Subscription Terms and Conditions

1. Subject matter of the contract

1.1. "EPLAN" in the sense of these Terms and Conditions is the Eplan company named in the respective order confirmation and which establishes a contractual relationship with the Contracting Party on this basis.

"Contracting Party" in the sense of these Terms and Conditions is the person, the company, the merchant, the legal entity under private or public law or the special fund under public law named as a Contracting Party of EPLAN in the order confirmation or registered as a user on the Eplan cloud platform.

EPLAN shall provide the Contracting Party with the Eplan software product selected by the Contracting Party either

- by download for installation on his/her local IT environment or that of his/her IT environment provider or
- as a cloud-based application

for use against payment for a limited period of time. Use of the software is only possible after receipt and entry of the license key/entitlement, which shall be made available to the Contracting Party by EPLAN immediately after conclusion of the contract. The scope and properties of the software modules – some of which are optional – are set out in the performance description.

1.2. The use of the software requires that the respective user, who has been authorized for use by the Contracting Party as its employee or service provider, has been registered on the Eplan cloud platform. The following information about the user is required in particular: Last name, first name, company of the Contracting Party, e-mail, country. The Contracting Party is responsible for ensuring that the users authorized by him provide truthful information during the registration process. In addition, the respective user assigns a personal password, which enables access to the cloud platform of EPLAN.

1.3. Unless otherwise agreed, the subject matter of the contract is the standard version of the respective software and the respective standard support. The standard version shall be provided to the Contracting Party in the version generally published by EPLAN at the time of conclusion of the contract.

1.4. The source code of the software is not the subject matter of the contract. All existing rights thereto shall remain with EPLAN.

1.5. The quality of the software provided by EPLAN shall be governed exclusively by the valid performance description available to the Contracting Party prior to conclusion of the contract. In particular, a quality exceeding the performance description cannot be derived from other representations of the software in public statements or in advertising by EPLAN and/or the manufacturer or its employees or sales partners, unless EPLAN has expressly confirmed the quality exceeding the performance

description to the Contracting Party in writing. The notice shall require at least the electronic form (Email).

2. Conclusion of the contract

2.1. All offers made by EPLAN are subject to change and non-binding. This shall also apply if EPLAN has provided the Contracting Party with product descriptions that have currently valid prices. EPLAN reserves the copyright to all product-related documents.

2.2. The order of the products by the Contracting Party shall be deemed to be a binding offer of contract. Unless otherwise stated in the order, EPLAN shall be entitled to accept the contract offer within three working days after it has been received by EPLAN.

2.3. Acceptance shall be effected by confirmation from EPLAN in writing.

3. Scope of use

3.1. EPLAN grants the Contracting Party a simple, non-exclusive right of use ("License") to the standard software in accordance with these Terms and Conditions and to the extent of the license model of EPLAN valid at the time of conclusion of the contract. Any further use of the standard software is excluded unless EPLAN has agreed to the extended use in writing. The notice shall require at least the electronic form (Email).

3.2. EPLAN grants the Contracting Party one of the license types listed below under letters a) to d), in each case limited to use for its own application purposes. The granting begins with the conclusion of the contract and is subject to the condition precedent of the complete payment of the first subscription fee in the respective valid amount.

a) Single-License: Simple and time-limited right of use, which is, however, restricted in terms of content and space to a single installation on a single user hardware or in a corresponding cloud-based application. The scope of use of the single-License does not include access via the company network or via a remote desktop connection (RDP).

b) Concurrent-License: Simple and time-limited right of use, which is, however, limited in terms of content and territory to installation on several computers in the company's internal network, whereby the network may only extend geographically to the area of the country in which the Contracting Party has its registered office. The maximum number of parallel uses within the network is based on the number of independently running base systems (no add-on systems), provided and activated within the license and managed on the server side by license management software provided by EPLAN. If the Contracting Party's place of business is within the European Economic Area (EEA), in Great Britain (GB) or in Switzerland, the license shall apply to the entire EEA, Great Britain (GB) and Switzerland.

c) WAN-License: If the Contracting Party acquires a WAN license, the provisions of Section 3.2 letter b) above shall apply, except that the Contracting Party's network may extend to the entire world.

d) Concurrent-Named-User-License: The software may only be used by registered users whose names are entered. Any further or other restrictions resulting from this type of license – in particular the membership of products in product families – can be found in the product-specific documents.

