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General Terms and Conditions for the Sale and Delivery of Products and the Provision of the Internet Portal for Non-Consumers

issued by

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– hereinafter called “Kiwigrid” –

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1 Definitions

Kiwigrid – Contractor, the manufacturer of the white label product and operator of the internet portal for the customer.

Customer – Principal, buyer and/or reseller of the brand-name product as well as supplier of the internet portal for resellers and final customers/consumers.

Final Customer/Consumer – User of the white label or the brand-name product with access to the internet portal.

Products or Product – Hardware with the installed operating software.

Hardware – Electronic device with interfaces to connect with decentralized, renewable energy producers, consumers, storage systems, smart meters etc.

Operating Software – The software (pre-)installed on the hardware in executable form (object code).

Internet Portal – Online services to configure and operate the products. The internet portal is accessed via the internet browser.

Access Authorization – Authorization to access the services on the internet portal by use of an access identification.

Application Data – Data generated or edited by the customer's users whilst using the services, especially texts, images, videos, print templates or other documents and media data.

SaaS Platform – A technology platform to process specific software functions that are adapted to the customer's individual needs and workflows; the platform is provided as Software as a Service (energy management) solution via the internet, and can be retrieved and used by the customer via a web browser or the locally installed client.

Energy Management Software – Special access software for measuring points that is installed locally on various terminals or PC systems and enables the use of the services via the internet.

Third-Party Software – The software provided by other manufacturers and used by the customer to access the SaaS platform; this software is only subject to the license terms of these manufacturers (e.g. operating systems, Acrobat Reader, Adobe Flash Player, Microsoft Office, Java Runtime Environment, current web browser, ERP software).

Customer's IT Infrastructure – Measuring devices, displays, PC, terminal, network, router, firewalls, internet access, central EDP systems and safety systems that are procured and operated by the customer or an external service provider. A functional IT infrastructure is the basis for the use of the Kiwigrid SaaS services.

Data Center – Service providers tasked by Kiwigrid that operate the SaaS platform on dedicated servers and make it available for online retrieval by the customer in accordance with the agreed conditions.

Service Level – Values contractually agreed on for minimum technical requirements, availability, as well as for reaction and disposal times.

Confidential Information – "Confidential information", as defined by this agreement, is: any information on the contracting parties' business processes and operational procedures, their business ideas and marketing concepts, their customers and clientele, as well as all other information and electronic data, especially files and documents, any copies made, drawings, notes, experience and know how and other knowledge, as far as they are, in each particular case, related to the contracting parties, their commercial operations in general and the distribution of software in particular.

2 Scope of Application

These contractual conditions apply to the purchase of the products and the associated access authorization for the internet portal and comprise:

- 2.1 The purchase of the product (hardware, operating software) by the customer incl. an operating manual.
- 2.2 The granting of a simple, non-exclusive, indefinite and transferable right of use to the operating software with due regard to the limitation under clause 5.
- 2.3 The access authorization for the internet portal together with the permission to transfer this access authorization to resellers only in combination with the product, with the resellers, too, being entitled to transfer the access authorization together with the product to third parties, especially final customers/consumers. The registration with the internet portal is realized using the access identification delivered with the product.
- 2.4 The contractual conditions do not apply to other services, such as installation, maintenance of the operational status and product configurations.
- 2.5 The customer's or third parties' general terms and conditions shall not apply, even if Kiwigrad does not object to them separately. Even if Kiwigrad refers to correspondence which contains terms and conditions of the customer or of third parties or makes mention of such, this does not suggest any agreement to the validity of such terms and conditions.

3 Offer, Contract Conclusion

Kiwigrid offers are subject to change and non-binding. The customer is bound to orders (quotes) placed with Kiwigrid for 30 days unless the offer itself allows a longer period. If Kiwigrid receives orders, a contract will be concluded only when the customer issues a written order confirmation or the written advice of delivery ("bill of delivery" by Kiwigrid, if, in the event of immediate delivery, no confirmation was issued in advance).

