GENERAL TERMS AND CONDITIONS

Special Terms for Additional Services

for business customers (IT Services Terms)

These special terms for additional services (hereinafter “EVOMECS IT Services Terms”) apply to contracts between EVOMECS GmbH, Kanalstraße 6, 80538 Munich, Germany (hereinafter “EVOMECS”) and its contractual partners (hereinafter “Customers”) for consulting assignments (for example project management, conceptual consulting) and for the implementation of standard and individual software. They apply both under the purchase model (on-premise) and to cloud use, in particular to set-up, connection of machines and interfaces, data migration, training and services when changing the operating model. They do not cover maintenance services for EVOMECS software products (hereinafter collectively “EVOMECS Software”), which are governed by the separate EVOMECS Maintenance Terms, or the cloud services themselves, which are governed by the EVOMECS Cloud Terms.

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

1. Application of the EVOMECS IT Services Terms

1.1. EVOMECS provides its services exclusively on the basis of the IT Services Terms. They form an inseparable part of all contracts for additional services concluded between EVOMECS and its customers.

1.2. Deviating, conflicting or supplementary terms and conditions of the Customer are excluded and shall not apply even if EVOMECS provides services without reservation in knowledge of the Customer’s terms and conditions.

1.3. Individual agreements made with the Customer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these EVOMECS IT Services Terms.

2. Subject Matter of the Contract

2.1. On the basis of these terms, EVOMECS provides services within the meaning of Sections 611 et seq. BGB (hereinafter “Project”). Only where Clause 5 of these terms applies are they works within the meaning of Sections 631 et seq. BGB.

2.2. The services to be provided by EVOMECS and their scope result conclusively from the service description contained in or attached to the order form or offer or the order in the EVOMECS online store. The contractual services and the related responsibilities of EVOMECS are conclusively set out in these service terms and the order form (in particular in the relevant service description). The Customer may only demand further services on the basis of an additional order against separate remuneration.

3. Principles of Service Provision

3.1. EVOMECS is entitled to use subcontractors to fulfil its contractual obligations but remains responsible to the Customer for the fulfilment of the contractual obligations.

3.2. Unless the offer contains specific provisions in this respect, EVOMECS may provide the contractual services on site at the client’s premises or remotely at its own discretion.

3.3. Where the contractual services consist of expert opinions, reports or results of investigations, these shall be provided in writing. Oral statements by EVOMECS or its employees or commissioned third parties are irrelevant insofar as they deviate from these.

3.4. EVOMECS appoints a contact person for the Customer for the entire duration of the Project. EVOMECS is only entitled to appoint a new project manager for reasonable business reasons. EVOMECS will inform the new project manager sufficiently about the status of the Project.

4. Cooperation of the Customer

4.1. The Customer will provide all cooperation and contributions required for proper performance by EVOMECS. The contractual provision of the services depends significantly on these contributions and may also require EVOMECS to influence the Customer’s vicarious agents, representatives, service recipients, other service providers or other third parties (excluding EVOMECS’s vicarious agents). EVOMECS may rely on notifications, instructions, approvals, sign-offs, acceptance declarations or comparable declarations of the Customer when providing the contractual services; following and/or implementing such declarations is deemed performance in accordance with the contract and EVOMECS is not responsible for the resulting consequences.

4.2. Insofar as applicable to the respective contractual service, the Customer provides in particular the following cooperation and contributions:

1. The Customer provides EVOMECS in good time, in the agreed format or otherwise in an appropriate format, with all data and information required for the provision of the contractual services. Where necessary, the Customer updates this data and information. The Customer is responsible for the completeness and accuracy of this data and information; EVOMECS is not obliged to check it.
2. The Customer grants EVOMECS access to premises, buildings, infrastructure, systems, machines and tools under the control of the Customer, its vicarious agents or other third parties commissioned by it, insofar as such access is necessary for the proper provision of the contractual services.

4.3. In an offer, these cooperation duties and contributions may be specified in more detail and/or supplemented or restricted by further cooperation duties and contributions.

