

# CONDITIONS OF USE FOR CONDAIR REMOTE PORTAL AND MOBILE APP

Condair Group AG, Pfäffikon SZ, Switzerland, as manufacturer and licensor ("the Licensor"), permits you, the user and licensee ("the Licensee"), to use the Condair Mobile App (hereinafter referred to as the "Mobile App") and Condair Remote Portal in accordance with the following General Conditions of Use ("the Conditions of Use")

## Conditions of Use for Condair Remote Portal and Mobile App

BY USING THE MOBILE APP AND CONDAIR REMOTE PORTAL, YOU ACCEPT AND AGREE TO BE BOUND AND COMPLY WITH THESE TERMS AND CONDITIONS AND OUR PRIVACY POLICY, FOUND AT [CONDAIR DATA PROTECTION](#) (THE "PRIVACY POLICY"), INCORPORATED HEREIN BY REFERENCE. IF YOU DO NOT AGREE TO THE CONDITIONS OF USE OR THE PRIVACY POLICY, YOU MUST NOT ACCESS OR USE THE MOBILE APP AND/OR CONDAIR REMOTE PORTAL.

### 1. Subject and Scope of the Conditions of Use

- 1.1 The subject of these Conditions of Use are the terms under which the Licensee is granted:
- a) Services through the Service Website (the "Condair Remote Portal")
  - b) Access to certain software that is downloaded to Licensee's mobile device (Mobile App "Condair PureHum")

The Condair Remote Portal and the Mobile App may be used in connection with the operation of Licensee's Condair air purifiers and humidifiers (the "Equipment"). In order to do so, the Equipment must fulfil the technical requirements for communicating with the Condair Remote Portal and with the Mobile App and it must be equipped with an WLAN or Internet connection. Further information can be found in the relevant product documentation. Installation of the Mobile App on Licensee's end device is free of charge. Use of the Condair Remote Portal and the Mobile App requires registration and consent to the Privacy Policy for the Condair Remote Portal and the Mobile App.

- 1.2 The Condair Remote Portal is used for remote monitoring and diagnostics by the Licensee, the Licensor or other Licensor's group company or of an affiliated distributor of the Licensor (the "Affiliate") using the information collected from the connected Equipment for the purposes of fulfillment of these Condition of Use and/or a service agreement with the Licensee (the "Services"). The Licensee acknowledges that all rights to the Condair Remote Portal including intellectual property rights, and thus the source and object code along with Equipment status and functional parameters data, remain the sole property of the Licensor or its licensors or service providers. These Conditions of Use and the actual use of the Condair Remote Portal do not entitle the Licensee to any rights of use of the Condair Remote Portal other than those granted in Section 4.
- 1.3 The Mobile App is used for remote Equipment control, monitoring and diagnostics via wireless local area network (WLAN) of the Licensee. The Mobile App consists of the Mobile App's object code, as provided by the Licensor (for example through a platform such as Apple Mobile App Store or Google Play Store) for download and installation on the end device in use. The Licensee is not entitled to make or apply changes to the Mobile App, whether in person or through third parties. All rights to the Mobile App, including all intellectual property rights, and thus the source code and the object code remain the sole property of the Licensor. These Conditions of Use and the actual use of the Mobile App do not entitle the Licensee to any rights of use of the Mobile App other than those granted in Section 4.
- 1.4 These Conditions of Use apply – unless explicitly provided otherwise – both to private consumers and to traders. A consumer means any natural person who, in contracts, is acting for purposes which are outside his trade, business, craft or profession. A trader means any natural person or any legal person, who, in contracts, is acting, for purposes relating to his trade, business, craft or profession.

## **2. Updates**

- 2.1 For the Condair Remote Portal the Licensor will provide updates and will install them automatically.
- 2.2 The Licensor will provide updates for the Mobile App to be installed by Licensee in order to ensure the reliability of the Mobile App or to accommodate a change to the function of the Mobile App and in order to adapt the Mobile App to technical enhancements. In doing so, the Licensor may at its discretion adjust the functions of the Mobile App without special notice. The Licensor will give the Licensee prior notice of such adjustments through the existing functions on the platforms (such as Apple Mobile App Store or Google Play Store). The Licensor recommends that updates are always promptly installed.
- 2.3 The Licensee is not entitled to the provision of Condair Remote Portal updates, Mobile App updates and Equipment firmware updates for the purpose of extending the functions.
- 2.4 The Licensee accepts that the Licensor will only service the most recent version of the Mobile App.

