GENERAL TERMS AND CONDITIONS

Cloud Terms

for business customers

These terms (hereinafter “EVOMECS Cloud Terms”) apply to the provision of the EVOMECS software as a cloud service (Software as a Service). EVOMECS GmbH, Kanalstraße 6, 80538 Munich, Germany (hereinafter “EVOMECS”), makes the EVOMECS software available to its contractual partner (hereinafter “Customer”) for use via the internet for a limited period against recurring remuneration, without software being handed over to the Customer.

This English version is a convenience translation. In the event of any discrepancy, the German version shall prevail.

1. Scope, Conclusion of Contract and Relationship to Other Terms

1.1. These Cloud Terms apply exclusively to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law. They form an integral part of every order for cloud services between the Customer and EVOMECS.

1.2. Deviating, conflicting or supplementary terms and conditions of the Customer shall not apply, even if EVOMECS does not expressly object to them or provides services in knowledge of them.

1.3. Individual agreements in the offer or in the order confirmation take precedence over these Cloud Terms.

1.4. The EVOMECS Software License Terms and the EVOMECS Maintenance Terms do not apply to cloud services; they apply exclusively to the purchase and maintenance of EVOMECS software under the purchase model (on-premise).

1.5. Additional services such as set-up, connection of machines and interfaces, data migration, training and consulting are governed by the EVOMECS IT Services Terms as amended from time to time.

1.6. Insofar as EVOMECS processes personal data on behalf of the Customer within the scope of the cloud services, the EVOMECS Data Processing Agreement (DPA) in the version valid at the time of conclusion of the contract applies in addition. In matters of data protection, the DPA takes precedence over these Cloud Terms.

1.7. The contract may be concluded in two ways:

- **Conventional route:** EVOMECS submits an offer to the Customer. The Customer places an order on that basis. The contract is concluded upon EVOMECS’s order confirmation in text form or upon activation of access, whichever occurs first.
- **Online store:** The presentation of editions, add-on modules and prices in the EVOMECS online store does not constitute a binding offer. The Customer selects the edition, add-on modules and the number of machines and users and submits a binding offer by completing the ordering process. EVOMECS confirms receipt of the order without undue delay by e-mail; this confirmation of receipt does not constitute acceptance. The contract is concluded upon a declaration of acceptance in text form or upon activation of access.

1.8. Orders via the online store are reserved exclusively for entrepreneurs within the meaning of Clause 1.1. The Customer confirms this in the ordering process. EVOMECS is entitled to verify the Customer’s status as an entrepreneur, for example by means of the VAT identification number, and to reject orders without stating reasons.

1.9. Before completing the ordering process in the online store, the Customer can review and correct the details entered in an overview. After conclusion of the contract, EVOMECS sends the order data and these Cloud Terms to the Customer by e-mail; they are also available in the customer account. The contract language is German.

1.10. “Order” within the meaning of these Cloud Terms means the Customer’s order including the order confirmation (conventional route) or the order completed in the online store including the order data (online store). Changes to the scope of use, such as a change of edition or the addition of add-on modules, machines or users, may be made via either route; online store customers may also make them via the customer account. Extensions take effect upon activation and are charged from that month; reductions are deemed a partial termination under Clause 11.2.

2. Subject Matter of the Contract

2.1. EVOMECS provides the Customer with the EVOMECS software specified in the order in the respective edition (e.g. Shopfloor Light, Essentials, Professional, Precision), including any add-on modules booked, with the scope of machines and users agreed therein as a cloud service. The functional scope results from the order, the product description and the documentation; these specifications are descriptions of performance and not guarantees.

2.2. EVOMECS operates the EVOMECS software on a cloud infrastructure within the European Union or the European Economic Area. The service providers currently used are listed in the list of sub-processors in the DPA.

2.3. The cloud services include in particular:

- provision of the EVOMECS software for use via the internet at the service transfer point pursuant to Clause 4.2;
- storage space for the Customer’s data to the agreed extent;
- operation, monitoring and maintenance of the software and infrastructure;
- ongoing provision of updates and upgrades;
- support and incident resolution pursuant to Clause 6;
- data backup pursuant to Clause 7.

