

Terms & Conditions of Use for EPLAN ePULSE Services



These Terms & Conditions of Use for EPLAN ePULSE Services ("T&Cs") govern the legal relationships between the parties. They apply exclusively to the EPLAN ePulse Services. If the female form is used for individuals, it applies equally to men and women.

"EPLAN ePULSE Services" means for the purposes of these T&Cs the products eView Free and Cogineer Free. The EPLAN ePULSE Portal is also part of the EPLAN ePULSE Services.

"EPLAN ePULSE Portal" means for the purposes of these T&Cs a platform on which cloud-based applications are provided to the user worldwide via an internet connection in a web-browser or in EPLAN software.

"EPLAN" means for the purposes of these T&Cs EPLAN Software & Service GmbH & Co. KG.

"Customer" means for the purposes of these T&Cs the company, merchant, legal entity under private law or public law or the public-law entity (special fund under public law) referred to in the order confirmation as EPLAN's contracting partner.

"Affiliated Undertakings" means for the purposes of these T&Cs legally independent undertakings which (a) hold the majority of shares or the majority of voting rights in another undertaking (majority interest) and undertakings in which such a majority interest is held or (b) directly or indirectly exert a controlling influence over another undertaking (control relationship) and undertakings subject to such control relationship or (c) are subject to common management or are otherwise interdependent (group relationship).

"Contract" means for the purposes of these T&Cs the contract for use entered into between the Customer and EPLAN regarding one or more EPLAN ePULSE Services.

"Service Specifications" means for the purposes of these T&Cs the description of the services contractually owed by EPLAN which EPLAN provides for the Customer as EPLAN ePULSE Services in accordance with the Contract and these T&Cs within the framework of the existing technical, operational and legal possibilities;

"Personal Access Data" means for the purposes of these T&Cs the data usually consisting of user name and password allowing the Customer to access the EPLAN ePULSE Services.

1. Subject of the Contract, conclusion of the Contract

- 1.1 The Customer receives from EPLAN the non-exclusive, non-transferable and non-sublicensable right to use the EPLAN ePULSE Services to the extent granted in these T&Cs, limited in time to the term of the Contract. The Customer is not entitled to use the source code or to have it disclosed to it. The Contract does not cover the source code, unless otherwise expressly agreed by the parties.
- 1.2 The range of products published by EPLAN is subject to changes and non-binding. Thus the presentation of the products on the website does not constitute a legally binding offer by EPLAN, but an invitation to tender made to the Customer. Before sending off a binding offer, the Customer has the possibility to check all the details once again and change them if necessary.
- 1.3 The Customer only submits a binding offer under the terms of section 145 German Civil Code (*Bürgerliches Gesetzbuch* – BGB) when they click on the "Create account" button.
- 1.4 Upon receipt of the offer, the Customer receives an automatically generated e-mail confirming that EPLAN has received the offer (acknowledgement of receipt). This acknowledgement of receipt does not constitute an acceptance of the offer. A contract does not yet come about as a result of the acknowledgement of receipt. The terms and conditions of contract including the T&Cs will be provided to the Customer together with the acknowledgement of receipt.
- 1.5 A contract only comes into force when EPLAN has explicitly declared its acceptance of the offer (order confirmation). The wording of the Contract (consisting of offer, General terms and conditions and order confirmation) will be sent to the Customer by e-mail in the order confirmation.
- 1.6 The language available for conclusion of the contract is German.

2. Application of the T&Cs

- 2.1 The legal relationship between EPLAN and the Customer in relation to the subject matter of the Contract is exclusively governed by these T&Cs.
- 2.2 Any different and/or conflicting terms and conditions of business of the Customer will only become part of the Contract provided that EPLAN has given its express consent to their application. This requirement of consent applies in any event, for example even if EPLAN, being aware of the Customer's general terms and conditions of business, performs the services without reservation. If EPLAN and the Customer have effectively agreed provisions derogating from these T&Cs by individual contractual agreement, these individual contractual agreements will prevail.

