

## 1. Subject of Terms

- (1) The subject of terms of these Terms of Use is the granting of the rights to use the Moticon Software in connection with our product lines OpenGo and ReGo, limited to the duration of the respective license acquired by the customer from Moticon. These concern both the use of the mobile apps or the desktop versions as well as the use via remote access as Software-as-a-Service (hereinafter each referred to as "Licensed Software") and regardless of whether the license was concluded for a limited or permanent use or as a subscription.
- (2) During the term of the Licensing, Moticon shall permit the Customer to use the Licensed Software and, insofar as use takes place as Software-as-a-Service, shall provide the Customer with access to and use of the Software installed on Moticon's servers.
- (3) Moticon may update and further develop the Licensed Software at any time and, in particular, adapt it due to a changed legal situation, technical developments, the new or further development of functions or to improve IT security. In doing so, Moticon shall give due consideration to the legitimate interests of the Customer and inform the Customer in good time of any necessary updates. In the event of a significant impairment of the legitimate interests of the customer, the customer shall have a special right of termination.
- (4) Moticon reserves the right to change or completely discontinue individual programs or product lines with effect for the future. Beyond any contractual terms already agreed upon, the customer shall have no claim to a continuation of the use of the Licensed Software or to an extension or a new conclusion of license agreements for its use.
- (5) The current system requirements for the use of the Licensed Software are available on the Moticon website (<https://moticon.com>). If required for technical reasons, the system requirements will be adapted to new functions. If the system requirements are not met, the Licensed Software may not work or not work correctly. Moticon does not owe an adaptation to the individual needs or the IT environment of the customer.
- (6) For some of Moticon's product offerings, Moticon may also provide the customer with storage space on its servers for the purpose of using the Licensed Software. Moticon shall ensure the agreed retrievability of the data stored there within the scope of the use of the Licensed Software.
- (7) Moticon shall take appropriate and reasonable measures to protect the data stored by Moticon. The data storage options offered to the Customer, if any, shall serve exclusively for the use of the Licensed Software and of data created within the scope of the intended use of the Licensed Software. The data storage options are not intended as permanent storage or archiving of important data that does not arise within the scope of the intended use of the Licensed Software. Accordingly, Moticon shall have no custodial or safekeeping obligations with respect to such data.
- (8) The customer remains the owner of the data stored on Moticon's servers and can access, manage, export or delete them at any time using the functions within the Licensed Software. Should this not function as desired in individual cases for technical reasons or not be available within the scope of the Licensed Software, the customer may contact Moticon's customer support at any time for the purpose of surrendering the data.
- (9) Within the scope of the administration of the customer's data stored at Moticon, the customer shall have the right to grant third parties access authorization to such data and certain areas and also to withdraw such authorizations. Moticon shall

not be responsible for the consequences of data access or data modification by such third parties to whom the customer has previously granted corresponding access authorizations.

## 2. Grant of License

- (1) Moticon hereby grants to Customer, for the term provided in the Agreement, the revocable, worldwide, non-exclusive, non-transferable and, except as otherwise expressly provided herein, non-sublicensable right to use the Licensed Software. The right to use the Software is limited to using the Licensed Software exclusively in connection with the wearable sensors ("Hardware") provided by Moticon.
- (2) Any modifications or new versions of the Licensed Software made available to the Customer shall be treated as Licensed Software under these Terms of Use. Moticon shall be entitled to update any older versions of the Licensed Software already installed by means of an update or to request corresponding updates of software used by the Customer, if this should be necessary for the product support requested by the Customer or for the proper performance of the license relationship, in particular for the elimination of security risks or errors. It may be mandatory to install appropriate updates in order to continue using Moticon's products and services. If the customer fails to install an update for the Licensed Software in breach of duty and this results in malfunctions which could have been avoided by installing the update without delay, Moticon shall not be liable for the resulting malfunctions.
- (3) With regard to any third-party software that may be provided by Moticon, the customer shall only receive the non-exclusive, non-transferable right of use for the use intended in accordance with these Terms of Use. Irrespective of this, the license conditions of the third party provider shall apply, which Moticon shall make available upon corresponding request.
- (4) In the event that the customer violates contractual provisions when using the Licensed Software, in particular any restrictions on use, Moticon shall have the right to refuse or block the customer's access to the Licensed Software. The same shall apply if the customer is in arrears with a due payment and fails to settle the outstanding amounts within a reasonable grace period set by Moticon.

