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Introduction

These General Terms and Conditions for the Provision and Use of Online Services of Kieback&Peter GmbH & Co. KG – hereinafter referred to as “GTC Online Services” – shall apply to the provision of software and/or services via the internet by Kieback&Peter GmbH & Co. KG – hereinafter referred to as “K&P” – and to the temporary use of such software and/or services – hereinafter jointly referred to as “Online Services” – by the contractual partner – hereinafter referred to as “User.”

- The Online Services may be made available in part or in full via K&P’s central web platform “connect,” which can be accessed via the internet. Said web platform shall hereinafter be referred to as “connect.”

1. ACCESS TO THE ONLINE SERVICES; RESPONSIBILITY FOR THE ACCESS DATA

- 1.1 Access to and use of the [Online Services](#) is generally only possible after User has registered (logged in) – e.g., on connect – by entering the access data. Where User is a legal entity, registration may only be carried out by persons authorized to do so by User and with unlimited legal capacity and power of representation.
- 1.2 Unless otherwise agreed, User will receive the access data by e-mail.
- 1.3 During User’s first login, User will be asked to change the access password.
- 1.4 It is the responsibility of User to keep all access data secret and not to make it accessible to unauthorized third parties, and to ensure that the [Online Services](#) are used exclusively by User or by persons authorized by User.

User shall be liable for any activity carried out using User’s access data (e.g., on connect).

Where it is to be feared that unauthorized third parties have obtained or will obtain knowledge of the access data, User shall notify K&P thereof without undue delay.

2. USE OF CONNECT AND THE ONLINE SERVICES; PROHIBITION OF THIRD-PARTY USE

- 2.1 The specifications of connect and the [Online Services](#) as well as the technical requirements for their use can be found in the data sheets, which may be amended from time to time and which are available for download at the following link: <https://kieback-peter.de/platform/>.
- 2.2 User’s authorization under these GTC Online Services is limited to access to connect and to the contractually agreed Online Services and to their use for User’s own internal purposes during the term of the contract and in accordance with the provisions of these GTC Online Services.
- 2.3 Unless expressly agreed otherwise, User shall be prohibited from opening access to connect and/or the Online Services to resellers or other third parties, as well as any other distribution and/or provision of Online Services or individual functions thereof to or for third parties.

The temporary transfer of User’s own Online Service use to third parties shall be excluded from the above prohibition, insofar as such third parties

- use the Online Services solely on behalf of and/or on the instructions of User in User’s place and solely for User and in accordance with these GTC Online Services, and in doing so
- merely exercise User’s authorized right of use on User’s

behalf without such third parties simultaneously providing their own deliveries and/or services using the Online Services.

3. AVAILABILITY OF ONLINE SERVICES

- 3.1 User shall not be entitled to continuous availability of Online Services that may be used free of charge. In particular, K&P may at any time temporarily restrict access to Online Services that can be used free of charge

- an acute threat to its data, hardware and/or software infrastructure or that of its customers from external threats (such as viruses, port hacking, attacks by Trojans), or due to
- a significant threat to the safety of grid operation or grid integrity.

- 3.2 With respect to chargeable Online Services, K&P warrants, unless expressly agreed otherwise between the parties, an availability of such chargeable Online Services of 99.0% over a 12-month period.

Periods of unavailability shall not include individual outages or impairments in accessibility of chargeable Online Services during regular maintenance windows and/or during maintenance, installation, or conversion work agreed with User, as well as scheduled shutdowns or decommissioning agreed with User during such periods. The regular maintenance windows are Monday to Friday between 08:00 p.m. and 06:00 a.m. (CET) as well as on weekends and public holidays.

In addition, **periods of unavailability are not considered** to be periods during which chargeable Online Services are not available or are only available to a limited extent due to technical or other circumstances beyond K&P’s control (e.g., force majeure, disruptions in telecommunications lines, fault of third parties).

- 3.3 In addition, periods of unavailability are not considered to be periods in which K&P temporarily restrict access to the chargeable Online Services due to

- an acute threat to its data, hardware and/or software infrastructure or that of its customers from external threats (such as viruses, port hacking, attacks by Trojans), or due to
- a significant threat to the safety of grid operation or grid integrity.

In the event of such a decision, K&P shall take into account legitimate interests of its customers to the extent possible and shall do everything reasonable for K&P to lift the access restriction at its earliest convenience.

Unless expressly agreed otherwise, K&P’s responsibility for the components used shall end at the data interfaces of the data center of K&P or its subcontractors to the public data networks.

4. BLOCKING OF CONNECT AND ONLINE SERVICES

- 4.1 K&P shall be entitled to temporarily block User’s access to connect and/or to the Online Services where and as long as there are specific indications that User violates these GTC Online Services, any other agreements, and/or applicable law. When deciding on blocking access, K&P shall give due consideration to User’s legitimate interests.

- 4.2 K&P shall be entitled to temporarily block User’s access to chargeable Online Services where and as long as User is in default with the payment of charges due.