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3. Payment

- 3.1 The EPLAN ePulse Services will be provided free of charge.

4. Type, scope and location of the services

- 4.1 EPLAN will provide all EPLAN ePULSE Services in non-physical form. The Customer can access the EPLAN ePULSE Portal through the website www.epulse.cloud on the internet. The Customer is responsible for setting up and maintaining the internet connection at its own expense.
- 4.2 EPLAN points out that the use of the EPLAN ePULSE Services can be affected by restrictions, delays or other problems inherent in the use of the internet and electronic means of communication. EPLAN is not responsible for delays or other damage arising from such problems unless EPLAN is to blame for these.
- 4.3 If EPLAN would breach national or international export and foreign trade law rules or sanctions or embargos by performing the contract, EPLAN is released from its obligation to perform.

5. Customer's duties to cooperate and provide information

- 5.1 The Customer is responsible for the hard- and software environment needed for use of the EPLAN ePulse Services which lie in its sphere of influence and responsibility. This also applies in relation to the system requirements and handling of the EPLAN ePULSE Services provided by EPLAN by the Customer's employees and agents. The Customer will observe the requirements communicated by EPLAN regarding use of the EPLAN ePulse Services. The Customer will ensure that a functioning hard- and software environment of adequate dimensions is set up that takes into account the capacity and performance requirements of the EPLAN ePULSE Services.
- 5.2 The Customer will test the EPLAN ePulse Services provided by EPLAN thoroughly to ensure that they are free from errors and are usable in the hard- and software configuration lying within its sphere of influence and responsibility before they are put into productive use and will inform EPLAN without delay about any errors. This obligation also exists for services received by the Customer from EPLAN in connection with warranty and maintenance.
- 5.3 The Customer will ensure that it backs up its data to the customary extent and at appropriate and adequate intervals. If EPLAN provides the Customer with a data back-up solution in connection with the EPLAN ePULSE Services, the Customer will fulfil its obligation by using the solution in accordance with the specifications.

6. Indemnification

Should EPLAN fraudulently conceal a legal defect or an error in the EPLAN ePulse Services, EPLAN agrees to reimburse the Customer for the damage arising from this.

7. Liability

Unless otherwise provided for in these terms and conditions, including the following provisions, in the event of a breach of contractual and non-contractual duties, EPLAN is liable to the Customer in accordance with the statutory rules. EPLAN is only accountable for wilful misconduct and gross negligence.

8. Application of additional provisions, third-party software

- 8.1 EPLAN points out that certain modules of the EPLAN ePULSE Services can contain software from third-party providers.
- 8.2 If third-party software is not available, if the term of use ends or if software requirements are modified, EPLAN can add equivalent products or replace this third-party software. Use of third-party software by the Customer is subject to these T&Cs and any applicable end-user license agreements with third-party providers which EPLAN will provide to the Customer and which are to be complied by the Customer and users. In the event of errors in third-party software, the provisions contained in clause 6 apply.

9. Use restrictions

- 9.1 The Customer may not abuse the EPLAN ePULSE Services. It is prohibited, in particular but not exclusively, from
- 9.1.1 breaching laws or other legal regulations and enforceable official orders;
- 9.1.2 transmitting or providing illegal, unethical or offensive content and referring to such content; this includes above all breaches against criminal rules and regulations (e.g. insults, stirring up hatred against national, racial, religious or ethnic groups or solicitation and incitement to commit criminal offences), glorifying or belittling violence, pornographic content capable of causing serious moral harm

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to children or adolescents or affecting their well-being and content which is capable of damaging EPLAN's reputation;

