

TERMS & CONDITIONS OF USE
Inventory Monitor

This document covers use of the Software defined herein and commonly known as **Inventory Monitor**, and any and all information, processes, products, applications, services, designated websites or any other item provided herein, used by any person or entity, who shall, as a condition to use, and by such use hereby agrees, to be bound by these Terms and Conditions.

1) DEFINITIONS.

- a) “Software” means **Inventory Monitor** and all applications, documentation, updates, information and related matter owned and provided by Makin Automotive Software, LLC for the reasonably expected use of, or access to, such Software, at or in any Platform defined or identified herein. The term “Software” does not include Third Party Technology.
- b) “Service Provider” means Makin Automotive Software, LLC, a California Limited Liability Company.
- c) “User” means anyone accessing Software defined herein, thereby agreeing to the terms and conditions herein.
- d) “Platform” means any website, desktop application or mobile application as Service Provider may designate or provide for access to the Software.
- e) “Professional Services” means consulting, development and other professional services available from Service Provider that User may order from time to time on mutually agreeable terms. Any applicable order for Professional Services is incorporated by reference and, in the event of any conflict in terms, the terms of the order shall control.
- f) “Separate Terms” refers to separate terms that are specified in the Software, or on the Platform, including readme or notice files and those that apply to Third Party Technology.
- g) “Services” means, collectively, both Software Subscription Services and Professional Services that User has ordered from Service Provider, including online and mobile orders.
- h) “Services Environment” refers to the combination of hardware and software components owned, licensed, or managed by Service Provider to which Service Provider grants Users access as part of a Subscription.

- i) “Service Specifications” means the descriptions found on or at the Platform, applicable to the Subscription Services, including any Documentation, Policies, and other descriptions referenced or incorporated in such descriptions.
 - j) “Third Party Content” means all text, files, images, graphics, illustrations, information, data, audio, video, photographs, and other content and materials that are obtained or derived from third party sources outside of Service Provider and made available to User through, within, or in conjunction with User’s use of the Software Services. Third Party Content does not include Third Party Technology.
 - k) “Third Party Technology” refers to third party technology that is licensed under Separate Terms and not under these Terms & Conditions, except as referenced or linked herein. Third Party Technology may be subject to additional terms and conditions and include open source software and limited use private software.
 - l) “Authorized Users” also known as Subscribers means those customers of Service Provider, their employees, contractors, franchisees, and other persons or entities, that have been authorized by Service Provider and Service Provider’s customers to use the Services pursuant to any Service Provider Agreement for Software or Professional Services.
 - m) “User’s Content” means all text, files, images, graphics, illustrations, information, data, audio, video, photographs, and other content and materials provided by User that reside in, or run on or through, the Services Environment.
- 2) **RESTRICTED USE:** Access to this Software is a non-exclusive, non-assignable, royalty-free, limited right of access and use of the Software; and User’s acknowledgment of such is a condition precedent to access and use. User further acknowledges that the Software is or may be subject to copyright, trademark and patent protection.
- 3) **USE OF THIRD PARTY TECHNOLOGY AND CONTENT:**
- a) The Services may contain or require the use of Third Party Technology. The third party owner, author, or provider of such Third Party Technology retains all ownership and intellectual property rights in such Third Party Technology. Any access to Third Party Technology is on behalf of Service Provider and the Customers of Service Provider.
 - b) Any Third Party Content made accessible by Service Provider in or through the Services Environment is provided on an “as-is” and “as available” basis, without any warranty of any kind. User acknowledges that the nature, type, quality, and availability of Third Party Content may change at any time, and features of the

Services that interoperate with third parties depend on the continuing availability of such third parties' respective application programming interfaces (APIs) for use with the Services.