## 3. Duties of the Customer

- (1) The customer must protect the access data transmitted to him from access by third parties and keep it safe. The customer shall ensure that use only occurs to the contractually agreed extent. Moticon shall be notified immediately of any unauthorized access.
- (2) The customer is obligated not to store any data on the storage space provided, the use of which violates applicable law, official orders, third-party rights or agreements with third parties.
- (3) The customer is responsible for regularly making appropriate data backups.
- (4) In the event that the Customer uses the Licensed Software to collect or evaluate data from third parties, the Customer shall be obliged to comply with the statutory data protection provisions, including the EU General Data Protection Regulation (DSGVO) and the Federal Data Protection Act. Insofar as this is necessary, the details of data collection and processing and, if applicable, the division of data protection obligations between the Customer and Moticon shall be regulated in a joint responsibility agreement or in a contract for commissioned processing. In this case, the relevant contract is attached to these Terms of Use.

## 4. Payment Terms

- (1) Use of the Licensed Software shall be at the charges individually agreed with the Customer or - if no such agreement has been made - set forth in the price list on Moticon's website.
- (2) Moticon's price lists are always subject to change and non-binding and may be adjusted with effect for the future. Orders shall only be deemed to have been accepted when they have been confirmed in writing by Moticon or when their execution has commenced.
- (3) All prices stated in the contract or in the price list are net prices and are exclusive of the applicable statutory value added tax and other applicable taxes and duties.
- (4) The licenses purchased by the customer shall be invoiced in each case at the conclusion of the contract or for an invoicing period. The terms of payment shall be specified by Moticon in an offer and confirmed by the customer in the form of an order. In the case of permanent licenses, only one payment is required for the one-time purchase of the permanent licenses. Unless otherwise agreed, the billing period shall be monthly in the case of paid subscriptions, and in the case of contract extensions of other temporary licenses or services for the purpose of software updates, the selected extension period in each case. Any usage-dependent costs shall be billed to the customer in the following month.
- (5) Moticon will send the customer a corresponding invoice. The term of payment shall be in accordance with the previously established terms of payment.
- (6) Objections to the invoice shall be raised within seven (7) business days after the invoice is issued. Moticon shall help to resolve the dispute regarding the objection within ten (10) business days after the objection is raised. If the dispute cannot be settled amicably in this way, each party shall be free to pursue its rights in court.

## 5. Restriction Regarding Duplication and Reverse Engineering

- (1) The Customer is not entitled to modify the Licensed Software, to use it in whole or in part in other programs, to split it or to permit or enable third parties to carry out such activities. In particular, Customer is not permitted, for example, to reconstruct the source code via reverse engineering or to obtain knowledge about the architecture of the Licensed Software.
- (2) For certain Licensed Software (SDK, API) explicitly offered for the purpose of developing customer-specific software, the following applies in derogation thereof: Customer may use released interfaces and libraries of the Licensed Software in whole or in part in other programs for its own purposes. Apart from this, the restrictions set out in (1) regarding distribution, passing on to third parties and reverse engineering shall apply unchanged.
- (3) Should the customer violate the aforementioned obligations, this will be treated as a material breach of the obligations of these Terms of Use.
- (4) This section is not intended to limit Customer's legal rights or preclude Customer's legal rights, particularly with respect to interoperability. However, irrespective of this, the customer shall always make an inquiry to Moticon in this regard about the requested or required information and wait for a reasonable period of time to respond before the customer may take action itself by means such as reverse engineering.

## 6. Support

- (1) Moticon shall set up a support service for Customer inquiries regarding functions of the Licensed Software. Individual

support services are subject to a charge, depending on the type of Licensed Software.

- (2) Depending on the type of Licensed Software, requests can be made via the support hotline indicated on the Moticon website at the times indicated there, via the web form indicated on the website or via e-mail to support@moticon.com. Requests will be processed in the chronological order in which they are received.

