
Intellectual Property	means (i) all and any rights in patents, copyright, moral rights, database rights and rights in trademarks, designs, know-how and confidential information; (ii) applications or registration, and the rights to apply for registration for any of these rights; and (iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world (whether registered or unregistered) in all cases which are used or owned by the Company.
Parties	means the Company and the Subscriber.
Place of Destination	means the point agreed between the Company and the Subscriber to which the Goods shall be delivered.
Person	means any natural person, partnership, joint venture, corporation, company, trust, firm, association, government, governmental department or agency.
Proprietary Items	include but are not limited to computer equipment or similar items included in the Goods to be supplied by the Company but not manufactured by the Company.
Service Exchange Unit	means a ChartCo Receiver or other Goods provided by the Company to replace defective items.
Software	means any software supplied by ChartCo to facilitate storage, delivery, or display of any or all of the Data Services
Subscriber	means the Person named on the front of the Contract with whom the Company has contracted to supply the ChartCo Service.
Subscription Fee	means the weekly subscription fee for the ChartCo Service as defined in the ChartCo Service Schedule.
Third Party Manufacturer	means any manufacturer or supplier of Goods including but not limited to computer equipment for use in connection with the ChartCo Receiver.

2. Use of the ChartCo Service and the ChartCo Receiver

- 2.1 Unless otherwise agreed in writing between the Parties, the terms and conditions of the Contract shall apply to the exclusion of all other terms and conditions including any of the Subscriber's terms and conditions.

- 2.2 The Subscriber may not assign his rights or obligations under the Contract without the prior written consent of the Company.
- 2.3 The ChartCo Service and Software is for use by the Subscriber at a named site, and may not be copied, sold or otherwise distributed for any other purpose.
- 2.4 If, pursuant to clause 2.2, the Subscriber rents or leases to third parties a service or product which incorporates the ChartCo Service, this does not relieve the Subscriber of any other obligations under the Contract, including the responsibility of advising third parties of the terms of the Contract and ensuring that those third parties uphold the terms of the Contract.
- 2.5 All data provided under the ChartCo Service is confidential proprietary business information which cannot be sub-licensed or copied or re-distributed without the express written permission of the Company in accordance with clause 16.
- 2.6 Unless purchased outright by the Subscriber the ChartCo Receiver supplied under the Contract remains at all times the property of the Company and the Subscriber is liable for its safekeeping.

3. Term and Termination

- 3.1 Subject to clauses 3.2 and 3.3 below the initial term of the Contract (hereinafter the "Initial Term") shall be set out in the ChartCo Service Schedule as accepted by the Subscriber or as otherwise agreed in writing by the Parties. If left unspecified, the Initial Term shall be 3 years.
- 3.2 The Company may terminate the Contract or the provision of any of the Data Services with immediate effect and without notice:
- (i) if the Subscriber fails to pay the Subscription Fee or any part of the Subscription Fee in accordance with clause 4.2 of these Terms and Conditions;
 - (ii) if the Subscriber is in breach of any of its obligations under the Contract;
 - (iii) if any communication satellite or satellite ground station used to provide the ChartCo Service becomes permanently inoperable;
 - (iv) if any of the Data Suppliers suspends, withdraws or cancels the supply of data to the Company.
- 3.3 The Company may terminate the Contract on three months' written notice to the Subscriber if, in the Company's opinion, market conditions are such that provision of the ChartCo Service is no longer commercially viable.
- 3.4 In the event of termination by the Company pursuant to clause 3.3, the Company's maximum liability shall be no greater than the repayment to the Subscriber of an amount calculated pro rata with respect to the pre paid Subscription Fee, for any remaining part of the Contract.
- 3.5 Notwithstanding the provision of clause 3.7 & 3.8 below, in the event of termination by the Subscriber within the first 12 months of the Contract the Company shall be entitled to charge the Subscriber and the Subscriber shall pay to the Company a cancellation fee, in accordance with the then current company price list, for early termination and return the Company's equipment, in good working order, carriage paid, to the Company's Registered Office.
- 3.6 The Subscriber acknowledges that where the ChartCo Receiver is provided on rental terms the Company shall recover possession of it on the termination of the Contract. Forthwith upon such termination the Subscriber shall notify the Company in writing of the whereabouts of the vessel on which the ChartCo Receiver is installed. The cost of retrieving, dismantling and removing the ChartCo Receiver from the vessel, including costs incurred in travelling to the vessel to remove the ChartCo Receiver, on termination of the Contract shall be borne by the Subscriber but such dismantling and removal might be carried out by an FMA under the instruction of the Company.
- 3.7 The Subscriber acknowledges that where the ChartCo Receiver has been provided as part of a Broadcast Hardware Package, if termination takes place within 24 months of installation, the Decoder shall be returned in good working order, carriage paid, to the Company's Registered Office. Any dismantling costs shall be borne by the Subscriber.
- 3.8 The Subscriber acknowledges that where the subscription is for a Broadcast Service Package and termination takes place within 24 months of installation, the Company shall be entitled to charge the Subscriber and the Subscriber shall pay to the Company a cancellation fee in accordance with the then current company price list, for early termination.
- 3.9 On termination of the Contract, for whatever reason, the then current quarterly Subscription Fee invoice remains outstanding and payable by the Subscriber in accordance with the Contract.

