

## **Terms of Use of Platforms and Portals (e.g. my.innovaphone.com, Devices App, Partner Portal) of innovaphone AG (hereinafter referred to as “innovaphone”)**

### **1. Scope of application**

- 1.1. The following Terms of Use cover the use of innovaphone’s customer platforms or portals (hereinafter uniformly referred to as “platform”) (e.g. my.innovaphone.com, Devices App, Partner Portal) provided by innovaphone to business customers (entrepreneurs as defined by Section 14 German Civil Code (BGB)) in connection with innovaphone services and/or contract products.
- 1.2. The respective offer is directed exclusively at customers who are not consumers as defined by Section 13 German Civil Code (BGB).

### **2. Services rendered by innovaphone**

- 2.1. innovaphone provides customers access to the platform via a registration process and, if applicable, a customer account. The services are made available to the customer free of charge.
- 2.2. In principle, the customer has no inherent right to register and open a customer account. However, in order to use some of innovaphone’s services and/or contract products (e.g. renting software and/or hardware, using innovaphone’s myApps cloud service or license management), the customer needs and/or is required to set up a customer account. If it is necessary and/or obligatory to register and set up a user/customer account in order to make use of innovaphone’s contract products, innovaphone shall not be entitled to turn down the customer’s request without cause.
- 2.3. After having registered and, if necessary, after having set up a customer account, the customer can access information stored by innovaphone on the platform or portal and use various other services, such as setting up and managing various projects, managing (software) licenses, software service credits (SSC) and innovaphone service credits (iSC) as well as managing repairs for innovaphone hardware products.
- 2.4. innovaphone reserves the right to further develop and expand the platform or to replace it with functions/features that are functionally equivalent and in line with the latest technological standards. In this respect, changes may be made to the services at any time, in particular to individual functions/functionality. Such changes shall not negatively impact the security of the platform and its core services. innovaphone also reserves the right to change characteristics and functions of the platform and/or all associated services, including deactivating functions, if this is necessary in order to comply with locally applicable laws or for operational and economic reasons.

### **3. Registration and special obligations of the customer concerning registration**

- 3.1. Registration is possible for natural persons who are unrestricted in their legal capacity and for legal entities for which registration must be carried out by the natural persons who are authorized to represent the legal entity or by their authorized representatives/contact persons; such persons are required to state the name of the company. **In doing so, the user must provide information that is true and complete, not information that is false, inaccurate, or misleading. It is also prohibited to use information and data that the user is not authorized to use. In particular, the user must correctly state their full first name, surname, and e-mail address.**

**Note: When registering as a user, the customer is responsible for providing a valid e-mail address and being able to retrieve the e-mails there. The e-mail is deemed received upon delivery of the e-mail to the inbox. The customer must ensure that they take note of the contents of the e-mail and, if necessary, take suitable organizational measures, particularly if an authorized person/legal representative (e.g. authorized innovaphone partner) has been tasked with managing such customer account.**

innovaphone reserves the right to request further information about the user at any time should this be necessary for the services to be rendered. Refusing to provide information, or providing incorrect information, may lead to the customer account being restricted or blocked (see item 6).

- 3.2. innovaphone shall send a confirmation link to the e-mail address provided by the customer so as to verify the latter’s identification.

3.3. Any changes to the details provided during registration must be reported to innovaphone without undue delay and, where possible, must be updated in the customer account. The customer bears sole responsibility for informing innovaphone about any changes to their details.

3.4. The registration process includes the following steps in particular:

- Entering the details required by the respective platform, such as the first and last name of the legal representative or contact person of the company and a valid e-mail address; in the case of authorized persons or legal representatives, the company name of the legal representative must also be entered as well as the first and last name of the contact person if applicable (e.g. of the authorized innovaphone partner);
- Confirmation, where applicable, of the existence of a power of attorney if the customer is not acting on their own behalf and is represented by the authorized person/legal representative (e.g. innovaphone partner);
- Consenting to the validity of these Terms of Use of Platforms and Portals;
- Acknowledgment of the privacy policy;
- Assigning a personal password;
- Verification of the customer's e-mail address and identification by innovaphone (a confirmation link is sent);
- Implementation of the initial registration by the customer/legal representative.

