



General Terms and Conditions

of

Kiwigrid GmbH
Kleiststraße 10 a-c
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- referred to hereinafter as '**Kiwigrid**' -

A General Terms and Conditions

B Special conditions for the use of Kiwigrid products as Software as a Service (SaaS)

C Special conditions for the use of Kiwigrid products as Platform as a Service (PaaS)

D Special conditions for the sale of Kiwigrid hardware

E Special conditions for the provision of services

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A. General Terms and Conditions (GTC)

1 Scope of validity of Part A

- 1.1 Unless expressly agreed otherwise, the following General Terms and Conditions apply to all offers, orders, commissions, contracts, and deliveries on the basis of which Kiwigrid provides services of all kinds to other companies (the '**Customer**') that are not consumers within the meaning of section 13 German Civil Code (BGB) or other corresponding legal provisions.
- 1.2 Conflicting, supplementary, or deviating terms and conditions, in particular the general terms and conditions of the Customer, shall not apply, even where Kiwigrid does not expressly contradict them.
- 1.3 Unless otherwise agreed, these General Terms and Conditions shall apply in the version valid at the time of the first conclusion of a contract with the Customer, or primarily - where this takes place - in the version last communicated to him within the framework of the conclusion of a contract, as a framework agreement also for similar future contracts, without Kiwigrid having to refer to them again in each individual case.
- 1.4 Individual agreements made with the Customer for individual cases (including side agreements, supplements, and changes) shall always take precedence over these GTCs, cf. section 305 b BGB.
- 1.5 The employees of Kiwigrid are not entitled to make deviating agreements, side agreements, individual guarantees, or assurances unless they are expressly authorized to do so or are entitled to do so by virtue of their executive position, proxy, or general power of attorney.
- 1.6 Should Kiwigrid additionally provide the Customer with services of a third party, the terms and conditions of the third party shall further apply with regard to these services, provided that the Customer was able to obtain knowledge of these in a reasonable manner prior to conclusion of the contract.

2 Offer, conclusion of contract

- 2.1 Unless explicitly marked otherwise, offers provided by Kiwigrid are subject to change and non-binding. This also applies to brochures, presentations, illustrations, drawings, product descriptions, or other documents provided to the Customer in whatever form.
- 2.2 A contract between Kiwigrid and the Customer is not established until the written order confirmation of the Customer's order is issued by Kiwigrid ('**individual contract**'). For the type, scope, and time of the contractual performance the written order confirmation from Kiwigrid shall be decisive.
- 2.3 Information provided by Kiwigrid regarding the object of its services in brochures, presentations, illustrations, drawings, product descriptions, or other documents that have become the subject of the contract are not warranted properties, but only descriptions and markings of the contractual object. Deviations from these data and properties, in particular with regard to technical data, dimensions, designs, performance characteristics, load capacity, quality, illustrations, drawings, and other significant features shall be deemed contractual where their use for the contractual purpose is not limited and the deviations are reasonable for the Customer. Kiwigrid reserves the right to make such deviations without prior notice and also during the delivery period.

3 Change Requests

- 3.1 Where the Customer requests a deviation from the contractually agreed scope of services, this constitutes a change request. The Customer should communicate such a change request to Kiwigrid in text form with a description of the desired change in service in sufficient detail that Kiwigrid is able to establish the change request in terms of its content, design, and technical impact on the previous scope of services.

- 3.2 On receipt of the corresponding change request, Kiwigrd will inform the Customer in text form of the costs that would be incurred to the Customer for the verification of the change request in terms of feasibility, time, and cost to the Customer. The Customer then states in text form whether he would like to commission such a verification of the change request on the basis of the cost estimate.
- 3.3 If the Customer then decides against the verification of the change request, the original scope of services continues to apply.
- 3.4 Once the verification has been carried out, Kiwigrd will send the Customer the result of the verification in the form of a supplementary offer in text form. The Customer must then inform Kiwigrd within 5 working days whether the change request should be implemented on the basis of the supplementary offer provided by Kiwigrd.
- 3.5 On the basis of the supplementary offer, Kiwigrd and the Customer mutually determine the resultant changes to the sequence of the project/service object. During this time, Kiwigrd will continue to execute the original scope of services, unless the parties have agreed otherwise.
- 3.6 Both the time required by Kiwigrd to verify the change request and the time additionally required for the implementation of the change request will be added to the originally agreed dates.

4 Prices, price changes, payment terms, dates

- 4.1 All prices are net ex works (EXW) in euro.
- 4.2 All prices are quoted accordingly exclusive of value added tax (VAT) and ancillary costs (in particular postage, freight, packaging and insurance, and also travel costs, accommodation and overnight costs). In the case of delivery or service across borders, the Customer shall bear any customs duties, fees or other levies incurred. The Customer shall handle all legal or official procedures in connection with cross-border deliveries or services independently unless otherwise expressly agreed. Additional or special services will be charged separately.
- 4.3 Services to be billed at cost will be charged, unless agreed otherwise, on the basis of the prices stated in the order confirmation provided by Kiwigrd.
- 4.4 Invoices are due for payment within 14 (fourteen) days of receipt of the invoice and performance of the service, or in the event of acceptance of the service, payment is due thereafter; payment must be made without any deduction, unless otherwise agreed in writing. For the date of payment, the date of receipt by Kiwigrd is decisive. Kiwigrd reserves the right to reduce the term of payment or to demand other safeguards, e.g. agreement of advance payments, trade credit insurance or bank guarantees, should there be doubts about the creditworthiness of the customer after internal examination.
- 4.5 The invoice should be sent as a single copy to the billing address specified in the order confirmation and should include a separate indication of the statutory value added tax applicable at the time of performance. Part payments or installments already made should be shown individually on the invoice. It must be ensured that all invoices and credit notes contain the information required by sections 14, 14a Value Added Tax Act (UStG) in full.
- 4.6 Project-related traveling time and costs will be invoiced to the Customer in accordance with the contractual agreements. The Customer must agree to project-related travel in advance in text form.
- 4.7 The Customer's payment obligation remains unaffected if a loss of the contractual object for which Kiwigrd is not responsible takes place or has taken place after the transfer of risk to the Customer.
- 4.8 If payment is not made within the payment period (point 4.4), the Customer shall be in default. Kiwigrd will then be entitled to charge the statutory interest at the rate of 9 percentage points p.a. above the base interest rate from the relevant date. Kiwigrd reserves the right to claim further damages.

