

## EFFITRAX BV

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België/Belgique/Belgium



# EFFITRAX BV

## Terms & Conditions

*EFFITRAX sells and rents terminals intended to collect vehicle data, transmit that over a wireless network and distribute collected data as well as other services related to vehicle data. The sale and rental of terminals as well as the provision of related services are conducted in accordance with the general terms and conditions of Effitrax described herein, which the customer declares s/he accepts unconditionally and without reservations.*

*These Terms and Conditions may be revised and amended from time to time. Appropriate notice about any amendments will be provided.*

## GENERAL CONDITIONS

### ARTICLE 1 SCOPE

This contract defines the conditions governing the sale and rental of terminals and of the related services specifically defined herein such as installation, data transmission, processing and distribution.

### ARTICLE 2 LIABILITY

The customer is informed that Effitrax is only under an obligation of means to provide a data collection service and that this service is relying on transmission networks controlled by telecommunications network operators independent of Effitrax. As such, Effitrax cannot guarantee timely delivery of data, their accuracy or fitness for a particular purpose, and shall not be liable for any prejudice that may result from system malfunctions.

Except in the case of intent or gross negligence, Effitrax shall not be liable for any damage to the customer's property or injury to its staff or to any third party as a result of the use of the equipment and the data, whatever its origin.

Data delivery times given by Effitrax, which are beyond human control, are for information only and in some cases may be longer than initially specified. Consequently, Effitrax will not be liable if the service is used for the purpose of guaranteeing the safety of property and persons.

Effitrax will not be liable for unavailability of the data on the customer's computer that results from communication, electrical or computer equipment, the Web, or any other equipment or software used by the customer, and in particular their unavailability or malfunctioning.

Should this liability clause contradict the stipulations of any other document provided to the customer or any other verbal or written agreement between the customer and Effitrax, the provisions of this clause shall prevail over the said document or agreement, unless there is a written agreement to the contrary duly signed by both parties.

Certain States, territories and countries do not authorise certain limitations of liability or limitation of damages, and in this respect, this Article 2 may only be applicable to the customer to the maximum extent permitted by such legal provisions.

Without prejudice to any other provision in this contract, including this Article 2, Effitrax's liability under this contract may not, in any case, exceed for any cause or claim, an upper limit which corresponds to the yearly contract value or 50,000€, whichever is less, after deduction of insurance reimbursements.

### ARTICLE 3 A CHANGE IN CIRCUMSTANCES

A party may request the other party to renegotiate the contract with a view to its modification or termination if the following requirements are met:

- a change in circumstances makes the performance of the contract for one of the parties excessively onerous, to the extent that its performance can no longer reasonably be required;
- that change was unforeseeable at the time of conclusion of the contract;
- that change is beyond control of the requesting party, and;
- the requesting party has not assumed this risk;

The parties shall continue to comply with their obligations during the course of the renegotiation, if possible.

If the renegotiations are rejected or fail within a period of one month, unless otherwise agreed between the parties, the court may, at the request of one of the parties, either modify the contract to bring it into line with what the parties would reasonably have agreed upon at the time of the conclusion of the contract if they had taken into account the change of circumstances, or terminate the contract in whole or in part at a date which may not precede the change of circumstances and according to modalities determined by the court.

### ARTICLE 4 B FORCE MAJEURE

Effitrax will not be liable for the consequences of failing to fulfill its obligations, or any delay therein, where such failure is attributable in particular to:

- force majeure or an act of government;

- and / or natural disasters (such as, but not limited to, fire and flooding), war, terrorist act, pandemic, satellite system failures, communication system failures, internet failures or loss of internet connectivity due to public or private operators, interruptions in power supply, boycott, embargos, exceptional labor disputes, customs quotas, procurement or labor shortages, exceptional transport delays, holding of supplies by customs authorities.

Should any of the circumstances defined above occur, the execution of this contract may be extended for as long as the circumstances persist, without giving rise to payment of damages.

Should said circumstances persist beyond 60 days and if the contract cannot be adapted accordingly, each of the parties will be entitled to terminate the contract without payment of damages.

## **ARTICLE 5 CLAIMS**

The parties shall settle any claims amicably. If they are unable to reach an agreement, they shall refer the matter to the competent Courts of Belgium having jurisdiction over the registered office of Effitrax. Whatever language is used in the contract or spoken by the customer, and wherever the contract was entered into, it shall be governed by Belgian law.

