GENERAL TERMS AND CONDITIONS · PURCHASE MODEL

Software License Terms

for business customers

These general software license terms (hereinafter “EVOMECS Software License Terms”) apply to the purchase of EVOMECS software products (hereinafter collectively “EVOMECS Software”), in the course of which EVOMECS GmbH, Kanalstraße 6, 80538 Munich, Germany (hereinafter “EVOMECS”) grants its contractual partner (hereinafter “Customer”) the use of the EVOMECS Software for operation on the Customer’s own systems (on-premise) against payment by providing a data carrier or a download.

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

1. Scope of these General Software License Terms

1.1. These EVOMECS Software License Terms are directed exclusively at natural persons acting in the course of their commercial or independent professional activity, as well as at companies, legal entities under public law or special funds under public law, and form an integral part of every order concluded between the Customer and EVOMECS. They apply exclusively and, at the time of the order, replace all prior oral or written agreements regarding the acquisition and use of EVOMECS Software.

1.2. Deviating, conflicting or supplementary general terms and conditions of the Customer are excluded and shall not apply even if EVOMECS, in knowledge of the Customer’s general terms and conditions, makes the EVOMECS Software available to the Customer for use without reservation.

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 Software License Terms.

1.4. References to the applicability of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions therefore apply unless they are directly amended or expressly excluded by these EVOMECS Software License Terms.

1.5. These Software License Terms do not apply to software developed or further developed by third parties, including so-called free software and open source software (“Third-Party Software”). If the Customer uses Third-Party Software, the license terms of the respective rights holders apply.

1.6. These Software License Terms do not apply to the use of the EVOMECS Software as a cloud service; the EVOMECS Cloud Terms apply exclusively to such use. If the Customer switches from cloud use to the purchase model, these Software License Terms apply from the acquisition of the license.

2. Subject Matter of the License

2.1. The Customer acquires the EVOMECS Software in object code, including the configuration and parameterisation already implemented as standard at the time of delivery. The description of the EVOMECS Software, its scope and individual functions results from the order form or order confirmation, the product description and the documentation. The information contained therein is to be understood as a mere description of performance and does not constitute a guarantee.

2.2. Installation and customer-specific configuration and/or parameterisation services (“Customizing”) are not the subject of the license and must be commissioned separately. In this respect, the EVOMECS IT Services Terms apply.

2.3. Subject to deviating agreements, the EVOMECS Software is delivered in the version current at the time of delivery. The Customer alone is responsible for ensuring that its hardware and software environments meet the system requirements. If there is any doubt about this, the Customer must seek advice from EVOMECS before concluding the contract.

2.4. After the EVOMECS Software has been made available (by transmission of the corresponding access data) and before productive use, the Customer is obliged to examine the EVOMECS Software and documentation thoroughly without culpable delay and, if a defect becomes apparent, to notify EVOMECS without undue delay. If the Customer fails to give notice, the EVOMECS Software including the documentation is deemed approved, unless the defect was not recognisable during the examination.

2.5. The Customer is aware that production data and/or other machine-related information without personal reference (hereinafter “Data”) may be automatically collected, generated and/or stored by the EVOMECS Software from the first commissioning. EVOMECS is entitled to use such Data generated by the user’s use of the EVOMECS Software to produce analyses for the preventive avoidance of machine failures; an obligation to do so exists only if contractually agreed. In addition, EVOMECS is entitled to use all Data in anonymised form, which does not allow any association with the Customer, individual users or other third parties, for the purpose of developing new products, further developing existing products, for marketing purposes and for other business purposes of EVOMECS. Insofar as EVOMECS processes personal data on behalf of the Customer, the EVOMECS Data Processing Agreement (DPA) applies.

3. Rights of Use of the Customer

Upon receipt of full payment of the agreed license fees, EVOMECS grants the Customer the simple (i.e. non-exclusive), non-transferable and non-sublicensable, perpetual right to use the EVOMECS Software exclusively for internal use for its internal business purposes and to have it used by commissioned data centre operators and outsourcing providers as well as other external service providers of the Customer – but not by direct competitors of EVOMECS – in accordance with these Software License Terms. The license granted includes the right to install, configure, load, display and run the EVOMECS 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 EVOMECS 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.

4. System Extensions and System Changes

4.1. With regard to machine-related software components, the license is limited to the respective machine ("physical system environment") specified in the order form or its annexes. When virtualisation technologies are used, the license can be extended accordingly against an upgrade fee.