2.4. The cloud services do not include establishing and maintaining the Customer’s internet connection, the Customer’s hardware and networks, machine controls and their interface options, or services under Clause 1.5. Connecting machines requires that the respective control unit provides the necessary data.

2.5. EVOMECS continuously develops the EVOMECS software and is entitled to change, supplement or replace functions, provided that the contractually agreed functional scope is not materially restricted as a result. EVOMECS announces material changes at least four (4) weeks in advance in text form.

3. Rights of Use

3.1. For the term of the contract, EVOMECS grants the Customer the simple, non-transferable and non-sublicensable right to use the EVOMECS software to the agreed extent (edition, number of machines and users) via the internet for its own internal business purposes. The software is not handed over, including in the form of a copy.

3.2. The Customer may permit use by its employees and by commissioned service providers, but not by direct competitors of EVOMECS. The Customer shall ensure that these persons comply with the obligations under these Cloud Terms.

3.3. The Customer is prohibited from making the EVOMECS software available to third parties for a fee or free of charge, from modifying or reverse engineering it or attempting to obtain the source code, unless Sections 69d and 69e of the German Copyright Act (UrhG) mandatorily permit otherwise, and from removing protective notices.

3.4. The Customer may not use the EVOMECS software in a manner that endangers its functionality or security, in particular no automated queries beyond the agreed scope, no load tests and no attempts to circumvent security mechanisms.

3.5. If the Customer exceeds the agreed scope of use (e.g. additional machines or users), EVOMECS will invoice the additional use from the month in which it began at the prices applicable at that time.

3.6. All rights to the EVOMECS software, the documentation, configuration templates and EVOMECS's know-how remain with EVOMECS. The rights to the customer data (Clause 8) remain with the Customer.

4. Availability and Maintenance

4.1. EVOMECS warrants an availability of the EVOMECS software of 99.5% per calendar month. Availability is calculated as follows: (total minutes of the calendar month – downtime minutes) / total minutes of the calendar month × 100.

4.2. The service transfer point is the transition from the data centre to the internet. Availability is determined by the accessibility of the EVOMECS software at this point; data transmission via the internet to the Customer is not covered by the availability commitment.

4.3. The following do not count as downtime:

- the regular maintenance window on Sundays from 10:00 pm to 12:00 midnight (CET/CEST);
- further maintenance work that EVOMECS has announced at least three (3) working days in advance in text form or in the customer portal;
- announced maintenance work by the infrastructure provider and urgent security measures required without prior notice to avert an acute threat;
- disruptions caused by the Customer or third parties commissioned by it, including its internet connection, networks, hardware and machine controls;
- disruptions due to force majeure and attacks by third parties (e.g. DDoS), provided EVOMECS has taken reasonable protective measures;
- restrictions of individual, non-essential functions as long as the core functions can be used.

4.4. EVOMECS will carry out maintenance work outside the service hours pursuant to Clause 6.2 wherever possible.

4.5. EVOMECS continuously measures availability and provides the Customer with proof of availability for the relevant calendar month upon request.

5. Service Credits for Availability Shortfalls

5.1. If availability in a calendar month falls below the value under Clause 4.1, the Customer receives a credit on the monthly fee for the affected cloud services of that month:

AVAILABILITY IN THE CALENDAR MONTH	CREDIT ON THE MONTHLY FEE
below 99.5%	5%
below 99.0%	10%
below 98.0%	25%

5.2. The Customer must claim the credit in text form within 30 days of the end of the affected calendar month. The credit will be offset against the next invoice; payment in cash is excluded, except at the end of the contract.

5.3. The credit settles any claims for a reduction of the fee due to availability shortfalls. Claims for damages under Clause 15 remain unaffected; credits received will be offset against them.

5.4. If availability falls below the value under Clause 4.1 in three out of six consecutive calendar months, the Customer may terminate the contract extraordinarily with immediate effect. This right of termination lapses if it is not exercised within 30 days of the end of the third affected month.

6. Support and Incident Resolution

6.1. Support, incident resolution, updates and upgrades are covered by the monthly fee. A separate maintenance contract is not required.

6.2. Service hours are Monday to Friday from 9:00 am to 5:00 pm (CET/CEST), excluding nationwide public holidays and public holidays in Bavaria. The Customer can reach EVOMECS via the service portal, the address of which EVOMECS will communicate to the Customer, and by telephone at +49 89 973 99 974.