4 Purchase of the Products, Right of Use to Operating Software, Copy Rights, Disclosure

- 4.1 The customer acquires the ownership of the hardware designated in the order and the included quick installation guide. A complete documentation is available on the internet portal in electronic form.
- 4.2 Kiwigrd grants the customer, with the limitation stated under clause 5, the non-exclusive, indefinite and transferable right of use to the operating software installed on the hardware. The customer knows that the complete use of hardware and operating software is possible only in connection with the access to the internet portal. The access authorization is time-limited, however, it can be extended by a separate order pursuant to clause 6, paragraph 6.
- 4.3 The operating software is installed on the hardware in executable form (object code). The source codes are not delivered with the products.
- 4.4 The operating software including all relevant documentations is copyright protected.
- 4.5 The customer is obliged to ensure, with appropriate technical and organizational measures, the intended use of the products and the operating software.
- 4.6 For backup purposes the customer is allowed to make an archive copy of the operating software. Copies of the operating software for backup purposes are considered part of intended use.
- 4.7 When the customer has purchased the products, he is authorized to bring the products (combination of hardware and operating software) on the market separately or in combination with his own products, directly or via resellers.
- 4.8 If the customer is a reseller or uses his right to transfer the right of use to the operating software to a third party, he shall impose the contractual obligations pursuant to clause 4 and clause 5 on the third party. When the right of use is transferred to the user, the user becomes the right-holder of the right of use. The customer's rights of use lapses. All existing copies of the transferred operating software shall be deleted.
- 4.9 Copies of the documentation may not be prepared for commercial purposes.

5 Extraordinary Termination of the Rights of Use to the Operating Software

- 5.1 If the customer severely violates the agreed rights of use or trademark rights of the right-holder, Kiwigrid shall be entitled to terminate the rights of use. Such termination without notice shall only be possible if Kiwigrid unsuccessfully issued a warning notice, setting an appropriate period of time for the customer to respond.
- 5.2 The operating software may be subject to export control regulations in individual countries. The customer shall be responsible for the compliance with these regulations. If the customer infringes such export control regulations, Kiwigrid shall be entitled to revoke the rights of use.
- 5.3 In the event of a termination of the rights of use pursuant to paragraph 5.1, the customer is obliged to delete the operating software affected by the termination including the documentation and all existing copies. At the request of Kiwigrid, the customer shall provide a statement on the deletion.

6 Access to the Internet Portal

- 6.1 On behalf of the customer Kiwigrid operates an internet portal specifically tailored for the customer.
- 6.2 On the market, the customer acts as a service provider of the internet portal for his buyers and resellers, as well as for his final customers/consumers.
- 6.3 The customer obtains one access authorization for the internet portal per delivered product, together with the permission to transfer this access authorization only in combination with the product to his buyers or resellers. The buyers and resellers, too, are authorized to transfer the access authorization to third parties, especially final customers/consumers.
- 6.4 The contractually agreed access authorization for the internet portal is valid for the duration stated in the order, starting with the initial commissioning of the product and the resulting activation of the access assigned to each product. The initial registration with the internet portal is performed using the access identification delivered with the product. The transfer of the right of use to the operating software to a third party at a later point in time shall not cause a prolonged duration of the access authorization for the internet portal.
- 6.5 The access authorization is limited in content pursuant to the terms of use for the internet portal applicable at the time of activation. The terms of use are displayed to the customer or the final customer/consumer prior to the activation of the portal access and have to be confirmed electronically.
- 6.6 The prolongation of the use duration and the associated access to the internet portal after the expiry of the period agreed upon requires a separate order renewal.
- 6.7 Any further claims against Kiwigrid shall neither be established in favor of the customer, nor the buyer/reseller or the final customer/consumer.
- 6.8 The access data to the internet portal including the password shall be kept secret and is not to be made accessible to unauthorized third parties. It is the customer's responsibility to ensure that only the customer and a person entitled by him can use his access to the internet portal and the available services. Whenever there is a reason to suspect that the customer's access data has been disclosed to unauthorized third parties or will be disclosed, Kiwigrid must be informed immediately. If the customer is a reseller or uses his right to transfer the right of use to the operating software to a third party, he shall impose the contractual obligations on the third party.

7 Prices

The prices apply to the scope of supply and performance stated in the order confirmation. Additional or special services will be calculated separately. Prices are in Euros and ex-works plus the costs for packaging, the statutory rate of value added tax, customs duty in the case of exports and fees and other public costs.