## 7. Warranty

- (1) Moticon warrants that the Licensed Software has been developed with the customary care and is free of defects (bugs, etc.) that materially impair or preclude its suitability for normal or contractual use. The functional scope of the Licensed Software as well as the conditions of use can be found in the respective current documentation of the Licensed Software at <https://account.moticon.com>.
- (2) According to the current state of the art, it is not possible to create software and hardware in such a way that it functions perfectly in all application combinations, works with previously unknown third-party software and hardware and/or is protected against manipulation of any kind by third parties. Moticon only warrants that the hardware and software used and provided by Moticon is suitable for the intended use described on the Moticon website.
- (3) Moticon does not provide any warranty or guarantee for the correctness or completeness of the results calculated by the Licensed Software based on the collected data from the hardware beyond the basic functionality of the Licensed Software. These are always only results determined on the basis of predefined algorithms, which cannot replace an individual consultation or evaluation by a knowledgeable expert and are naturally based on a limited data set. They should therefore also only be understood as an aid and not as a substitute for expert advice.
- (4) Moticon does not guarantee the achievement of the business purpose intended by the customer and is not liable for the consequences of business decisions made by the customer.
- (5) Moticon guarantees an overall availability of the online services of at least 99.0% per month at the handover point. The handover point is the router output of Moticon's data center.
- (6) Availability shall be deemed to be the Customer's ability to use all main functions of the Licensed Software. Maintenance times as well as times of malfunction in compliance with any agreed remedy time shall be deemed times of availability of the Licensed Software. Times of insignificant malfunctions shall also be disregarded when calculating availability. Moticon's measuring instruments in the data center shall be decisive for the proof of availability.
- (7) Moticon shall perform maintenance on the Licensed Software on a regular basis and inform the Customer thereof in due time via e-mail. Maintenance shall be performed regularly outside the Customer's usual business hours, unless due to compelling reasons maintenance must be performed at a different time.
- (8) It is the customer's responsibility to report any malfunctions immediately to the contact details provided. The acceptance of a fault report and fault rectification is guaranteed Monday to Friday (excluding national holidays) between 9:00 a.m. and 6:00 p.m. Central European time zone (service hours).
- (9) Any other legal claims of the customer against Moticon shall remain unaffected. Moticon's liability for the unavailability of the Licensed Software due to intent and gross negligence on the part of Moticon shall remain unaffected.
- (10) Any warranty claims shall become statute-barred after one year. This shall not apply if the law mandatorily prescribes longer periods. A longer statutory limitation period shall also apply if Moticon or its legal representatives or vicarious agents

are guilty of intent or gross negligence or if the claim for damages is based on injury to life, body or health.

## 8. Liability

- (1) Moticon shall be liable for damages in the case of intent and gross negligence without limitation.
- (2) In the event of slight negligence, Moticon's liability shall be limited to the breach of essential contractual obligations. Essential contractual obligations, also referred to as cardinal obligations, shall be understood to be those obligations which make the proper performance of the contract possible in the first place and on the fulfillment of which the contractual partner may rely.
- (3) Moticon's obligation to pay compensation shall be limited in each case to the foreseeable damage typical of the contract in the event of a breach of essential contractual obligations.
- (4) Furthermore, any liability of Moticon is excluded.
- (5) The above exclusions or limitations of liability shall also apply with regard to the liability of Moticon's employees, representatives and vicarious agents and, in particular, also in favor of the shareholders, employees, representatives, bodies and their members with regard to their personal liability.
- (6) The above limitations of liability shall not apply to liability in the event of injury to life, limb or health, in the event of fraudulent concealment of a defect or in the event of the assumption of a guarantee by Moticon or for liability on the part of Moticon under the Product Liability Act.
- (7) The customer shall be responsible for immediately notifying Moticon in text form of any damage or loss for which Moticon is liable or for having Moticon record such damage or loss.
- (8) The operation and availability of the systems for the use of the Licensed Software, including the public telephone network, the computer networks and the Internet, may be affected by numerous factors beyond Moticon's control, despite redundancies in the system. Use of the Licensed Software may be temporarily impaired or even impossible due to such disruptions. Moticon is in no way responsible for such circumstances beyond the control or responsibility of Moticon.
- (9) The Customer is solely responsible for the correct setup and use of the Licensed Software, including, if applicable, the correct instructions and correct entry of the required data. Moticon shall not be liable for any incorrect understanding or use of the Licensed Software and algorithms by the customer, unless this is due to incorrect instructions or guidance provided by Moticon.

## 9. Third Party Rights

- (1) Moticon warrants to the best of its knowledge that the Licensed Software is free from third party rights that would restrict or preclude its use for the contractually intended purpose.
- (2) Should the contractually agreed use nevertheless be restricted by the rights of third parties, Moticon shall be entitled, within a reasonable period of time, either to modify the product or service in such a way that the rights of third parties are no longer infringed or to procure authorization from the third parties so that the customer can use the product or service without restrictions and at no additional cost.