- 4.9 If the Customer is in arrears with a payment for more than three weeks or if doubts arise about his solvency for other reasons, Kiwigrid shall be entitled to demand the provision of collateral for all other claims and to perform any deliveries still outstanding only against advance payments or security deposits.
- 4.10 The Customer shall only be entitled to setoff or retention rights to the extent that his claim has been legally established or is undisputed.
- 4.11 In the event that the Customer does not retrieve the ordered services until after a period of four months from receipt of the order, Kiwigrid is entitled to recalculate the prices in order to adapt them to changing market conditions, procurement costs, or VAT. In the event of price increases of more than 5%, the Customer can terminate the individual contract in writing with a notice period of 30 days from notification of the price increase. The right of termination expires and the price increase shall be deemed to be approved if the Customer does not exercise his right of termination within the specified period.
- 4.12 In the event of the economic inability of the Customer to fulfill his obligations towards Kiwigrid, Kiwigrid may terminate existing exchange contracts with the Customer by withdrawal, ending continuing obligations by termination without notice, to the extent permitted by law. The Customer shall inform Kiwigrid of this in writing in good time.

5 Cooperation obligations of the Customer, subcontractors

- 5.1 The Customer shall cooperate with Kiwigrid without delay and to an appropriate extent, where this is necessary for the provision of the contractual services, shall be available to answer questions and shall provide the necessary information, competent employees, means of communication and connections, and shall make hardware, software, and premises accessible.
- 5.2 The Customer must report defects in writing immediately in a comprehensible and detailed form, providing all information relevant for the detection and analysis of the defects. Of particular importance to be stated are the work steps that led to the occurrence of the defect, the appearance, and the effects of the defect. Unless otherwise agreed, this should be done using the relevant forms or the error reporting tool provided by Kiwigrid. If the Customer violates this notification obligation, the warranty claims shall be limited if and to the extent that timely notification could have accelerated the rectification of the defect or prevented damage. The commercial obligation of inspection and reporting of defects (section 377 Commercial Code (HGB)) also applies.
- 5.3 The Customer shall provide Kiwigrid with appropriate support in the examination and assertion of claims against other parties in connection with the provision of services, if so requested. This applies in particular to recourse claims by Kiwigrid against suppliers.
- 5.4 All cooperation services must be provided to Kiwigrid free of charge, in full, on time, and in the agreed manner.
- 5.5 If the Customer is in default with the fulfillment of the actions for which he is responsible, Kiwigrid shall notify the Customer immediately and set a deadline for the action. After expiry of the set deadline, Kiwigrid's performance obligation, which cannot be provided without this action or can only be provided with disproportionate additional effort, rests for the duration of the delay. Any additional expenses incurred by this must be reimbursed to Kiwigrid in addition to the remuneration. A legal right of termination by Kiwigrid remains unaffected.
- 5.6 Kiwigrid may use subcontractors and/or freelancers for the provision of its services without the prior consent of the Customer, unless there is a reason recognizable to Kiwigrid that makes such a deployment unreasonable for the Customer. If Kiwigrid uses subcontractors, Kiwigrid shall be liable for them as for its own vicarious agents.

6 Delivery, delays to delivery, disruptions in the provision of services

- 6.1 Unless otherwise agreed in the relevant individual contract, the delivery dates and deadlines specified by Kiwigrid are non-binding.
- 6.2 Fixed performance dates shall be agreed exclusively and expressly in documented form. The agreement of a fixed performance date is subject to the proviso that Kiwigrid receives the services of its respective suppliers on time and according to contract.
- 6.3 If no other agreement is made in writing, the place of performance shall be the registered office of Kiwigrid.
- 6.4 Unless otherwise agreed, all deliveries are made at the Customer's risk from the relevant delivery warehouse, with handover to the carrier to the inland delivery address specified in the order.
- 6.5 Kiwigrid shall only be entitled to make partial deliveries if (a) the partial delivery is usable for the Customer within the scope of the contractually intended purpose, (b) the delivery of the remaining ordered goods is assured, and (c) the Customer does not incur any significant additional effort or additional costs as a result (unless Kiwigrid agrees to bear these costs). Kiwigrid shall not be liable for impossibility of delivery or for delays in delivery, insofar as these were caused by force majeure or other events that were unforeseeable at the time of conclusion of the contract (e.g., operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays, strikes, or failure to deliver, incorrect or untimely delivery by suppliers) that are beyond Kiwigrid's control. If such occurrences make delivery or service significantly more difficult or impossible for Kiwigrid and the hindrance is not only temporary, Kiwigrid shall be entitled to terminate the individual contract.

In the event of hindrances that are temporary, the delivery or service periods shall be extended or the delivery or service dates postponed by the period of the hindrance plus a reasonable restarting period. If, as a result of the delay, the Customer cannot reasonably be expected to accept the delivery or service, he may terminate the individual contract by making a written declaration to Kiwigrid without delay. Kiwigrid shall inform the Customer immediately in the event of delivery delays.

7 Acceptance of contractual services of work

- 7.1 If a service is commissioned under a work contract, Kiwigrid shall make the work produced under the contract available for acceptance within a set, reasonable period of at least two weeks. If the Customer does not accept the work after it has been performed for a reason other than a defect, the work shall be deemed accepted on expiry of the acceptance period. Any use of the work by the Customer, whether in whole or in part, shall constitute acceptance.
- 7.2 The above provision also applies to partial orders for which acceptance is given separately, and also to individual parts of a work that are intended to work together on the basis of the contract, provided that separate acceptance dates have been agreed for them. In this case the Customer shall receive work documents relevant to the progress of the work that serve as information on the respective project status.
- 7.3 Acceptance should be given in writing or text form and without delay. Any complaints should be recorded in the acceptance report. Minor defects that do not affect functioning do not provide grounds for refusal of acceptance. The same applies to formal errors; these shall be eliminated immediately by Kiwigrid.
- 7.4 If acceptance is excluded on the basis of the nature of the work, the completion of the work shall take its place.