## **ARTICLE 6 BILLING**

Subscription: The subscription period will begin on the 1st of the month following the installation of the equipment and at the latest 3 months after delivery. Effitrax will bill the customer every month. The subscription shall be billed on the first day of each period. Any communications or messages not included in the subscription will be invoiced to the customer at the end of the period.

Sale of equipment: equipment will be delivered to the customer after full payment has been executed. Payment will be considered executed when the amount due by the customer has been paid into Effitrax's bank account, and received by Effitrax.

## **ARTICLE 7 PAYMENT AND TRANSFER OF OWNERSHIP**

Prices quoted are exclusive of tax and costs, notably shipping charges, and where applicable the corresponding amounts will be added to the invoice.

The customer shall pay Effitrax any invoice covered by this contract within thirty (30) days of its issue date. After that, the invoice will bear interest as of right at 1% per month, any month started being due in full. Each payment incident will generate an administrative cost of 150€, which will be invoiced.

Moreover, Effitrax reserves the right to suspend its services if payment is late, until the amounts remaining due have been paid in full.

Transfer of ownership of the equipment to the customer shall only be effective after payment of the last instalment. Nevertheless, the customer shall bear the risks relating to the equipment as from its delivery.

## **ARTICLE 8 USE**

The customer shall use the equipment and services sold by Effitrax according to the Effitrax recommendations. Should the customer use the equipment in a way that breaches the terms and conditions of this contract, Effitrax reserves the right to interrupt service without notice and without compensation. Notwithstanding, payment for services already provided by Effitrax will be due in full.

Furthermore, certain countries impose restrictions or authorisations for the use of navigation or geopositioning technologies. The customer is solely responsible for obtaining, where applicable, the authorisations necessary to the use of the technologies supplied by Effitrax.

## **ARTICLE 9 INSTALLATION**

If the installation is performed by the customer:

The customer will be responsible for installing and testing the equipment. Effitrax undertakes only to supply to the customer a written copy of the installation procedures. Effitrax may invoice the customer for any technical support requested during installation.

If the installation is performed by Effitrax or its representative:

The customer undertakes to provide Effitrax or its representative (with) all the conditions necessary to the successful completion of this task: contact details of the person to contact on site, address, date, time, availability of the vehicle. The customer undertakes to respect the dates and times of the appointments made by Effitrax, failing which the expenses incurred will be invoiced.

In both cases, the customer has 15 days to check and report any malfunctions found in the equipment installed, after which any repeat intervention will be carried out as part of the maintenance process, cf. Art. 19.

## **ARTICLE 10 WIRELESS EQUIPMENT**

When the wireless equipment delivered to the customer is fitted with a SIM card, this SIM card remains the property of the telecommunications operator, which is why it must be returned to Effitrax in all cases within a maximum of 30 days following the end of the service contract. If the card is not returned within this period, Effitrax reserves the right to invoice the customer at the current replacement price.

## **ARTICLE 11 INTELLECTUAL PROPERTY RIGHTS**

The customer acknowledges and accepts that between Effitrax and the customer, and without prejudice to the intellectual property rights of any third parties, all the intellectual property rights relating to all the items covered by the products and services provided by Effitrax, including in particular the hardware, software, firmware, data, databases and other objects of intellectual property rights, are and will remain the exclusive property of Effitrax and its licensors.

No stipulation in this contract aims to transfer or attribute to the customer any intellectual property right whatsoever in full ownership, but only the limited authorizations expressly stipulated by this contract.

Under the terms of this contract, the customer will only have limited use of the above-mentioned intellectual property rights. The customer shall not undertake any action which would jeopardize, limit or affect the intellectual property rights of Effitrax or its licensors. The customer is prohibited from making or allowing the modification, creation of derivative works, translation, retro-engineering, decompilation, disassembly or piracy of all or any part of the items covered by the products and services provided by Effitrax, and this to the full extent allowed by the law. The customer undertakes not to export, in any way whatever, any part of the items covered by the products and services provided by Effitrax, nor any product directly derived from it, in breach of any export laws or regulations that may be applicable.

