

# **BeSeenOnABike**

## **(A Subsidiary of MEGAPIXELS Ltd)**

Please read these terms and conditions ("the Terms") carefully. By entering one of our Websites, you are deemed to have accepted our conditions of use as set out in the Terms including the Disclaimers, which are set out below. These Terms also apply, in so far as they are relevant, to orders placed other than through a Website.

### **TERMS AND CONDITIONS**

#### **Introduction**

- 1.1 The websites, [www.megapixels.com](http://www.megapixels.com), [www.datamind.co.uk](http://www.datamind.co.uk), [www.beseenonabike.com](http://www.beseenonabike.com) and [www.megapixelstrade.co.uk](http://www.megapixelstrade.co.uk) ("the Websites") are owned and operated by MegaPixels Limited ("MegaPixels Limited", "us," "we"), a private limited company registered in England and Wales (number 3694262) whose registered office is at 7 Tucks Close, Bransgore, Christchurch, Dorset BH23 8ND. Responsibility for liability, however arising, in relation to the Websites rests solely and exclusively with MegaPixels Limited.
- 1.2 From time to time, we may modify the Terms. Accordingly, please continue to review the Terms whenever accessing or using the Websites or before placing an order. If at any time you do not agree to the Terms, you may not access or otherwise use the Websites. Please print off and retain the Terms for your records.

#### **Use of the Websites**

#### **User Responsibility and Indemnity**

- 2.1 You agree not to do or cause to be done anything, which might interfere with the proper or lawful working of the Websites.
- 2.2 You agree to indemnify, defend and hold us harmless from and against any claims, actions, demands (including reasonable legal fees) or other proceedings brought against us by a third party to the extent that such claim, suit, action or other proceedings is based on or arises in connection with your use of the Websites and any breach by you of the Terms.

#### **Disclaimers**

- 3.1 Unless otherwise specified, the materials on the Websites are directed solely at those who access the Websites from the United Kingdom mainland. We make no representation that any product or service referred to in the materials on the Website are appropriate for use, or available, in other locations. Those who choose to access this site from locations other than the United Kingdom mainland are responsible for compliance with local laws if and to the extent local laws are applicable.
- 3.2 We do not warrant (either expressly or impliedly) that the function, operation or accessibility of the Websites will be uninterrupted or error-free, that defects will be corrected, or that the Websites or the server that makes it available will be free of viruses or other harmful elements. As a condition to become a visitor to and a user of the Websites, you agree that your access will be subject to the Terms and that access is undertaken at your own risk. We shall not be liable for damages of any kind and howsoever arising, (including but not limited to damage caused by viruses, worms or trojan horses) related to your use of or inability to access this site.

- 3.3 We do not accept any liability for any loss of data or software, revenue, business, profits, cost or expense, or any direct, indirect, incidental or consequential loss or damage arising out of or in connection with the use of, or the lack of availability of the Websites or its content or as a result of withdrawing and/or screening editing or removing any materials or content on the Websites or otherwise.
- 3.4 We endeavour to display the products featured on the Websites as accurately as possible. We cannot be held responsible for the limitations of technology and cannot guarantee that your monitor's display of any colour, texture, or visual detail of actual merchandise will be accurate.
- 3.5 We reserve the right to withdraw any product from the Websites at any time and/or remove, screen or edit any materials or content on the Websites.
- 3.6 We endeavour to present recent, accurate and reliable information on our Websites. However, we make no claims to its accuracy, either expressed or implied. There may be occasions when some of the information featured on the Websites may contain incomplete data, typographical errors, or other inaccuracies. Any errors are wholly unintentional and we apologise for any inconvenience which this might cause. We reserve the right to amend errors, make changes to our Websites, or to update product information at any time without prior notice and without there being any liability on our part.
- 3.7 These disclaimers and exclusions shall be governed by and construed in accordance with English Law. If any provision (or part) of these disclaimers and exclusions shall be unlawful, void or for any reason unenforceable then that provision (or the part concerned) shall be deemed severable and shall not affect the validity and enforceability of the remaining provisions.
- 3.8 Subject to Clause 3.9, in the event that the we are held liable for any loss or damage of any kind, the total liability of MegaPixels Limited (whether in contract, tort, negligence or otherwise) in respect of any loss or damage arising out of or in connection with the Websites shall be limited to £1000 for any one incident or series of incidents. This clause does not affect your statutory rights as a consumer. This clause survives termination of this agreement for any reason.
- 3.9 Nothing in this clause 3 shall exclude our liability to you for fraudulent misrepresentation by us or the death or personal injury resulting from our negligence or that of our employees.