## **3. Intellectual Property**

- 3.1 The Licensee acknowledges and agrees that the Condair Remote Portal and the Mobile App is provided under licence, and not sold, to the Licensee. The Licensee does not acquire any ownership in the Condair Remote Portal and the Mobile App's software or related documentation or any other rights thereto, other than the right to use the same in accordance with the licence granted and subject to all terms, conditions, and restrictions under these Conditions of Use. The Licensor and/or its licensors and/or its service providers reserves and shall retain its or their entire right, title, and interest in and to the Condair Remote Portal and the Mobile App's software and all intellectual property rights arising out of and/or relating to the software, except as expressly granted to the Licensee in these Conditions of Use.
- 3.2 The Licensee shall use reasonable efforts to safeguard all software (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. The Licensee shall promptly notify the Licensor, if the Licensee becomes aware of any infringement of the Licensor's intellectual property rights, in particular in, but not limited to, the Condair Remote Portal and/or the Mobile App and shall fully cooperate with the Licensor in any legal action taken by the Licensor to enforce its intellectual property rights.

## **4. Grant of License, Rights of Access and Use, Availability**

- 4.1 On registration, the Licensee grants to Licensor, non-exclusive rights to access and use (incl. transfer) of the functional parameters of the connected Equipment collected by the Condair Remote Portal and the Mobile App.
- 4.2 On registration, the Licensor grants to Licensee, non-exclusive, non-assignable and non-sublicensable, rights of use of the Condair Remote Portal and/or the Mobile App, for Mobile App free of charge (the "License Agreement"). The rights of use of Condair Remote Portal and/or the Mobile App according to these Conditions of Use are granted for use in connection with the Equipment on an end device owned or used by the Licensee. No rights to the Condair Remote Portal and the Mobile App such as rights of reproduction etc. other than use of the Condair Remote Portal and installation and use of the Mobile App on the end device are granted.
- 4.3 The grant of rights of use to Licensee is subject to:
  - a) the Licensee acknowledging Licensor's and/or its licensors' and/or its service providers' copyright and in particular subject to his commitment not to change or remove any copyright labels.
  - b) Licensee's commitment not to change and/or decompile the Mobile App and/or the Condair Remote Portal.
- 4.4 If the Licensor permits the transfer of rights of use by the Licensee to a third party in a separate agreement, the Licensee shall ensure that the third party also accepts these Conditions of Use and assumes all pertinent rights and duties.
- 4.5 Reliability of Services. Licensee acknowledges that the use of the Condair Remote Portal's and the Mobile App's features, including remote access and mobile notifications, are not error-free or 100% reliable or 100% available. Proper functioning of the Services relies and is dependent on, among other things, the transmission of data through Licensee's wi-fi network, enabled wireless device and broadband internet access, or optional Cellular Backup service, for which neither Licensor nor any wireless or data carrier is responsible, and may be interrupted, delayed, refused, or otherwise limited for a variety of reasons, including insufficient coverage, power outages, termination of service and access, environmental conditions, interference, non-payment of applicable fees and charges, unavailability of radio frequency channels, system capacity, upgrades, repairs or relocations, and priority access by emergency responders in the event of a disaster or emergency (collectively "Service Interruptions"). Licensee understands that Service Interruptions may result in the Services being unreliable or unavailable for the duration of the Service Interruption. Licensor cannot and does not guarantee that Licensee will receive notifications within any given time, or at all. Licensee agrees that he will not rely on the Condair Remote Portal or the Mobile App for any life safety or critical purposes. The notifications regarding the Equipment status and faults are provided for informational purposes only and are not a substitute for identifying onsite specific risks and emergencies. Remotely, Licensor or its relevant Affiliate cannot provide specific information relating to a situation at Licensee's site/facility/home. Licensee acknowledges that it is his responsibility to educate himself on how to respond to an emergency and to respond according to the specifics of his situation.
- 4.6 Service Interruptions, no refund or rebate. The Services may be suspended temporarily, without notice, for security reasons, systems failure, maintenance and repair, or other circumstances. Licensee agrees that he will not be entitled to any refund, rebate or any compensation for such suspensions. Licensor does not offer any specific uptime guarantee for the Services.
- 4.7 System Requirements. The Services will not be accessible without: (i) a working network in Licensee's facility/site/home that communicates reliably with the Equipment; (ii) an Account; (iii) an enabled and supported wireless device, such as a phone or tablet required for the Mobile App; (iv) always-on Internet access in Licensee's facility/site/home with bandwidth sufficient to support the Equipment used by Licensee; and (v) other system elements that may be specified by Licensor or its Affiliate. It is Licensee's responsibility to ensure that he has all required system elements and that they are compatible and properly