8 Delivery, Delivery Periods, Dates

- 8.1 Unless otherwise stated, all deliveries shall be performed ex-works at customer's risk by handling the charge over to the carrier and delivering it to the domestic delivery address stated in the order. The delivery dates are stated in the respective order.
- 8.2 Kiwigrd is not liable for impossibility of delivery or for delays in delivery, in so far as these have been caused by force majeure or other events which were not foreseeable at the time of concluding the contract (e.g. any breakdowns in business operations, difficulties with the supply of materials or energy, delays in transport, strikes, energy or raw materials, the incorrect or untimely supply by suppliers) and for which Kiwigrd is not responsible. If such occurrences make delivery or service for Kiwigrd difficult or impossible and the obstruction is not only of temporary duration, Kiwigrd is eligible to withdraw from the contract. In the event of impediments that are of temporary duration, the deadlines for delivery or performance shall be extended or the delivery or performance dates shall be postponed by the period of the impediment plus a reasonable start-up period. If it is unreasonable for the customer to accept delivery or service due to the delay, he can withdraw from the contract via immediately written declaration to Kiwigrd. In the event of delivery delays, Kiwigrd shall inform the customer immediately.
- 8.3 Kiwigrd shall only be authorized to perform partial deliveries if (a) the partial delivery can be used by the customer within the scope of the contractually intended use, (b) the delivery of the remaining ordered goods is guaranteed, and (c) and no significant additional work and expenses or additional costs arise for the customer (unless Kiwigrd declares to be prepared to bear such costs).

9 Payments

- 9.1 Unless otherwise agreed, the invoice amount shall be paid without discount within 14 days from the date of invoice and delivery of the products.
- 9.2 The payment obligation of the customer shall remain unaffected if a loss of the contractual object occurs or has occurred after passing the risk to the customer and if Kiwigrd is not responsible for the loss.
- 9.3 If the customer is wholly or partly in default with a payment, Kiwigrd shall bill, from the start of the default the legal interest rate of 8 % p. a. above the base interest rate. The right to assert additional damages shall be reserved.
- 9.4 In the event that the customer falls behind with a payment for longer than three weeks or if doubts as to his ability to pay arise for another reason, all existing payment obligations towards Kiwigrd shall become due for immediate payment. Furthermore, Kiwigrd shall be entitled to demand the provision of securities on account of all other accounts receivable and to carry out outstanding deliveries only against advance payment or provision of securities.
- 9.5 Excluding set-offs that are undisputed or have been confirmed by a court of law in a final form, set-offs on the part of the customer shall only be binding after the express agreement of Kiwigrd in writing.
- 9.6 The assertion of any right of retention on behalf of the customer against Kiwigrd's claims is excluded unless the customer's counterclaims are undisputed or have been confirmed by a court of law in a final form.

10 Extended Retention of Ownership

- 10.1 The products delivered by Kiwigrid shall remain property of Kiwigrid, until all – including future – amounts receivable, to which Kiwigrid is entitled on the basis of the ongoing business relationship, are paid.
- 10.2 If the customer sells the products as a reseller to other resellers or to final customers, the products delivered by Kiwigrid may be resold only under the reservation of the right of property until the full payment of the purchase price and only in a proper business transaction.
- 10.3 The customer as a reseller herewith assigns in advance any claims including accessory rights, that he acquires towards his buyers by the sale of items under Kiwigrid's retention of ownership, to the full amount to Kiwigrid. If the products owned by Kiwigrid were sold together with any other items at an overall price, the assignment shall be limited to the portion of the total price that corresponds to the pro rata value of the products delivered by Kiwigrid in relation to the value received for all items sold at the total price.
- 10.4 The customer shall be entitled to collect the claims assigned to Kiwigrid. He shall return the proceeds to Kiwigrid at the latest at the due date. In the event of default with payment or substantial degradation of financial circumstances, Kiwigrid shall be entitled to disclose the assignment of the claim and to demand immediate direct payment. The customer shall be obliged to notify his assignors at Kiwigrid's request and to furnish Kiwigrid with all documents and information necessary to assert the assigned claim. If requested, the customer shall further be obliged to provide Kiwigrid an exact list of the claims to which Kiwigrid is entitled stating debtors, amount of each claim, dates of invoices and any other information desired by Kiwigrid.
- 10.5 The pawning, security assignments and the transfer of ownership of the products under Kiwigrid's retention or of the claims assigned to Kiwigrid are expressly prohibited for the customer.
- 10.6 Furthermore the customer is expressly prohibited to conclude and execute global contracts of assignment or so-called factoring contracts (assignment of claims to a factoring company or to a third party as a hedge transaction, bogus factoring), in as far as such contract refers to claims assigned within the framework of these terms and conditions. The customer shall be obliged to inform Kiwigrid if he, on entering into the business relationship with Kiwigrid or upon receipt of these terms, should have concluded contracts of the kind indicated in the preceding sentence with a third party.
- 10.7 In the event of access by third-parties to the goods in Kiwigrid's ownership or to the claims assigned to Kiwigrid, the customer shall be obliged to immediately inform Kiwigrid and to support Kiwigrid in any possible way to enforce Kiwigrid's rights. In particular, in the event of pawnings, the customer shall be obliged to notify the executory officer, that the pawned goods are the property of Kiwigrid. The customer is obliged to send the seizure protocol to Kiwigrid immediately and thereby assure in writing that the pawned goods are the property of Kiwigrid. In the event that Kiwigrid's products are damaged as a result of the access of a third party, the customer must compensate for the damages. The customer will be liable for all costs that incur as a result of an intervention by Kiwigrid.
- 10.8 If the customer is in default with payment or stops his payments, his right to resale Kiwigrid's products and to collect any associated claims shall lapse.
- 10.9 Kiwigrid is eligible to withdraw from the contract and to reclaim products or, if the products have been resold, to collect the assigned claims.