4.4. EVOMECS is not responsible for consequences resulting from cooperation or contributions of the Customer that are not provided, not provided properly and/or provided late. Any dates and deadlines are postponed by the duration of such breach plus a reasonable period for the proper continuation of the affected contractual services. The Customer pays EVOMECS for the additional effort resulting from such a breach at the agreed daily rates. The Customer’s payment obligations remain unaffected.

4.5. The Customer appoints a contact person for EVOMECS for the entire duration of the Project. The Customer is only entitled and obliged to appoint a new project manager for reasonable business reasons. The Customer will inform the new project manager sufficiently about the status of the Project.

4.6. EVOMECS regularly informs the project manager appointed by the Customer about the status of the Project.

4.7. The Customer undertakes to coordinate its employees and the third parties commissioned by it who are to provide services within the scope of the Project. In particular, it ensures that they do not hinder or impair the provision of services by EVOMECS.

5. Acceptance

5.1. Contractual services are only subject to acceptance by the Customer if and insofar as (i) this is expressly agreed in the contract or (ii) applicable mandatory law so provides. The acceptance procedure of this Clause 5 applies to such contractual services.

5.2. Unless a different period is agreed in the contract, the Customer accepts the contractual services within five (5) working days of submission for acceptance ("Acceptance Period"), provided the contractual services are free of material defects. The contractual services are free of material defects if they essentially meet the agreed acceptance criteria. If no specific acceptance criteria have been agreed, the contractual services are free of material defects if they essentially have the characteristics described in the service description. Insignificant deviations from acceptance criteria and/or the service description are not material defects and do not prevent acceptance; however, EVOMECS will remedy such defects within a reasonable period by rectification or replacement at its option.

5.3. If there are defects preventing acceptance, the Customer must notify EVOMECS of these in writing within the Acceptance Period. If the Customer does not notify EVOMECS of any defects preventing acceptance in due form by the end of the Acceptance Period, the contractual services concerned are deemed accepted. The same applies if the Customer reports defects preventing acceptance in due form and time, EVOMECS resubmits the contractual services concerned to the Customer as "defects remedied" and the Customer does not object within two (2) working days; however, this consequence occurs at the earliest at the end of the Acceptance Period.

6. Remuneration

6.1. The remuneration for the services results from the order form or offer. Unless expressly agreed otherwise, remuneration is on a time and material basis.

6.2. All prices are exclusive of statutory VAT, customs duties and other taxes or fees. These are to be paid by the Customer.

6.3. EVOMECS invoices the remuneration after provision of the respective contractual services, unless the offer provides for a different payment schedule. If EVOMECS provides the contractual services on an ongoing basis (i.e. for two (2) or more consecutive months), all contractual services of a month are invoiced at the beginning of the following month.

6.4. Payments are due within 14 days of receipt of the invoice.

6.5. Travel expenses. Any travel expenses incurred in providing the contractual services for journeys between the Customer's place of business or another location requested by the Customer and EVOMECS's place of business, as well as accommodation costs, are not included in the remuneration but are to be reimbursed separately. For train journeys, second-class fares are reimbursed; for air travel, economy class tickets. For car journeys, a flat rate of EUR 0.60 per kilometre is reimbursed. Accommodation costs are reimbursed up to EUR 160 per person per night. Meal expenses are reimbursed at a flat rate in accordance with the rates recognised for tax purposes.

7. Rights of Use in Work Results

7.1. EVOMECS grants the Customer the simple (i.e. non-exclusive), non-transferable and non-sublicensable, perpetual right to use the work results produced within the scope of the contract exclusively for internal use for its own business purposes within the scope of the contract. Work results include in particular expert opinions, project plans, software, drafts, drawings, lists, etc. For work results introduced into the EVOMECS Software within the scope of cloud services (e.g. configurations, interfaces), the right of use is limited to the term of the cloud contract.

7.2. With regard to software, the right includes the right to install, configure, load, display and run the software. The right to configure also includes the modification and creation of interfaces. In addition, the Customer is entitled to make a backup copy, in particular for the purpose of disaster recovery and reinstallation in the event of a hardware defect or hardware change. The Customer must visibly mark the physical copy or the file name of the backup copy with the note "Backup copy" and a copyright notice of EVOMECS.