3.3. The Contracting Party's own application purposes are its internal business transactions. The following shall be excluded:

a) the processing of business transactions for companies affiliated with the Contracting Party,

"Affiliated Companies" in the sense of these contract conditions are legally independent companies that a) hold the majority of the shares or the majority of the voting rights in another company (majority shareholding) as well as such companies that are under such a majority shareholding, or b) that can directly or indirectly exercise a controlling influence on another company (controlling relationship) as well as such companies that are under such a controlling relationship, or c) that are under joint management or are otherwise dependent on each other.

b) operating a computer center for third parties,

c) the temporary provision of the standard software (e.g. as application service providing) for other companies or

d) the use of the standard software for training persons who are not employees of or otherwise employed by the Contracting Party,

unless EPLAN has permitted the Contracting Party such use in writing. Operation by a third party on behalf of, under control of and exclusively for the purposes of the Contracting Party (IT outsourcing, hosting) is permitted. The use of technical solutions by the Contracting Party by means of which the Contracting Party intends to achieve a use beyond the purchased licensing, i.e. in particular via dongle servers as well as remote desktop software, is not permitted.

3.4. Duplications of the standard software shall only be permitted to the extent and in such number as is necessary for the contractual use. The Contracting Party may make backup copies of the standard software in accordance with the rules of technology and to the extent necessary. If the Contracting Party has acquired the standard software by way of online download, it shall be entitled to copy the standard software onto a data carrier. Copies on movable data carriers shall be marked as such, provided with the copyright notice of the original data carrier and appropriately documented with regard to the number and whereabouts of such copies. At the request of EPLAN, the Contracting Party shall provide suitable proof that it has fulfilled its obligations in accordance with sentence 1.

3.5. The Contracting Party is prohibited from editing, in particular decompiling, unless EPLAN has permitted the Contracting Party to do so in writing. The notice shall require at least the electronic form (Email). By way of exception, the Contracting Party may also deviate from the editing prohibition without express permission if the measure – in particular in the case of imminent functional restriction or a system failure – is required in order to

a) establish interoperability with other hardware and software used by the Contracting Party
b) to secure or restore the intended use or
c) to eliminate a serious fault.

3.6. If EPLAN provides the Contracting Party with a new version of the standard software within the scope of rectification or maintenance, which replaces previously provided contractual items (old version), the new version shall also be subject to these contract conditions.

3.7. If EPLAN provides the Contracting Party with a new version of the standard software, the Contracting Party's rights with regard to the old version shall expire without the need for an express return or deletion request by EPLAN. The Contracting Party may continue to use the old version for as long as is necessary for compatibility reasons, in particular in the event that its contracting parties or suppliers are using older versions; the number of total licenses acquired shall not be increased as a result. With regard to the old version, the Contracting Party shall not have any claim against EPLAN for software services, in particular not for care and maintenance. If the Contracting Party uses a file originally stored under the old version with the new version, this file can no longer be processed with the old version.

3.8. EPLAN shall not acquire any rights to the files, documentation and other data of the Contracting Party created by the intended and contractually agreed use of the standard software.

4. Installation, training, software service and consulting-services

4.1. Insofar as the software is made available to the Contracting Party by EPLAN via download, EPLAN refers for installation of the software to the installation instructions described in the application documentation, in particular to the hardware and software environment, which must be available at the Contracting Party. At the request of the Contracting Party, EPLAN shall undertake the installation of the software on the basis of a separately concluded agreement and its respectively valid list prices.

4.2. Instruction and training shall be provided by EPLAN according to a separate agreement with the Contracting Party on the basis of their respective valid list prices.

4.3. The Contracting Party shall participate in the software service as offered by EPLAN in accordance with the current performance description "Software Service". Unless otherwise agreed, EPLAN shall owe services only on the latest program version provided to the Contracting Party. The service covers both the software and the associated EPLAN software documentation. The rights and obligations of the Contracting Party to newly delivered program versions within the scope of the software service shall be governed by these Terms and Conditions.

4.4. The Contracting Party shall in each case receive the standard version of the new software versions as set out in the associated performance description. The Contracting Party shall be responsible for the adoption of any customer-specific adaptations. Individual programs as well as customer-specific adaptations of the software based on customizing technologies such as API programming, scripting, individualization of master data, batch routines, etc. are excluded from the service. Any work required in this respect to maintain operability after delivery of new software

versions of the standard software shall be commissioned and remunerated separately by the Contracting Party.

