

# Swegon DS-23 General Terms and Conditions

## 1 GENERAL

- 1.1 These Swegon DS-23 general terms and conditions for Swegon's digital services ("GTC") apply to all Customers who use the Service(s) as defined in these GTC. For Customers who have entered into a separate agreement with Swegon regarding the Services, these GTC form an integrated part of such agreement.
- 1.2 No pre-printed general terms on Customer's purchase order or other document issued or referred to by Customer shall apply (even if Swegon has not explicitly objected to their applicability), unless Swegon has explicitly agreed to such terms/document in writing. These GTC shall under all circumstances prevail in the event of conflict between the terms of these GTC and any other general terms.
- 1.3 Installation instructions (including firewall settings, connectivity and security) for the Service are provided by Swegon in connection to the Service and/or in Product Sheet.

## 2 DEFINITIONS

"**Customer**" means, as applicable in each relevant case, (i) the entity identified in a written agreement with Swegon regarding use of the Service, (ii) a party that has been granted a trial period free of charge, and/or (iii) a party using the free of charge part of the Service.

"**Customer Data**" means all data generated by Products used by Customer and which are connected to the Service.

"**Facilities**" means the buildings, estate and/or facilities listed in the list of the buildings, estates and/or facilities that are covered by the Service for each Customer respectively.

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights, and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, patents, inventions, utility models and rights in designs.

"**Products**" means Swegon's or its affiliates' solutions and products for which the Product Sheet provides for connectivity.

"**Product Sheet**" means the specifications and documentation of a Product and/or Service which

are applicable from time to time and are accessible through the Service or Swegon's website, excluding marketing material.

"**Service**" means the digital service comprising the connected functionality of the Products and/or the web-based control and monitoring system, enabling inter alia the Customer to monitor and analyse the status and health of the Product as set out in the specific Product Sheet.

"**Start Date**" means the date from which the Service is delivered to the Customer.

"**User Account**" means each user account created by a User as described in section 3.1.

"**User**" means any person appointed by Customer to access the Service in line with the procedure described in the Product Sheet.

## 3 CREATION OF A USER ACCOUNT

- 3.1 To create a User Account, the User shall follow the instructions in the Service.
- 3.2 Customer receives a worldwide, non-transferable and non-exclusive right to access and use the Service in accordance with these GTC.
- 3.3 Customer shall make sure that any User acts in compliance with these GTC when using the Service, including any terms and conditions provided to User in the Service. Further, Customer is responsible for all acts and omissions of User in relation to the Service and shall hold Swegon harmless from any costs, damage and losses for Swegon caused by User's use of the Service in breach of these GTC.

## 4 CONNECTIVITY

- 4.1 The Service can be connected either (i) by the Customer using its own network solution to achieve Product connectivity, or (ii) by Swegon equipping the Product with a GSM (mobile phone) modem and suitable antenna such that internet connectivity is enabled.
- 4.2 If the Service is dependent upon a connection to internet and the parties have not agreed that Swegon shall be responsible for providing a connectivity solution, Customer's connectivity solution shall at least meet the below requirements for the Product and/or Service in question. If the below requirements are not met, Swegon cannot guarantee full functionality of the Service:
  - (a) The Customer has an upload and download speed of 10 Mbit/s;

- (b) Potential interruptions of the Customer's connectivity are for less than five consecutive minutes; and
  - (c) The Customer has firewall settings in accordance with Swegon's instructions in each relevant Product Sheet.
- 4.3 For Customers who have purchased a Product for which the Service is reliant on the Customer's internet access, the Customer shall, unless otherwise agreed with Swegon in writing, be fully responsible for maintaining the connection to internet, and Swegon shall in no manner whatsoever be responsible or held liable for any costs, damage or losses caused by lacking or limited internet connection.

## **5 LIMITED ACCESS TO THE SERVICE**

- 5.1 The Service is provided in regard to Customer's Products in the Facilities and may not be used for any other purpose unless agreed in writing with Swegon.
- 5.2 Swegon may discontinue Customer's (and its Users') access to parts of or all of the Service with immediate effect and during the time it lasts if:
- (a) Customer's or User's use of the Service (i) poses a security risk to the Service, the Products, Swegon or any third party, or (ii) could adversely impact Swegon's systems, the Service or the systems or content of any third party (including Swegon's other customers);
  - (b) Customer or Users are in breach of these GTC; or
  - (c) Customer is in breach of its payment obligations.
- 5.3 If any of the above is remedied, Swegon may give Customer and/or Users access again to the Service. During the period while the access to the Service is discontinued, Customer will remain responsible for all fees accrued. However, if access is discontinued in accordance with (a) or (c) above, Swegon may at its sole discretion choose to terminate Customer's and/or Users' access to the Service with immediate effect.