- c) Service Provider may update, change, or modify the Services as a result of a change in, or unavailability of, such Third Party Technology, Third Party Content, Third Party Services, or APIs. Service Provider does not intend, and is not aware of, any infringement on Third Party Rights.
- 4) **COPYRIGHT INFRINGEMENT.** Service Provider has in place certain legally mandated procedures regarding allegations of copyright infringement occurring in the Software, or related to the Services. Service Provider has adopted a policy that provides for the immediate suspension and/or termination of any User who is found to have infringed on the rights of Service Provider or of a third party, or otherwise violated any intellectual property laws or regulations. Service Provider's policy is to investigate any allegations of copyright infringement brought to its attention. If User or any other person or entity has evidence, knows, or has a good faith belief that User's rights or the rights of a third party have been violated and desire Service Provider to delete, edit, or disable the material in question, then any person or entity making such claim or request must provide Service Provider with all of the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of the exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (c) identification of the material that is claimed to be infringed or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Service Provider to locate the material; (d) contact information, such as an address, telephone number, and if available, an electronic mail address; (e) a statement of good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (f) a statement that the information in the notification is accurate, signed under penalty of perjury, by the person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. For this notification to be effective, it must be provided to Service Provider's designated agent at:

Legal Department
Makin Automotive Software, LLC
c/o Makin & Associates
100 Spectrum Center Drive, Suite 900
Irvine, California 92618
Telephone (949) 643-8137
Facsimile (949) 643-5367
compliance@makinauto.com

- 5) **OWNERSHIP.** User retains all ownership and intellectual property rights in User's Content. Service Provider retains all ownership and intellectual property rights to the Services, including the Software and derivative works thereof, all other proprietary rights in and to the Software, and to any ideas or suggestions submitted by User to anything developed or delivered by or on behalf of Service Provider under these Terms & Conditions. User shall obtain at User's sole expense any rights and consents that Service Provider, in its discretion, deems necessary or appropriate from third parties for User's Content and Third Party Content, as well as other vendors' products provided by User that User may use with the Services, including such rights and consents as necessary for Service Provider to perform the Services under these Terms & Conditions. User shall not:
- a) remove or modify any program markings or any notice of Service Provider's or any licensors' proprietary rights;
 - b) make available in any manner the programs or materials resulting from the Services (excluding User Content) to any third party for personal use or use in the third party's business;
 - c) modify, make derivative works of, disassemble, decompile, or reverse engineer any part of the Services (including review of data structures or similar materials produced by programs), or access or use the Services in order to build, support, assist or authorize, a third party in building or supporting products or Services competitive to Service Provider;
 - d) perform or disclose any benchmark or performance tests of the Services, including the Software, without Service Provider's prior written consent;
 - e) perform or disclose any of the following security testing of the Services Environment or associated infrastructure without Service Provider's prior written consent: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, load testing, or penetration testing;
 - f) copy, reproduce, distribute, republish, reverse engineer, download, display, post, or transmit any part of the Software in any form or by any means, including electronic, mechanical, photocopying, recording, or other means;
 - g) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, Software, Services Environments, or materials available to any third party, or assist or encourage others to do any of these acts.

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6) SERVICE SPECIFICATIONS.

- a) The Services are subject to, governed by, and conditioned upon User's compliance with the Service Specifications and these Terms and Conditions. User acknowledges that use of the Services in a manner inconsistent with the Service Specifications, or failure to timely pay Subscription Fees may adversely affect access to the Software, or performance, and result in additional fees, or both. User may not exceed the ordered quantity of users reflected in the Order. If excess usage is desired, User must amend the Order. Additional fees may apply to any additional work performed by Service Provider.
- b) Service Provider may make changes or updates to the Services and the Service Specifications at Service Provider's discretion; however, changes will not result in a material reduction in the level of performance or availability of Services provided to Authorized User specified in the applicable Order and Subscription.
- c) Service Provider and its affiliates may provide the Services or any part thereof, such as administration and support, as well as other Services (including Professional Services and disaster recovery), from any location worldwide, and through use of subcontractors or other professionals.

7) RESPONSIBILITY FOR USERS.