8 Changes to services and products

- 8.1 Kiwigrid is entitled to make changes to services and products, provided that Kiwigrid has a legitimate interest in the service or product changes, the performance data agreed with the Customer are still achieved and the service or product changes are reasonable for the Customer. A legitimate interest of Kiwigrid exists in particular if changes or further developments are necessary in order to adapt the product portfolio to a new product policy, the current state of the art or the applicable legal situation. The Customer will of course be informed about this in good time.
- 8.2 To the extent that Kiwigrid products can or should no longer be further developed and/or offered and there is no application of paragraph 8.1,
- a) Kiwigrid shall inform the Customer of the phasing out of the product at least twelve (12) months in advance;
 - b) Kiwigrid can inform the Customer with a shorter period of at least three (3) months, if and to the extent that this is absolutely necessary because an upstream supplier ceases to supply, where this was not foreseeable by Kiwigrid and compliance with the period of twelve (12) months would only be possible for Kiwigrid at disproportionate cost;
 - c) if Kiwigrid informs the Customer giving the shortened period of three (3) months, it must inform the Customer of the compelling reasons for this and explain why compliance with the twelve (12)-month period would involve disproportionate cost,

whereby the Customer's claim to the relevant performance is accordingly waived. Any remuneration paid in advance for a discontinued product must be refunded immediately.

9 Material defects, limitation period, reimbursement of expenses

- 9.1 Kiwigrid only provides a warranty for the contractually owed quality of the services. No claims for material defects exist for an only insignificant deviation of Kiwigrid's services from the contractually agreed quality.
- 9.2 Claims for defects also do not exist in cases of excessive or improper use, natural wear and tear, failure of components of the Customer's system environment, software errors that cannot be reproduced or otherwise demonstrated by the Customer, or damage caused by particular external influences that are not assumed under the individual contract. This also applies in the event of subsequent modification or repair by the Customer or by third parties, except where this does not complicate the analysis and remedying of a material defect.
For claims for damages and reimbursement of expenses, section 11 applies additionally.
- 9.3 The limitation period for claims for material defects is one year from delivery, or if acceptance is required, from the date of acceptance. The statutory deadlines for recourse set out in section 478 BGB remain unaffected. The same applies where pursuant to section 438 para. 1 no. 2 or section 634 a para. 1 no. 2 BGB the law prescribes longer deadlines, in the event of intentional or grossly negligent breach of duty by Kiwigrid, in the event of fraudulent concealment of a defect, as well as in cases of injury to life, limb, or health, as well as for claims under the Product Liability Act (Produkthaftungsgesetz).
- 9.4 The processing by Kiwigrid of a material defect notification by the Customer shall only lead to the suspension of the limitation period to the extent that the legal requirements for this are satisfied. This does not result in the limitation period beginning again from the start.
- 9.5 Supplementary performance (redelivery or rectification) can only influence the limitation period of the defect triggering the supplementary performance.

- 9.6 Recourse claims for contracts for digital products in accordance with section 327 u BGB remain unaffected.
- 9.7 Kiwigrid may demand compensation for its expenses, where
- a) it acts on the basis of a notification without a defect being present, unless the Customer could not establish with reasonable effort that no defect was present, or
 - b) a reported fault is not reproducible or otherwise demonstrable by the Customer as a defect, or
 - c) additional expenses are incurred due to failure by the Customer to properly fulfill his cooperation obligations.

10 Rights of third parties, defects of title

- 10.1 Kiwigrid shall only be liable for violations of third-party rights through its performance if that performance is used unchanged in accordance with the contract and in particular in the contractually agreed, otherwise in the intended operating environment.
- 10.2 Kiwigrid shall be liable for violations of third-party rights only within the European Union and the European Economic Area and at the place of contractual use of the service. Section 9.1 sentence 1 applies accordingly.
- 10.3 If a third party asserts to the Customer that a service provided by Kiwigrid violates his rights, the Customer must notify Kiwigrid immediately. Kiwigrid and if applicable its upstream suppliers are entitled, but not obliged, to defend the asserted claims at their own expense to the extent permissible.
- 10.4 The Customer is not entitled to recognize claims of third parties or to settle them before he has given Kiwigrid a reasonable opportunity to defend against the rights of third parties by other means.
- 10.5 If the rights of third parties are infringed by a service provided by Kiwigrid, Kiwigrid will, at its own discretion and at its own expense,
- a) provide the Customer with the right to use the service, or
 - b) adapt the service so that it is free of infringement, or
 - c) withdraw the service with reimbursement of the remuneration paid for it by the Customer (minus an appropriate compensation for use), if Kiwigrid cannot achieve any other remedy with reasonable effort.

The interests of the Customer shall be adequately taken into account.

- 10.6 Claims of the Customer due to defects of title shall lapse in accordance with section 9.3. Section 11 shall apply additionally to claims for damages and reimbursement of expenses of the Customer; section 9.6 shall apply correspondingly for additional expenses of Kiwigrid.

11 Liability

- 11.1 Kiwigrid is always liable to the Customer
- a) for damages caused intentionally or by gross negligence,
 - b) for damages caused intentionally or negligently from injury to life, limb, or health, and

c) for product liability damages pursuant to the regulations of the Product Liability Act.

- 11.2 Kiwigrd shall not be liable in the case of simple negligence, unless it is a violation of essential contractual obligations, the fulfillment of which enables the proper execution of the contract in the first place or the violation of which endangers the achievement of the purpose of the contract and on the observance of which the Customer may regularly rely.
- 11.3 Without prejudice to clauses 11.1 and 11.2, Kiwigrd's liability for all material and financial damages shall be limited to the contractually typical and foreseeable damage. This also applies to lost profits and missed savings. Indirect damages and consequential damages that are the result of defects of the delivery item can also only be compensated insofar as such damages are typically to be expected when the delivery item is used as intended. Liability for other remote consequential damages is excluded.
- 11.4 The above exclusions and limitations of liability apply to the equal extent in favor of the bodies, legal representatives, employees, and other vicarious agents of Kiwigrd.
- 11.5 Insofar as Kiwigrd provides technical information or acts as an advisor and this information or advice does not form part of the contractually agreed scope of services owed by it, this is given free of charge and subject to the provisions in section 11.1 with the exclusion of any liability.
- 11.6 The Customer is responsible for regularly backing up his data. In the event of a data loss that is the fault of Kiwigrd, the liability of Kiwigrd shall therefore be limited in extent to the costs of recovery that would have arisen if the data had been properly backed up by the Customer. This does not apply if regular data backup has been agreed as a service of Kiwigrd.