4. Subscription Fees

- 4.1 The Subscription Fee shall remain fixed at the rate stated in the ChartCo Service Schedule during the Initial Term. The Subscription Fee shall be reviewed by the Company prior to the end of the Initial Term and the Company shall give the Subscriber not less than one month's notice in writing of any proposed change in the Subscription Fee.
- 4.2 Subscription Fees for the ChartCo Service are payable by the Subscriber quarterly in advance and within 30 days of the date of invoice from the Company or the Agent, whichever date shall be the earlier. Subscription renewals will be invoiced automatically no later than thirty days before the due date and if the renewal fee is not received by the due date, the Contract may be terminated, in accordance with clause 4.3 below.
- 4.3 If any payment due to be paid by the Subscriber under the Contract is in arrears and remains unpaid after one month's notice in writing the Company retains the right to:
- (i) suspend the ChartCo Service. In the case of non-payment of the Subscription Fee, should the amount due be paid within one calendar month from the date of suspension, the ChartCo Service may be re-instated upon payment by the Subscriber of a reconnection fee;
 - (ii) terminate the ChartCo Service and where appropriate repossess the ChartCo Receiver.
- 4.4 Where the ChartCo Receiver is repossessed the Subscriber shall be liable for the reasonable costs of dismantling and recovering the ChartCo Receiver.
- 4.5 Except as may be prohibited by law, in the event of any insolvency or inability to pay debts as they become due by the Subscriber hereto, or voluntary or involuntary bankruptcy proceedings by or against the Subscriber, or appointment of a receiver or arrangement or composition for the benefit of creditors, the Company may elect to cancel any unfulfilled obligations hereunder.

5. Transfer of The ChartCo Receiver

- 5.1 Subject to agreement in writing by the Company, which shall not be unreasonably withheld, the ChartCo Receiver may be transferred from one vessel to another owned or

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chartered by the Subscriber. All costs associated with this transfer, including a Contract Amendment Fee in accordance with the then current company price list which shall be invoiced by the Company or Agent to Subscriber, and which costs shall also include decommissioning and reinstallation of the ChartCo Receiver shall be borne by the Subscriber. Payments of the Subscription Fee shall continue during the transfer period.

5.2 On vessel sale or transfer to new owners or managers the Subscriber shall inform the new owners or managers that the ChartCo Receiver supplied on rental terms is excluded from the ship sale.

5.3 Subject to agreement in writing by the Company, which shall not be unreasonably withheld, in the event that the vessel is transferred to another owner or manager the ChartCo Receiver may remain onboard the vessel subject to a Contract being established between the Company and the new owner or manager.

6. Warranty

6.1 Subject to the remaining provisions of this clause, the ChartCo Receiver sold or provided to the Subscriber shall be warranted free from defects in materials and workmanship for a period of 24 months from installation or 30 months from date of delivery whichever occurs first. For defects occurring in the ChartCo Receiver following expiry of the warranty period, the Company will, for a further period of three years, or the duration of the Contract whichever occurs first, provide a Service Exchange Unit at a Service Exchange Unit price as defined in the then current Company price list. The Service Exchange Unit will be warranted free from defects in materials and workmanship for twelve months from the date of despatch from the Company to the delivery address. For ChartCo Receivers rented from the Company the warranty period shall run for the full term of the Contract.

6.2 In the case of Proprietary Items sold to the Subscriber by the Company the Company will provide a full replacement warranty for a period of six months from date of installation or nine months from date of delivery whichever occurs first, provided that such items have been used and operated in accordance with the manufacturer's instructions.

6.3 ChartCo support policy is repair by unit replacement. Onboard attendance and labour is excluded. All ChartCo Receivers and Proprietary Items in respect of which a warranty claim is made shall be returned by the Subscriber at its risk and cost to the Company for repair or replacement as determined by the Company at its sole discretion. Any transportation costs for the return of defective ChartCo Receivers and Proprietary Items shall be paid by the Subscriber. Replacement ChartCo Receivers and Proprietary Items shall be returned to the Subscriber freight paid by the Company.