6.3. Incidents are classified and handled as follows:

ERROR CLASS	DESCRIPTION	RESPONSE TIME
1 – critical	The EVOMECS software or essential parts of it cannot be used; operations are severely impaired.	max. 5 hours, handling also outside service hours
2 – significant	Use is severely impaired but possible.	Report by 12:00 noon: same working day, otherwise next working day
3 – minor	Use is not or only insignificantly impaired.	as appropriate, within regular updates

6.4. The response time is the period within which EVOMECS begins handling after receipt of a sufficiently described report. The Customer reports error class 1 incidents via the service portal and additionally by telephone. If an error class 1 incident cannot be resolved promptly, EVOMECS will provide a workaround where possible.

6.5. The Customer appoints a master user and a deputy as central contact persons. The master user directs requests of error classes 2 and 3 and general support requests to EVOMECS. EVOMECS responds to general requests within five working days.

6.6. Services outside this Clause, in particular training, process consulting, customer-specific configuration and requests not based on a malfunction of the EVOMECS software, are invoiced in accordance with the IT Services Terms at the applicable daily rates.

7. Data Backup

7.1. EVOMECS backs up the customer data at least once a day. Backups are retained for 14 days, stored separately from the production system and processed within the EU or EEA.

7.2. If customer data is lost for reasons for which EVOMECS is responsible, EVOMECS will restore the data status of the last available backup at no additional charge.

7.3. If the Customer requests the restoration of an earlier data status for other reasons, for example after accidental deletion by its users, EVOMECS will carry this out where possible and charge the effort in accordance with the IT Services Terms. A claim exists only insofar as a backup of the desired status is available within the retention period.

7.4. Data backup by EVOMECS serves to restore operations. It does not replace archiving to fulfil the Customer's statutory retention obligations; for this purpose, the Customer may use exports under Clause 12.

8. Customer Data, Data Protection and Use of Data

8.1. Customer data means all data that the Customer or its users enter or upload into the EVOMECS software or that is generated through its use, in particular master data, orders, feedback, machine and process data as well as documents and drawings. Customer data remains the property of, or at the disposal of, the Customer.

8.2. EVOMECS processes customer data exclusively for the provision of the contractual services. Disclosure to third parties is made only to the sub-processors named in the DPA, on the basis of a legal obligation or with the Customer's consent. EVOMECS excludes any sale of customer data.

8.3. EVOMECS is entitled to use machine and usage data without personal reference in anonymised and aggregated form, which does not allow any conclusions to be drawn about the Customer, individual users or third parties, to improve and further develop the EVOMECS software and to produce analyses for the preventive avoidance of machine failures. Any use beyond this requires a separate agreement.

8.4. Insofar as EVOMECS processes personal data on behalf of the Customer, the Customer is the controller within the meaning of the GDPR and EVOMECS is the processor. The EVOMECS DPA applies. The Customer is responsible for ensuring that it may lawfully process personal data, in particular data of its employees, in the EVOMECS software; this includes any co-determination rights of a works council.

8.5. EVOMECS takes appropriate technical and organisational measures to protect customer data in accordance with the state of the art. The data of different customers is processed logically separated from one another.

9. Obligations of the Customer

9.1. The Customer provides the internet connection, end devices and network infrastructure required for use and complies with the system requirements specified by EVOMECS in the documentation. For the connection of machines, it provides the necessary control options and network access.

9.2. The Customer keeps access data secret, protects it against access by unauthorised persons and informs EVOMECS without undue delay if misuse is suspected. It manages the user accounts of its employees and revokes access for employees who have left.

9.3. The Customer is responsible for the content it introduces into the EVOMECS software and ensures that such content does not infringe third-party rights and is free of malware.

9.4. The Customer reports malfunctions without undue delay, in a comprehensible manner and with all information useful for analysis.

9.5. In the event of serious breaches of Clauses 3 or 9, in particular if the security of the platform or of other customers is endangered, EVOMECS is entitled to temporarily block the Customer's access in whole or in part. EVOMECS informs the Customer without undue delay and lifts the block as soon as the reason no longer applies.