There may be additions to and/or deviations from the registration steps set out above due to product-specific and/or technical requirements, in particular if further information is required for the procurement of services and/or contract products.

3.5. Once the registration steps have been carried out, the registration process is completed, and the customer then receives a user/customer account and is able to register for the respective platform for the first time.

#### **4. Concluding contracts via the platform**

4.1. innovaphone also offers registered customers the option of concluding online contracts (online procedures). The fact that innovaphone's services and/or contract products are presented on the respective platform is not to be construed as a legally binding offer on the part of innovaphone, but instead only as an invitation to the customer to place an order (e.g. when renting hardware products or the innovaphone myApps cloud service). By clicking on the respective button and/or clicking on the checkbox, the customer submits an offer to conclude the respective contract here. innovaphone confirms receipt of the order (order confirmation) to the customer by e-mail. The respective contract is accepted by sending an order confirmation to the customer by e-mail.

4.2. If innovaphone expressly states that services and/or contract products on platforms constitute a legally binding offer to conclude a contract (e.g. when renting software), the contract is concluded simply by clicking on the respective button and/or clicking on the checkbox. innovaphone shall specifically indicate this in the respective offer.

4.3. When making legal declarations online, the customer as a registered user must truthfully and completely record the information and details (e.g. first and last name of the legal representative with power of attorney or contact person of the company) requested by innovaphone prior to the respective order; such information being required to be able to conclude the contract. To this extent, item 3.1 shall apply mutatis mutandis.

4.4. The customer submits all legal declarations required by the platform or portal (e.g. the order or consent to the validity of innovaphone's General Terms and Conditions) electronically by clicking on the respective button and/or clicking on the checkbox.

4.5. innovaphone provides the customer with all material contractual provisions, including the applicable General and Special Terms and Conditions, by e-mail or, alternatively, via the customer account.

#### **5. General and special duties of the customer when using the platforms**

5.1. The platforms may not be available in all countries or it may not be possible to access to innovaphone's platforms from some countries or from a specific customer location. The customer is required to check the availability or the possibility of access before using the services of the respective platform.

5.2. If the customer is able to manage (software) licenses within the framework of the platform, innovaphone software can be activated via the user/customer account using a license key. The permission to use the software (hereinafter referred to as the "license") is uploaded here to what is referred to as the "Balance", a virtual warehouse.

**Note: The customer is obliged to make backup copies of all license keys and downloaded license files and to store them carefully. innovaphone is not liable for any disadvantages incurred by the customer as a result of no backup copies being made. innovaphone accepts no liability for errors made by the customer when managing licenses. For instance, object-related licenses that were incorrectly assigned to a device (hardware) due to an error on the part of the customer can no longer be used anywhere else.**

- 5.3. If the customer is able to manage repairs on the platform, faulty devices can only be returned to innovaphone with an RMA number (Return Merchandise Authorization).
- 5.4. If the customer uses the customer account to manage iSC, it must be remembered that iSC are bound to a specific customer account once they have been uploaded to a Devices app. It is then no longer possible to transfer iSC to another customer account.
- 5.5. The customer is personally responsible for all content, actions and processes carried out via their user/customer account. This means that the customer is obliged to ensure that the computer system used to access their account is protected in accordance with the latest technological standards and that the data transmission channels used are secure. In all other respects, the liability provisions/restrictions on the basis of item 9 (Liability) shall apply.
- 5.6. For reasons of data protection and IT security, the customer must ensure within the company that the user ID and passwords created for authorized users under its account are not passed on to unauthorized third parties. The customer must put organizational measures in place to ensure this in order to prevent the login details being misused. In particular, users shall be required to store their username and password in such a way that it is not possible for these to be accessed by unauthorized third parties. The password can be changed regularly in the user account. The customer shall manage passwords carefully and keep them secret. Personal login details must be changed without undue delay if the customer suspects that unauthorized individuals know the login details so as to prevent access.