6.4 The above warranties are given by the Company subject to the following conditions and other provision of this clause 6:

- (i) the ChartCo Receiver, Proprietary Items and software have been installed and operated in accordance with the Company's work practices and documentation and that any system has been commissioned by an FMA or ChartCo trained and approved engineer;
- (ii) the Subscriber does not attempt to repair or tamper with the ChartCo Receiver and Proprietary Items or allow any third party to do so.

6.5 The Company shall be under no liability and the warranty contained in this clause 6 shall not apply:

- (i) in respect of any defect in the ChartCo Receiver and Proprietary Items arising from any drawings, design or specification provided by the Subscriber;
- (ii) in respect of any defect arising from wear and tear, wilful damage, negligence, neglect, abnormal working conditions, incorrect operation, misuse or alteration or repair of the ChartCo Receiver and Proprietary Items without the Company's prior written approval.

6.6 Before returning the ChartCo Receiver and Proprietary Items to the Company a Subscriber must first contact the ChartCo 24 Hour Support Desk for approval prior to despatch. At the Subscriber's option the Company may arrange for an engineer to visit the installation site. In such cases the Subscriber shall pay the engineer's transportation, accommodation and living expenses, and pay for the engineer's time at the then current rates.

6.7 Except as expressly provided in the Contract, no representation, warranty or condition, express or implied statutory or otherwise is given by the Company and all such representations warranties and conditions are excluded except to the extent that this exclusion is prohibited by law.

7. Warranty Disclaimer

7.1 Use of the ChartCo Service is at the sole risk of the Subscriber and is provided solely as an aid to safe navigation. The Company makes no assurance of successful reception of the ChartCo Service. The Company shall not be responsible to the Subscriber or to any of its Affiliates for lost revenues, lost profits, lost data, or other special, incidental, direct, indirect or consequential damages or loss or damage or other expense directly or indirectly arising from the Subscriber's, or any other Parties' use of or inability to use the ChartCo Service or for commercial loss of any kind, nor shall any recovery against the Company whether in contract, tort or otherwise be greater than the amounts paid by the Subscriber hereunder.

7.2 The Company shall not accept any responsibility for damages that are caused by the ChartCo Receivers and Proprietary Items or ChartCo Services except to the extent that they are caused by the negligence of the Company. The Company makes no warranty or representation, either express or implied including the implied warranties of merchantability and fitness for a particular purpose, with respect to these products or services. Furthermore, the Company does not warrant that the ChartCo Service will meet the Subscriber's requirements or that their operation will be uninterrupted or error free. The ChartCo Service is provided "AS IS" and the Subscriber assumes the entire risk when using it.

7.3 The Subscriber shall hold harmless and defend the Company from and against any loss or damage resulting from any use of the ChartCo Service by any third party not authorised by the Company.

8. The Company's Obligations

8.1 The Company shall use all reasonable endeavours to ensure the provision of a 24 Hour Support Desk for problem solving and advice to Subscribers when required.

8.2 The Company shall use all reasonable endeavours to ensure the provision of a data centre (ChartCo Data Centre) which will permit the Subscriber to download ChartCo Service Data as and when required.

9. The Subscriber's Obligations

9.1 The Subscriber shall at its own expense be responsible for:

- (i) the cost of installing the ChartCo Receiver and Proprietary Items;
- (ii) all ship work necessary to enable the proper installation of the ChartCo Receiver and Proprietary Items;

(iii) the provision and proper maintenance of suitable accommodation for the ChartCo Receiver and Proprietary Items;

(iv) the provision and proper maintenance of cables, batteries, the electrical supply and other fittings associated with the ChartCo Receiver and Proprietary Items;

(v) the cost to the Company of modifying the ChartCo Receiver and Proprietary Items to comply with any changes in national or international regulations governing the specification of the ChartCo Receiver and Proprietary Items;

(vi) where required, the provision of a suitable Inmarsat satellite communication system, personal computer and printer and any other ancillary equipment not provided under the Contract;

(vii) provision of all personal computer and printer consumables such as disks, tracing paper and ink;

(viii) the communication costs of accessing the ChartCo 24 Hour Support Desk and ChartCo Data Centre.

9.2 The Subscriber shall pay to the Company or Agent any invoiced costs within 30 days of the presentation to the Subscriber of the invoice in respect of the installation and maintenance costs of the ChartCo Receiver and Proprietary Items.

10. Prices

10.1 The prices shown on the ChartCo Service Schedule are ex works the Company and exclude VAT (if applicable), the cost of any necessary export licences, insurance, packing and freight. Such costs shall be to the account of the Subscriber.

11. Delivery

11.1 Unless otherwise agreed by the Company delivery of Goods shall be CIP (Carriage and Insurance Paid) to Place of Destination Incoterms 2000, the terms of which are hereby incorporated in the Contract.