4.2. The license may be transferred from the previous system environment to a new system environment (e.g. in the event of a hardware defect or hardware change), provided that the new system environment essentially corresponds to the previous system environment. In all other cases, the Customer must purchase a new license or a software package of a higher level. The effort incurred in connection with a change of the physical system environment shall be remunerated in accordance with the EVOMECS IT Services Terms.

5. Obligations and Restrictions of Use

5.1. The Customer is not permitted to rent out the EVOMECS Software to third parties unless EVOMECS and the Customer have agreed otherwise in writing.

5.2. The Customer is further prohibited from editing the EVOMECS 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 EVOMECS 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 EVOMECS 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.

5.3. The Customer may use the EVOMECS 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 EVOMECS Software comply with all obligations under these Software License Terms.

6. Intellectual Property

EVOMECS remains the exclusive holder of all rights to the EVOMECS Software and the content of all materials and information provided. This also applies if the Customer edits the EVOMECS Software in breach of contract and/or combines it with its own programs or those of a third party. If, under applicable law, the Customer, its employees or third parties commissioned by it are to be regarded as rights holders of the changes/combinations, the Customer grants EVOMECS rights of use thereto to the greatest possible extent, in particular the exclusive, perpetual right, unrestricted in terms of content, territory and time, to comprehensively use, market, reproduce, distribute and publicly communicate these changes/combinations, and/or ensures that the employees and/or other third parties concerned grant these rights to EVOMECS.

7. Rights and Obligations in the Event of Third-Party Claims

7.1. The Customer shall notify EVOMECS without undue delay and comprehensively as soon as it becomes aware of third-party claims for alleged infringement of copyrights or other industrial property rights of third parties in connection with the use of EVOMECS Software.

7.2. EVOMECS will defend the Customer against all liability claims for infringement of third-party intellectual property rights and take over the control and coordination of the defence activities. EVOMECS will indemnify the Customer against all final and binding damages imposed for infringement of copyrights or other industrial property rights of third parties through its use of the EVOMECS Software, as well as against reasonable legal defence costs incurred in connection with the defence against such third-party claims, provided that (i) the Customer's use of the EVOMECS Software fully complied with these Software License Terms and other agreements between EVOMECS and the Customer, (ii) the Customer informed EVOMECS of the third-party claims without undue delay, and (iii) the Customer supports EVOMECS in rejecting the third-party claims and has refrained from all activities that could impair a legal defence. If EVOMECS does not take over control of the defence activities within thirty days of written receipt of the information about the third-party claims, the Customer is entitled to conduct the defence independently.

8. Security Measures, Control over Software Use (Audit)

8.1. The Customer shall protect the EVOMECS Software against access by unauthorised third parties through suitable organisational and technical security measures. In particular, installation media and the backup copy of the EVOMECS Software must be kept in a safe place.

8.2. EVOMECS is entitled to audit the contractual use of the EVOMECS Software at any time on the basis of a specific suspicion or at least once a year through an independent third party bound to confidentiality ("Auditor", e.g. a certified public accountant). EVOMECS will generally announce the audit in writing 45 days in advance.

8.3. The Customer is obliged to cooperate with EVOMECS and the Auditor in the planning and execution of the audit and to support them to a reasonable extent. Reasonable support includes providing the Auditor with all relevant information to demonstrate the contractual use of the EVOMECS Software and, insofar as necessary to clarify license compliance, granting access to the systems on which the EVOMECS Software is installed and executed during normal business hours. The Auditor will only transmit to EVOMECS such information as is necessary to establish breaches by the Customer of these license terms and of the use specified in the customer order, product description and documentation, and to enforce EVOMECS's resulting claims. Within the scope of its support, the Customer shall ensure that no personal data or sensitive information and trade secrets are transmitted to EVOMECS and the Auditor in connection with the audit. Insofar as the transmission of personal data is necessary to carry out the audit, EVOMECS and the Customer shall jointly take the necessary measures to ensure compliance with the applicable data protection laws.

8.4. Insofar as the Customer incurs reasonable costs through its participation in the audit, these will not be borne by EVOMECS. The costs of the Auditor are borne by EVOMECS unless the audit reveals a not insignificant breach by the Customer of the contractually agreed use of the EVOMECS Software. In such a case, the Customer shall indemnify

EVOMECS against the costs of the Auditor unless the Customer is not responsible for the breach.

8.5. If the audit establishes that the Customer uses the EVOMECS Software to an extent that exceeds the acquired rights of use qualitatively (i.e. with regard to the type of permitted use) or quantitatively (i.e. with regard to the number of licenses acquired), the Customer must order sufficient licenses to cover this use at current prices within 30 days of completion of the audit. If it fails to do so, EVOMECS will assert the rights to which it is entitled.

