

## **TERMS AND CONDITIONS OF SALE, MOOCALL LTD.**

### **1. Introduction**

1.1 The general terms and conditions of sale detailed below only govern the contractual relationship between the User (hereafter referred to as You/Your) and the trader Moocall Limited (hereafter referred to as We/Us/Our) registered in Ireland with company number 501223 (the “**Contract**”).

1.2 Both parties accept these conditions unreservedly. These general conditions of sale are the only conditions that are applicable and replace all other conditions, except in the case of express, written prior dispensation. We maintain that, by confirming your order, you unreservedly accept our general conditions of sale, having read them.

1.3 These Terms and Conditions of Sale are important to you and us as they have been designed to protect your rights as a valued customer and to protect our rights as a business and to create an understanding between us.

1.4 The Contract constitutes the entire agreement between the parties. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us, which is not set out in the Contract.

1.5 Any samples, drawings, descriptive matter or advertising issued by us and any descriptions of the Device (as hereinafter defined) or illustrations or descriptions of the services contained in our website or brochures are issued or published for the sole purpose of giving an approximate idea of the services and/or goods described therein. They shall not form part of the Contract or have any contractual force.

### **2. Ordering**

2.1 There are two methods in place to place an order:

2.1.1 by Internet, on our site: [moocall.com](http://moocall.com), 24 hours a day and 7 days a week; or

2.1.2 by telephone, on 00-353-1-9696038, Monday to Friday 9am - 5pm.

### **3. Device information**

3.1 The device is a birthing sensor for a pregnant cow which is used to monitor the pregnant cow and to issue an alert to a phone which has been synchronized to the device when the cow is about to go into labour, (the “**Device**”).

3.2 The Device comes with a pre-loaded credit package and may require software updates which will be available remotely.

3.3 The Device comes with an instructional video and brochure which can be downloaded for free at [moocall.com](http://moocall.com).

3.4 Please note, the Device does not assist in the labour of the cow but instead alerts the phone, subject to the phone having been synchronized to the Device in accordance with the

Device instructions, when the cow is about to go into labour. Any use of the Device which is inconsistent with the instructional video and brochure may affect blood flow to the cow's tail and the cow's health.

3.5 We will not be held liable for the poor or improper use of the Device and its consequences.

3.6 Our customer service team will be happy to answer your questions any time from [9 a.m. to 5 p.m., Monday to Friday:

3.6.1 by telephone: 00-353-1-9696038 (National rate); or

3.6.2 by email: [info@moocall.com](mailto:info@moocall.com)

#### **4. Prices**

4.1 The prices indicated on our website are in Euros and include all taxes but do not include delivery or support costs.

4.2 The support cost is indicated for the User as the Device(s) are chosen and is invoiced at the end of the order in addition to the price of the Device(s) and the associated delivery costs. The support costs run from activation of the Device by you. The support cost is an annual upfront payment and will be invoiced on an annual basis thereafter. The Device will alert you when the subscription is due for renewal. You shall pay the invoice issued by us within thirty (30) days of the date thereof.

4.3 The possible delivery costs are indicated for the User as the Device(s) are chosen and are invoiced at the end of the order in addition to the price of the Device(s) and the associated support costs.

4.4 We reserve the right to modify our prices and our support costs at any time but will apply the current rates as indicated to you on the site at the time the order was placed.

4.5 If an obviously incorrect price appears on our website (e.g. a price that is clearly too low), and for whatever reason (IT bug, human error, technical error etc.), your order will be cancelled, even if it has been initially validated.

4.6 All amounts payable by the Customer under the Contract are inclusive of amounts in respect of value added tax chargeable from time to time ("VAT") and you will be issued a valid VAT invoice and pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Device and/or support service at the same time as payment is due for the supply of the Device and/or support service.

#### **5. Availability**

5.1 Please note that we will honour your order while stock is available. If the Device becomes out of stock after your order has been confirmed, we will honour your order when we receive the Device back in stock or alternatively we will refund the price you paid for the Device within 60 days following the date of payment.

## **6. Delivery**

6.1 The Device will be delivered to Ireland. In the event where you want the Device delivered to another country, please see our website, [www.moocall.com](http://www.moocall.com).

6.2 The Device will be delivered to the address you indicated when you place your order.

6.3 We offer several methods of delivery. For further details, please refer to our website.

6.4 Lost parcels: We will do everything in our power to respect the delivery times indicated on our website. In the event where you do not receive your package in the indicated time frame, an investigation will be conducted with the carrier and may take several days upon receipt of your claim. During this period, no reimbursement or re-delivery will take place.