- a) Subscribers are responsible for identifying and authenticating all Authorized Users, for approving access by such persons to the Services, for controlling against unauthorized access, and for maintaining the confidentiality of usernames, passwords, and account information. Service Provider is not responsible for any harm caused by any user's, including unauthorized individuals who gain access because usernames, passwords, or accounts were not terminated by User on a timely basis. User is responsible for all activities that occur under Users' usernames, passwords, or accounts, or as a result of User or Users' access to the Services. No third party beneficiaries are intended under these Terms & Conditions.
- b) User agrees to notify Service Provider immediately of any unauthorized use. User agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Services.
- c) User agrees not to use or permit use of the Services, including by uploading, e-mailing, posting, publishing, or otherwise transmitting any material, including User Content and Third Party Content, for any purpose that may violate privacy rights, constitute an infringement of intellectual property or other proprietary rights, or otherwise violate laws, ordinances, or regulations of any state or federal government

d) If Service Provider believes or it is determined that any Software, services, subscriptions, communications or any other content or act may have violated a third party's intellectual property rights, then Service Provider may choose to either modify the items or services to be non-infringing (while substantially preserving its utility or functionality) or obtain a license or permission to allow for continued use. If these alternatives are not commercially reasonable, then Service Provider may, at its option and upon 30 days' written notice, or any notice appropriate for compliance with applicable law, substitute the Subscription, Service or Software with a commercially reasonable alternative, or terminate, without penalty, the obligations under the Services Agreement and Terms & Conditions. In addition to any other rights afforded to Service Provider under these Terms & Conditions, Service Provider reserves the right, but has no obligation, to take remedial action if any material violates the foregoing restrictions, including the removal or disablement of access to such material. Service Provider shall have no liability to User in the event that Service Provider takes such action. User shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and ownership of all of User Content. User agrees to defend and indemnify Service Provider against any claim arising out of a violation of User obligations under this section.

8) END OF SERVICES.

- a) Upon the end of the Services term, User no longer has rights to access the Services, including the associated Service Provider Software and Services Environments, and any warranty shall cease, if allowed under applicable law. However, upon User's written request, and for a period of up to 15 days after the Services end, Service Provider will make available to User the User Content as existing in the Services Environment on the date of termination. At the end of such 15-day period, and except as may be required by law, Service Provider will delete or otherwise render inaccessible any User Content that remains in the Services Environment.
- b) Service Provider may temporarily suspend User passwords, accounts, and access to or use of the Services if User or their representatives, agents, franchisees, contractors, employees or other persons or entities under User's supervision or control violate any provision of these Terms & Conditions, or fail to make timely payment for Services, or if, in Service Provider's reasonable judgment, the Services, or any component thereof, face an imminent, significant threat to security or functionality. Service Provider will use reasonable efforts to provide advance notice to User of any such suspension based on the nature of the circumstances giving rise to the suspension. Service Provider will use reasonable efforts to reestablish the Services promptly after Service Provider determines that the situation giving rise to the suspension has been cured; however, during any suspension period, Service Provider will, if commercially reasonable, make

available to User the User Content as existing in the Services Environment on the date of suspension. Service Provider may terminate the Services if any of the foregoing causes of suspension is not resolved within 30 days after Service Provider's initial notice thereof. Any suspension or termination by Service Provider under this paragraph shall not excuse User from User's payment obligations.

- c) Provisions that survive termination or expiration of these Terms & Conditions are those relating to limitation of liability, indemnification, payment, confidentiality, jurisdiction and others that by their nature are intended to survive.
- 9) CONFIDENTIALITY. The parties may have access to each other's confidential information and agree to disclose only information that is required for the performance of obligations under these Terms & Conditions. Confidential information shall be limited to the terms and pricing under the Services Agreement, User Content residing in the Services Environment, the Software, and information clearly identified as confidential at the time of disclosure.
- a) User agrees that the Software may contain valuable proprietary interests and subject to copyright, trademark and patent protection. Trade secrets and/or copyrightable material must be kept confidential. User may run reports generated by the Software but may not copy the source code or any portion of the Software, allow reverse engineering, or allow others to do so.
 - b) Confidential Information shall not include information that is or becomes a part of the public domain through no act or omission of the other party; was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; or was lawfully disclosed to the other party by a third party without restriction on the disclosure. No fiduciary relationship arises out of these Terms and Conditions.
 - c) If required by law, and following the proper legal procedure, the parties hereto may disclose limited Confidential information to a governmental entity or in legal proceeding.
 - d) User is responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from User Content, including any viruses, Trojan horses, worms, or other programming routines contained in User Content that could limit or harm the functionality of a computer or that could damage, intercept, or expropriate data, and shall indemnify and defend Service Provider for any damage or claims caused thereby.