4.5. The following services are not part of the contract between the Contracting Party and EPLAN:

a) Services for programs that are used by the Contracting Party under operating conditions other than those specified by EPLAN.

b) Adaptations of the software to new operating system releases or conversions of the software to operating systems for which the software has not been generally released by EPLAN.

c) Service work caused by the Contracting Party due to the fact that he/she or a person in his/her area of responsibility does not observe the operating instructions, other forms of incorrect operation occur or the software or a data carrier on which it is located is damaged or changed due to a culpable breach of duty.

d) Any services at the place of installation.

e) Training services by means of remote communication, e.g. by hotline, web conference or online training.

If such additional consulting-services are ordered by the Contracting Party in writing, EPLAN shall be entitled to invoice services rendered in accordance with the order at its respective valid prices, in particular its hourly and travel cost rates.

5. Use as cloud-based application, availability

5.1. If the Contracting Party accesses the software via the cloud platform (use as a cloud-based application), it shall be responsible for the functional capability of the devices used in its sphere for access, the existence of the necessary hardware and software environment and the maintenance of the internet connection. The Contracting Party shall be obliged to treat its access data confidentially and not to disclose it to third parties.

5.2. The Contracting Party is obliged to back up its data regularly so that the data can be restored at any time even in the event of a system disruption or failure. Eplan shall not be liable for the loss of data of the Contracting Party due to the failure of the Contracting Party to adequately back-up said data and thus to ensure that the lost data can be restored with reasonable effort.

5.3. The Contracting Party is obliged to notify EPLAN immediately of any disruptions or malfunctions of the cloud platform and/or the applications available on the platform after their discovery. The Contracting Party shall take all measures that enable the respective disruption or malfunction and its causes to be determined and facilitate or accelerate its elimination; in particular, the Contracting Party shall document its findings in a comprehensible manner.

5.4. The Contracting Party is not permitted to make the cloud platform, including the software applications on it, accessible to third parties without the express prior consent of EPLAN. The consent must be in writing.

5.5. Under no circumstances is the Contracting Party permitted to use content for the replication and/or other imitation of the cloud platform or the applications available therein. He/she is not entitled to (a) misuse the cloud platform, (b) gain access to unauthorized areas of the applications, (c) store illegal, immoral or offensive content on the platform or (d) knowingly provide sequences with harmful components, (e) transmit unsolicited advertising messages (spam) via the platform or (f) otherwise interfere with the functioning of the cloud platform in a damaging manner.

5.6. If the Contracting Party violates the obligations imposed on it by these Terms and Conditions, EPLAN may temporarily block its access to the cloud platform after prior written notification of the Contracting Party if the violation can be remedied thereby. The block shall be lifted as soon as the reason for the block has ceased to exist. If the Contracting Party continues to violate its obligations or repeatedly violates them despite a corresponding warning in writing, EPLAN may terminate the contract without notice and permanently delete the Contracting Party's account. EPLAN reserves the right to assert further legal rights.

5.7. EPLAN is only responsible for the proper functioning of the applications available within the cloud platform up to the internet node of the data center in which the applications are operated. EPLAN is not responsible for the failure-free operation of the other data line connections. The applications are considered "available" until the Contracting Party reports a disruption or until EPLAN detects the disruption. The measurement of the downtime starts with the receipt of the notification of the Contracting Party by EPLAN or the recognition of the disruption by EPLAN.

5.8. Unless otherwise agreed in a Service Level Agreement, the availability of the Cloud and the applications contained therein shall be 98% per calendar month. If the average availability does not fall below 80% per calendar month for reasons for which EPLAN is responsible, the Contracting Party shall receive a lump-sum credit amounting to 20% of the monthly fee for the service package affected by the disruption, if the non-availability is notified by the Contracting Party without undue delay. If the availability in a month is less than this, the Contracting Party shall be credited the entire monthly charge, provided that the non-availability is notified by the Contracting Party without undue delay. The credit shall be calculated pro-rata for the month within the contract period affected by the lower availability and offset at the end of the contract period. A pro-rata refund on software service contracts is excluded. If the contract ends, the Contracting Party shall receive a refund in cash. Further claims due to a shortfall in the specified average availability are excluded – without prejudice to the rights to which the Contracting Party is entitled in accordance with these Terms and Conditions and by law.

5.9. Defects in performance based on any of the following events shall not be considered downtime and shall not be taken into account when calculating availability:

a) necessary maintenance work;

b) disruptions, failures and impediments to performance originating from the domain of the Contracting Party;

c) failures that are due to the influence of third parties (e.g. denial-of-service attack) or force majeure.