configured. Licensee acknowledges that the Services may not work as described when the requirements and compatibility have not been met. If Licensee modifies substitutes, moves, or otherwise changes any of the required system elements, it is his sole duty and responsibility to be sure they are compatible and properly configured to work with the Equipment, the Mobile App and Condair Remote Portal.

- 4.8 Licensors or its Affiliate provides Licensee with information regarding the Equipment in Licensee's facility/site/home and the information is provided "as is" and "as available". Licensors cannot guarantee that it is correct or up to date. In critical cases, accessing Equipment information through the Services provided is not a substitute for direct access to the information in the Equipment.

## **5. Use Restrictions**

- 5.1 The Licensee shall not, directly or indirectly:
- a) use (including making any copies of) the Mobile App or the Condair Remote Portal beyond the scope of the licence provided under these Conditions of Use.
  - b) modify, correct, translate, adapt, enhance, further develop, or otherwise create derivative works, enhancements or improvements, whether or not patentable, of the Mobile App or and/or the Condair Remote Portal or any part of both;
  - c) combine the Mobile App and/or the Condair Remote Portal or any part of both with, or incorporate the Mobile App and/or the Condair Remote Portal or any part of both in, any other programs;
  - d) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Mobile App and/or the Condair Remote Portal or any part of both;
  - e) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks or any copyright, patent, or other intellectual property or proprietary rights or other symbols, notices, marks, or serial numbers on or relating to any copy provided on or with the Mobile App and/or the Condair Remote Portal, including any copy of both;
  - f) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Mobile App and/or the Condair Remote Portal, or any features or functionality of the Mobile App and/or the Condair Remote Portal, to any third party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service (SaaS), cloud, or other technology or service;
  - g) use the Mobile App and/or the Condair Remote Portal in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property rights or other right of any person, or in violation of any applicable law, regulation, or rule; or
  - h) use the Mobile App and/or the Condair Remote Portal for purposes of benchmarking or competitive analysis of the Mobile App, developing, using, or providing of a software product or service that competes with the Mobile App or any other purpose that is to the Licensors's commercial disadvantage.
- 5.2 Except for the limited rights and licences expressly granted under these Conditions of Use, nothing herein grants, by implication, waiver, estoppel or otherwise, to Licensee or any third party any intellectual property rights or license, nor other right, title, or interest in or to the Mobile App and/or the Condair Remote Portal, and any of Licensors's confidential information.

## **6. Supported End Devices and Supported Hardware and Software**

- 6.1 The Licensors provides the Licensee with the Mobile App for defined use on a supported end device. The supported end devices and the minimum requirements for the end devices are listed in the current product documentation or on the Mobile App platforms (Apple Mobile App Store or Google Play Store).
- 6.2 When using the Mobile App and/or the Condair Remote Portal, the Licensors's system and software requirements (regarding the Mobile App see details on the Apple Mobile App Store or Google Play Store platforms) must be complied with. Software programs and third-party services intended for interaction with the Mobile App and/or the Condair Remote Portal must only be used after approval by the Licensors. Compliance with the system requirements is the sole responsibility of the Licensee. Questions regarding interoperability must be referred to the Licensors.