#### **ARTICLE 12 DATA RE-USE**

The customer acknowledges and accepts that Effitrax may - in accordance with the GDPR regulations - (re)use the sensor data that is provided by its products and services, for purposes as product and service improvement, statistics, resell, or other aspects as provided for in the privacy policy of Effitrax. The data used therefore will as much as needed at all times be anonymized, or at least pseudonymized.

#### **ARTICLE 13 GDPR**

See our privacy policy

## **RENTAL AND LOAN CONDITIONS**

#### **ARTICLE 14 RENTAL BY A THIRD PARTY**

When the rental contract is established in the name of a third party, in particular a finance organization, it is entered into directly between the customer and the third party. The customer must then refer to the third party's general terms and conditions.

In such a case, the customer will sign a service agreement with Effitrax for the provision of the services agreed upon, excluding hardware rental.

#### **ARTICLE 15 CONDITION OF EQUIPMENT**

Equipment is supplied in perfect working order. The customer shall inform Effitrax of any incident that may occur when operating the equipment, see Articles 16 & 18 below.

At the end of the contract, the equipment must - in the same perfect working order - be returned to Effitrax at which point the equipment will be examined as provided for in Article 16 below.

#### **ARTICLE 16 SUPPLY AND RETURN OF EQUIPMENT**

When the contract is signed, the customer will be asked for a deposit of 200 EUR for each item of equipment rented. This deposit will be cashed by Effitrax and returned to the customer when the equipment is fully returned to Effitrax at the end of the rental period.

At the end of the rental period, the equipment shall be returned to Effitrax's address within one (1) month. The cost of deinstallation, packaging and carriage will be payable by the customer.

Any equipment not returned at the end of the rental period, as provided for in these terms and conditions, will be billed for an amount equivalent to its commercial value, minus the deposit. The corresponding deposit will be permanently retained.

#### **ARTICLE 17 TERM**

Rental is granted for a minimum period of one calendar month, each month begun being due in full. Rental charges will be billed per calendar month in advance and for a minimum period of 1 month.

#### **ARTICLE 18 TERMINATION & RENEWAL**

A rental contract must be terminated by the sending a registered letter with bill of receipt, at the latest six (6) months before the expiry of the contract period concerned.

Unless otherwise expressly agreed by Effitrax, the contract shall be renewed or extended automatically and tacitly every six months if the renter does not return the equipment by the agreed date to Effitrax.

#### **ARTICLE 19 USE + GUARANTEE**

All equipment remains the sole property of Effitrax. The customer may only use the equipment for his/her own needs and within the limits of the characteristics defined by Effitrax and the manufacturer. S/he may not, under any circumstances, lend or sub-rent the equipment and shall not modify it in any way.

#### **ARTICLE 20 DAMAGE TO EQUIPMENT**

The customer will be invoiced for the cost of repairs, as well as the return shipping costs, for any damage other than that due to normal use. To this end, the equipment shall be examined when it is returned. This examination shall be deemed valid and to have taken place in the presence of both parties, since the customer may be present himself/herself or be represented by his/her own expert when the equipment is examined upon its return.

In the event of a failure for which the customer is not responsible during the rental period, Effitrax will replace the equipment. If this is impossible, the rental price will be reimbursed on a *pro rata* basis.

The customer shall have no claim whatsoever for damages if Effitrax is unable to replace the equipment.

The damage to the equipment must be communicated by the Customer to Effitrax **within 48 hours** from the moment of the event. Should the equipment be lost or completely destroyed, see Article 18.

#### **ARTICLE 21 VALIDITY - TERMINATION**

Any modifications to the clauses and conditions of this contract will be null and void unless in writing and agreed by both parties. Should the customer breach the general rental terms and conditions, and in particular should s/he be found to have used the equipment in a clearly negligent way, this contract shall be terminated with immediate effect as soon as the official report on the incident has been completed, and without further notice or compensation. Such termination will lead to the interruption of the service and the immediate return of the equipment as is and in accordance with Article 11 ?

#### **ARTICLE 22 LOSS AND DESTRUCTION**

The equipment rented is insured by the customer against loss and total or partial destruction. If it is lost or completely or partially destroyed, the renter must inform Effitrax in writing, giving details of the circumstances, **within 48 hours** from the moment of the event.

Should the customer fail to return the equipment after having provided the above information within one month after the event, it will be billed for the non-returned equipment at the normal sale price plus one third. Unless – within the aforementioned timeframe - it is proven by the customer to Effitrax that no physical material can be returned.