11 Warranty, Material Defects, and Defects of Title

- 11.1 The period of warranty is one year on delivery or on acceptance, as far as an acceptance is necessary.
- 11.2 The delivered goods have to be accurately inspected immediately after delivery to the customer or to third parties named by the customer. They are considered to be approved if Kiwigrid has not received a written notification of defects pertaining to visible defects or other defects visible in the course of a prompt, thorough examination within ten working days following delivery of the delivery object, or otherwise within ten working days following the discovery of the defect, or any earlier point in time at which the defect became evident to the customer in the course of the normal utilisation of the delivery object without thorough examination. On demand of Kiwigrid, the damaged goods shall be sent back to Kiwigrid carriage free. For this purpose, the customer will use the return authorization established by Kiwigrid, according to the enclosed information on warranty and repair conditions. If the notice of defects is justified, Kiwigrid will reimburse the costs of the cheapest method of dispatch; this does not apply if the costs rise because the item of supply is located somewhere other than the place of intended use.
- 11.3 In case of material defects in the items supplied, Kiwigrid is initially obliged and entitled to repair them or supply replacements according to Kiwigrid's choice, this choice is to be made within an appropriate period. In the event of failure, i.e. the impossibility, intolerability, refusal or unreasonable delay in reworking delivered goods or delivering replacement goods, the customer shall be entitled to withdraw from the contract or reduce the purchase price appropriately.
- 11.4 If a defect is due to fault on the part of Kiwigrid, the customer may request compensation under the conditions described in clause 12.
- 11.5 In the event that the item supplied infringes a third party industrial property right or copyright then, according to Kiwigrid's choice and at Kiwigrid's own costs, Kiwigrid will either modify or exchange the item supplied in such a way that it no longer infringes any third party rights, but so that the item supplied continues to fulfill its contractually agreed functions, or procure the right of use for the customer by concluding a licence contract. If Kiwigrid does not manage to do this within an appropriate period, the customer shall be entitled to withdraw from the contract or reduce the purchase price appropriately. Any claims for damages by the customer are subject to the restrictions of clause 12 of these general terms and conditions.
- 11.6 The warranty is not applicable if the customer or any third party modifies the delivery object without the express consent of Kiwigrid, whereby making the remedy of defects impossible or unreasonably difficult. In each case, the customer shall bear the additional costs of remedying defects caused by the modification.
- 11.7 Kiwigrid's descriptions of products and other characteristics do not represent the quality or warranty statement in terms of § 443 BGB (German Civil Code). The contracting parties agree, that a warranty statement in the sense of § 443 German BGB is defined only if Kiwigrid issues a corresponding written statement using the word "Garantie" and in compliance with the formal regulations in § 477.