## **7. Registration**

- 7.1 Proper use of the Condair Remote Portal requires the Licensee to register and to set up a user account. In so doing, correct and complete information regarding identity, e-mail address and, in some cases, place of installation must be entered and subsequently updated in case of changes. In addition, Licensees must inform the Licensors when they are no longer entitled to use the Equipment activated in the Mobile App and/or the Condair Remote Portal (e.g., equipment is sold to another owner). Infringement of this obligation will entitle the Licensors to exclude the Licensee from using the Mobile App and/or the Condair Remote Portal.
- 7.2 Licensors may block a user account if there is reason to believe that the account is being used in an unauthorised fashion and/or attempts are being made to access the user account by means of unauthorised access to the Mobile App, the Condair Remote Portal or the Licensors's underlying systems (e.g., hacking). In such cases the Licensors will inform the Licensee in question immediately via the e-mail address stored in the user account and provide the Licensee with renewed access by setting up a new user account, unless the facts suggest that the Licensee is responsible for attempts at unauthorised access to the Licensors's systems.
- 7.3 In exceptional cases, the Licensors may terminate the contract with the Licensee without notice and delete the user account, if the Licensors's back end is continuously unable (for more than 72 hours) for reasons outside its responsibility to make a connection with the Licensee's unit and the Licensors has informed the Licensee of this by e-mail to the address on record or by telephone, but the situation has not been remedied within a week of so doing.

## **8. Warranty**

- 8.1 Configuration of the Mobile App to match the Equipment is the sole responsibility of the Licensee and is performed in accordance with the current product documentation or the Mobile App installation wizard. The Licensor accepts no liability for the correct configuration of the Mobile App or for problems arising from its incorrect configuration.
- 8.2 Unless installed by an Affiliate of Licensor, the configuration and setup of the Equipment is the sole responsibility of the Licensee and is performed in accordance with the current product documentation, the Condair Remote Portal only monitors the equipment operation and the Licensor accepts no liability for correct configuration of the Equipment or for problems arising from Equipment's incorrect configuration. Using the information from the Condair Remote Portal, the Licensor may notify the Licensee of the potential problems arising from incorrect configuration of the Equipment.
- 8.3 The Licensee is aware that the Equipment can be connected to the Condair Remote Portal via an internet connection. The Licensee shall ensure that only authorised persons can establish such a connection.
- 8.4 The functions made available by the Mobile App and/or the Condair Remote Portal are deemed to be free of material defects if they fulfil the functions stated in the currently valid product documentation or otherwise separately agreed. The Licensor does not guarantee that the Mobile App's and/or the Condair Remote Portal's functions will match the Licensee's requirements.
- 8.5 The Licensor makes no warranty that defects will be corrected or that the Services will be available on an uninterrupted, timely, secure or error free basis.
- 8.6 The deviation from the functions stated in the currently valid Mobile App and/or Condair Remote Portal documentation or otherwise separately agreed is only considered as a defect, if it is reproducible. The Licensee must describe this in sufficient detail. If the Mobile App or the Condair Remote Portal is defective, Licensee's sole remedy shall be the remediation of the defect by Licensor within an appropriate time. If subsequent performance fails, the Licensee shall be entitled to withdraw from the contract. This does not apply in the case of minor defects. There is no right to a price reduction of the Equipment or the Condair Remote Portal. If there is a service or warranty agreement in place between Licensor or its Affiliates and Licensee for the Mobile App and/or the Condair Remote Portal at the time the defect happened, the terms of the warranty or service agreement concerning defects in the Mobile App and/or the Condair Remote Portal shall prevail over this Section 8 of the Conditions of Use in the event of any inconsistency or conflict between the warranty or service agreement and the terms of this Conditions of Use.
- 8.7 The Licensee shall provide the Licensor with reasonable support in identifying the defects, for instance by paper printouts, screenshots or descriptions of faults, etc.