9. Warranty

9.1. EVOMECS warrants that the EVOMECS Software essentially corresponds to the specifications in the order and the product description applicable at the time of the order.

9.2. EVOMECS does not warrant that the EVOMECS Software meets the Customer's requirements and purposes or works error-free with other computer programs or system environments or operating systems used by the Customer, unless this is expressly stated in the product description or user documentation. Any warranty or liability of EVOMECS for Third-Party Software is excluded.

9.3. If the Customer asserts defects, it shall inform EVOMECS with a detailed description of how the defects manifest themselves. The Customer agrees to cooperate with EVOMECS by providing all necessary information and documentation and any other reasonable support to enable EVOMECS to remedy the defect.

9.4. Within the scope of the warranty, EVOMECS will first attempt to remedy the error or have it remedied. For this purpose, EVOMECS will, at its own discretion, provide a new, defect-free software version or remedy the defect. The provision of temporary solutions by EVOMECS, whether software-based or by way of instruction, which end the effects of the defect, is also deemed to be a remedy. If two attempts at subsequent performance fail, the Customer is entitled to set a reasonable grace period for remedying the defect. In doing so, it must expressly point out in writing that, if the rectification is not successfully carried out within a reasonable period, it will withdraw from the contract or claim a reduction (reduction of the license fee) and damages in accordance with the statutory provisions.

9.5. In the event that defects of title in the EVOMECS Software have been established by a court, EVOMECS may, at its own expense and at its option, either change or replace the affected EVOMECS Software in such a way that it no longer falls under third-party property rights but nevertheless complies with the contractual provisions with the Customer, or obtain the right for the Customer to use it without restriction and without additional costs in accordance with the contract. If EVOMECS is unable to do so, the Customer is entitled to reduce the remuneration by the part corresponding to the reduction in use.

9.6. The limitation period for warranty claims begins with the provision of the EVOMECS Software. Subject to the provisions of sentence 3 of this Clause 9.6, warranty claims become time-barred within one year of the provision of the EVOMECS Software. Claims for damages based on intentional or grossly negligent breaches of duty, injury to life, body and health, claims based on fraudulent misrepresentation and claims under the German Product Liability Act become time-barred within the respective statutory period.

9.7. If the Customer claims damages or reimbursement of futile expenses within the scope of the warranty, EVOMECS is liable in accordance with the limitations of liability in Clause 11.

10. License Fees and Billing

10.1. The Customer shall pay EVOMECS all license fees specified in the respective order ("License Costs") in full and without deduction within 14 days of receipt of the invoice. License Costs are stated as net amounts in euros and exclude statutory VAT, customs duties and other taxes or fees. The latter are to be paid by the Customer if applicable.

10.2. If the Customer defaults on payment of the License Costs, it shall pay default interest of 9 percentage points above the base interest rate.

10.3. The Customer shall notify changes to its billing and contact information without undue delay.

11. Limitations of Liability

11.1. 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.

11.2. 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.

11.3. The parties agree that liability for typically foreseeable damages or typically foreseeable expenses shall in total not exceed the License Costs paid by the Customer for the acquisition of the EVOMECS Software. In the case of recurring remuneration, liability is limited to twice the net remuneration per contract year. In the event of loss of data, EVOMECS's liability is limited to the damage that would have occurred if the Customer had backed up its data properly and regularly.

11.4. With the exception of the cases mentioned in Clauses 11.1 and 11.2, liability for simple negligence is excluded.

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

12. Confidentiality

12.1. The Customer is aware that it has received and will receive confidential information in connection with the software acquisition, in particular with the preliminary discussions and the conclusion of the order.

12.2. Confidential information means all embodied and/or oral information and data that is marked as confidential or secret or that a reasonable third party would regard as worthy of protection and therefore confidential, even if it relates to third parties. Confidential information includes in particular the EVOMECS Software, know-how, operating methods, security measures, experience, company data and operational documents that meet the above requirements, as well as information communicated orally, in writing, in drawings, images, electronically or in any other way, in particular e-mails, letters and faxes, insofar as they are not generally accessible. Confidential information therefore also includes all contractual documents, including the agreements expressed in this context, as well as presentations and other information, including the order form, price lists and special

conditions, as well as specialist, commercial and technical information and all findings arising from dealing with information to be treated as business and trade secrets.

12.3. Disclosure of confidential information to third parties is only permitted with the written consent of EVOMECS. Third parties are all natural or legal persons except (i) the respective business partner itself, (ii) its employees and (iii) professional advisers (e.g. auditors and lawyers), insofar as they are subject to a statutory or contractual obligation of confidentiality.