## **6 AVAILABILITY AND SERVICE LEVEL**

- 6.1 Functionalities and specifications of the Service is described in the Service and Product Sheet. Swegon may make available new functionalities and updates from time to time and shall update the Product Sheet accordingly. Any such new functionalities can be offered to the Customer as an "add-on" to the Service subject to a fee that will be added to the Customer's subscription fee if the Customer purchases such new functionalities. Swegon reserves the right to make standard

updates of existing Service, which shall be available to the Customer free of charge.

- 6.2 The Service is intended to operate in accordance with the applicable service level set out in the relevant Product Sheet. Swegon shall use reasonable efforts to maintain the availability of the Service to the Customer and Users but does not guarantee 100 % availability or any specific availability.
- 6.3 Swegon may from time to time suspend the Service for the purpose of maintenance. Swegon shall, to the extent possible, ensure that maintenance is carried out outside of normal business hours. Scheduled maintenance shall be notified minimum four (4) days in advance.
- 6.4 Swegon does not provide a warranty of any kind that the Service is free from defects, merchantable or fit for a particular purpose. Swegon shall not be responsible for any damage caused by errors or disruptions in the Service and shall not be obliged to pay compensation or damages for any errors, deficiencies, disruptions, loss of data or other breach of contract.
- 6.5 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of these GTC:
- (a) an event described in section 10.8 (force majeure);
  - (b) a fault or failure of the internet or any public telecommunications network;
  - (c) a fault or failure of Customer's computer systems or networks;
  - (d) any product or equipment in the Facilities;
  - (e) any breach by Customer of these GTC; or
  - (f) maintenance.

## **7 CUSTOMER OBLIGATIONS**

- 7.1 Customer shall add and remove Users by following the procedure described in the Product Sheet, Service and/or as instructed by Swegon.
- 7.2 Customer shall only install, connect and use the Service in accordance with these GTC, Product Sheet and the instructions made available in the Service or otherwise provided by Swegon.
- 7.3 The Service is provided as a subscription service covering the Products and/or agreed areas in the Facilities. The Customer undertakes to duly inform Swegon about the Facilities for which the Customer wants to subscribe to the Service.
- 7.4 A User Account is personal and only allowed to be used by Users. Customer undertakes to ensure that no one else but Users can use any login details linked to a User Account, and that these are stored

in such a way that unauthorised persons cannot access the information. If Customer suspects that the Service or a User Account is being used unauthorised, Customer shall report this to Swegon immediately. Swegon is not responsible for any losses caused by the unauthorised use of Customer's login details.

7.5 The right to access and use of the Service granted to Customer under section 3.2 above is subject to the following conditions:

- (a) Customer may not sub-license its right to access and use of the Service;
- (b) a User Account may only be used by Customer and Users (if applicable);
- (c) Customer may not republish or redistribute any content or material from the Service or the Product Sheet(s), Customer Data excepted; and
- (d) Customer may not use the Service in any way that is unlawful, illegal, fraudulent or harmful or in connection with any such purpose or activity.

7.6 If the Customer, within its business, provides products and/or services that include the Product or Service, the Customer undertakes to inform its customer of the terms of these GTC and Product Sheet, including that products and/or services that include the Product or Service cannot be used without either accepting these GTC and the Product Sheet, or actively opting out from the Product and/or Service sending data.

## **8 PRICE AND PAYMENT**

8.1 Subject to any agreed trial period (free of charge), the Customer shall purchase the Service from Swegon at the prices and subject to the terms set out in Swegon's from time-to-time applicable price list. The prices are excluding value added tax and any other additional taxes and fees.

8.2 Unless otherwise agreed in writing with Swegon, the Customer shall make full payment for the Services ordered not later than thirty (30) days from the date of Swegon's invoice. Fees for monthly Services will be invoiced in advance.

8.3 If Customer at any time should fail to make payment in full on the due date, Swegon shall be entitled to claim interest in accordance with the Swedish Interest Act (1975:635).