6.5 Upon receipt of your order, we recommend that you verify your Device against the order that you placed with us and if necessary, write any anomalies that may have occurred on the delivery voucher and then sign it. Without prejudice with respect to the applicable legal guarantees, we recommend that you address any reservations you may have pertaining to a malfunctioning Device on the date of delivery as quickly as possible by Post to the following address or by email:

Address: Carraig House, 5-6 Brookfield Terrace, Blackrock, Co. Dublin, Ireland

Email: [info@moocall.com](mailto:info@moocall.com)

## **7. Secure payment**

7.1 We offer three methods of payment:

7.1.1 Credit card (Debit card, Visa, Laser, or MasterCard,

7.1.2 bank transfer, or

7.1.3 Cheque

7.2 When you pay by credit card, your account will be debited when your order is placed. If sufficient funds are not available, your order will not be taken into account. For payments made on-line by credit card, the "Secure Socket Layer" (SSL) is used, which allows your banking information to be encrypted when on the network.

7.3 For security reasons, all orders paid by bank card are verified by us. Complementary information may be requested, or demanded, in order to validate your purchase. Accordingly, in order to avoid any delays, when you place your order, please enter the following: a current email address and a land line telephone number where you can be reached at any time of the day.

7.4 When you pay by bank transfer payment or cheque, your payment will be processed when your bank transfer is received and cleared our Bank. Once your payment is received we will dispatch the Device. The processing of off-line payments may take several days.

## 8. Right of Withdrawal

8.1 The right of withdrawal entitles you to 14 calendar days to cancel all or part of your order. This cooling-off period begins from the delivery of your order, or from the delivery of the final parcel should your order be delivered in several parcels.

8.2 In order to exercise the right of withdrawal, you must inform us of your intention within this 14-day period.

8.3 We strongly suggest you contact us by email or phone to notify us of your decision.

8.4 You will then have 14 calendar days to return the Device(s) after you have informed us of your intention to exercise your right of withdrawal.

8.5 Return costs are at your own expense.

8.6 We will issue a refund for returned Device(s) and original shipping fees via the same payment method initially used upon receipt of the Device(s) or upon proof of shipping. Please note that we may apply a discount to the refund to reflect the depreciation of the Device resulting from handling for reasons other than establishing the nature, characteristics and functioning of the Device.

## 9. Returns

9.1 For any returned package, please go to our website and follow the return policy instructions.

9.2 Please note that the Device(s) must be returned to the following address:

Carraig House, 5-6 Brookfield Terrace, Blackrock, Co. Dublin, Ireland.

9.3 Please note that shipping fees are the client's responsibility except if the Device does not conform to its description (the client is responsible for any damage done during the shipment of returned goods).

For the period covered under warranty provided in clause 10 below, the client must return the Device to Carraig House, 5-6 Brookfield Terrace, Blackrock, Co. Dublin, Ireland. No package will be accepted at our head office. Please note that when being repaired we may need to delete data stored on your device's memory card or hard drive in order to repair it. We therefore advise you to back up important files before sending the Device for repair. We will not accept responsibility for any data loss resulting from repairs.

## 10. Quality of Goods

10.1 We warrant that for a period of 12 months from the date of activation of the Device (the "**Warranty Period**") or for the Extended Warranty Period (as defined below) if applicable, the Device shall:

10.1.1 conform in all material respects with their description;

10.1.2 be free from material defects in design, material and workmanship.

10.2 Subject to clause 10.1, if:

10.2.1 you give notice in writing during the Warranty Period or the Extended Warranty Period (if applicable) within a reasonable time of discovery that the Device does not comply with the warranty set out in clause 10.1;

10.2.2 we are given a reasonable opportunity of examining the Device; and

10.2.3 you (if asked to do so by the us) return the Device in accordance with clause 9, we will, at our option, repair or replace the defective Device, or refund the price of the defective Device in full.

10.3 We shall not be liable for the Devices' failure to comply with the warranty in clause 10.1 if:

10.3.1 you make any further use of the Device after giving a notice in accordance with clause 10.2;

10.3.2 the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Device;

10.3.3 you alter or repair the Device without our prior written consent;

10.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

10.3.5 the Device differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

10.4 Except as provided in this clause 10, we shall have no liability to you in respect of the Devices' failure to comply with the warranty set out in clause 10.1.