10) LIMITED WARRANTY. THIS STATED LIMITED WARRANTY REPLACES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED AND SERVICE PROVIDER DISCLAIMS, TO THE EXTENT ALLOWED BY LAW, ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, OR OF FITNESS FOR A PARTICULAR PURPOSE, AS IT RELATES TO SOFTWARE, HARDWARE, SYSTEMS, NETWORKS, ENVIRONMENTS, OR ANY OTHER MATTER, PRODUCT, SUBSCRIPTION OR SERVICE. No agent of Service Provider is authorized to make any other warranties or to modify this limited warranty. Service Provider makes no warranty to unauthorized Users. Service Provider makes only the following representations and warranties:

- a) The Software materially conforms to these Terms & Conditions;
- b) Service Provider has the right to grant access to the Software;
- c) Service Provider is aware of no infringement of any third party's intellectual property rights;
- d) Service Provider is aware of no viruses or time bombs in the Software.

11) DISCLAIMERS AND EXCLUSIVE REMEDIES.

- a) USER ACKNOWLEDGES THAT SERVICE PROVIDER DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. SERVICE PROVIDER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE. SERVICE PROVIDER DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, WILL OPERATE IN COMBINATION WITH USER CONTENT, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, OR DATA NOT PROVIDED BY SERVICE PROVIDER, OR WILL MEET USER REQUIREMENTS, SPECIFICATIONS, OR EXPECTATIONS. SERVICE PROVIDER DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD PARTY CONTENT, EXCEPT AS SPECIFICALLY PROVIDED HEREIN, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT. FOR ANY BREACH OF WARRANTY, USER'S EXCLUSIVE REMEDY AND SERVICE PROVIDER'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF A MATERIALLY DEFICIENT

SERVICE THAT CAUSED THE BREACH OF WARRANTY, OR, IF SERVICE PROVIDER CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, AND THE DEFICIENCY WAS NOT CAUSED OR EXACERBATED BY USER, THEN, AFTER REASONABLE WRITTEN NOTICE FROM USER, ADEQUATELY DESCRIBING THE CLAIMED DEFICIENCY AND THIRTY DAYS OPPORTUNITY FOR SERVICE PROVIDER TO CURE THE DEFICIENCY, USER MAY END THE DEFICIENT SERVICES AND SERVICE PROVIDER WILL REFUND ANY FEES FOR SERVICES PREPAID FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

- b) LIMITATION OF LIABILITY AND DAMAGES. SERVICE PROVIDER SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF USER'S REVENUE, SALES, PROFITS, REPUTATION, DATA, OR DATA USE. SERVICE PROVIDER'S MAXIMUM LIABILITY FOR ANY AND ALL DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS & CONDITIONS, AGREEMENT, ORDER, USE OF THE SOFTWARE, OR SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS USER PAID TO SERVICE PROVIDER FOR THE SERVICE, THAT IS THE SUBJECT OF THE CLAIM FOR DAMAGES, IN THE 2-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM, LESS ANY REFUNDS OR CREDITS RECEIVED BY USER FROM SERVICE PROVIDER. USERS SPECIFALLY ACKNOWLEDGE AND AGREE TO THE COMMERCIAL REASONABLENESS OF SUCH LIMITATION.

12) LIMITATIONS OF SOFTWARE.

- a) The Software may compare and determine the consistency of information across multiple sources for Authorized User's internal business purposes, and not for any consumer benefit or other commercial use. The Software cannot determine whether data was input correctly to User's original source, or whether an uploaded photo reflects a particular item or is merely a placeholder photo. Service Provider makes no representations regarding, and shall not be held liable for, the accuracy of online information.
- b) Service Provider shall make reasonable efforts to keep the Software functional; however, some factors are outside the control of Service Provider, such as failures of a website host, mobile Service Provider, network, User's actions, hardware, or data

sourced from third parties for comparison to User's data. Platforms and supported data sources may vary, as determined by Service Provider to be commercially reasonable.