## **9 WARRANTIES**

9.1 Swegon warrants that the Service, when used by Customer in accordance with these GTC, to the best of Swegon's knowledge:

- (a) will not breach any laws, statutes or regulations applicable under Swedish law; and
- (b) will not infringe the Intellectual Property Rights of any third party.

9.2 If Swegon reasonably determines, or any third party alleges, that the use of the Service by Customer in accordance with these GTC infringes any third party's Intellectual Property Rights, Swegon may at its own cost and expense:

- (a) modify the Service in such a way that it no longer infringes the relevant Intellectual Property Rights;
- (b) procure for Customer the right to use the Service in accordance with these GTC; and/or
- (c) terminate the part(s) of the Service that is claimed to infringe Intellectual Property Rights, without it being considered a breach of contract.

9.3 Customer acknowledges that complex software is never wholly free from defects, errors, bugs, or security vulnerabilities, and thus Swegon gives no warranty or representation that the Service will be wholly free from defects, errors and bugs or that the Service will be entirely secure.

## **10 INDEMNIFICATION AND LIMITATION OF LIABILITY**

10.1 Swegon shall indemnify Customer from and against any liability to third parties arising from a claim that the use of the Service infringes upon any third party's Intellectual Property Rights provided, however, that Swegon shall have no liability if such claim arises from, if applicable, any modification, combination or development of the Service that has not been performed by Swegon or on its behalf.

10.2 Customer shall indemnify Swegon from and against any liability to third parties arising from Customer's violation of these GTC.

10.3 In events described in sections 10.1 and 10.2 above, the party making the claim must provide the other party with prompt written notice of any claim and allow such other party the right to assume the exclusive defence and control, and cooperate with any reasonable requests assisting the defence and settlement of such matter.

10.4 Neither party shall be liable to the other party for loss of profit, production, goodwill or other indirect damage or loss, including the other party's liability to pay compensation to a third party, or for loss of data.

10.5 The maximum liability of Swegon under these GTC and for providing the Service in respect of any event or series of related events shall not

exceed the amount paid and payable by Customer for the Service for the preceding twelve (12) months.

- 10.6 For the avoidance of doubt, Swegon shall not be held liable under these GTC if the Customer has not complied with its obligations in section 7.
- 10.7 The limitation in respect of a party's liability in damages pursuant to this section 10 shall not apply where the party has acted intentionally or grossly negligent.
- 10.8 A party may be relieved from liability for a failure to perform any obligation under these GTC during such period, and to the extent that the due performance thereof by such party is prevented by reason of any circumstance beyond the control of the party. Such force majeure is defined as any occurrence beyond a party's will and control and shall include, without limitation, natural disasters, governmental acts, decisions of authorities, war and other military conflicts, mobilization, riots, terror attacks, seizure, embargos, labour conflicts, epidemics, pandemics or other occurrences which are unforeseeable, material and not negligently caused by any of the parties. In order to be relieved from liability, the relevant party must undertake reasonable actions within its control in order to limit the extent of the damages and consequences of a force majeure event. The party affected by the force majeure event shall also immediately inform the other party in writing of the beginning and the end of such occurrence and resume its performance as soon as reasonably possible.

## **11 INTELLECTUAL PROPERTY RIGHTS**

- 11.1 Customer retains all rights, title and interest, including all Intellectual Property Rights, in all Customer Data. Customer grants Swegon a worldwide, non-exclusive, sub-licensable, license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate Customer Data to the extent required for the performance of Swegon's obligations and the exercise of Swegon's rights under these GTC. The license also includes the right for Swegon to anonymise and aggregate Customer Data to produce statistics and to improve the Service and the Products during and after the expiry or termination of the Customer's use of the Service and/or these GTC.
- 11.2 Swegon, or any third party from whom Swegon derives its right, owns and shall retain all rights, title and interest, including any Intellectual Property Rights, in and to the Service. Nothing in these GTC shall be deemed as an assignment or transfer of any Intellectual Property Rights from Swegon to Customer, or from Customer to Swegon.