12 Confidentiality

- 12.1 Confidential information is business and trade secrets and also information that a knowledgeable third party would consider worthy of protection or that is marked as confidential; this can also be information that becomes known during an oral presentation or discussion. The contracting parties are obliged to maintain secrecy over confidential information that becomes known in connection with the execution of the contract. The obligation to confidentiality does not apply to information that is already lawfully known to the parties or becomes known outside the contract without violating a confidentiality obligation.
- 12.2 Reverse engineering (section 3 para. 1 no. 2 Law on the Protection of Trade Secrets (GeschGehG)) is not allowed.
- 12.3 The disclosure of such information to persons who are not involved in the conclusion, execution, or processing of the contract may only take place with the written consent of the other contractual partner. Unless otherwise agreed, this obligation ends after five years after the respective information became known, but in the case of continuing obligations, not before they are terminated.
- 12.4 The contracting parties shall also impose these obligations on their employees and any third parties employed.

13 Copyright to Kiwigrd documents

- 13.1 All documents, in particular drawings, illustrations, calculations, drafts, brochures, catalogs, models, assembly and instruction documents, and also the design and concept description, remain the intellectual property of Kiwigrd. The Customer may not copy the resultant documents, use them himself, or pass them to third parties without consent. He is also not entitled to create replicas using such documents, unless otherwise agreed.

- 13.2 If the Customer violates the obligations in clause 13.1, he shall pay a contractual penalty of 50% of the fee agreed between the parties for the contractual subject affected, but at least EUR 5,000.00. The contractual penalty will be offset against any claim for damages. Further claims, in particular for omission, remain unaffected.

14 Export conditions

- 14.1 Kiwigrid's products may be subject to the relevant export regulations of the United States of America, the European Union, and/or the Federal Republic of Germany. In the event of a possible re-export of the products, the Customer undertakes to comply with all relevant national or international export regulations and, if necessary, to obtain the necessary permits.
- 14.2 In the event of a breach of these obligations, the Customer shall indemnify Kiwigrid from all claims and compensate all damages asserted against Kiwigrid by the Supplier or Licensor, third parties, or state and/or international authorities or organizations.
- 14.3 The Customer must inform his contractual partners in writing of the export regulations.

15 Principles of conduct and loyalty

- 15.1 Each of the parties declares the following:
- a) We respect and support the United Nations Universal Declaration of Human Rights and use our influence to prevent the occurrence of human rights violations.
 - b) We respect and support the core labor standards of the International Labour Organisation (ILO). We live diversity and equal treatment irrespective of gender, marital status, ethnic origin, nationality, age, religion, sexual orientation, or physical or mental disability. We uphold freedom of association and recognize the right to collective bargaining. We strive for occupational and plant safety and for health protection at the highest levels.
 - c) We are committed to responsible use of natural resources and promote the use of environmentally friendly technologies.
 - d) We advocate free competition and transparent markets and fight unfair competition and restrictions on competition. When dealing with company information, we comply with the national and international capital market regulations.
 - e) We ensure that personal data is handled with care.
 - f) We are committed to the protection of trade secrets and the intellectual property of third parties.
 - g) We comply with the legislation and procedures on the collection of taxes, the granting of subsidies, and the awarding of public contracts.
 - h) We do not tolerate corruption and take all necessary and appropriate measures to prevent corruption. Conflicts of employees' private interests and corporate interests are to be avoided. We take care to ensure that no undue influences arise on politics or policy.
 - i) We comply with the applicable national and international sanctions and embargo regulations as well as other restrictions of foreign trade law.
 - j) We take all necessary and appropriate measures to prevent money laundering of the proceeds of crime.

15.2 The parties shall refrain from making critical or disparaging statements to third parties about the other party, in particular with regard to organizational processes, technical issues and the like. This shall also apply for a period of two (2) years after the termination of an individual contract.

16 Final provisions

16.1 A waiver of rights or claims or formal requirements in individual cases or even in repeated cases does not imply a waiver in this regard for the future.

16.2 Kiwigrd is entitled to make changes to these General Terms and Conditions (GTCs). Kiwigrd will only make such changes for valid reasons, in particular due to new technical developments, changes in the jurisdiction or the legal situation, market conditions, or for other equivalent reasons. Changes will be communicated to the Customer in writing or by e-mail. If the Customer does not object to a change within four weeks of receipt of the notification, the changes shall be deemed to be accepted by the Customer. In the case of the GTCs, the Customer will be informed separately of the right of objection and the legal consequences of remaining silent.

16.3 The place of fulfillment for all liabilities is Dresden.

16.4 If the Customer is a merchant, a legal entity under public law, or a special fund under public law and to the extent permitted by law, the place of jurisdiction is agreed to be Dresden. However, Kiwigrd is entitled to sue the Customer at the generally applicable place of jurisdiction.

16.5 Should a clause in an individual contractual agreement be or become invalid in whole or in part, the parties shall undertake to agree on a provision that corresponds to the intended economic objective. This shall also apply mutatis mutandis in the event of a loophole in the regulations or a change in the law. The validity of the remaining provisions is not affected.

16.6 The legal relationship between Kiwigrd and the Customer is governed by German law to the exclusion of the UN Sales Convention.

B. Special terms and conditions for the use of Kiwigrd products as Software as a Service (SaaS)

1 Scope of Part B

- 1.1 Kiwigrd is a platform provider that enables its customers to network energy producers, energy consumers, energy storage systems and e-mobility within the intelligent electricity grid.
- 1.2 These SaaS Terms and Conditions govern the use by the Customer of Kiwigrd products provided as SaaS by Kiwigrd in its area of disposal (from the data center interface to the Internet). In addition, the general regulations of *Part A of the GTCs* apply.

2 Contractual services

- 2.1 Contractual services are software products offered by Kiwigrd, in particular Kiwigrd applications and Kiwigrd services (**'Kiwigrd products'**). The scope of services, the nature, the purpose, and the operating conditions of the contractual SaaS services are obtained from the respective product descriptions.
- 2.2 Kiwigrd products may only be used by the Customer and only for the purposes agreed in the individual contract. During the term of the individual contract, the Customer may access the Kiwigrd products via the Internet and by means of supported browsers or another suitable application (e.g. 'app') and may use the functionalities associated with the software in accordance with the contract.
- 2.3 Additional services, such as the development of customer-specific solutions or necessary adjustments, require a separate contract.

