

General Terms and Conditions of ENAIKOOON GmbH (GTC)

1. General provisions

- a. These GTCs apply to all contracts between ENAIKOOON GmbH (hereinafter referred to as "ENAIKOOON") and their contractual partners (hereinafter referred to as "customers"), particularly those regarding the purchase of hardware and software products as well as for the purchase of the following services: ENAIKOOON fleet-control-web, ENAIKOOON fleet-control-easy, ENAIKOOON fleet-control-compact, ENAIKOOON M2M-commserver, ENAIKOOON data-forwarder, ENAIKOOON DGPS-enabler, ENAIKOOON MP-route, ENAIKOOON OSM-route, ENAIKOOON can-66, ENAIKOOON driver-id, ENAIKOOON buddy-tracker, ENAIKOOON v-locator-mobile and ENAIKOOON rfid-tracker, as well as other applications set up on the ENAIKOOON M2M-commserver.
- b. Contracts are concluded solely on the basis of the following conditions. The customer accepts these conditions when placing an order, registering on the Internet or accepting delivery, even if they conflict with their own General Terms and Conditions in part or in full.
- c. A contract with ENAIKOOON cannot be formed until confirmed by ENAIKOOON in writing.
- d. Termination of or withdrawal from a contract must be effected in writing or by fax to have legal force.

2. Service content

- a. ENAIKOOON provides the following services – depending on the scope of the contract:

(1) ENAIKOOON fleet-control-web, ENAIKOOON fleet-control-easy, ENAIKOOON fleet-control-compact:

These applications allow the customer to monitor its vehicles, locate its vehicles and print reports on the movement history of its vehicles.

(2) ENAIKOOON M2M-commserver:

ENAIKOOON provides the customer with the ENAIKOOON M2M-commserver, a platform which allows it to exchange data with mobile objects. The ENAIKOOON M2M-commserver stores the transmitted data for a pre-defined period.

(3) ENAIKOOON data-forwarder:

Data that the ENAIKOOON M2M-commserver sends or receives can be forwarded to a customer server or received from there. This allows data to be exchanged with other programs used by the customer (e.g. scheduling software or ERP software).

(4) ENAIKOOON DGPS-enabler:

By receiving GPS correction signals, the so-called DGPS (Differential Global Positioning System) signals, can improve the precision of GPS positioning.

ENAIKOOON is using technology that allows correction signals to be received and the GPS positions received by the GPS-enabled devices used by the customer to be corrected.

(5) ENAIKOOON MP-route/ENAIKOOON OSM-route

With these applications, the customer can have the current and previous locations of its vehicles displayed on a map.

(6) ENAIKOOON can-66:

This application allows CAN bus data to be assessed. This includes makes it possible to analyse the reasons for increased fuel consumption, engine trouble, engine maintenance cycles etc. and make improvements.

(7) ENAIKOOON driver-id:

Using RFID technology, the working hours of mobile staff can be recorded and access to machines, rooms, etc. limited to authorised persons.

(8) ENAIKOOON buddy-tracker:

This software, which is compatible with selected mobile telephones, shows the GPS position most recently transmitted by ENAIKOOON telematic modules to the ENAIKOOON M2M-commserver, along with other data on every mobile object listed.

(9) ENAIKOOON v-locator-mobile:

This software, which is compatible with selected mobile telephones, transmits the current GPS position of the telephone to the ENAIKOOON M2M-commserver, allows text messages to be received via GPRS and status texts and messages to be transmitted between the ENAIKOOON M2M-commserver and the telephone.

(10) ENAIKOOON rfid-tracker:

This software, which is compatible with selected RFID-capable mobile telephones, allows RFID-TAGs to be read and the data read to be transmitted to the ENAIKOOON M2M-commserver via GPRS.

- b. ENAIKOOON is not responsible for the transport or further processing of data. The customer will require one or several providers, as well as additional application software, for that purpose. Depending on how data/images are to be sent or processed, e.g. by SMS, MMS, e-mail or radio, third parties may be involved in the process. ENAIKOOON accepts no responsibility for transport at this stage.
- c. ENAIKOOON grants the user a non-exclusive right, limited in place to the user's computer workstation and in time to the term of this contract, to the online use of software, including all necessary reproductions.
- d. ENAIKOOON is not obliged to keep the software on its own server, but can use third parties to this end.