10. Remuneration and Price Adjustment

10.1. The monthly fee results from the order or from the price list shown in the online store at the time of the order and depends on the edition, add-on modules and the number of machines or users. One-off services such as set-up and machine connection are, where commissioned, remunerated separately in accordance with the IT Services Terms. All prices are net plus statutory VAT.

10.2. The obligation to pay begins with the provision of access. EVOMECS invoices the monthly fee in advance at the beginning of each calendar month; partial months are charged pro rata. Invoices are payable without deduction within 14 days of receipt. For orders via the online store, payment is made using the payment methods offered there; the invoice is made available in the customer account and sent by e-mail.

10.3. If the Customer defaults on payment, it owes default interest of 9 percentage points above the base interest rate. If the Customer is in default for more than 30 days with an amount equal to at least one monthly fee, EVOMECS may block access until payment is made after prior notice of 14 days. Customer data is retained during the block.

10.4. EVOMECS may adjust the monthly fee no more than once per calendar year with two months' notice in text form. The increase may not exceed the change in the index of average gross monthly earnings of full-time employees in the economic sector "Information technology service activities" (Federal Statistical Office, WZ J 62) since conclusion of the contract or since the last adjustment. The Customer may terminate the contract with effect from the date the adjustment takes effect; EVOMECS will point this out in the notice.

10.5. The Customer may only set off undisputed or legally established claims.

11. Term and Termination

11.1. The contract begins with the provision of access and runs for an indefinite period. There is no minimum term unless otherwise agreed in the order.

11.2. The Customer may terminate the contract in whole or in part (e.g. for individual machines or users) with one month's notice to the end of a calendar month. EVOMECS may terminate the contract with three (3) months' notice to the end of a calendar month.

11.3. The right of both parties to extraordinary termination for good cause remains unaffected. Good cause for EVOMECS exists in particular if the Customer is in default with an amount equal to two monthly fees or, despite a warning,

seriously breaches Clause 3. The Customer's right of termination under Clause 5.4 remains unaffected.

11.4. Notices of termination must be given in text form (e.g. by e-mail to info@evomecs.com). Online store customers may additionally terminate via the termination function in their customer account.

11.5. Upon termination taking effect, the Customer's right of use ends. Clause 12 applies to the export, switching and deletion of customer data.

12. Data Export, Switching of Provider and Deletion

12.1. Exportable data means all customer data under Clause 8.1. It does not include the EVOMECS software, its configuration logic, templates, documentation or other components of EVOMECS protected by intellectual property rights or as trade secrets.

12.2. During the term of the contract and after termination, the Customer may request a complete export of its exportable data at any time. EVOMECS provides the export within ten (10) working days of the request: structured data in a common, machine-readable format (CSV or JSON) and files in their original format, via a secured download.

12.3. With its notice of termination or during the notice period, the Customer may request that EVOMECS supports switching to another provider or to its own infrastructure, or makes all exportable data available. EVOMECS completes the switch within a transitional period of 30 calendar days after expiry of the notice period. If this is technically not feasible, EVOMECS notifies the Customer, stating reasons, within 14 working days of the switching request and specifies an alternative transitional period of no more than seven months. During the transitional period, the cloud services remain available on the existing terms.

12.4. After the end of the transitional period, the Customer may retrieve its data for at least a further 30 calendar days (retrieval period). EVOMECS then deletes all customer data, including backups upon expiry of their 14-day retention period, unless statutory retention obligations prevent this. EVOMECS confirms the deletion in text form.

12.5. The export in standard format under Clause 12.2 and the support with switching under Clause 12.3 are covered by the remuneration; EVOMECS does not charge switching fees. The Customer shall remunerate further services, such as preparing the data for a specific target system or setting up an on-premise installation, in accordance with the IT Services Terms.

12.6. EVOMECS provides information on export procedures, data formats and known technical limitations in the documentation.

13. Switch to the Purchase Model (On-Premise)

13.1. The Customer may switch from cloud use to the purchase model at any time. The EVOMECS Software License Terms and the EVOMECS Maintenance Terms apply to the purchase model.

13.2. Whether and to what extent monthly fees already paid are credited against the purchase price is governed exclusively by the individual agreement in the offer or order confirmation. In the absence of such an agreement, no credit will be given.