3 Scope and rights of use

- 3.1 For the duration of the individual contract, Kiwigrd shall grant the Customer the non-exclusive use of the current version of the Kiwigrd products he has ordered, via the Internet as part of a SaaS. The Customer may pass on the use granted to him to his own customers (**'end customers'**) and to authorized installation partners (**'installers'**), and may also grant the end customers and installers usage rights, to the extent described in section 3.3.

The Customer acts in the market as a provider of Kiwigrd products on the Kiwigrd platform. For this purpose, the Customer is granted the non-exclusive right to have Kiwigrd's white-label products branded with his brand (**'branding'**) and to offer them to his end customers and installers under his brand.

A transfer of the possibility of use to B2B customers of the Customer by way of a sublicense is only permitted with the prior consent of Kiwigrd and requires a corresponding reseller agreement between the parties.

- 3.2 Kiwigrd will set up a customer tenant for the Customer on the backend of the Kiwigrd platform (**'KiwiOS.cloud'**) and operate it on his behalf for the duration of the individual contract. Kiwigrd (or a third party authorized by Kiwigrd) shall provide the computing power and the data storage necessary for the use of the customer tenant and the commissioned Kiwigrd products.

The following services are provided by Kiwigrd:

- a) Hosting, operation, and maintenance of KiwiOS.cloud;

- b) Provision, operation, and maintenance of the ordered Kiwigrid products in the customer tenant set up on KiwiOS.cloud;
 - c) Storage of the data for and on behalf of the Customer resulting from the operation and use.
- 3.3 The customer may use the ordered Kiwigrid products in the set-up customer tenant and within the scope of the non-exclusive right of use granted to him by Kiwigrid, for his own purposes in accordance with the contract and employing his own personnel, and may process and store his data. Insofar as the Customer passes on the options of use granted to him to end customers or installers, these may only use the Kiwigrid products for the contractual purposes of the respective end customer and may only process and store their data.
- 3.4 The customer tenant set up for the Customer on KiwiOS.cloud is protected against unauthorized access by third parties. Kiwigrid shall transmit the access data required for the use of the customer tenant to the Customer for identification and authentication. The Customer is not permitted to provide the access data to unauthorized third parties. If the Customer becomes aware that access data, the customer tenant, or the KiwiOS.cloud has been accessed without authorization, he must inform Kiwigrid immediately in text or written form and change the relevant access data or have it changed. If Kiwigrid suspects on the basis of actual indications that access data is being misused or used in breach of contract, Kiwigrid may block and replace the access data. Kiwigrid will take reasonable account in this matter of the Customer's legitimate interests. Kiwigrid's rights to withhold performance remain unaffected. The scope of the access authorization is limited to the terms of use applicable to the customer tenant at the time of activation. Insofar as terms of use apply, these will be displayed to the Customer or end user/consumer before portal access is activated and must be confirmed electronically by him.
- 3.5 No transfer to the Customer of the software of the Kiwigrid products, in particular the KiwiOS.cloud, takes place; the Customer cannot make any changes to this software, except within the permitted scope of section 69d Copyright Act (UrhG), insofar as this is applicable to the contractual services agreed here at all.
- 3.6 Kiwigrid is obliged to grant the use only of the current version of the respective Kiwigrid products. Bug fixes are provided only on the basis of the current version. Kiwigrid may update and otherwise reasonably change the Kiwigrid products at any time during the term of the individual contract without the Customer's separate consent, in particular to adapt to a changed legal situation, technical developments, or to improve functionalities or IT security. Kiwigrid will take reasonable account of the Customer's legitimate interests and provide at least the functions promised in the relevant product description during the term of the individual contract.
- 3.7 Access by the Customer, end customers, and installers to the Internet is not a subject of this contractual relationship. These parties are solely responsible for the functionality of their Internet access, including the transmission channels and their own computer.

4 Obligations of the Customer to cooperate

- 4.1 In addition to the obligations of cooperation arising from *Part A of the GTCs* the Customer shall:
- a) Neither give unauthorized third parties access to the Kiwigrid products, in particular to the KiwiOS.cloud or allow a retrieval of information stored there, nor interfere with the programs of Kiwigrid, nor intrude into the data network of Kiwigrid or encourage such an intrusion;
 - b) Keep the use and access authorizations assigned to him and/or the user secret, protect them against access by unauthorized third parties and not pass them to unauthorized users;

- c) Oblige all authorized users to comply with the provisions agreed here;
 - d) Respect the rights of third parties to documents or works used (e.g., when uploading texts or data to the Kiwigrid platform that originate from third parties or contain data from third parties) and not upload illegal content or use the contractual services for processing such content (in particular, do not upload racist, discriminatory, pornographic, politically extreme or other prohibited content or content that endangers the protection of minors to Kiwigrid's servers);
 - e) Check data and information for viruses before uploading them to Kiwigrid and use software that meets the state of the art;
 - f) Not misuse the Kiwigrid platform or parts of it for unsolicited sending of messages or information to third parties for advertising purposes or for other purposes not compliant with the law.
- 4.2 To enable the successful setup of a tenant on the KiwiOS.cloud and the branding of this tenant and the Kiwigrid products ordered, the Customer must provide in particular the following content in good time:
- a) Input to the Kiwigrid style guides incl. the standard color set;
 - b) Logo as a *.svg file, vector image, or *.png file;
 - c) Fonts incl. all necessary rights of use that allow the use of the font by Kiwigrid in the Kiwigrid products;
 - d) Links to the Legal Information section, to the privacy policy and to the terms of use;
 - e) Service contact details; and
 - f) Where ordered: target domain/certificates.

Requests for changes after the tenant has been set up will be processed in accordance with the provisions of section 3 of *Part A of the GTCs* (Change Requests).

5 Error reporting methods

- 5.1 The Customer shall inform Kiwigrid immediately of any errors in the contractual services that occur. For this purpose, Kiwigrid provides the Customer with access to an error reporting tool. The Customer must use the error reporting tool provided by Kiwigrid in each case.
- 5.2 An error exists in particular if the KiwiOS.cloud or parts of it do not fulfill the functions specified in the product description, delivers incorrect results, interrupts the program run uncontrollably, or does not function properly in any other way, such that the use of KiwiOS.cloud or parts of it is impossible.
- 5.3 If an error is reported within the framework of the error reporting procedure, the Customer must ensure that at least the following is complied with:

- a) The error detector and the recipient of the error message are clearly defined.
- b) The type of error message must be harmonized in such a way that a reported error can be reproduced by the Customer and/or Kiwigrid: a clear error description, date of occurrence, framework conditions in which error occurs, screenshots where necessary.