4.3 In the event of blocking in accordance with Articles 4.1 or 4.2 hereinabove, User shall not be entitled to a refund of any fees already paid. Once the reason for blocking no longer applies, K&P shall unblock User's access within a reasonable period of time.

5. AMENDMENTS OF ONLINE SERVICES

5.1 The content, scope, and functions of Online Services may change over time, in particular as part of K&P's usual product development.

5.2 User shall not be entitled to the retention of Online Services that may be used free of charge in the form known to User.

5.3 K&P shall notify User of amendments to chargeable Online Services in writing, by e-mail and/or within connect at its earliest convenience and prior to the scheduled entry into force of the changes, provided that such amendments, in K&P's reasonable discretion, significantly impact User's use of such chargeable Online Services.

Where User cannot reasonably be expected to accept the amendments, User may object in writing to the relevant amendments within 30 calendar days of receipt of the aforementioned notification. Where no objection is raised and User continues to use the (possibly amended) chargeable Online Services after expiry of the objection period, the amendments shall be deemed to have been effectively agreed with effect from the expiry of the period.

Where User objects to the amendments and where it is impossible or unreasonable for K&P to continue to provide the chargeable Online Services in unchanged form (e.g., because changes are mandatory for security reasons), K&P shall be entitled to terminate the provision of the relevant Online Services without undue delay.

6. REMUNERATION AND PAYMENT MODALITIES; OFFSETTING

6.1 User shall pay the agreed fees to K&P for the provision of chargeable Online Services.

6.2 All fees are subject to the applicable statutory value-added tax.

6.3 Where an indefinite term has been agreed for the provision of Online Services, the fee shall be invoiced in advance at the beginning of the agreed billing period. Unless otherwise agreed, a billing period is 12 months in each case.

6.4 Where a fixed term ("Total Term") has been agreed for the provision of the Online Services, User shall be invoiced in advance for the total term.

6.5 All invoiced amounts are due upon receipt of the respective invoice by User and must be paid by User without deduction within 14 calendar days of receipt of the invoice.

6.6 User shall only be entitled to withhold payments or offset them against counterclaims to the extent that User's counterclaims are undisputed or have been recognized by declaratory judgment.

7. REMOTE ACCESS TO SYSTEMS; VIEWING EVENT MESSAGES; ROUTER MAINTENANCE

7.1 Some of the Online Services require or involve access by K&P – hereinafter referred to as "**Remote Access**" – via a telecommunications connection to the building automation systems – hereinafter jointly referred to as "**Systems**" – of User and/or third parties (e.g., system owners). By means of such remote access, K&P may, for example, commission, check, monitor, maintain or repair the systems and also carry out any other activities agreed with User.

7.2 Remote access by K&P is carried out on the basis of prior consent given by User by accepting K&P's remote access conditions as may be amended from time to time. Within

connect, User will be requested to do so before remote access is carried out (for the first time).

By accepting the remote access conditions, User expressly consents to the performance of remote access in accordance with the remote access conditions.

7.3 The systems may send automated fault messages and other event-related information – hereinafter referred to as "Event Messages" – to connect. K&P shall be authorized to inspect such event messages. However, K&P shall not be obligated to do so without express agreement. K&P shall treat any inspected event reports confidentially and only use them in the interests of User, e.g., for the purpose of preventive maintenance of the systems.

7.4 Where necessary, K&P shall carry out maintenance work (in particular, system software updates) on the routers in the system via a telecommunications connection.

8. LIABILITY AND LIMITATION OF LIABILITY

8.1 Insofar as the German Telecommunications Act is applicable, K&P's liability shall be limited in accordance with Article 70 Telecommunications Act. Outside the scope of application of the Telecommunications Act, K&P's liability shall be governed by the provisions hereinbelow.

8.2 K&P shall only be liable for its own fault and the fault of its legal representatives, executives, and other vicarious agents in accordance with the provisions hereinbelow.

8.3 Where User incurs damage as a result of the free use of Online Services, K&P shall only be liable to the extent that such damage was caused by the use of such Online Services in accordance with the agreement and only in the event of intent (including fraudulent intent) and gross negligence on the part of K&P or its legal representatives, executives, or ordinary vicarious agents.

8.4 In the context of the use of chargeable Online Services, K&P shall be liable without limitation for intent and gross negligence, including that of its legal representatives, executives, and ordinary vicarious agents.

In the event of a slightly negligent breach of an obligation on the fulfilment of which User may rely and the fulfilment of which is essential for the proper performance of the contract (referred to as "cardinal obligation"), K&P's liability shall be limited to such damage that must typically be expected to occur within the scope of the contractual relationship (referred to as "Foreseeable Damage Typical for the Contract"). Otherwise, liability for damage caused by slight negligence is excluded.

In the event of liability on the part of K&P in accordance with the paragraph hereinabove, such liability shall be limited to an amount of EUR 250,000.00 per claim and to a total amount of EUR 500,000.00 per calendar year.