## **9. Limitation of Liability**

- 9.1 IN NO EVENT WILL LICENSOR OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR: (a) ANY: (i) COSTS ARISING FROM THE USE OF THE MOBILE APP, INCLUDING COSTS OF DATA TRANSFER VIA MOBILE COMMUNICATIONS AND DATA ROAMING (ii) USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE MOBILE APP; (iii) LOST REVENUES OR PROFITS; (iv) DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; (v) LOSS OR CORRUPTION OF DATA; (vi) LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; (vii) FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; (viii) FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; (ix) SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; (x) BREACHES IN SYSTEM SECURITY; OR (b) ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, IN EACH CASE WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2 IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF LICENSOR AND ITS AFFILIATES, INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT POSSIBLY PAID TO THE LICENSEE FOR THE EQUIPMENT WHICH ARE THE SUBJECT OF THE CLAIM.
- 9.3 THE LIMITATIONS SET FORTH IN THIS SECTION 9 WILL NOT APPLY TO DAMAGES OR LIABILITIES ARISING FROM THE GROSSLY NEGLIGENT ACTS OR OMISSIONS, OR WILFUL MISCONDUCT OF THE LICENSOR OR IN CASE OF MANDATORY LAW.
- 9.4 IN NO EVENT WILL LICENSOR BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR DAMAGES OR LIABILITIES ARISING FROM THE ACTS OR OMISSIONS OF THIRD PARTIES, LICENSOR'S AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS.

## **10. Term and Termination**

- 10.1 The Licence Agreement commences upon registration by Licensee, recommended to be made during the warranty period or during the period of a separate service agreement for the Equipment.
- 10.2 On expiry of the warranty period arising from the Licensee's contract to purchase the Equipment or for retrofitting it with an Internet interface as well as upon expiry of a separate service agreement for the Equipment with an Affiliate of Licensor, the right to use and access the Mobile App and/or the Condair Remote Portal shall automatically terminate as well.
- 10.3 Either party may terminate this Licence Agreement without cause upon six (6) months' written notice to the other party. All notices of termination shall be given in writing and will be effective upon receipt.
- 10.4 In addition, the Licensor is entitled to terminate the Licence Agreement with immediate effect in case of a material breach of

these Conditions of Use or of the copyright in the Mobile App or the Condair Remote Portal by Licensee and/or in case the Licensor is no more authorised to provide the Mobile App, the Condair Remote Portal and/or the Services.

- 10.5 Upon termination of this Licence Agreement, all rights and obligations of the parties under this Licence Agreement will cease, except that any obligations that by their nature are intended to survive termination (including, but not limited to, confidentiality and liability provisions).

## 11. Final Provisions

- 11.1 Licensor shall not be responsible or liable to Licensee, or deemed to be in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labour disputes, civil disturbances, riot, rebellion, invasion, hostilities, war, terrorist attack, embargo, natural disaster, epidemics, pandemics, including the 2019 novel coronavirus disease (COVID-19) pandemic, acts of God, flood, tsunami, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, or Licensee's Equipment, as well as loss and destruction of property, or any other circumstances or causes beyond Licensor's reasonable control.
- 11.2 If any term or provision of the Conditions of Use is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of the Conditions of Use or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 11.3 The Conditions of Use may be modified or expanded at the Licensor's discretion to an extent which is reasonable for the Licensee. In this case, registered Licensees will be informed at least six weeks before the change comes into force in electronic form (e.g., via the e-mail address provided by the Licensee via the Mobile App or the Condair Remote Portal itself or by the product's information service). The modified or expanded Conditions of Use will apply unless objected to by the Licensee prior to the effective date, and after the Licensor has expressly drawn the Licensee's attention to the consequences of his failure to object. If the Licensee raises an objection, the Licensor may terminate the contract with the Licensee by giving one month's notice from the submission of the objection.
- Licensor agrees to periodically review the Conditions of Use in order to be aware of any such modifications and Licensee's continued use of the Mobile App shall be deemed to be acceptance thereof.
- 11.4 The Conditions of Use and Licensor's Privacy Policy constitute the sole and entire agreement between the Licensee and the Licensor regarding the Mobile App and the Condair Remote Portal and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter, except for a written service agreement, if applicable.

## 12. Applicable law, Jurisdiction

- 12.1 These Conditions of Use are subject to **Swiss law** without giving effect to any conflict of law principles and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 12.2 **Exclusive place of jurisdiction is Pfäffikon SZ/Switzerland.** Licensor, however, may also bring action in any other competent court.
- 12.3 Consumers may also bring action in the courts of their domicile or place of residence and may only be sued at their domicile or place of residence.

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