13.3. In this case, the cloud contract ends at the end of the calendar month in which the on-premise installation was put into productive operation, without the need for separate termination. Clause 12 applies to the transfer of customer data.

14. Warranty

14.1. During the term of the contract, EVOMECS provides the EVOMECS software in a condition suitable for contractual use and remedies defects within the scope of incident resolution under Clause 6. A workaround that eliminates the effects of the defect is also deemed to remedy the defect.

14.2. EVOMECS does not warrant that the EVOMECS software meets the Customer's particular requirements or works together with the Customer's systems, unless this is expressly promised in the product description.

14.3. EVOMECS's strict liability for defects already existing at the time of conclusion of the contract (Section 536a (1) alt. 1 BGB) is excluded.

14.4. Clause 5 takes precedence for availability shortfalls. Otherwise, the Customer may reduce the fee appropriately if EVOMECS does not remedy a reported defect within a reasonable period. The Customer's right to terminate for failure to grant use (Section 543 (2) sentence 1 no. 1 BGB) only exists if EVOMECS has been given sufficient opportunity to remedy the defect and this has failed.

14.5. Clause 15 applies to damages and reimbursement of futile expenses.

15. Liability

15.1. EVOMECS is liable without limitation for intent and gross negligence, for injury to life, body or health, for fraudulent misrepresentation, where a guarantee has been assumed and under the German Product Liability Act.

15.2. In the event of a simple negligent breach of material contractual obligations (cardinal obligations), liability is limited to the foreseeable damage typical for the contract. Cardinal obligations are obligations whose fulfilment makes the proper performance of the contract possible in the first place and on whose compliance the Customer may regularly rely.

15.3. In the cases of Clause 15.2, liability per contract year is limited in total to the amount of the net remuneration paid by the Customer in the twelve months preceding the event giving rise to the damage.

15.4. EVOMECS is liable for the loss of data only in the amount of the effort that would have been required to restore the data from the contractually owed backups under Clause 7.

15.5. Otherwise, liability for simple negligence is excluded. The above limitations also apply in favour of EVOMECS's legal representatives, employees and vicarious agents.

15.6. Liability for breaches of data protection law is governed by this Clause, unless Art. 82 GDPR mandatorily provides otherwise.

16. Confidentiality

16.1. Both parties treat all confidential information of the other party received in connection with the contract as confidential and use it only for the performance of the contract. Confidential information includes in particular the customer data, the EVOMECS software, prices and special conditions, know-how and the business and trade secrets of both parties.

16.2. Disclosure to employees, sub-processors and advisers is permitted provided they are bound to confidentiality and require the information for the performance of the contract.

16.3. The obligation does not apply to information that is publicly known or becomes known without breach of this obligation, that was already lawfully known to the receiving party, or that must be disclosed on the basis of a legal obligation or an order of an authority or court; in the latter case, the disclosing party informs the other party in advance where possible.

16.4. The confidentiality obligation applies during the term of the contract and for five (5) years after its end.

17. Final Provisions

17.1. EVOMECS may use subcontractors to fulfil its obligations and remains responsible to the Customer. The DPA applies to sub-processors.

17.2. EVOMECS may amend these Cloud Terms with effect for the future if there is a valid reason, in particular changes in the legal situation, security requirements or the further development of the services, and the Customer is not unreasonably disadvantaged as a result. EVOMECS notifies changes in text form at least six (6) weeks before they take effect. If the Customer does not object by the effective date, the changes are deemed accepted; EVOMECS will point this out in the notification. In the event of an objection, the Customer may terminate the contract with effect from the date the changes take effect.

17.3. The Customer permits EVOMECS to name it as a reference customer with its company name and logo on the website and in marketing materials. The Customer may revoke this at any time in text form. Press releases about the customer relationship require prior coordination.

17.4. The Customer shall comply with the applicable export and import control regulations when using the services.

17.5. The law of the Federal Republic of Germany applies, excluding the UN Convention on Contracts for the International Sale of Goods (CISG). The exclusive place of jurisdiction for all disputes arising from this contract is Munich. EVOMECS is also entitled to bring an action at the Customer's registered office.

17.6. Notices and declarations under these Cloud Terms must be made in text form unless expressly provided otherwise.

17.7. Should any provision of these Cloud Terms be invalid, the validity of the remaining provisions shall remain unaffected.