K&P expects that the above limitation of liability in terms of amount is sufficient to cover the foreseeable damage typical for the contract in the event of a claim. Should User consider this limitation of liability to be insufficient to cover the typically foreseeable damage, User is to notify K&P thereof so that cover may be taken out against any higher liability risk.

8.5 Liability for data loss or data destruction is limited to the typical restoration costs that would have been incurred if User had regularly made backup copies in accordance with the risks involved.

8.6 Liability for fraudulent intent, personal injury, and under the German Product Liability Act shall remain unaffected by the provisions hereinabove.

8.7 The foregoing provisions shall also apply in favor of K&P's employees.

9. NON-DISCLOSURE; DATA PROTECTION AND DATA SECURITY

- 9.1 The parties shall be obligated to treat as confidential any and all trade and business secrets and technical and organizational information obtained in the course of performing the contract – hereinafter jointly referred to as “Confidential Information.” Information generally published by the disclosing party or information representing generally accessible knowledge shall not be deemed confidential information.
- 9.2 Each party shall be responsible for compliance with the relevant provisions of data protection law in its area of responsibility.
- In particular, User shall ensure that the data generated by it in the course of using connect and/or the Online Services and available in K&P’s access area (e.g., within connect) may be collected, processed, and used by K&P for the performance of the contract in accordance with the relevant provisions of data protection law.
- 9.3 Where K&P performs processing on behalf of User within the meaning of Article 28 EU General Data Protection Regulation (GDPR), the parties shall enter into an agreement on processing on behalf of a controller.
- 9.4 Where K&P uses a third party to provide the services arising from the relevant contractual relationship, K&P shall be entitled to disclose User’s confidential information and data to such third party to the extent necessary for the contractual provision of services. K&P shall obligate the third party/parties to handle the confidential information and data with utmost confidentiality.
- 9.5 K&P shall also be entitled to disclose User’s confidential information and data in cases where K&P is required to do so by law or based on official orders, and further where said third party is obligated to non-disclosure due to such third party’s profession.

10. USE OF NON-PERSONAL DATA

- 10.1 To the extent that K&P obtains non-personal data of User and/or third parties (e.g., device characteristics, performance parameters, other purely technical information) in the course of the contractual relationship, K&P may use such data for an unlimited period of time (e.g., for product development and to improve its range of services).
- 10.2 Article 10.1 hereinabove shall apply accordingly to data that K&P has sufficiently anonymized or pseudonymized in accordance with the applicable provisions of data protection law.

11. TERM AND TERMINATION; TERMINATION OF USE

- 11.1 Unless otherwise agreed, the provision of agreed chargeable Online Services shall commence upon their activation by K&P after completion of any preparatory work required for such purpose.
- 11.2 Unless a fixed term (“Total Term”) has been agreed, the provision shall run for an indefinite period with a minimum term of four years.
- 11.3 The provision of Online Services that may be used free of charge may be terminated by either party without observing a notice period.
- 11.4 Where a fixed term (“Total Term”) has been agreed for the provision of chargeable Online Services, the provision shall end at the end of such total term without requiring a notice of termination.

Where no total term has been agreed, the provision of chargeable Online Services may be terminated by either party subject to a notice period of thirty calendar days at the

end of a month, but for the first time with effect from the end of the (possibly) applicable minimum term.

- 11.5 The right of the parties to terminate the contract without notice for cause shall remain unaffected. K&P shall be deemed to have cause in particular where User is in default of payment for at least 30 calendar days.
- 11.6 Where User uses the Online Services within the scope of a trial access provided by K&P for User’s own internal testing purposes – hereinafter referred to as “Trial Use” – the term of such trial use shall commence upon activation of the trial access by K&P and shall thereafter be 30 calendar days – hereinafter referred to as the “Trial Period.”
- At the end of the trial period, the trial use shall end without the need for a notice of termination. User may apply to K&P one time to extend the trial period by an additional 30 days.
- 11.7 User’s right to use the relevant Online Services shall end when the termination of the Online Services takes effect, when the total term expires (cf. Article 11.4 hereinabove) and/or when the trial period expires (cf. Article 11.6 hereinabove), and K&P shall be entitled to block access to the Online Services.

K&P shall also be entitled to delete any and all user data relating to the Online Services concerned and affected by the termination after 30 calendar days from the effective date of the termination of the Online Services, from the end of the total term or from the end of the trial period, unless provided otherwise by mandatory statutory provisions.

12. FINAL PROVISIONS

- 12.1 Any and all legal relationships between K&P and User shall exclusively be governed by and construed in accordance with the laws of the Federal Republic of Germany in exclusion of the United Nations Convention on the International Sale of Goods (CISG).
- 12.2 Legal venue shall be the competent court with local and subject-matter jurisdiction for K&P’s principal place of business. K&P shall be entitled, however, to bring an action at User’s principal place of business.

Place of performance for both parties shall be K&P’s principal place of business.