6 Availability and services

The availability of the services provided, the contractual services, and service levels are set out in the order confirmation by Kiwigrid together with the respective product description and the applicable service level agreement.

7 Warranty

- 7.1 Defects in the software of Kiwigrid products will be rectified by Kiwigrid once the Customer has notified it of the defect or once Kiwigrid has become aware of the defect, in accordance with the regulations of the applicable Service Level Agreement. The same applies to other disruptions in the availability for use of the KiwiOS.cloud.
- 7.2 The Customer's right of termination due to non-granting of use pursuant to section 543 para. 2 sentence 1 no. 1 Civil Code (BGB) is excluded, unless the transfer of the contractual use of the Kiwigrid products is considered as having failed permanently.
- 7.3 If the respective Kiwigrid product is used with the inclusion of an installed Kiwigrid Energy Manager, Kiwigrid can also perform the rectification by means of a software update to the Energy Manager operating software that eliminates the defect. For this purpose, the Customer must connect the Energy Managers supplied to the Internet and assist with the update to the extent necessary as specified by Kiwigrid. Kiwigrid is released from the warranty for so long as the Customer fails to establish the Internet connection for an update or does not support the update to the required extent. In the event of failure of the rectification or replacement delivery by Kiwigrid, i.e., the impossibility, unreasonableness, refusal or unreasonable delay of the rectification or replacement delivery, the Customer may withdraw from the individual contract or reduce the purchase price by an appropriate amount.
- 7.4 In the event of an only insignificant reduction in the suitability of the services for contractual use, the Customer has no claims due to defects.
- 7.5 No-fault liability as per section 536 a Civil Code (BGB) is excluded for each of the parties, insofar as it concerns contractual services of software rental within the framework of a SaaS. This exclusion of liability does not apply in the event of a breach of essential contractual obligations or for damages caused intentionally or negligently from injury to life, limb, or health by the respective party.
- 7.6 Section 578 b BGB remains unaffected.

8 Data protection

- 8.1 Within the framework of the contract and the use of Kiwigrid's products, the Customer shall strictly observe the data protection obligations incumbent on him, in particular in accordance with the GDPR and the Federal Data Protection Act (BDSG). Insofar as the Customer transmits personal data to Kiwigrid by way of executing the contract or using the service, the Customer shall be responsible for obtaining the appropriate transmission authority.
- 8.2 If Kiwigrid has access to the Customer's personal data or processes it to provide the contractual services, Kiwigrid will only act in accordance with instructions within the framework of the data processing order issued by the Customer. The rights and obligations of the parties within the framework of this order data processing are set out in a corresponding contract in accordance with art. 28 GDPR.

- 8.3 The Customer remains the controller both in general in the order relationship and in the sense of data protection law. The Customer fully indemnifies Kiwigrd from all claims and official measures or sanctions in connection with the processing of personal data, unless Kiwigrd is solely responsible for the inadmissible processing and has carried out it contrary to the instructions of the Customer. The liability of the Customer includes reimbursement of reasonable costs for legal defense. All other claims and rights of Kiwigrd remain unaffected.
- 8.4 Kiwigrd guarantees that the Customer's data will be stored exclusively on the territory of the Federal Republic of Germany, in a member state of the European Union, or in another contracting state of the Agreement on the European Economic Area, unless otherwise agreed.
- 8.5 Kiwigrd may use data of the Customer, where this is not personal, for data analysis, market research, statistical purposes, calculation of forecasts, and for product developments. This also includes such data of the Customer that was originally personal but was anonymized before being used for these purposes.

9 Remuneration

- 9.1 The remuneration to be paid by the Customer is based on the terms specified in the order confirmation.
- 9.2 Otherwise, clause 4 of *Part A of the GTCs* applies.

C. Special terms and conditions for the use of Kiwigrad products as Platform as a Service (PaaS)

Filed under: <https://kiwios.io/terms-of-use>

D. Special terms and conditions for the sale of Kiwigrid hardware

1 Scope of Part D

- 1.1 These terms and conditions apply to the sale of hardware by Kiwigrid for use in connection with the Kiwigrid platform and its delivery to the Customer and to the granting of a single, non-exclusive, perpetual, and transferable right of use to the operating software of the hardware sold, in compliance with the restriction in clauses 4 and 5.
- 1.2 In addition to these provisions, the provisions of *Part A of the GTCs* apply.

2 Contractual services

- 2.1 The subject of this individual contract Hardware is the sale of Energy Managers and corresponding extensions (Extension Digital) from Kiwigrid to the Customer (**'hardware'**).
- 2.2 The hardware is suited to be used in conjunction with the Kiwigrid platform. Full use of the hardware and its operating system is only possible in combination with the Kiwigrid platform and a connection of the hardware to the Internet, which must be ensured by the Customer or his end customer. This Internet connection enables Kiwigrid, among other things, to carry out updates of the operating software of the hardware.
- 2.3 The quality, the scope of services, the functionalities, and the compatibility of the hardware and the necessary system requirements are set out in the relevant service description, which is made available to the Customer at the latest when the offer is made, in addition to the installation and operating instructions, unless otherwise agreed.
- 2.4 If delivery of the hardware includes operating software that is absolutely necessary for its functioning, the Customer shall only receive a right to use it with this hardware. Other software is subject to separate regulations.
- 2.5 Unless otherwise agreed, the hardware must be properly installed and put into operation by the Customer in accordance with the installation instructions provided. All other services of Kiwigrid that are provided at the Customer's request (in particular operation preparation, installation and demonstration of successful installation, instruction, training, and consulting), shall be charged on the basis of cost.