**Note: In accordance with the statutory provisions, the customer is liable for all use/activities carried out under his login for the platform.**

## **6. Blocking access to platforms**

- 6.1. innovaphone is entitled to temporarily or permanently suspend access to platforms (blocking) if there are clear indications that the customer or a user of the user/customer account who has been authorized by the customer is or has been in violation of the present Terms of Use and/or applicable law and/or the rights of third parties, or if innovaphone has any other legitimate interest that makes blocking necessary. innovaphone shall take the interests of the customer into account accordingly when deciding on any suspension/blocking thereof.
- 6.2. **Inadmissible use is deemed to exist in particular if the customer violates their registration duties in accordance with item 3.1 or uses the platform in a fraudulent manner or in a way that constitutes a criminal offence.**
- 6.3. Maintenance work and software support required to ensure the security of network operations, the maintenance of network integrity, the interoperability of services and data protection (the security, confidentiality, availability, integrity and resilience of the systems, networks, programs, applications and data) is carried out on a regular basis. innovaphone can temporarily block access to platforms in this respect or also permanently suspend it if there are significant security risks. innovaphone shall inform the customer without undue delay about any such suspension. Permanent suspension constitutes cause for terminating the contract to use the respective platforms.
- 6.4. innovaphone shall inform the customer by e-mail about any temporary or permanent blocking. In the event of access being temporarily blocked, innovaphone shall reactivate the access authorization and notify the customer accordingly.

## **7. Termination/de-registration, deletion of user/customer accounts, exclusion of liability in case of expiration of iSC/SSC**

- 7.1. The use of the respective platform can be terminated by the customer at any time without needing to observe a period of notice or provide reasons; to this extent, the customer is able in principle to delete their user/customer account at any time (de-registration). If the contracts concluded with innovaphone for services and/or contract products of innovaphone (e.g. to rent software and/or hardware) oblige the customer to maintain a customer account for the term of the contracts, the option of de-registering is excluded until the customer terminates the respective contract.

- 7.2. innovaphone is entitled to terminate the respective use of the platform or access to the platform giving one (1) month's notice. Ordinary termination is not possible for innovaphone if the user/customer account within the platform is needed in light of the contracts concluded between the customer and innovaphone for services and/or contract products (e.g. to rent software and/or hardware). In this respect, the notice periods for the respective contract (e.g. to rent software and/or hardware or to use the innovaphone myApps cloud service) and any rules on the use of the associated platform that may have been made therein shall apply.
- 7.3. The right to terminate without notice remains unaffected by the right of both parties to terminate ordinarily. innovaphone shall be entitled to terminate without notice and permanently block/suspend the services (see item 6.1.) in particular if
- legal or official requirements mean that the platform services must be permanently discontinued (e.g. if laws are broken);
  - the customer or a user of the user/customer account who has been authorized by the customer violates the essential contractual obligations that are incumbent upon him or her under the present Terms of Use for Platforms and does not refrain from violating these obligations despite a warning or does not immediately eliminate consequences of contract violations that have already occurred and thereby violates the rights of innovaphone to a more than insignificant extent.
- 7.4. Once the termination takes effect, innovaphone is entitled in principle to delete all the customer's data generated within the scope of the use of the respective platform after expiry of any legal storage or retention obligations. The Customer's SSC, iSC or managed licenses, if any, held and managed in the user/customer account may be retained for a period of two (2) months after termination of the contracts for which a user/customer account is required. During this period, the customer is able to use SSC, iSC or licenses for innovaphone by concluding a new contract or reactivating the customer account.

**Note: The iSC expire after two (2) months, after which time the customer will no longer be able to access the iSC, SSC and licenses managed on the platform. If the customer requests the deletion of their customer account, any iSC and/or SSC and licenses managed in the balance statement of the customer account expire immediately; object-related licenses can no longer be managed. Any and all claims against innovaphone for reimbursement and/or compensation are excluded in this respect.**

- 7.5. The customer will be informed of the deletion of the customer account in good time by e-mail.