12.4. As the recipient of confidential information, the Customer must make every effort to protect it from unauthorised use or publication and shall apply the same standard of care as it applies to the protection of its own confidential information, but at least the care of a prudent businessperson.

12.5. Notwithstanding the above provisions, disclosure of confidential information is permitted insofar as

1. it is expressly made available to the Customer in writing by EVOMECS as not confidential and not requiring secrecy or with express written permission for any use or exploitation; or
2. it is publicly known at the time of disclosure; or
3. it becomes publicly accessible at a later date, unless this results from a breach of this agreement by the Customer as recipient of the confidential information; or
4. the Customer can prove by written records that it possessed it before the business initiation in connection with the acquisition of EVOMECS Software, developed it itself or became aware of it without breaching a confidentiality obligation; or
5. it is disclosed by express order of a court, authority or other public body in order to defend one's own position in criminal, civil or public proceedings, or its disclosure is required by statutory provisions, regulations or other mandatory sovereign rules and the Customer has informed EVOMECS of the disclosure in advance where possible and has made reasonable efforts to protect the confidential information in connection with such disclosure.

12.6. The confidentiality provisions apply for a period of five (5) years from the conclusion of the order for the acquisition of EVOMECS Software.

13. Miscellaneous

13.1. Subcontractors: EVOMECS has the right to use subcontractors to fulfil its contractual obligations.

13.2. Notices: Unless otherwise agreed, declarations of intent, notices or notifications by the Customer are only effective if sent to the following address: EVOMECS GmbH, Management, Kanalstraße 6, 80538 Munich, Germany, info@evomecs.com. The assertion of warranty claims requires written form. EVOMECS is free to waive the aforementioned requirements for effectiveness for declarations of intent, notices or notifications by the Customer – also retrospectively.

13.3. Set-off: The Customer may only set off undisputed or legally established claims.

13.4. Assignment: Each party may assign the contractual relationship to an affiliated company within the meaning of Section 15 of the German Stock Corporation Act (AktG), provided that it has informed the other party of the assignment in writing in advance. Any assignment of claims by the Customer to third parties requires the prior written consent of EVOMECS.

13.5. Collateral agreements, written form: Amendments or additions to these Software License Terms require written form within the meaning of Section 126 (1) BGB to be effective. The same applies to the waiver or amendment of this written form requirement. Where written form is required in this contract, e-mail, fax, PDF or other forms deviating from Section 126 (1) BGB do not satisfy this form unless the specific customer agreement provides otherwise.

13.6. Independent contracting parties: The contractual relationship does not establish a partnership, franchise, joint venture, agency or trust relationship between EVOMECS and the Customer.

13.7. Marketing: The Customer grants EVOMECS the temporary, non-exclusive right to display the Customer's trademarks and logos on the EVOMECS website and in EVOMECS marketing materials solely for the purpose of identifying the licensee as a customer of the EVOMECS Software. Unless otherwise agreed, EVOMECS is entitled to issue press releases about the customer relationship (e.g. on the conclusion of the contract and/or the commissioning of the EVOMECS Software). The content of the press release requires mutual coordination.

13.8. Use of feedback: The Customer is entitled at any time to inform EVOMECS of suggestions for improvement, recommendations or other feedback ("Feedback") and grants EVOMECS the royalty-free, worldwide, transferable, sublicensable, irrevocable and perpetual right to use this Feedback comprehensively in connection with the operation and development of the EVOMECS Software. In particular, EVOMECS is entitled to reproduce, distribute, publicly communicate including making publicly available, publish and translate the Feedback. Non-anonymised distribution, making publicly available or publication of the Feedback by EVOMECS requires mutual coordination.

13.9. Export restrictions: The EVOMECS Software may be subject to export and import restrictions. In particular, authorisation requirements may exist or the use of the software or related technologies abroad may be subject to restrictions. The Customer shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union and the United States of America as well as all other relevant regulations. The Customer's performance of the contract is subject to the proviso that it is not prevented by national or international export and import regulations or any other statutory provisions.

13.10. Applicable law and place of jurisdiction: Unless otherwise required by the mandatory law of a Member State of the European Union or another country, the agreements under these Software License Terms are governed exclusively by the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded. The exclusive place of jurisdiction for all disputes arising from or in connection with these Software License Terms and the relevant customer order is the Regional Court of Munich I (Landgericht München I). EVOMECS is also free to bring an action in the Customer's judicial district.