EPLAN regularly carries out maintenance work, among other things for the import of updates and upgrades. Should maintenance work lead to interruptions of the service, EPLAN shall inform the Contracting Party in writing in advance. EPLAN shall keep impairments due to maintenance work to a minimum.

5.10. Within the available applications via "DATA PORTAL" the Contracting Party receives access, among other things, to product data of parts, components and devices of various kinds from various manufacturers (digital product data). The Contracting Party is entitled to further use the digital product data within the framework of the Terms and Conditions. Exclusively EPLAN or the respective manufacturer decides which digital product data is made available to the Contracting Party in which form and to which extent. EPLAN shall always carefully compile the digital product data. However, it is not possible for EPLAN to check the completeness, correctness and that it is up-to-date. It may happen that individual digital product data are incorrect, incomplete or outdated. EPLAN accepts no liability for this or for the suitability of the data for fulfilling the Contracting Party's specific purposes.

5.11. The specification of individual products described within the scope of the digital product data results from the data sheet of the respective manufacturer. The conformity of the digital product data in the applications provided by EPLAN with the actual condition and properties of the parts, components and devices is not guaranteed. In case of doubt, the Contracting Party shall contact the respective manufacturer for verification of product specifications. He/she may use the "feedback function" for this purpose.

5.12. EPLAN shall enter the digital product data into the applications in accordance with the agreements made with the respective manufacturer. This also applies to subsequent updates. In doing so, EPLAN shall include the data of all manufacturers with the same value and according to uniform criteria and shall not favor or disadvantage any manufacturer without objective reason. User activities may result in a favoring display of certain manufacturer information, e.g. by the frequent selection of the respective manufacturer or download of its product data. This does not constitute a recommendation on the part of EPLAN. EPLAN grants the respective manufacturer the possibility of accompanying advertising in a suitable form and within the scope of technical possibilities (e.g. banner placement), the content of which is the sole responsibility of the manufacturer.

5.13. EPLAN reserves the right to move individual software functions that are currently available in the Eplan Platform solutions ("on Premise") to the cloud in future versions. The affected software functions are named and described in the performance description for the respective version of the Eplan platform software. As long as the Contracting Party has a valid software service contract with EPLAN, the Contracting Party may continue to use the software functions moved to the cloud within the scope of the performance description. In case that the Contracting Party terminates the software service contract and does not convert to subscription, the Contracting Party may continue to further use the Eplan software licenses purchased "on Premise" in the version last used by him. Unless otherwise contractually agreed, any further right to use the functions available in the cloud by the Contracting Party is excluded in this case and not being owed by EPLAN.

Add-On systems and modules (Add-Ons), Elements or additional functions (API programs) can only be used in the same version as the Eplan basic software systems.

In case that the Contracting Party terminates the software service contract, EPLAN is not obliged to maintain the version compatibility of the Add Ons, Elements or additional functions moved to the Cloud and used by the Contracting Party.

6. Protection of the contractual objects

6.1. Unless rights are expressly assigned to the Contracting Party under this contract, all rights to the subjects of the contract (and to all copies made by the Contracting Party) – in particular copyrights and industrial property rights – shall remain with EPLAN or, in the case of delivery of third-party software, with the respective supplier of this software. This also applies to adaptations of the subjects of the contract by EPLAN, the licensor or third parties.

6.2. The Contracting Party shall carefully store the contractual items provided in order to exclude misuse. The Contracting Party shall only make contractual items (whether unchanged or modified) accessible to third parties with the consent of EPLAN. The consent must be given in writing. The notice shall require at least the electronic form (Email). Third parties do not include the employees of the Contracting Party and other persons who are present at the Contracting Party's premises for the contractual use of the contractual items or who are active in the Contracting Party's sphere.

6.3. The Contracting Party is prohibited from changing or removing copyright notices, marks and/or control numbers or marks of EPLAN or the respective licensor. If the Contracting Party modifies or edits the subject matter of the contract, it shall incorporate these notices and marks into the modified version of the subject matter of the contract.

6.4. The Contracting Party shall keep records of the copies of contractual items made by it on data carriers in accordance with the contract and their whereabouts, shall provide EPLAN with information on this on request and shall allow EPLAN to inspect its records on request.