10.5 These Terms and Conditions shall apply to any repaired or replacement Device supplied by us under clause 10.2.

10.6 You may elect to extend the Warranty Period for a further period of 12 months following the expiry of the Warranty Period by notifying Us in writing within 30 days prior to the expiration of the Warranty Period and making the payment to us of €30 (the "**Extended Warranty Period**").

10.7 For the avoidance of doubt, spare parts are not provided as part of the warranty contained in this clause 10.

## 11. Spare Parts

We provide spare parts for the Device, which You can purchase separately to your Device, the details of which are on Our website. These Terms and Conditions shall apply to any spare part supplied by Us to You.

## **12. Title and risk**

12.1 The risk in the Device shall pass to you on completion of delivery.

12.2 Title to the Device shall not pass to you until we receive payment in full (in cash or cleared funds) for the Device and any other goods that we have supplied to you in respect of which payment has become due, in which case title to the Device shall pass at the time of payment of all such sums.

## **13. Limitation of liability (YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE)**

13.1 Nothing in these Terms and Conditions shall limit or exclude our liability for:

13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors; or

13.1.2 fraud or fraudulent misrepresentation.

13.2 Subject to clause 13.1:

13.2.1 we shall under no circumstances whatsoever be liable to you, whether in Contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

13.2.2 our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid for the Device.

13.3 The terms implied by the Sale of Goods Act, 1893, and the Sale of Goods and Supply of Goods and Services Act, 1980, are, to the fullest extent permitted by law, excluded from the Contract.

13.4 This clause 13 shall survive termination of the Contract.

## **14. Protection of personal data**

14.1 We fully respect your right to privacy. You have the permanent right to access and rectify all the information that concerns you. You can at any time make a request to us to find out what personal information we hold concerning you. You may at any time and by request, correct this information if it is inaccurate.

14.2 You agree that we may send you information in the form of specific and occasional email and text message notifications in respect of the Device and related matters. You may at any time request not to receive any such notifications from us by clicking on the link created for this purpose and inserted at the bottom of each notification.

14.3 As a result of your interaction with the Device, we may hold and process certain information in respect of your use of the Device. By registering with us and/or by using the Device you consent to this collection and our use of such information.

14.4 In addition, you grant us a non-exclusive, transferable, irrevocable, sub-licensable, royalty-free worldwide licence to use all information gathered via the Device and permit us to commercially exploit such information and disclose and distribute such information to third parties provided that such information will not include personally identifying information, except as, a) authorised by you, b) to comply with applicable laws or this Contract.

14.5 Please note that we may also use this information to send you information about our products and services and the products and services of our commercial partners. If at any time you do not wish to receive such information please contact us at [info@moocall.com](mailto:info@moocall.com) or by post to Carraig House, 5-6 Brookfield Terrace, Blackrock, Co. Dublin, Ireland and we shall immediately cease such communication.

## **15. Intellectual Property ownership**

15.1 All Intellectual Property Rights in or arising out of or in connection with the Device shall be owned by us.

15.2 For the purposes of these Terms and Conditions, Intellectual Property Rights shall mean patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

15.3 You hereby acknowledge that, in respect of any third party Intellectual Property rights in the Device, your use of any such Intellectual Property rights is conditional upon receipt of a written licence from the relevant licensor on such terms as will entitle us to license such rights to you.

## **16. Termination**

16.1 On termination of the Contract for any reason you shall immediately pay to us all outstanding unpaid invoices.

## **17. Force majeure**

17.1 For the purposes of the Contract, Force Majeure Event means an event beyond our reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

17.2 We shall not be liable to you as a result of any delay or failure to perform our obligations under the Contract as a result of a Force Majeure Event.

17.3 If a Force Majeure Event prevents us from providing the Device for more than four (4) weeks, we shall, without limiting our other rights or remedies, have the right to terminate the Contract immediately by giving written notice to you.

## **18. General**

### **18.1 Assignment and other dealings**

We may at any time assign, transfer, mortgage, charge, sub-contract or deal in any other manner with all or any of its rights under the Contract and may sub-contract or delegate in any manner any or all of our obligations under the Contract to any third party.

You shall not, without our prior written consent, assign, transfer, charge, sub-contract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

### **18.2 Notices**

Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **18.3 Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

If one party gives notice to the other of the possibility that any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **18.4 Waiver**

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

#### 18.5 No partnership or agency

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

#### 18.6 Third parties

A person who is not a party to the Contract shall not have any rights to enforce its terms.

#### 18.7 Variation

Except as set out in these Terms and Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by us.

#### 18.8 Governing law

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Ireland.

#### 18.9 Jurisdiction

Each party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).