### **Intellectual Property**

- 4.1 All brand names, product and service names and titles and copyright used in the Websites ("the Marks") are Marks of their respective holders. All goodwill associated with or with the Marks or with MegaPixels Limited and megapixels.com trade names or marks shall inure solely to the benefit of their respective holders or with MegaPixels Limited and you shall not assert any claim or ownership to the Marks or to the goodwill or reputation thereof.
- 4.2 No permission is given by us for the use of the Marks or MegaPixels Limited and megapixels.com trade names or marks by any person other than such holders and such use may constitute an infringement of the holder's rights.
- 4.3 All designs and content featured on the Websites, including navigational buttons and images, artwork, graphics, photography, text and the likes are the copyright of

MegaPixels Limited or its licensors and any use of materials on this site without our prior written consent is strictly prohibited.

## **Privacy Policy**

- 5.1 MegaPixels Limited is registered as a data controller with the office of the Data Protection Commissioner. Details of our registration can be found at the Data Protection Commissioner's Website [www.dataprotection.co.uk](http://www.dataprotection.co.uk).
- 5.2 We respect your concerns about privacy. We, therefore, encourage you to refer to our privacy policy on an ongoing basis to stay abreast of our most current privacy policy practices, which are intended to protect your privacy and ensure that your personal information is handled in a safe and responsible manner. Details of our privacy policy can be found at [http://www.datamind.co.uk/Merchant/privacy\\_policy.htm](http://www.datamind.co.uk/Merchant/privacy_policy.htm)

## **Hyperlinks**

- 6.1 Certain hypertext links in the Websites will lead to websites which are not under our control. When you activate any of these, you will leave the Websites. We have no control over the material on any of these linked websites.
- 6.2 The inclusion of hyperlinks cannot be taken to imply any endorsement or validation by us of the content of the linked website referred to. Hyperlinks can become out-of-date and cease to work or they can direct users to a website page whose contents or use have been changed by its owner. We accept no responsibility or liabilities for any losses or penalties that may be incurred or for the accuracy of hyperlinks to third party websites, or the content of such third party websites.
- 6.3 You may provide hyperlinks to the Websites without our prior written consent. Such hyperlinks may only direct users to the home page of the Websites, and must display the relevant page in the same form as the home page of the Websites, without amendment or framing.

## **Purchase of Goods**

### **Basis of the Sale**

- 7.1 We shall sell and you shall purchase the goods you have ordered ("the Goods") (which term shall include services) in accordance with the Terms.
- 7.2 All orders for the Goods shall be deemed to be an offer by you to purchase the Goods pursuant to the Terms. By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with the Terms. Your acceptance of delivery of the Goods shall be deemed conclusive evidence of your acceptance of the Terms.
- 7.3 On receipt of your order we shall send an automatic email to acknowledge receipt. The automatic acknowledgement of your order by us shall not be deemed acceptance of your offer. Shipment of your order shall be deemed acceptance of your offer.
- 7.4 No variation of or addition to the Terms shall be binding unless agreed in writing by an authorised representative of MegaPixels Limited.
- 7.5 Our employees or agents are not authorised to make any representations or give any advice concerning the Goods unless confirmed by us in writing. In entering into the

contract, you acknowledge that you do not rely on, and waive any claim for breach of, any such representations which are not so confirmed.

- 7.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by us shall be subject to correction without any liability on our part.

### **Price**

- 8.1 All prices are in UK sterling and are inclusive of UK VAT, currently 17.5%.
- 8.2 Any quotation or published price is subject to alteration or withdrawal without prior notice as a result of fluctuation in exchange rates, increase in supplier costs, error in published price or other costs beyond our control. Statement of price or a quotation does not constitute an offer.
- 8.3 The price quoted excludes delivery.
- 8.4 Delivery including postage & packing and order handling charges are described in the Delivery pages which can be found on this Website at /Delivery\_costs\_times.htm.