6.5. If the Contracting Party passes on data carriers, memory or other hardware on which contractual items are stored (in whole or in part, unchanged or modified) to third parties or gives up direct possession thereof, it shall ensure that the stored contractual items have been completely and permanently deleted before passing on or giving up possession.

6.6. EPLAN is entitled to provide all installations of the software with software copy protection (online license key) that enables the Contracting Party to use the software for a limited period of time in accordance with the term specified in the order confirmation. The Contracting Party is obliged to inform EPLAN immediately in writing about recognizable functional impairments of the software protection. If the contractual partner is still using hardware copy protection (dongle), EPLAN will replace defective dongles with an online license key in return for the return of the old dongle - if technically possible. If the Contracting Party loses the dongle or if it is lost, EPLAN may make the provision of an online license key dependent on the renewed payment of the fee for the use of the software, unless the Contracting Party proves the destruction of the dongle.

6.7. The Contracting Party shall ensure within its sphere of influence that the software is only used if it is either secured by a functioning dongle or a valid online license key. In the event of a culpable breach of this obligation, liquidated damages in the amount of a simple subscription fee for three (3) years shall be due. The Contracting Party shall have the right to prove that no damage or only less damage than the lump sum has been incurred in the individual case; EPLAN shall also have the right to demand compensation for any proven higher damage.

7. Rights of use, evaluations

7.1. If new or modified contents are created by processing digitally displayed products or work results (contents) of the Contracting Party using the software provided by EPLAN, to which an independent industrial property right can be established, the results are exclusively entitled to the Contracting Party.

7.2. If the Contracting Party uses the software as a cloud-based application, EPLAN shall be entitled to record the manner of use of the Eplan software (e.g. operating steps, editing functions and the use of input fields) as well as the selected software and hardware configuration and to evaluate them in a suitable manner. EPLAN shall use the knowledge gained from the evaluation in a non-individualizable form to improve the user-friendliness, the functional scope and the performance of the software. An automated evaluation of contents or results within the meaning of Section 7.1 shall only take place with the consent of the respective user and only for the purpose of enabling additional functionality of the Eplan software.

7.3. EPLAN is entitled to take all legally permissible steps to prevent the misuse of its software products. In this context, the Eplan Software may include a security mechanism that can detect the installation or use of illegal copies of the Eplan software programs and exclusively collects and transmits data about these illegal copies (e.g. IP and MAC addresses). The collected data does not include any data of the Contracting Party created with the Eplan Software Programs. By using the Eplan Software, the Contracting Party consents to such detection and collection of data as well as to its transmission and use if an illegal copy is detected. EPLAN also reserves the right to use a hardware locking device, license management software and/ or an online license key to control access to the Eplan software. The Contracting Party shall not take any steps to circumvent or defeat the purpose of any such measure. The use of the Eplan software programs without a required hardware copy protection or online license key provided by EPLAN is prohibited.

7.4. EPLAN may collect, process and store personal data of the Contracting Party in compliance with the regulations of the applicable data protection-laws, -directives, and other regulations.

7.5. Should EPLAN analyse data of the Contracting Party, EPLAN shall do so exclusively within the admissible scope under data protection law.

8. Non-transferability of the right of use

The right to use the software granted to the Contracting Party by EPLAN in accordance with this contract is not transferable. The transfer of the contractual items to third parties is prohibited. This also applies to the temporary transfer as well as to the granting of usage possibilities to third parties against payment or free of charge,

regardless of whether the contractual items are transferred in a tangible or intangible form or only access to them is granted.

9. Cooperation and information obligations of the Contracting Party

9.1. The Contracting Party has informed itself about the essential functional features of the software and bears the risk that the features correspond to its requirements and needs. In the event of ambiguities or doubts, the Contracting Party shall obtain information from EPLAN employees or expert advice from third parties before concluding the contract.

9.2. The Contracting Party shall be responsible for setting up a functional hardware and software environment for the use of the software, which is also sufficiently dimensioned taking into account the additional capacities and system resources.

9.3. The Contracting Party shall thoroughly test the software provided by EPLAN for freedom from defects and for usability in the existing hardware and software environment before using it. This shall also apply to software received from EPLAN within the scope of warranty and maintenance.

9.4. The Contracting Party shall observe the instructions given by EPLAN for the installation and operation of the software; it shall regularly inform itself about current instructions on the web pages accessible via the internet at www.eplan.com and take these into account during operation.