12. Title

12.1 Title to Goods sold to the Subscriber shall pass to the Subscriber upon full payment of the price of the Goods including VAT to the Company, except where hardware is supplied, at discounted prices, as part of a special Package Bundle, in which case the specific terms applicable to that Bundle shall apply.

13. Loss or Damage in Transit

13.1 The Company shall not be liable for loss or damage to Goods unless:

- (i) the Company is notified thereof in writing, in the case of damage or shortage within 3 days of delivery, in the case of non-delivery within a reasonable time after the date upon which the Goods would have been delivered in the normal course of events, and
- (ii) in the case of damage to Goods, those Goods are returned by the Subscriber at the Subscriber's risk and cost for inspection to the Company within 7 days of delivery.

14. Contracts (Rights of Third Parties) Act 1999

14.1 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the Contract so as to confer a benefit on the Company's Agent as expressly provided for herein.

15. Liability for Damage to the ChartCo Receiver

15.1 The Subscriber shall be liable for, and shall indemnify the Company against, loss of or damage to the ChartCo Receiver resulting from whatever reason.

16. Intellectual Property Rights

16.1 Subject to clause 2.4 and to any third Parties' superior rights, Intellectual Property in the ChartCo Service and in the ChartCo Receiver shall remain vested in the Company. All rights in Intellectual Property and confidential proprietary information in the ChartCo Service, or any portion thereof, shall not be sub-licensed, copied, re-transmitted or transferred to anyone without the prior express written permission of the Company and, when appropriate, the third party owner of the rights or the confidential proprietary data.

17. Force Majeure

17.1 If the Company is prevented from fulfilling its obligations under the Contract by reason of any supervening event of Force Majeure, it shall promptly give notice of this to the Subscriber and shall do everything in its power to resume full performance.

17.2 Subject to 17.1 above, the Company shall not be deemed to be in breach of its obligations under the Contract.

17.3 If and when the period of such incapacity exceeds three months then the Contract shall automatically terminate unless the Parties agree otherwise in writing.

18. Assignment

18.1 The Contract shall be binding upon the Parties. The Subscriber may not assign the Contract or any rights or obligations under it without the prior written consent of the Company.

19. Notice

19.1 Neither these Terms and Conditions nor any other part of the Contract shall in any way be amended except by prior written agreement signed by the Company.

19.2 Notices shall be in writing, sent to the place of business of the appropriate party at the address set out at the beginning of the Contract (marked for the attention of the Managing Director, or such other person as the relevant party may notify the other in writing) or to such other address as may from time to time (by notice to the other party) be designated and notices shall be deemed (in the absence of any evidence to the contrary) to have been duly given:

- (i) five (5) business days after the date of posting if sent by pre-paid first-class mail;
- (ii) if delivered by hand: on the day of delivery provided that a receipt has been signed by or on behalf of the addressee; and if sent by facsimile transmission: at the time of transmission (provided that such transmission is during normal business hours and a hard copy is also sent by first class recorded delivery post).

20. Entire Agreement

20.1 The Contract, together with its schedules and exhibits, if any, contains the entire agreement of the Parties with respect to its subject matter and supersedes all prior written or oral agreements or representations of the Parties concerning the subject matter hereof.

20.2 Each party acknowledges that in entering into the Contract (and any other document to be entered into pursuant to it) it does not rely on any representation, warranty, collateral contract or other assurance of any person (whether party to the Contract or not) that is not set out in the Contract or the documents referred to in it. The only remedy available to any party in respect of any representation, warranty, collateral contract or other assurance that is set out in the Contract (or any document referred to in it) is for breach of

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contract under the terms of the Contract. Nothing in the Contract shall, however, limit or exclude liability for fraud.

21. Waiver

21.1 No delay or omission by the Company to exercise any right or power under the Contract shall impair any such right or power or be construed as a waiver. No change or waiver of any provision of the Contract is valid unless by agreement in writing by the Company, save only that the Company may vary the ChartCo Service specifications without the consent of a Subscriber. No waiver of any right under the Contract by the Company shall be taken to constitute a subsequent waiver of that right, or of any other right under the Contract.

22. Authorisation

22.1 The Contract must be signed by an authorised officer of the Parties. No employee, agent, or representative of either party has authority to bind such party by any oral representation or warranty.

23. Invalidity

If any provision of the Contract is held to be invalid or unenforceable, such a provision shall (so far as invalid or unenforceable) be given no effect and shall be deemed to be excluded from the Contract but without invalidating any of the remaining provisions of the Contract. The Parties shall use all reasonable endeavours to replace the invalid or unenforceable provision by a valid provision, the effect of which is as close as possible to the intended effect of the provision so excluded.

24. Governing Law and Jurisdiction

24.1 The formation, existence, construction and performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.