### **Delivery and risk**

- 9.1 All delivery times quoted are estimates only. Please read our estimated delivery times and ensure they are suitable for you.
- 9.2 If we fail to deliver within a reasonable time, you may (by informing us in writing) cancel the contract, however:
- 9.2.1 you may not cancel if we receive your notice after the Goods have been dispatched; and
- 9.2.2 if you cancel the contract, you can have no further claim against us under that contract.
- 9.3 If you accept delivery of the Goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the Goods).
- 9.4 We may deliver the Goods in instalments. Each instalment is treated as a separate contract.
- 9.5 We may decline to deliver if we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or if the premises (or the access to them) are unsuitable for our vehicle.
- 9.6 The Goods are at your risk from the time of delivery.
- 9.7 Delivery takes place either:
- 9.7.1 at our premises (if you are collecting them or arranging carriage); or
- 9.7.2 at your premises or specified premises (if we are arranging carriage).
- 9.8 You must inspect the Goods on delivery. If any of the Goods are damaged (or not delivered), you must record that on the receipt given to the carrier. You must write to tell us within five working days of delivery (or the expected delivery time). You must give us

(and any carrier) a fair chance to inspect the damaged goods. Maximum liability for goods lost or damaged in transit will be £150.00 per consignment, unless you take out extra insurance.

- 9.9 If you fail to take delivery of the Goods or fail to give us adequate delivery instructions we may:
- 9.9.1 store the Goods until actual delivery and charge you for the reasonable costs (including insurance) of storage; and/or
  - 9.9.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to you for the excess over the price under the contract or charge you for any shortfall below the price under the contract.

### **Payment terms**

- 10.1 You are to pay us by credit or debit card, direct bank transfer or cheque, unless you have an approved credit account. Payment by credit/debit card or cheque will require clearance prior to delivery.
- 10.2 If you have an approved credit account, payment is due no later than 21 days from the invoice date unless otherwise agreed in writing.
- 10.3 If you fail to pay us in full on the due date:
- 10.3.1 we may suspend or cancel future deliveries;
  - 10.3.2 we may cancel any discount offered to you;
  - 10.3.3 you must pay us interest at the rate equivalent to that set for the purposes of s6 of the Late Payment of Commercial Debts (Interest) Act 1998:
    - a. calculated (on a daily basis) from the date of our invoice until payment;
    - b. compounded on the first day of each calendar month; and
    - c. before and after any judgement (unless the court orders otherwise).
- 10.4 If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may do any of those at any time without notice.
- 10.5 You do not have the right to set off any money you may claim from us against anything you may owe us.
- 10.6 While you owe money to us, we have a lien on any of your property in our possession.
- 10.7 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including finance costs and legal costs on a full indemnity basis) following any breach by you of any of your obligations under the Terms.

### **Retention of Title**

- 11.1 Until you pay all debts you may owe us:

- 11.1.1 all Goods supplied by us remain our property;
- 11.1.2 you must store them so that they are clearly identifiable as our property;
- 11.1.3 you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;
- 11.1.4 you may use those Goods and sell them in the ordinary course of your business, but not if:
  - a. we revoke that right (by informing you in writing); or
  - b. you become insolvent.
- 11.2 You must inform us (in writing) immediately if you become insolvent.
- 11.3 If your right to use and sell the Goods ends you must allow us to remove the Goods.
- 11.4 We have your permission to enter any premises where the Goods may be stored:
  - 11.4.1 at any time, to inspect them; and
  - 11.4.2 after your right to use and sell them has ended, to remove them, using reasonable force if necessary.
- 11.5 Despite our retention of title to the Goods, we have the right to take legal proceedings to recover the price of the Goods supplied should you not pay us by the due date.
- 11.6 You are not our agent. You have no authority to make any contract on our behalf or in our name.

### **Orders and Specifications**

- 12.1 You shall be responsible for ensuring the accuracy of any order (including any applicable specification) submitted by you and for giving us any necessary information relating to the Goods within a sufficient time to enable us to fulfil your order.
- 12.2 The quantity, quality and description of and any specification for the Goods shall be those set out in our acknowledgement of your order.
- 12.3 We reserve the right to make any changes in the specification of the Goods which are required to confirm with any applicable safety or other statutory requirements or which do not materially affect their quality or performance.

### **Cancellation and Return of Goods Bought Online or by Telephone**

- 13.1 If you are buying online or over the telephone as a consumer (ie not in the course of your business) then, subject to clause 15, you may cancel your order for goods by giving notice to us in writing no later than seven working days from (and excluding) the day on which we deliver the goods to you, and only:
  - 13.1.1 if you agree to return the goods to us at your expense (unless the goods were defective when delivered); and