3. Liability

- a. ENAIKOOON's liability is excluded unless otherwise agreed below.
- b. Exclusion from liability in accordance with point a does not apply to damage caused by the culpable breach of a cardinal contractual obligation in a way which could jeopardise the fulfilment of the contractual purpose. Cardinal contractual obligations are such as allow the proper performance of the contract at all and on compliance with which the contractual partner regularly depends and may depend. Liability is however limited to damage which is typical for the contract and that each contractual party ought to have foreseen due to circumstances known to them at the time.
- c. Neither will exclusion from liability in accordance with point a apply in the case of damage arising from loss of life, physical injury or damage to health which is due to a negligent breach of an obligation by ENAIKOOON or its legal representatives or subcontractors.
- d. Exclusion from liability in accordance with point a will not apply in the event of damage which is due to a wilful or grossly negligent breach of an obligation by ENAIKOOON or its legal representatives or subcontractors.
- e. Exclusion from liability in accordance with point a will not apply to claims arising from the German Product Liability Act (Produkthaftungsgesetz).
- f. Where ENAIKOOON's liability is excluded or limited, the same applies to the liability of ENAIKOOON's legal representatives, employees and subcontractors.
- g. If ENAIKOOON has issued a warranty for the quality or durability of the goods it has supplied, the contents of such a warranty will not be affected by the above limitation of liability.

4. Warranty for hardware and software products, Special terms and conditions of sale

- a. If the customer is an entrepreneur within the meaning of Section 14 of the German Civil Code (BGB), the following applies:
 - (1) The customer must check the goods received. Obvious defects should be reported in writing within 14 calendar days of receipt of delivery. The customer should report hidden defects within 14 calendar days of their discovery. It is for the customer to prove the date of discovery in the event of disputes. In the event of a breach of the duty to report, the customer is excluded from making warranty claims with respect to the defect in question.
 - (2) If the customer requests remedy, ENAIKOOON may at its discretion remedy the defect or supply a replacement that is free of defects. In the event of the supply of a replacement, ENAIKOOON will supply the customer with a replacement that is free of defects within 14 days. In the event of the failure of remedial action, the customer reserves the right, at its discretion, to a reduction of the purchase price or to withdraw from the contract; damage claims – to which the limitation of liability in accordance with Point 3 of these General Terms and Conditions applies – will not be affected in the event of the failure of remedial action.
 - (3) Warranty claims on the grounds of material defects expire one year after the delivery of the goods.
- b. If the customer is a dealer/reseller selling ENAIKOOON products to the end customer, in addition to point a, the following applies:
 - (1) The dealer must arrive at an arrangement with its customers equivalent to point a above.
 - (2) If the dealer assigns warranty claims it is entitled to make against ENAIKOOON to a customer or undertakes to do so, it must inform ENAIKOOON of this immediately in writing.
 - (3) Since ENAIKOOON, as manufacturer, has technical expertise that makes it better able to remedy material defects, the dealer is obliged to inform ENAIKOOON immediately if a customer of the dealer approaches it with warranty claims. At ENAIKOOON's request, the dealer must ask its customer to contact ENAIKOOON directly. Irrespective of this, the dealer must go about remedying any defects in accordance with ENAIKOOON's instructions; ENAIKOOON may also remedy any defects itself.
- c. The customer will bear any shipping and COD expenses for the dispatch of the goods after signature of the contract.

5. Warranty for ENAIKOOON services, availability, execution

- a. ENAIKOOON endeavours to guarantee the maximum possible availability of services. The obligation will be deemed to be performed if the software is available for use by the user 98% of the time in an average month (30 days). ENAIKOOON is entitled to carry out maintenance work and servicing activities regularly in order to maintain availability. ENAIKOOON may temporarily interrupt the operation of the server for this purpose, at most for 24 hours, without this constituting a service disruption. Where possible, ENAIKOOON will inform the customer of this in advance. In the event of technical or other problems that are beyond ENAIKOOON's control (force majeure, third-party fault etc.), ENAIKOOON will take measures without delay (determine party responsible, put in place contingency measures) to ensure that operation resumes quickly. The customer will pay ENAIKOOON for this in the form of a lump sum of EUR 180.00 in each case.
- b. Compensation, regardless of fault, for defects that already existed when the contract was signed (Section 536a of BGB) is excluded.
- c. ENAIKOOON should be informed of defects and disruptions immediately, but no later than within two weeks of them being discovered. ENAIKOOON's liability is excluded for the period in which the customer does not inform ENAIKOOON of a disruption or does not send defective devices to ENAIKOOON.
- d. ENAIKOOON does not accept liability for the availability of the GPS system required for tracking. ENAIKOOON would like to point out that it is not presently certain whether the next generation of satellites will be available in time before the end of the service life of the current satellites, with the result that there could be occasional gaps in tracking.