13) INDEMNIFICATION AND HOLD HARMLESS

- a) User agrees to indemnify, defend and hold harmless Service Provider from any and all losses, claims, damages, or expenses related to or resulting from any negative effect on User's business operations or any other claims by any person or entity against Service Provider or User, including User, its employees, agents, representatives, customers, franchisees, and any other persons or entities.
- b) If a third party makes a claim against Service Provider that any User content infringes the third party's intellectual property rights in information, design, specification, instruction, software, service, data, or hardware ("the Material"), User shall defend against the claim and indemnify Service Provider from any and all damages, liabilities, costs, expenses, or settlement payments.

14) **USER'S COOPERATION.** As a condition to Service Provider's performance and duties, User agrees to provide Service Provider with all information, access, and good faith cooperation reasonably necessary to enable Service Provider to provide the Services. User grants Service Provider the right to use, process, and transmit, in accordance with these Terms & Conditions, User's Content for the duration of the subscription period and additional post-termination period during which Service Provider provides User with access.

15) **FEEES AND SUBSCRIPTION:** Users are responsible for payment of the annual fee for Services, set forth in User's separate agreements with Service Provider, Price Lists and User's Orders. In the event User gains access to the Software or to the Services, without a separate agreement, Price List or Order, then User shall be liable to Service Provider, and shall pay promptly, the highest annual fee charged by Service Provider to any subscriber within the past 12 months. User is responsible for any sales, value-added, or other similar taxes that Service Provider must pay based on Services User ordered, except taxes on Service Provider's income.

16) **SERVICE DATA.** Service Provider may: compile statistical and other information related to the performance, operation, and use of the Services; use data in aggregated form, among other purposes not prohibited by these Terms & Conditions, for security and operations management, marketing, to create statistical analyses, and for research and development purposes; and make such data and information publicly available, to the extent that it does not incorporate User's Confidential Information in a form that could serve to identify User or any individual.

- 17) **FORCE MAJEURE.** Neither Party is responsible for failure or delay of performance caused by an act of war, hostility, terrorism, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export, import, or other license); or other event outside the reasonable control of the obligated party. The parties will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either party may terminate unperformed Services.
- 18) **NO JOINT VENTURE.** No partnership, joint venture, agency, or fiduciary relationship exists between Service Provider and User. User understands that Service Provider's business partners or associates, including any third party firms retained by User to provide consulting services or applications that interact with the Software, are independent of Service Provider and are not Service Provider's agents. Service Provider is not liable for nor bound by any acts of any such business person or entity, unless providing Services as a Service Provider subcontractor on an engagement ordered under the Services Agreement, and, if so, then only to the same extent as Service Provider itself would be responsible. Service Provider retains all rights to select, hire, or fire, at its sole discretion and without representation or disclosure regarding backgrounds, histories, and businesses interests, all Service Provider employees, members, executives, investors, business partners, subcontractors, vendors, and Users.
- 19) **REGULATORY COMPLIANCE.** User will remain solely responsible for User's regulatory compliance in connection with User's use of the Services. Service Provider is not responsible for any technical requirements that result from User's regulatory obligations.
- 20) **HEADINGS AND SEVERABILITY.** Headings of paragraphs are for convenience only and do not affect interpretation of the terms of the paragraph. If any term, line or portion of these Terms and Conditions, including any document made a part thereof, is held invalid, that portion shall be severed and all other terms, conditions, or covenants shall remain in full force and effect.
- 21) **CALIFORNIA LAW AND USE, DISPUTES.** In the event of any dispute regarding these Terms and Conditions, the Services, or any related matter, the prevailing party shall be entitled to reasonable attorney fees. Prior to filing any action or proceeding in a court of law or elsewhere, the parties hereto agree to mediate disputes. Failure to mediate shall result in waiver of right to attorney fees. These Terms and Conditions are governed by California law, without reference to rules regarding conflicts of law. The Services and any website used as a Platform are controlled and operated by Service Provider from its offices in the State of California and Service Provider makes no representation as to the appropriateness of use of the Services in other locations. Use or access shall not be

construed as Service Provider purposefully availing itself of the benefits or privilege of doing business in any state or jurisdiction other than California.

22) NO SIGNATURE REQUIRED. No signature is necessary to bind Users hereunder. Clicking to accept the terms herein or simply use of the Software, constitutes acceptance.