## 10. Duration and Termination

- (1) The licensing of a software takes place at the time of the acquisition of a license by the customer and is valid for the duration specified in the license. If no license term has been specified, the license shall be deemed concluded for an indefinite term.

- (2) During an agreed fixed term or in the case of licenses purchased on a permanent basis, the right to ordinary termination is excluded. In the case of automatically renewing licenses, these can always be terminated with a notice period of 30 days with effect from the end of the current term. Licenses that have been concluded for an indefinite period can be terminated with a notice period of 30 days to the end of the next monthly billing period.
- (3) The right to terminate without notice for good cause shall remain unaffected. In any case, the termination must be in text form.
- (4) After termination of the contract, Moticon is not obligated or, in some cases, no longer authorized to store customer data in the customer account and may or must delete this data and the customer account without prior notice. It is the responsibility of the customer to back up this data in a timely manner prior to termination of the contract and to create backup copies. In the event of an unexpected, premature termination of the contract for which the customer is not responsible, Moticon shall grant the customer a reasonable period of time to back up and create backup copies of such data.

## 11. Confidentiality

- (1) The customer and Moticon work together in a spirit of trust. This already applies to pre-contractual contacts and negotiations. In each case, the parties shall take into account the interests of the other party and undertake to maintain confidentiality.
- (2) The persons entrusted by Moticon with the execution of the contract are obliged to maintain secrecy and data confidentiality.
- (3) The customer entrusts Moticon with access to and analysis of important and sensitive data. Moticon employees can access and analyze the data, in particular to provide support to the customer.
- (4) Moticon is fully aware of the sensitive nature of the data and undertakes to treat it as strictly confidential and to use this confidential data only for the performance of this contract and the fulfillment of its obligations under this contract. All rights of the customer to the data shall remain unaffected.

## 12. Changes to these Terms of Use

- (1) Moticon reserves the right to amend or supplement these Terms of Use with effect for the future if this is necessary for valid reasons. This includes, in particular, cases in which adaptations to the legal and statutory situation or to new technical developments are required, loopholes in the regulations are to be closed or the range of services offered by Moticon is changed. If the contractual equilibrium between the parties is significantly disturbed by the change and the change thus becomes unreasonable for the Customer, the change shall not be made.
- (2) Changes to these Terms of Use will be communicated to the customer in an appropriate manner by notification. The notification is usually made by sending an e-mail to the e-mail address provided by the customer.
- (3) The customer may object to the changes in the Terms of Use in writing within 6 weeks from the date of receipt of the notification and the possibility of taking note of them. Among other things, the customer may send an e-mail to [dpo@moticon.com](mailto:dpo@moticon.com) stating his objection.
- (4) If the customer does not object to the amended terms of use within the time limit, the amended or supplemented terms of use shall become effective vis-à-vis the customer.
- (5) If the customer objects within the period, the original Terms of Use shall remain effective for existing contracts (but only for

these) until further notice. However, Moticon reserves the right in such a case to make requests for extension with regard to these contracts beyond the previously agreed term dependent on acceptance of the new Terms of Use. Likewise, any extraordinary right of termination by Moticon shall remain unaffected.

- (6) In informing the customer of the changes, Moticon shall specifically draw the customer's attention to the possibility of objection and termination, the deadline and the legal consequences, in particular with regard to failure to object.

## 13. Final Provisions

- (1) Should individual provisions of these Terms of Use be invalid or unenforceable, this shall not affect the validity of the remaining provisions.
- (2) The parties shall replace such provisions by valid and enforceable provisions which correspond as closely as possible to the meaning and economic purpose as well as the intention of the parties at the time of conclusion of the contract. The same shall apply in the event of a gap in the contract.
- (3) In cases of force majeure, e.g. natural disasters, fire, war, terrorism, pandemics or strikes, the performance and delivery deadlines shall be suspended for the duration of these events.
- (4) Deviations from these terms of use and their appendices must be made in writing.
- (5) The law of the Federal Republic of Germany shall apply to the exclusion of the conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980 (UN Sales Convention).
- (6) The exclusive place of jurisdiction for all disputes arising from or in connection with these Terms of Use is Munich, Germany.

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