6. Obligations of the customer, blocking of services or deliveries

- a. The customer guarantees that the address data it has given is complete and correct.
- b. The customer is aware that its monitoring systems could send data that is banned under data protection legislation and that it must not use this data to monitor others. In such cases, it will suspend data transmission or have it modified by the manufacturing firm. ENAIKOOON would like to point out that location data may only be disclosed to third parties with the consent of the parties whose position it concerns or whose position it indicates. The customer undertakes to ensure compliance with this provision. ENAIKOOON is not liable for misuse of data that results from the customer or a third party transmitting data, using it themselves, accessing it themselves or making it available to others without the consent of the data subject. The customer must take measures to prevent such data from being made accessible to unauthorised parties. It is obliged to keep access data made available to it secret from unauthorised third parties and safe from access by unauthorised third parties so that it is impossible for third parties to misuse data for access purposes. Personal passwords should be changed at regular intervals. Third parties which use the user's Internet connection with its knowledge and consent are not unauthorised.
- c. The customer must ensure that third-party rights are not breached by the use of ENAIKOOON's services. This particularly applies to personality rights, copyrights, copyright-related rights and industrial property rights. The customer must release ENAIKOOON from any legitimate third-party claims that are made on the grounds of the breach of such rights.
- d. It is the customer's responsibility to ensure that only such data or data volumes are transmitted or displayed as is permitted by law. Depending on the monitoring system used, more data may be sent for technical reasons than is permitted by law. The customer is aware of this.
- e. If the customer breaches its obligations arising from this contract, particularly those arising from these GTCs, or breaches legal obligations in connection with them, ENAIKOOON may suspend its own services and block access if a warning setting a reasonable deadline goes unheeded. If third parties make claims against ENAIKOOON on the grounds of a breach against the provisions under point b, c and/or d, the customer will release ENAIKOOON from such claims and reimburse ENAIKOOON for the costs of a reasonable legal defence and law suit.

7. Payment of agreed charges

- a. ENAIKOOON is not obliged to accept any form of payment other than transfers.
- b. If the customer defaults on payment, ENAIKOOON is entitled without further ado to suspend its own services immediately and, in particular, to block access. The customer will also bear the associated cost of 14 euros per mobile terminal for reconnection. In the event of default on payment, ENAIKOOON is further entitled to levy a handling fee of 5.00 euros per warning.
- c. Offsetting against ENAIKOOON claims arising from this contract is only possible in the case of claims that are recognised or declared final and absolute or ripe for decision. The customer may enforce a right of retention as per Section 273 of BGB only on the grounds of such claims.

8. Exclusive commercial use

ENAIKOOON hardware (ENAIKOOON locate, ENAIKOOON time, ENAIKOOON rfid, ENAIKOOON inmarsat, ENAIKOOON lommy etc.) is intended solely for commercial use. They are registered as so-called b2b devices which are used solely in places other than private households (Section 6 (3) Sentence 2 of ElektroG (Electronic Equipment Act)). The customer therefore undertakes neither to use the modules itself for private purposes nor to make them available to third parties for their private use for a fee or free of charge. The customer also undertakes not to sell the modules to employees or private third parties unless they prove that the modules will only be used for commercial purposes. If the customer breaches these obligations, it will be obligated to compensate ENAIKOOON for any damage incurred as a result.

9. Data protection

- a. ENAIKOOON would like to point out in accordance with Section 33 of BDSG (Federal Data Protection Act) that personal data is stored within the framework of and for the purposes of the performance of the contract. ENAIKOOON wishes, furthermore, to point out that the data may be transmitted to third parties within the framework of and for the purposes of the performance of the contract.
- b. ENAIKOOON is entitled to process and use the existing data of its customers for its own purposes where this is necessary in the interests of advising customers, advertising and market research and tailoring its services to requirements. The customer may object to such use of its data at any time. ENAIKOOON will provide the customer at any time upon request with full information on the stored data free of charge, if the customer is the subject of such information.
- c. ENAIKOOON expressly points out to the customer that comprehensive data protection cannot be guaranteed with the latest technology when data is transmitted on open networks, such as the Internet. Other Internet users may in certain circumstances also have the technology to breach network security and control communications. The customer itself is fully responsible for the security of the data it transmits and/or stores on Web servers.

10. Changes to GTCs

ENAIKOOON is entitled to change the General Terms and Conditions provided it notifies the user in writing at least six weeks in advance of the change taking effect. The customer may object to the change within four weeks of receipt of notification; otherwise the change will be considered approved. ENAIKOOON must expressly draw attention to this in the notification.

11. Concluding provisions

- a. All changes, amendments or the full or partial cancellation of the contract must be made in writing, including any change to or cancellation of the requirement for written form.
- b. For contracts entered into by ENAIKOOON on the basis of these General Terms and Conditions and for any subsequent claims arising from them, whatever their nature, the law of the Federal Republic of Germany applies, excluding the United Nations Convention on Contracts for the International Sale of Goods. The place of performance and place of jurisdiction for all disputes arising from contracts subject to these General Terms and Conditions is Berlin-Charlottenburg, provided the customer is a merchant in the sense of the German Commercial Code (HGB). The place of performance is Berlin-Charlottenburg.
- c. Should provisions of these General Terms and Conditions are or become invalid this will not affect the validity of the remaining provisions. The parties undertake to replace any invalid provision with a clause fulfilling the same purpose as, or at least coming close to, the provision the parties would have agreed to achieve the same economic outcome if they had known the provision to be invalid. The same applies in the event of gaps in the provisions.