- 13.1.2 where the goods are as fit for sale on their return as they were on delivery (including the original packaging and all manuals and documentation supplied with the goods).
- 13.2 If you cancel an order for goods in accordance with clause 13.1, but:
- 13.2.1 do not return the goods; or
- 13.2.2 return the goods at our expense
- we may charge you for the cost of recovering the goods.
- 13.3 You may not cancel any order which has been accepted by us, except with our agreement in writing.
- 13.4 We may suspend or cancel the order (at our option), by written notice if:
- 13.4.1 you fail to pay us any money when due (under the order or otherwise);
- 13.4.2 you become insolvent;
- 13.4.3 you fail to honour your obligations under these terms.
- 13.5 You become “insolvent” for the purposes of this clause 13 if:
- 13.5.1 you make any voluntary arrangement with your creditors or become the subject to an administration order or (being an individual or firm) become bankrupt or (being a company) go into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 13.5.2 an encumbrancer takes possession (or a receiver is appointed) of any of your property or assets or any distress or execution is levied on your property or assets; or
- 13.5.3 you cease or threaten to cease trading; or
- 13.5.4 we reasonably suspect that any of the events mentioned above is about to occur and notify you accordingly.
- 13.6 If the Goods have been delivered but not paid for, the price shall become immediately due and payable on cancellation by us, notwithstanding any previous agreement or arrangement to the contrary. On cancellation before delivery of all the Goods ordered and without prejudice to any other rights we may possess, we shall be entitled to payment for any goods we have supplied.
- 13.7 You shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of cancellation by either party in accordance with this clause 13.

## **Warranties and Liability**

- 14.1 Subject as expressly provided in these conditions and except where you are buying the Goods as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all representations, warranties or conditions expressed or implied, statutory or otherwise, are hereby expressly excluded to the fullest extent permitted by law.

- 14.2 Where you are buying the Goods as a consumer your statutory rights are not affected by these conditions.
- 14.3 Any goods not manufactured by us are sold with such warranty as the manufacturers give to us and which we are able without expense to enforce.
- 14.4 Any warranty given under this clause 14 shall not apply if (other than by us) any repair to the goods is made (or attempted), or if components not manufactured or supplied by us are installed. Any warranty given does not cover data recovery from failed hard disks or any consequential loss of data. You are advised to perform regular backups of important data.
- 14.5 You shall inspect the goods immediately upon delivery. Any claim by you based on any defect in the quality or condition of the goods or their failure to correspond with specification shall, whether or not delivery is refused by you, be notified in writing to us within seven days from delivery or where the defect or failure was not apparent on reasonable inspection within fourteen days of discovery of the defect or failure (subject to clause 14.6).
- 14.6 We shall only accept the return of defective goods if:
- 14.6.1 you have obtained a return of goods number (Return Materials Authorisation) from us. Goods must be returned to us within fourteen days of obtaining a return of goods number and no new return of goods numbers can be issued;
  - 14.6.2 the return of goods number is clearly visible on the outside of the package;
  - 14.6.3 you enclose a detailed description of the fault and the invoice number; and
  - 14.6.4 the goods are returned in their original packaging and insured by you in transit.
- Goods returned for credit must be returned complete with all manuals and documentation; we reserve the right to charge up to £50.00 per item not returned.
- 14.7 In all instances, goods must be returned as new, with no blemish, defect or parts missing, neither must the outer manufacturer packaging show any damage or be defaced in anyway. Should the items/packaging show any damage or be incomplete and defaced in any manner a fee of up to 25% will be deducted from the credit issued at our discretion.
- 14.8 We are not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if we are negligent.
- 14.9 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to the level of our insurance cover, currently £1,000,000, for any one incident.
- 14.10 For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the goods.
- 14.11 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.

## **Unsealed Software**

15. Unsealed software will not be accepted for credit or exchange. If any discs are found to be faulty you may be asked to contact the manufacturer direct.

### **Force majeure**

- 16.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may then cancel or suspend any of our obligations to you, without liability.
- 16.2 Examples of those circumstances include act of God, accident, explosion, fire, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

### **General**

- 17.1 No waiver by us of any breach of the Terms by you shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 17.2 English law is applicable to any contract made under the Terms. The English and Welsh courts have exclusive jurisdiction.
- 17.3 If you are more than one person, each of you has joint and several obligations under the Terms.
- 17.4 If any of the Terms are unenforceable as drafted:
- 17.4.1 it will not affect the enforceability of any other of these terms; and
- 17.4.2 if it would be enforceable if amended, it will be treated as so amended.
- 17.5 Any notice by either of us which is to be served under the Terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.
- 17.6 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.
- 17.7 Any queries or comments about our products or services, or objection to us making use of your personal data in the ways detailed above, should be directed to Chris Street, Managing Director.

January 2004