9.5. Insofar as EPLAN has assumed further performance obligations in addition to the provision of the contractual items, the Contracting Party shall cooperate in their performance to the required extent free of charge, e.g. by providing employees, work rooms, hardware and software, electrical power, data and telecommunication facilities.

9.6. The Contracting Party shall grant EPLAN access to the subjects of the contract for troubleshooting purposes, at EPLAN's discretion directly and/or by means of remote data transmission.

9.7. The Contracting Party shall take reasonable precautions in the event that the software does not work properly in whole or in part (by means of daily data backups, fault diagnosis, regular checking of data processing results, etc.). Unless the Contracting Party expressly indicates otherwise in advance, EPLAN may assume that all data of the Contracting Party with which EPLAN may come into contact are adequately backed up.

9.8. The Contracting Party shall bear any disadvantages and additional costs arising from a breach of its obligations.

10. Duty to examine and to give notice of defects

If a defect in the subject matter of the contract becomes apparent during the term of the contract, the Contracting Party shall notify EPLAN of the defect without delay. If the Contracting Party fails to notify EPLAN of defects that it has detected or that it could have detected in the due performance of its commercial inspection duties or fails to do so in good time, it shall lose its warranty claim. The assertion of warranty claims shall be excluded for defects already known to the Contracting Party at the time of

conclusion of the contract or defects, which remained unknown due to gross negligence.

11. Defects in quality and title, other defects in performance

11.1. In the event of material defects, EPLAN shall initially provide warranty by means of subsequent performance. For this purpose, EPLAN shall, at its discretion, provide the Contracting Party with a new, defect-free software version or remedy the defect. The elimination of the defect shall also be deemed to exist, if EPLAN shows the Contracting Party reasonable possibilities to avoid the effects of the defect.

11.2. In the event of defects of title, EPLAN shall initially provide warranty by means of subsequent performance. For this purpose, EPLAN shall, at its discretion, provide the Contracting Party with a legally flawless opportunity to use the delivered contractual items or replaced or modified contractual items of equivalent value.

11.3. The Contracting Party shall be obliged to adopt a new software version if the contractual scope of functions is maintained and the adoption does not lead to significant disadvantages.

11.4. The Contracting Party's right to terminate the contract on the grounds of non-granting of use shall be excluded unless the repair or replacement delivery has failed within a reasonable period of time; an insignificant reduction in suitability shall not be taken into account. EPLAN shall pay damages or compensation for futile expenses due to a defect within the limits specified in these Terms and Conditions.

11.5. If EPLAN provides services for troubleshooting or fault elimination without being obliged to do so, EPLAN may demand remuneration for this in accordance with its usual rates. This shall apply in particular if a defect cannot be proven or cannot be attributed to EPLAN. In addition, EPLAN shall be remunerated for any additional expenses incurred due to the fact that the Contracting Party has not properly complied with its obligations to inspect and give notice of defects.

11.6. If a third party asserts claims that prevent the Contracting Party from exercising the rights of use granted to it under the contract, the Contracting Party shall inform EPLAN immediately in writing. The Contracting Party hereby authorizes EPLAN to conduct the appropriate legal defense against the third party in and out of court on its own responsibility. If the Contracting Party is sued, it shall coordinate with EPLAN and shall take legal action, in particular an acknowledgment or settlement, only with the consent of EPLAN.

11.7. The Contracting Party may only derive rights from other breaches of duty by EPLAN if it has notified EPLAN in writing of the breach of duty and has granted EPLAN a reasonable period of grace to remedy the breach. This shall not apply if a remedy is not possible due to the nature of the breach of duty. The specified limits apply to compensation for damages or reimbursement of futile expenses in accordance with these Terms and Conditions.

12. Liability

12.1. EPLAN shall only be liable if EPLAN is at fault unless the law provides for liability even without fault.

12.2. EPLAN shall be liable without limitation for intent and gross negligence.

12.3. In the event of a degree of fault which falls short of Section 12.2 (simple negligence), EPLAN shall be liable

a) unlimited in case of injury to life, body or health;

b) limited to compensation for the foreseeable, typically occurring extent of damage for other damage arising from the breach of an essential contractual obligation. An essential obligation is an obligation the fulfillment of which makes the proper performance of the contract possible in the first place and on the maintenance of which the other Contracting Party justifiably relies.

12.4. In addition to Section 12.3, EPLAN shall be liable exclusively for direct property damage up to a maximum amount of € 1 million per damaging event, whereby the liability for the entirety of all damaging events within a calendar year shall be limited to € 2 million. Liability for financial loss and any kind of consequential damage is excluded, in particular for loss of profit, for damage resulting from loss of production and for damage incurred by third parties.