## **EQUIPMENT SALE CONDITIONS**

#### **ARTICLE 23 EQUIPMENT WARRANTY**

Without prejudice to any actions as regards the carrier, claims about apparent defects or non-conformity of the delivered products stipulated on the shipping note must be made in writing to Effitrax within eight (8) days of receiving the products. Effitrax may, within fourteen (14) days of the date of receipt of the claim, or within fourteen (14) days after inspection if Effitrax deems so fit, either replace the product or credit the customer with the corresponding value.

The customer must seek formal agreement from Effitrax before returning all or part of the products. Costs incurred in returning them shall be payable by the customer.

During the one (1) year warranty period, Effitrax will repair in the factory or replace, free of charge and as it deems fit, equipment that exhibits a manufacturing defect. This warranty does not cover normal wear and tear or damage resulting from impacts or misuse. The warranty period lasts one (1) year from the date of delivery to the customer.

The costs of packaging and shipping of the equipment to Effitrax are payable by the customer, the costs of returning it to the customer are payable by Effitrax. The costs of removing and re-fitting the equipment are payable by the customer.

#### **ARTICLE 24 SHIPPING – CUSTOMS**

Packaging, shipping and testing of the equipment are the customer's responsibility. The customer shall also bear customs duties and import taxes, and take care of import and export procedures.

#### **ARTICLE 25 MAINTENANCE**

Effitrax may carry out maintenance after the warranty period at the request of customer. Billing of such maintenance is not covered by this contract.

#### **ARTICLE 26 RESALE AND RENTAL**

The customer is free to resell or rent the equipment as long as all instructions for use are provided. This excludes the SIM card, which remains the property of the telecom operator.

If the equipment is resold or rented during the warranty period, and given its operating conditions and environment, the warranty to the first purchaser and his/her successors shall be terminated with immediate effect.

On the other hand, the right to the services provided by Effitrax may only be transferred with the latter's express written consent.

## **SERVICE CONDITIONS**

#### **ARTICLE 27 PROVISION OF INFORMATION**

Any sensor data is made available to the customer by Effitrax through its platform and APIs.

If the services described above are shut down completely for reasons that are the responsibility of Effitrax, or due to the equipment rented or sold, the expiry date of the service will be extended one day for every day the service is unavailable. Effitrax shall make its best efforts to ensure access to data for the customer.

Moreover, Effitrax shall not in any circumstances be liable for any failure due to the communications systems used by the customer, or to incorrect installation or (mis)use of the equipment.

The customer declares that s/he accepts the technical characteristics and limits of the service, and in particular recognizes that:

- s/he is aware of the nature of the internet, of the technical resources used (IoT or cellular networks, web, satellites) and of their technical performance and of response times when consulting, querying or transferring information and data;
- data and information circulating on the internet or by wireless network are not protected against misappropriation.

Consequently, Effitrax shall not be liable for the transmission of data, access times, any restrictions or interruptions in access to networks and dedicated servers connected to the internet, or any failure of the customer's reception equipment or the (telephone) line.

For all the reasons described above, the customer shall not seek to hold Effitrax liable in the event of any direct or indirect prejudice such as loss of earnings or business.

#### **ARTICLE 28      TERM**

The duration of the services covered by this contract is determined by the dates stipulated in the specific terms, and may not be shorter than twelve (12) months. Duration of service and quantity of service are two separate notions.

Consequently, whatever the quantity of service actually used by the customer, the duration of the services initially provided for in the contract may not be modified, except by a mutual amendment hereto.

If the quantity of services initially provided for is exceeded, the customer will be charged at the unit value stipulated in the specific terms.

If the contract is not terminated by registered letter with bill of receipt by either of the parties (6) six month before the end of each execution period, the contract will be renewed for a further period of (12) twelve months.

Should the customer fail to fulfil one of the general conditions which also apply to the services or act in any way that breaches the provisions concerning the Intellectual Property, this contract may be terminated as of right by Effitrax without any legal formalities and without further notice or compensation. Such termination will lead to the cessation of the services provided by Effitrax.

#### **ARTICLE 29      RENEWAL**

Any renewal or extension of the services shall be made tacitly and with immediate effect if the equipment continues to transmit after the service expiry date stipulated in the specific terms and will be billed at currently applicable rates.