## **12 CONFIDENTIALITY**

- 12.1 The parties hereby undertake during the term of the use of the Service and thereafter, to maintain in absolute confidence any Confidential Information (as defined below) disclosed by the other party in connection with Customer's use of the Service and not to disclose any Confidential Information thus received to any third parties.
- 12.2 For the purposes of these GTC, "**Confidential Information**" means any and all information (whether in written or oral form) save as provided under (a) – (d) below:
- (a) information which is or becomes common knowledge otherwise than as a result of a breach of these GTC;
  - (b) information which the disclosing party can show was in its possession before receiving such information from the other party in connection with these GTC;
  - (c) information which a party has received or receives from a third party without any lawful restraints as to the disclosure thereof; or
  - (d) information which a party is legally obliged to provide under compulsory law, any court order or by order of another authority of competent jurisdiction.

## **13 ANTI-BRIBERY, ANTI-MONEY LAUNDERING, CORRUPTION AND SANCTIONS**

- 13.1 Customer and its affiliates, including their respective directors, officers and employees, shall not offer, promise, give, authorise, solicit or accept any undue financial or other advantage of any kind in any way connected with the performance of these GTC and/or use of the Service and shall otherwise comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption. Customer shall promptly report to Swegon any request or demand for such financial or other advantage received by Customer or its affiliates in connection with the performance of these GTC and/or use of the Service.
- 13.2 Customer and its affiliates, including their respective directors, officers and employees, shall comply with all applicable national and international economic or financial sanctions laws, and trade embargoes and similar restrictions issued by the United Nations, European Union, United Kingdom, the United States of America or by any other competent authority ("Sanction Laws") and they shall not engage in any trade, business, venture or dealing which could directly or indirectly expose Swegon, its affiliates and their respective directors, officers and employees to any

sanctions imposed by such authority.

- 13.3 Customer warrants that Customer and its affiliates, including their respective directors, officers and employees, are not a designated entity under any Sanction Laws at the time when the Service is acquired and that they will remain non-designated during the period during which the Service is used. Customer understands and agrees that with respect to Swegon's products provided to Customer,

(a) the Customer shall not export, re-export or otherwise transfer or provide or make available the Service to a country, territory or person to which/whom such export, re-export or transfer is prohibited by Sanctions Laws, and

(b) the Customer commits not to sell or provide or make available the Service to third parties whom they have reason to assume will disregard Sanction Laws or circumvent them. Upon request, Customer must provide to Swegon, without delay, all required information, especially as regards the final recipient, final destination and end-use of the Service.

- 13.4 Customer and its affiliates, including their respective directors, officers and employees, shall comply with all applicable national and international laws on anti-money laundering and counter terrorist financing. Customer represents that it has in place the adequate anti-money laundering procedures that are necessary to comply with the aforementioned laws. Customer shall promptly report to Swegon any suspicious activity of which it becomes aware relating to transactions directly or indirectly connected to the use of the Service and performance of these GTC.

- 13.5 Swegon shall be entitled to refuse further performance and may terminate the Customer's (and its Users') access to the Service with immediate effect upon becoming aware of any breach of this section 13 without it being considered a breach of these GTC and without being liable for any costs, damage or loss as a result of such termination.

- 13.6 Customer shall maintain and apply, and shall ensure that its affiliates maintain and apply, adequate policies and procedures to ensure compliance with this section 13. Customer shall, if there is an objective reason to believe that Customer or any of its affiliates is in breach of this section 13, allow Swegon access to Customer's and its affiliates' premises, books and computer systems to enable Swegon and its auditors and examiners to conduct reasonable and appropriate audits and examinations of the compliance by Customer and its affiliates with this section 13.

- 13.7 In the event the Customer is in breach of this

section 13, (i) Customer shall indemnify Swegon for any and all costs, damage or loss incurred as a result of such breach, and (ii) Swegon shall be entitled to terminate the Customer's (and its Users') access to the Service.

- 13.8 In the event of any conflict with other provisions in these GTC, this section 13 shall prevail.

## 14 TERMINATION

- 14.1 Unless otherwise agreed in writing between Swegon and the Customer, the subscription of the Service (and thereby Swegon's obligation to give Customer access to the Service) shall commence on the Start Date and shall initially remain in force for twelve (12) months. The subscription of the Service shall thereafter be automatically renewed for periods of twelve (12) months each time unless terminated by the Customer or Swegon in writing at least three (3) months before the expiry of the initial period of any renewal period thereof.

- 14.2 If Customer has been granted a trial period free of charge, Swegon shall be entitled to terminate such trial period at any time with fourteen (14) day's written notice to Customer. This provision shall apply even if a fixed trial period has been agreed.