13. Statute of limitations

The limitation period for warranty claims of the Contracting Party is one year. Sentence 1 shall not apply insofar as longer periods are prescribed by law, as well as in cases of injury to life, body or health, in the event of an intentional or grossly negligent breach of duty and in the event of claims for damages under the mandatory Product Liability Law.

14. Duration of the contract, end of the right to use the contractual objects

14.1. Unless otherwise agreed, the contractual relationship shall commence at the start of the contract specified in the order confirmation and shall be concluded for an indefinite period.

14.2. Unless otherwise agreed, the basic contract term shall be stated in the order confirmation. The contractual relationship may be terminated by either party for the first time after the respective basic contract term with three months' notice to the end of the basic contract term. If no notice of termination is given, the contractual term shall be extended by twelve further months in each case (extension period) until notice of termination is given no later than three months before the end of the respective extension period. The term of the software maintenance shall correspond to that of the Subscription Agreement; separate termination shall be excluded.

14.3. The right of termination without notice for good cause remains unaffected for both parties. In particular, EPLAN shall have the right of extraordinary termination if the Contracting Party seriously violates its contractual obligations if a required period for remedy has expired unsuccessfully. EPLAN shall also have the right of extraordinary termination if the Contracting Party is in default with the payment of the subscription fee for two consecutive dates or is in default with an amount that reaches the subscription fee for two months in a period that extends over more than two dates.

14.4. The declaration of termination must be made in writing. The notice shall require at least the electronic form (Email).

14.5. In all cases of termination of its right of use (e.g. by the expiry of the contract, termination, cancellation of the contract), the Contracting Party is obliged to return all deliveries of the contractual items including associated hardware components (e.g. dongle) to EPLAN without request and without delay and to delete all copies.

15. Amount of fees and price adjustments

15.1. Unless otherwise agreed, the subscription fee to be paid by the Contracting Party for the use of the software shall be due at the beginning of the respective term. EPLAN shall send an invoice for this to the Contracting Party. All amounts are subject to the applicable statutory value-added tax. However, EPLAN is entitled at any time, even in the context of an ongoing business relationship, to provide a service in whole or in part only against advance payment. EPLAN shall declare a corresponding reservation at the latest with the order confirmation.

15.2. Unless otherwise agreed, the invoiced fee shall be due immediately after receipt of the invoice by the Contracting Party without deduction and for cashless transfer to the bank account of EPLAN. The invoice shall be deemed to have been received three days after it has been issued, unless the Contracting Party provides evidence to the contrary. After the expiry of the aforementioned payment period, the Contracting Party shall be in default.

15.3. Objections against the invoice amount must be asserted to EPLAN in writing immediately, at the latest within two weeks after receipt of the invoice.

15.4. EPLAN reserves the right to change the subscription fee for the use of the software at most once a year at its reasonable discretion to reflect changing market conditions, changes in taxes and duties, as well as changes in procurement costs (e.g. costs for production and licenses, technical provision of the service, customer service and processing, general administrative expenses such as rent, interest and other financing, personnel and service providers, IT systems or energy) in order to adjust them to the effects of an increase or reduction of the cost components associated with the services offered by EPLAN.

15.5. EPLAN shall notify the Contracting Party of the price adjustment in writing. Price adjustments shall become effective at the earliest 60 days after notification of the price adjustment to the Contracting Party. In the event of a price increase, the Contracting Party shall have a special right of termination in accordance with Section 18.4 of these Terms and Conditions. The receipt of the termination declaration by EPLAN is decisive for the timeliness of the special termination.

16. Third-party software

16.1. For software of other manufacturers that was not developed by EPLAN and/or for which EPLAN is not the author or co-author and/or which is not the property of EPLAN, in particular open source software (third-party software), the terms of use and license conditions of the respective manufacturer shall apply exclusively. Third-party software (OSS) is listed in the respective performance description.

16.2. Any third-party software is not part of the software service or other software maintenance and support services, and the provisions and regulations regarding software service or software maintenance and support services set forth in these Terms and Conditions shall not apply to such third-party software. For third-party software, the terms and conditions of the respective manufacturer of the third-party software shall apply exclusively.