12 Liability

- 12.1 Kiwigrid's liability for damages, irrespective of the legal reasons, but in particular on account of impossibility, default, defective or incorrect deliveries, breach of contract, infringement of duties during contract negotiations and tort, as far as such liability depends on proof of fault, shall be restricted in accordance with the following conditions.
- 12.2 Kiwigrid shall not be liable in cases of simple negligence of Kiwigrid's organs, legal representatives, employees or other agents in so far as this does not amount to an infringement of essential contractual obligations. Essential to the contract are the obligations of prompt supply free of defects as well as duties of consultation, protection, and care, which will allow the customer the use of the supply item in accordance with the contract or which serve the purpose of protecting the life and limb of personnel of the customer or the customer's property against considerable damage.
- 12.3 In so far as Kiwigrid is liable for damages on the grounds of and in accordance with clause 12, paragraph 2, this liability is limited to damage which Kiwigrid has foreseen when concluding the contract as a possible consequence of a contractual infringement or which Kiwigrid, by applying due care, should have foreseen. Furthermore, indirect and consequential damage resulting from defects in the item supplied are subject to compensation only in so far as such damage is typically to be expected upon intended use of the item supplied.
- 12.4 In the event of liability for simple negligence, Kiwigrid's obligation to compensate for property damage and the resulting further financial losses is limited to an amount of EUR 100,000.00 per claim, even if this is a case of infringement of obligations essential to the contract.
- 12.5 The above exclusions and limitations of liability shall apply to the same extent in favor of the organs, legal representatives, employees and other agents of Kiwigrid.
- 12.6 In so far as Kiwigrid provides technical information or acts as an adviser and this information or advice is not part of the contractually agreed scope of services owed by Kiwigrid, this is done free of charge and with the exclusion of any liability.
- 12.7 The limitations of this clause 12 do not apply to Kiwigrid's liability on account of deliberate actions, for guaranteed characteristics, on account of injury to life, limb or health or according to the product liability law (Produkthaftungsgesetz).
- 12.8 The customer is responsible for regular backup of his data. In the event of data loss caused by Kiwigrid, Kiwigrid is hence only liable for the costs that would have been incurred to restore the data if the customer had made proper data backup.
- 12.9 In the event that a third party makes claims against the customer on account of an infringement of a right, the customer shall, if possible, give Kiwigrid the opportunity to indemnify the customer, be it through negotiations with the third party and/or through delivery of a product that no longer infringes any of the third party's rights.

13 Secrecy

Kiwigrid and the customer are obliged to maintain secrecy over all confidential information obtained under the contractual relationship as well as all business and trade secrets; in particular, they must not forward them to third parties or use them in any way other than covered by the contractual purpose.

14 Export Regulations

- 14.1 Kiwigrid's products are, subject to the respective export regulations of the United States of America, the European Union and/or the Federal Republic of Germany. In the event that the customer re-exports the products, he is obliged to strictly observe all national and international export regulations and obtain all necessary official authorizations.
- 14.2 In the event that the aforementioned obligations are violated, the customer shall indemnify Kiwigrid from any claims and further be liable for any damage incurred by the supplier or licensor, third parties or national and/or international authorities or organizations against Kiwigrid.
- 14.3 The customer shall notify his contracting parties of the export regulations in writing.

15 Final Provisions

- 15.1 A waiver of rights or claims or formal requirements in individual or repeated cases does not mean a waiver as to that for the future.
- 15.2 Changes and amendments of these conditions or the contract must be made in writing and must be expressly indicated as such. This also applies to this paragraph itself.
- 15.3 The place of performance for all obligations is Dresden.
- 15.4 If the customer is a business person, a legal entity under public law or a special fund under public law, the court of jurisdiction is agreed to be Dresden. Kiwigrid, however, has the right to sue the customer at his place of general applicable jurisdiction.
- 15.5 If a provision of these general terms and conditions is or becomes wholly or partly ineffective, the parties undertake to agree on an appropriate regulation, which is as similar as possible in economic and business objectives as was intended by the previous provision. The same shall apply in the case of a regulatory gap of the agreement or legislative changes. The effectiveness of the remaining provisions will not be affected thereof.
- 15.6 The legal relationship between Kiwigrid and the customer shall be subject to the laws of the Federal Republic of Germany to the exclusion of UN purchase laws.