- 14.3 Either party is entitled to terminate the Service with immediate effect if the other party

(a) fails to fulfil any of its obligations under these GTC, provided such failure is of material importance to the non-breaching party and the other party has failed to rectify the breach within thirty (30) days after written notice thereof; or

(b) has suspended its payments, is the subject of a bankruptcy petition, commences negotiations for a composition with its creditors or applies for company reconstruction (Sw. *företagsrekonstruktion*), enters into liquidation or may otherwise be deemed to be insolvent.

- 14.4 For the avoidance of doubt, a termination of the subscription of the Service can be made with respect to all Facilities or any of the Facilities.

- 14.5 Upon termination of the Service, all the provisions hereunder shall cease to have effect if not explicitly stated otherwise. However, it shall not affect Customer's obligation to pay Swegon any accrued fees.

## 15 DATA PROTECTION

- 15.1 Subject to this section, each party is responsible as a controller for the processing of personal data carried out by the party in connection with the Customer's use of the Service. Each party shall ensure that the processing is carried out in

accordance with applicable data protection laws.

- 15.2 In connection with the provision of the Service, Swegon may from time-to-time process personal data on behalf of the Customer. For such processing of personal data, the Customer is the controller and Swegon will process the personal data as processor.
- 15.3 The parties agree that Swegon's data processing agreement ([link]) shall apply to Swegon's processing of personal data on behalf of the Customer in accordance with section 15.2 above.
- 15.4 Where Swegon acts as a processor, Swegon's processing of personal data shall be carried out in accordance with applicable data protection legislation, the Customer's instructions and what has otherwise been agreed between the parties.

## **16 MISCELLANEOUS**

- 16.1 These GTC as applicable from time to time, any instructions issued by Swegon from time to time regarding the Service and the Product Sheet constitute the entire agreement regarding the use of the Service.
- 16.2 Swegon reserves the right to update or change the Service, Product Sheet, the fees as well as these GTC. In the event of material changes (such as increases in the fees), Customer is given reasonable notice prior to the change taking effect. Material changes will become effective on the date set forth in the notice, and all other changes will become effective upon posting of the change.
- 16.3 In no event shall any delay, failure or omission of a party in enforcing, exercising or pursuing any right, claim or remedy under these GTC be deemed as a waiver thereof, unless such right, claim or remedy has been expressly waived in writing.
- 16.4 Neither party may, without the other party's written consent, transfer or otherwise assign, partially or in full, any of its rights or obligations pursuant to these GTC. However, Swegon may assign its rights and/or obligations under these GTC to any legal entity which directly or indirectly controls, is controlled by or under common control with Swegon.
- 16.5 Should any provision in these GTC or part thereof be found void or invalid, the other provisions of these GTC shall remain in force and the provision may be amended to the extent such invalidity materially affects the rights or obligations of either party pursuant to these GTC.

## **17 GOVERNING LAW AND DISPUTES**

- 17.1 These GTC shall be governed by the substantive law of Sweden.
- 17.2 Any dispute, controversy or claim arising out of or

in connection with these GTC, or the use of the Service otherwise, or the breach, termination or invalidity thereof, shall first be referred to mediation in accordance with the Mediation Rules of the SCC Arbitration Institute, unless one of the parties objects.

- 17.3 If one of the parties objects to mediation or if the mediation is terminated, the dispute shall be finally resolved by arbitration. The Rules for Expedited Arbitrations shall apply, unless the SCC Arbitration Institute in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules of the SCC Arbitration Institute shall apply. The SCC Arbitration Institute shall decide whether the arbitral tribunal shall be composed of one or three arbitrators.
- 17.4 The seat of arbitration shall be Gothenburg, Sweden, and the language to be used in the arbitral proceedings shall be Swedish.
- 17.5 The parties undertake and agree that all arbitral proceedings conducted with reference to this arbitration clause will be kept strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. Information covered by this confidentiality undertaking may not, in any form, be disclosed to a third party without the written consent of the other party. This notwithstanding, a party shall not be prevented from disclosing such information in order to safeguard in the best possible way its rights vis-à-vis the other party in connection with the dispute, or if the party is obliged to so disclose pursuant to statute, regulation, a decision by an authority, applicable stock exchange regulations or the regulations of any other recognised marketplace.