17. Export compliance

17.1 For (a) the transportation of goods (goods, software and technology) across national borders as well as (b) the provision of services (e.g. assembly, maintenance, repair, instruction and training) abroad or with the extraterritorial effect which serve the fulfilment of EPLAN's contractual obligations, national and European foreign trade legislation as well as – where relevant – U.S. export control legislation shall apply. In accordance with these regulations, individual deliveries or services may be subject to restrictions or prohibitions. If this is the case, EPLAN shall be released from its fulfilment obligations to the extent of the restrictions or prohibition.

17.2 Upon request, the Contracting Party is obliged to provide EPLAN with adequate and complete information on the end use and final destination of the goods to be delivered or services to be rendered. For this purpose, the Contracting Party shall prepare the necessary documents using the officially stipulated forms and provide EPLAN with the original copies so that EPLAN can check them and provide the competent supervisory authority with the necessary verification.

17.3 If an export or transportation permit or another permit or clearance under foreign trade legislation is required, EPLAN`s performance obligations shall be dependent upon the granting of such a permit or clearance by the competent authority. If the approval or clearance is not granted or there are other obstacles to the fulfilment of the contract under foreign trade or customs legislation, EPLAN shall be entitled to withdraw from the contract in its entirety or with respect to the affected delivery or service obligation. Services already rendered are to be restituted provided that no obstacles to this exist under foreign trade legislation.

17.4 The adherence to agreed delivery deadlines is subject to the timely granting of the necessary export or shipment permits or other clearances by the competent authority. In case the granting of the required permits is delayed, the delivery period shall be extended by the duration of the official proceedings and a reasonable restart time after receiving the positive notice; EPLAN cannot fall into arrears during this period.

17.5 The Contracting Party shall take appropriate measures to ensure that the goods, intellectual property rights, trade secrets, rights of access or re-use within the meaning of Articles 12g and 12ga of Regulation (EU) No. 833/2014 and Article 8g of Regulation (EU) No. 765/2006 ("sanctioned objects"), which are delivered to it by EPLAN under this contract or granted to it and are listed in the list of goods under Articles 12g and 12ga of Regulation (EU) No. 833/2014 and Article 8g of Regulation (EU) No. 765/2006, do not enter the Russian Federation or Belarus either directly or indirectly or are intended for use there. Even entering into an obligation under the Law of Obligations that is aimed at this is to be avoided, as is any arrangement which may be qualified as a circumvention of the afore mentioned prohibition.

17.6 The Contracting Party shall inform EPLAN immediately about third party activities indicating a breach of the obligations set out in Clause 17.5. The Contracting Party shall support EPLAN to the best of its ability in clarifying and remedying the situation.

17.7 A breach of Clause 17.5 constitutes a serious breach of contractual obligations which entitles EPLAN to extraordinary termination of the contractual relationship. Furthermore, EPLAN may demand suitable remedial measure from the Contracting Party.

18. Final provisions

18.1 The order confirmation sent by EPLAN and these Terms and Conditions together form a uniform contract, whereby in the event of contradictions, the order confirmation shall take precedence.

18.2 General terms and conditions of the Contracting Party shall not apply in connection with this contract and its initiation. This shall also apply if EPLAN fails to expressly object to the general terms and conditions of the Contracting Party.

18.3 EPLAN reserves the right to adapt these contract conditions to changed legal or technical conditions as long as the functionality of the services for the Contracting Party is maintained, and it is only a matter of insignificant adaptations for the contractual rights and obligations of the parties. The Contracting Party shall be informed of such changes at least two months before the planned entry into force of the changes.

18.4 Insofar as changes to these contract conditions entail significant changes to the functionality or the services and/or affect the fundamental rights and obligations of the parties arising from the contract, the Contracting Party shall be entitled to object to the change within one month of receipt of the change notification and to terminate the contract with effect from the effective date of the changes notified by EPLAN. To be effective, the notice of termination must be in writing. The notice shall require at least the electronic form (Email). If the notice period expires without the Contracting Party giving notice of termination, the changes shall be deemed to have been effectively agreed upon. EPLAN shall inform the Contracting Party of its right of termination in the notification of change.

18.5 If the Contracting Party is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from and in connection with this contract shall be the general court of law of the registered office of EPLAN. If EPLAN files a lawsuit, EPLAN shall also be entitled to file suit against the Contracting Party at the general court of law of its place of business.

18.6 These Terms and Conditions shall be governed by, and construed in accordance with, the laws of Finland. The UN Sales Law of April 11, 1980 (Vienna CISG Convention) shall be excluded.

© EPLAN
As of: October 2024