- 9.1.3 breaching third-party rights, in particular but not exclusively their personal rights, copyrights or their trade mark, design, patent or utility model rights;
- 9.1.4 endeavouring to access devices, data, service offers or networks without authorisation or to destroy or otherwise adversely affect them;
- 9.1.5 distributing spam, malware or other harmful software or
- 9.1.6 using the EPLAN ePULSE Services in another way which is capable of harming or destroying the services or affecting their application or usability.
- 9.2 The Customer may not pass the Personal Access Data allocated to it for use of the EPLAN ePULSE Services on to unauthorised third-parties and has to protect this data from access by third parties. The Customer will change its Personal Access Data at regular intervals for security reasons.
- 9.3 The Customer is prohibited from transferring its rights of use to the EPLAN ePULSE Services to third parties, including disclosing its Personal Access Data.
- 9.4 The Customer will use the EPLAN ePULSE Services and all related components exclusively in accordance with their intended use and the contractual provisions.
- 9.5 The Customer is not permitted to modify, remove or otherwise suppress any copyright notices, identifying symbols and/or control numbers or characters of EPLAN or the licensor or manufacturer. If it suspects that the services provided by it are being used improperly, EPLAN is entitled to check at reasonable intervals whether they are being used in compliance with the provisions of these terms and conditions.
- 9.6 If the Customer hands over data media or other hardware containing software or other information copyrighted to EPLAN to third parties or surrenders direct possession of the storage media, it will ensure beforehand that the components originating from EPLAN have been completely and permanently deleted.

10. Software und software updates

- 10.1 EPLAN will provide the Customer with software updates at its discretion.
- 10.2 If the right to use the software provided by EPLAN ends, the Customer is required to discontinue its use. EPLAN is entitled to deactivate the services without further notice. If it is not possible to deactivate them and the Customer is actually still using EPLAN ePULSE Services after the Contract has ended, EPLAN will charge the Customer a fee as compensation for the duration of the continued use. The prices valid at the time of use will be deemed to be a reasonable fee for compensation for continued use of EPLAN ePULSE Services. The Customer is free to prove that the service it has continued to use without authorisation has a lower value; similarly, EPLAN is able to charge a higher amount of compensation against proof.

11. Term, expiry and termination of the Contract

- 11.1 The Contract is entered into for an indefinite period. Each party is entitled to give contractual notice on the Contract at any time observing a notice period of one month.
- 11.2 The term of the Contract begins on the contractually agreed date, but no later than from the date on which the EPLAN ePulse Services are provided for use by the Customer in accordance with clause 4 for the first time.
- 11.3 The right of both parties to give immediate notice of termination for cause remains unaffected.
- 11.4 Notice of termination must be in text form.

12. Confidentiality

- 12.1 The parties agree to keep confidential all information which they have directly or indirectly received from the other party in connection with the contractual relationship and during its implementation and not to disclose it to third parties. Affiliated Undertakings are not deemed to be third parties if disclosure to them is necessary for performance of the Contract and the Affiliated Undertaking is also bound to confidentiality under these T&Cs. If EPLAN makes use of third parties in order to perform its obligations under the Contract, EPLAN will ensure that they also comply with this confidentiality obligation.
- 12.2 The confidentiality obligation does not apply to information which (a) is obvious or (b) was already known to the party or (c) the party has lawfully received from a third party or (d) has developed itself without breaching any confidentiality obligations and such information which (e) a partner of EPLAN requires in connection with performance of the Contract so that EPLAN can comply with its contractual obligations and can maintain the secu-

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ality and operation of EPLAN ePULSE Services. The party invoking one of the above exceptions is responsible for substantiating this.

- 12.3 The duty to keep confidential continues to apply for another five years after the end of the Contract.

13. Final provisions

- 13.1 If personal data of the customer is processed, EPLAN may, at its own discretion and taking into account the legitimate interests of the Customer, instruct a sub-contractor to process the data; EPLAN will comply with the requirements in paragraphs 2 and 4 of Article 28 GDPR in this context.
- 13.2 The contractual relationship may not be transferred or assigned to a third party, either in whole or in part, without EPLAN's prior written consent.
- 13.3 All legal disputes arising out of and in connection with the Contract and these T&Cs shall be governed by the laws of the Federal Republic of Germany
- 13.4 The exclusive place of jurisdiction for all disputes arising out of and in connection with these T&Cs is at the location of EPLAN's registered office. EPLAN may also bring legal action against the Customer at the Customer's place of residence.