3 Ordering procedure, quantity forecast, and delivery

- 3.1 If the Customer wishes to purchase hardware, the Customer must inform Kiwigrid in writing or in text form by placing an order at least eight (8) weeks before the desired delivery date.
- 3.2 An order of the Customer becomes binding when it is accepted by Kiwigrid. Acceptance is made in writing or in text form to the Customer and contains confirmed quantity details and the delivery date.
- 3.3 In order to improve the predictability of future order quantities, the Customer must state his expected demand for hardware for the following three (3) calendar months in writing or in text form not later than four (4) weeks before the beginning of each calendar quarter. This demand forecast is non-binding for both parties.
- 3.4 As soon as it becomes apparent to Kiwigrid that it may be unable to deliver by an agreed delivery date, Kiwigrid must immediately notify the Customer of this in text form. Kiwigrid and the Customer will then agree on how any adverse consequences of the impending delay to delivery can be averted or mitigated.
- 3.5 The hardware purchased by the Customer must be collected by the Customer from Kiwigrid (ex works Kiwigrid, Kleiststrasse 10 a-c, 01129 Dresden, in accordance with Incoterms 2020), unless the parties agree to ship to a different delivery address (obligation to ship).

- 3.6 Kiwigrd will pre-install the respective Kiwigrd applications commissioned and the necessary version of the operating system on the ordered hardware, will set up an appropriate link to the relevant customer tenant of KiwiOS.cloud and will activate the ordered Kiwigrd applications for the relevant customer tenant. The installed version of the software shall be documented by Kiwigrd on the delivery note.

4 Acquisition of hardware and obligations to cooperate, rights of use to the operating software, copyrights, prohibition of reverse engineering, transfer

- 4.1 The Customer acquires ownership of the hardware and short documentation specified in the order. The operating instructions and the installation instructions can be made available to the Customer electronically at Kiwigrd's discretion, unless this is unreasonable for the Customer.
- 4.2 The Customer shall ensure that all hardware is installed only by trained specialist personnel, unless otherwise indicated. The Customer therefore undertakes to offer and carry out regular training of installers (i.e., both his own and external personnel) who will be commissioned with installing the hardware and to oblige his end customers to have the hardware installation carried out only by installers trained by the Customer.
- 4.3 With the restriction of point 5, Kiwigrd grants the Customer the non-exclusive, perpetual, and transferable right of use to the operating software installed on the hardware. The Customer understands that the full use of the hardware and operating software is only possible in conjunction with access to the Kiwigrd platform. This access authorization is temporally limited to the term of a SaaS order between Kiwigrd and the Customer.
- 4.4 The operating software is installed in executable form (object code) on the hardware. Source codes are not shipped with the hardware.
- 4.5 The operating software including the associated documentation is protected by copyright.
- 4.6 Reverse engineering (section 3 para. 1 no. 2 Law on the Protection of Trade Secrets (GeschGehG)) is not allowed.
- 4.7 The Customer shall take appropriate technical and organizational measures to ensure that the intended use of the hardware and the operating software is assured, for example by imposing a suitable obligation on its end customers.
- 4.8 The Customer is entitled to place the hardware on the market after its purchase, individually or in combination with its own products, either directly or via resellers.
- 4.9 If the Customer is a reseller or if the Customer otherwise avails himself of his right to transfer the rights of use to the operating software to a third party, he must impose the contractual obligations of sections 4 and 5 on the third party. When the rights of use are transferred, they pass to the new user and the rights of use of the Customer expire. All existing copies of the transferred operating software must be deleted.
- 4.10 Copies of the documentation may not be made for commercial purposes.

5 Extraordinary termination of the rights of use to the operating software

- 5.1 If the Customer seriously violates the agreed rights of use or property rights of the right holder, Kiwigrd may terminate the rights of use. This measure is taken following an unsuccessful warning with an appropriate deadline set by Kiwigrd.
- 5.2 The operating software may be subject to export control regulations in some countries. The Customer is responsible for compliance with these. If the Customer violates such export control regulations, Kiwigrd may revoke the rights of use.
- 5.3 In the event of termination of the rights of use under section 5.1, the Customer shall delete the operating software affected by the termination, including the documentation and all copies. If requested by Kiwigrd, the Customer shall submit a declaration that the deletion has taken place.

6 Extended retention of title

- 6.1 The hardware supplied by Kiwigrid shall remain the property of Kiwigrid until all claims – including future claims – to which Kiwigrid is entitled from the business relationship with the Customer have been repaid.
- 6.2 Where the Customer sells the hardware as a reseller to other resellers or to end customers, the hardware supplied by Kiwigrid may only be resold subject to retention of title until full payment of the purchase price and only in the ordinary course of business.
- 6.3 Acting as a reseller, the Customer hereby assigns in advance all claims in full to Kiwigrid, including all ancillary rights, which he acquires from the sale of hardware owned by Kiwigrid to his customers. If the hardware owned by Kiwigrid has been sold together with other items for an overall price, the assignment is limited to that part of the overall price that corresponds to the ratio of the value of Kiwigrid's hardware to the value of all items sold for the overall price.
- 6.4 The Customer is entitled to collect the claims assigned to Kiwigrid. He must transfer the proceeds to Kiwigrid at the latest when they are due. In the event of a delay in payment or a significant deterioration in assets, Kiwigrid is entitled to disclose the assignment and to demand payment from the end customer directly. The Customer shall, if requested by Kiwigrid, inform its customers of the assignment and pass to Kiwigrid all documents required for the assertion of the assigned claims and provide information. He shall also provide Kiwigrid, if requested, with an exact list of the claims assigned to Kiwigrid, stating the debtors, the amount of the individual claims, the invoice data and the other information requested by Kiwigrid.
- 6.5 Pledges, security assignments and security transfers of hardware owned by Kiwigrid or of claims assigned to Kiwigrid are expressly prohibited to the Customer.
- 6.6 Likewise, the Customer is expressly prohibited from concluding or executing global concession contracts or factoring contracts (transfer of the claim to a factoring company or to a third party as a security transaction, so-called recourse factoring), insofar as such a contract relates to claims that are assigned on the basis of these contractual conditions. The Customer must inform Kiwigrid if he has already concluded contracts of the type specified in the preceding sentence with a third party when he enters into business relations with Kiwigrid or when accepting these terms and conditions.
- 6.7 The Customer is obliged to inform Kiwigrid immediately of any access by third parties to the hardware owned by Kiwigrid or to the claims assigned to Kiwigrid and to support Kiwigrid in safeguarding its rights in every way. In particular, in the event of any seizure, he must inform the enforcement officer that the seized hardware is the property of Kiwigrid. He must immediately send Kiwigrid the seizure report and confirm in writing to Kiwigrid that the seized hardware is the property of Kiwigrid. Where damage occurs to the hardware of Kiwigrid due to access by third parties, the Customer must replace it. The Customer must bear all costs incurred as a result of an intervention by Kiwigrid.
- 6.8 If the Customer is in default of payment or if he stops making payments, his right to resell the hardware of Kiwigrid and to collect the associated claims shall expire.
- 6.9 Kiwigrid is entitled to withdraw from the contract and reclaim the hardware, or if it has been resold, to collect the assigned claims.