Use of the software is only permitted in the agreed contractual territory. In the absence of a deviating agreement, the contractual territory is the country in which the Customer has its registered office.

The Customer is prohibited from editing the software and the associated documents and information or creating works derived from the software, translating, decompiling, disassembling or otherwise reverse engineering it, or making any other attempts to determine the source code of the software or its underlying ideas or algorithms, or removing product identifications, copyright notices or other notices embedded in the software, without the prior written consent of EVOMECS. If the Customer intends to decompile the software to the extent permitted under Sections 69d and 69e of the German Copyright Act (UrhG) in order to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, the Customer is only permitted to do so if it informs EVOMECS of its intention in writing in advance and EVOMECS does not provide the necessary information within a reasonable period.

The Customer may use the software only to the contractually agreed extent. Any deviating use is in breach of contract, even if the Customer can technically access additional software components or additional types of use are possible. The Customer shall ensure that its personnel or other persons commissioned by it who have access to the software comply with all obligations under these terms.

8. Intellectual Property

8.1. If and insofar as copyrights or other property rights arise in the work results, these remain with EVOMECS. The same applies to methods, results, software or similarly protectable know-how used by EVOMECS; EVOMECS also remains the holder of all existing industrial property rights in this respect.

9. Liability

9.1. EVOMECS is liable in accordance with the statutory provisions for damages based on an intentional or grossly negligent breach of contractual obligations, as well as for injury to life, body and health, fraudulent misrepresentation or under the German Product Liability Act.

9.2. For a simple negligent breach of cardinal obligations, EVOMECS's liability is limited to foreseeable damages

typically occurring in contracts of this kind. Cardinal obligations are material obligations that form the basis of the contract, that were decisive for the conclusion of the contract and on whose fulfilment the Customer may regularly rely.

9.3. The parties agree that liability for typically foreseeable damages or typically foreseeable expenses shall in total not exceed the agreed total remuneration for the contractual services under the offer affected by the breach of duty. In the event of loss of data, EVOMECS's liability is limited to the damage that would have occurred with proper and regular data backup.

9.4. With the exception of the cases mentioned in Clauses 9.1 and 9.2, liability for simple negligence is excluded.

9.5. For on-premise products, the Customer is obliged to carry out appropriate data backups and to make backup copies of all data and programs in machine-readable form at least once a day. In the event of data loss for which EVOMECS is responsible, EVOMECS's liability is limited to the costs of restoring data that the Customer could not have prevented by fulfilling the aforementioned obligation or other reasonable measures. For cloud services, data backup is governed by the EVOMECS Cloud Terms.

9.6. The above limitations of liability also apply to breaches of duty by EVOMECS's legal representatives or vicarious agents.

10. Term and Termination

10.1. These service terms apply to all contractual services of EVOMECS in accordance with the respective order form or offer. Unless a different date is specified therein, the contract enters into force on the day of legally valid signature or acceptance by the last of the parties. The contract may be concluded for an indefinite period or for a fixed term ("Initial Term").

10.2. Unless otherwise agreed, offers with a fixed term are automatically extended by a further twelve (12) months each (each a "Renewal Term") unless terminated by either party with three (3) months' notice before expiry of the Initial Term or a Renewal Term.

10.3. If no fixed term is provided for the contract, it ends at the end of the day on which the contracting parties have fully performed the services covered by the contract.

10.4. Extraordinary termination: The right to extraordinary termination remains unaffected.

10.5. Notices of termination must be in writing.

11. Applicability of Further Terms

11.1. Depending on the operating model, the EVOMECS Software License Terms (purchase model) or the EVOMECS Cloud Terms (cloud) in the version valid at the time of conclusion of the contract apply in addition.

11.2. Insofar as EVOMECS processes personal data on behalf of the Customer within the scope of the services, the EVOMECS Data Processing Agreement (DPA) applies.