## 8. Warranty/exclusion of warranty claims

- 8.1. innovaphone provides its services in connection with the use of platforms free of charge. **The customer bears all costs incurred by them for using the respective platforms, along with the risk and costs in the event of loss of data, loss of turnover and for time and effort incurred by them as a result of using the platforms.**
- 8.2. innovaphone endeavors to enable trouble-free use of the platforms and shall take into account technical developments to an economically and technically appropriate extent and within the operational possibilities of innovaphone. If the customer detects faults that have a negative impact on usability, the customer must inform innovaphone immediately. innovaphone will take action to remedy the fault.
- 8.3. Implied warranty claims for material defects and defects in title arising from and in connection with the use of platforms are excluded unless innovaphone fraudulently concealed the defect.

## 9. Liability

- 9.1. **General limitation of liability for free services:** innovaphone is only liable if the damage was caused by the contractual use of the free services and only in case of deliberate acts (including fraudulent conduct) or gross negligence. Liability under product liability law and liability for physical and personal injury are not excluded.
- 9.2. **General limitation of liability for fee-based services:** innovaphone is liable to an unlimited extent for all damages resulting from deliberate acts or gross negligence, as well as if a promised feature is missing. In case of ordinary negligence, liability is unlimited for injuries to life, limb, or health. Aside from this, innovaphone is only liable in case of ordinary negligence if a material obligation is violated, the fulfilment of which is essential to implementing the contract, the violation of which endangers reaching the purpose of the contract and on the observance of which the customer may regularly rely (fundamental obligation). In case of a violation of a fundamental obligation, liability is limited to the damage typically foreseeable for the contract. This also applies to loss of earnings or savings. Liability for any other consequential damages is

excluded. Liability according to the German Product Liability Act (ProdHaftG) shall remain unaffected by the limitations of liability.

- 9.3. **Liability upon loss of data:** The customer bears the risk of loss of data. The customer shall ensure that the data is backed up properly and shall make backup copies and copies of the data at regular intervals. In the case of loss of data, innovaphone shall be liable to the extent that the damage would have occurred if the customer had carried out proper data backup; the liability is thus limited to the reconstruction efforts that would be required assuming the customer had carried out proper data backup. The limitation to the damage that would have occurred even if the data backup had been carried out properly does not apply if innovaphone cannot prove that its data backup function (for which the customer is responsible) functioned properly.
- 9.4. **Liability for contents and release from liability:** innovaphone assumes no liability for contents placed on a platform by the customer or a user of the user/customer account who has been authorized by the customer. innovaphone also assumes no guarantee for links provided on the platform to which direct or indirect reference is made. innovaphone is not responsible for the contents of a page accessed by means of such a link.
  - 9.4.1. If the customer uploads content themselves, they are obliged to comply with all applicable statutory provisions at all times, in particular all applicable data protection laws and other regulations and/or official requirements with regard to personal data.
  - 9.4.2. The customer is also responsible for all activities that take place through the use of their customer account. The customer is solely responsible for the data they store on the platform. In particular, they are responsible for managing access for users authorized by the customer (e.g. innovaphone partner authorized by the customer) and the uploading of all data to the platform. It is the customer's responsibility to take the necessary measures to ensure the security of the platform's contents as well as compliance with the laws and to protect the rights of third parties.
  - 9.4.3. **The customer indemnifies innovaphone against all claims of third parties, in particular against any claims for damages and/or reimbursement of costs (including attorney fees for any necessary legal proceedings), which innovaphone may assert against the customer or third parties to whom the customer has granted use of the platform, arising from uploaded user content and/or illegal use.**
- 9.5. Items 9.1. to 9.4. shall apply mutatis mutandis to claims for reimbursement of expenses and other liability claims.