7 Warranty, material defects and defects of title

- 7.1 Kiwigrid guarantees that the hardware complies with the agreements set out in section 2 when used in accordance with the contract.
- 7.2 In addition, section 9 of *Part A of the GTCs* shall apply to material defects and section 10 of *Part A of the GTCs* shall apply to defects of title.

- 7.3 The delivered hardware must be carefully examined immediately after delivery to the Customer or to the third party designated by him, section 377 Commercial Code (HGB). The hardware shall be deemed approved if Kiwigrid has not received a written notice of defects in respect of evident defects or other defects that were recognizable in an immediate, careful examination within ten working days of delivery of the hardware or otherwise within ten working days after the discovery of the defect or at any earlier point in time in which the defect was recognizable to the Customer during normal use of the hardware without further examination. The Customer shall have claims for defects only if reported defects are reproducible or otherwise demonstrable by the Customer. At the request of Kiwigrid, the rejected hardware must be returned carriage paid to Kiwigrid for the purpose of supplementary performance. If the notice of defects is justified, Kiwigrid will reimburse the costs of the cheapest dispatch route; this shall not apply if the costs are increased because the hardware is situated at a location other than the place of intended use.
- 7.4 If there are material defects in the delivered hardware, Kiwigrid shall be initially obliged and entitled to repair or replacement delivery at its discretion and within a reasonable period of time. In doing so, Kiwigrid shall give due consideration to the interests of the customer. Kiwigrid can also perform the rectification by performing an update to the hardware operating software that eliminates the defect. For this purpose, the Customer must connect the hardware supplied to the Internet and assist with the update to the extent necessary as specified by Kiwigrid. Kiwigrid is released from the warranty for so long as the Customer fails to establish the Internet connection for an update or does not support the update to the required extent. Ownership of parts that are exchanged in the course of rectification shall pass to Kiwigrid; section 439 para. 6 BGB remains unaffected.
- 7.5 In the event of failure, i.e., the impossibility, unreasonableness, refusal, or unreasonable delay of the rectification or replacement delivery, the Customer may withdraw from the contract or reduce the purchase price by an appropriate amount. If the Customer withdraws from the contract, Kiwigrid will take back the hardware and refund the payment made by the Customer, less the cost of the use granted to the Customer, and at most the normal sales value of the hardware on return.
- 7.6 If a defect is due to the fault of Kiwigrid, the Customer may claim for damages under the conditions set out in Section 11 of *Part A of the GTCs*.
- 7.7 In the event that the hardware violates an industrial property right or copyright of a third party, Kiwigrid will, at its discretion and at its own expense, modify or replace the hardware in such a way that no rights of third parties are further violated, but the hardware still fulfills the contractually agreed functions, or will provide the Customer with the right of use by concluding a license agreement. If it does not succeed in this within a reasonable period of time, the Customer shall be entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages by the Customer are subject to the provisions of section 11 of *Part A of the GTCs*.
- 7.8 Kiwigrid assumes no warranty for hardware that is not installed by qualified, trained personnel in accordance with the specifications of section 4.2. A non-contractual use of the goods also does not constitute a defect.
- 7.9 The warranty shall also lapse if the Customer changes the hardware or has it changed by third parties without the consent of Kiwigrid and the rectification of defects is made impossible or unreasonably difficult as a result. In any case, the Customer shall bear the additional costs of the rectification of defects caused by the change.
- 7.10 Product and other property descriptions given by Kiwigrid do not constitute guarantees of quality or durability within the meaning of section 443 German Civil Code (BGB). The parties agree that a guarantee declaration within the meaning of section 443 BGB is only present if Kiwigrid submits it in writing using the term 'guarantee' and in compliance with the formal requirements listed in section 479 BGB.

E. Special terms and conditions for the provision of services

1 Scope of Part E

These terms and conditions apply in addition to the provisions of *Part A of the GTCs* for services offered by Kiwigrid.

2 Type and scope of services

2.1 Kiwigrid supports the Customer in particular with the following types of services:

- Modification of Kiwigrid products within the meaning of Section 2.1 Part B of the GTC (SaaS), for example customer-specific adaptations or extensions
- Software developments
- Performance of analyses
- Project management
- Organizational consulting
- Implementation support
- Installation
- Instruction/training in operation
- Management consulting

The type, place, time, and scope of the services are set out in the respective individual contract. Services under a work contract are not the subject of these terms and conditions and are only effective in the form of a deviating written agreement in the individual contract.

2.2 Kiwigrid supports the Customer with the services mentioned in section 2.1 solely in the planning; responsibility for the project and its success is borne by the Customer. Kiwigrid assumes no responsibility for a specific outcome in connection with the services provided, unless expressly agreed otherwise.

2.3 Kiwigrid provides the services according to the state of the art at the time of conclusion of the contract and using personnel qualified to provide the agreed services. The Customer is not entitled to the performance of services by specified employees of Kiwigrid. The Customer is also not authorized to issue instructions to the employees deployed in the provision of services.

3 Rights of use

3.1 All industrial property rights in connection with Kiwigrid's services, in particular copyrights to the services provided, remain with Kiwigrid.

3.2 Once full payment of the remuneration is made, the Customer is granted the non-exclusive and non-transferable right to permanently use the service results for his own purposes within the scope of the contractually stipulated purpose of use, unless otherwise agreed.

3.3 If the Customer intends to grant third parties rights of use to the service results provided, this shall require the written consent of Kiwigrid.

4 Service disruptions

4.1 If the service is not provided in accordance with the contract and this is the fault of Kiwigrid, Kiwigrid shall provide the service in full or in part without additional costs to the Customer within a reasonable period of time in accordance with the contract, unless this is only possible with disproportionate effort. The prerequisite is a written complaint from the Customer, which must be made immediately, at the latest within 2 weeks after the default becomes known.

4.2 Further claims of the Customer due to qualitative service disruptions are excluded. This exclusion does not apply in case of intent or gross negligence, nor in case of injury to life, body, or health.