## 10. Data protection and IT security/blocking access to platforms for security reasons

- 10.1. innovaphone is obliged to keep the customer data confidential in connection with the use of the platform and shall only use it for the requisite purposes to the extent necessary for innovaphone to render its services and contract products. In this respect, innovaphone undertakes to comply with the applicable data protection regulations, in particular the GDPR and the German Data Protection Act (BDSG). The customer can read innovaphone's privacy policy on its website at any time <https://www.innovaphone.com/de/services/dsgvo-transparente-information.htm>.
- 10.2. innovaphone ensures that the technical and organizational measures on the platform are provided in accordance with Art. 32 GDPR.
- 10.3. innovaphone can temporarily or permanently suspend access to the platform (blocking) if there are significant security risks. innovaphone shall inform the customer without undue delay about any such suspension. Permanent suspension constitutes cause for terminating the contract to use the platform.

## 11. Copyright and trademark rights, responsibility for third-party content

- 11.1. The trademarks and logos used by innovaphone within the framework of the platform are largely protected by copyright or other property rights. The customer is not permitted to use the trademarks or logos without the consent of innovaphone or the respective copyright owner.
- 11.2. innovaphone software provided on platforms is protected by copyright. The customer may only use software provided by innovaphone within the scope of the respective contract (e.g. for purchasing and/or renting software, providing software for test purposes) and the contractually granted rights of use. Unless expressly permitted in individual cases, the customer is therefore prohibited particularly from reproducing, translating, decompiling, editing, modifying, and/or removing copyright markings on the software.

## 12. General provisions

- 12.1. The customer's general terms and conditions (GTC) do not in principle form part of the contractual agreement between the contracting parties on the use of the platform unless otherwise confirmed in writing by innovaphone.
- 12.2. These Terms of Use are subject to the statutory provisions valid in the Federal Republic of Germany (excluding the UN Convention on Contracts for the International Sale of Goods).
- 12.3. The customer requires prior written consent to transfer the rights and obligations arising from the agreement on the use of platforms with innovaphone to a third party (non-assignability).
- 12.4. Place of performance and exclusive place of jurisdiction is Stuttgart. Furthermore, innovaphone is entitled to bring legal action at the customer's registered office.

### **13. Amendments to the Terms of Use**

- 13.1. innovaphone is entitled to make changes to these Terms of Use at any time with an appropriate notice period, provided that the change is reasonable for the customer in consideration of innovaphone's interests. The customer shall be informed of any changes by letter, e-mail, or fax or in the portal the next time the customer logs in to the platform.
- 13.2. If the change is unfavorable to the customer and is associated with economic disadvantages, the customer has the right to object within an appropriate period of time after being notified by the change. When notifying the customer of a change, innovaphone shall inform the customer of the latter's right to object and of the fact that the change shall take effect if the customer does not exercise their right to object within the period of time set by innovaphone. If the customer objects, the previous Terms of Use remain valid, yet innovaphone shall have the right to extraordinarily terminate the contract within four (4) weeks of the customer objecting. In this case, items 7.4 and 7.5 shall apply mutatis mutandis. innovaphone shall compensate the customer for any economic disadvantages to an appropriate extent.
- 13.3. The customer has no right to object under item 13.2. if innovaphone is compelled to make the change for legal reasons for innovaphone (e.g. in case of changes in the law, court orders or official requirements); any claims for damages by the customer resulting from economically disadvantageous changes to the Terms of Use are excluded in this case.
- 13.4. In the event of changes to the Terms of Use, the customer shall continue to have the right to terminate the respective agreement on the use of the platform in accordance with item 7.
- 13.5. Notwithstanding the above provisions, it is possible to make changes to the Terms of Use announced with a reasonable period of notice with the consent of the customer (e.g. via an electronic declaration of intent at the next login on the platform).

### **14. Language of the Terms of Use; German language prevails**

These Terms of Use were written in German. If the Terms of Use are translated into other languages and provided to the customer, the German version shall prevail if there are any discrepancies between the different language versions.

### **15. Partial Invalidity/Severability Clause**

If individual provisions in these Terms of Use are or become invalid, void, or unenforceable, the validity of the remaining provisions in these Terms of Use shall remain unaffected. The parties agree that in such a case, the provision shall apply that is closest to expressing the intended economic purpose of the invalid, void, or unenforceable provision. The above provision shall also apply accordingly if these Terms of Use should fail to cover a specific aspect.