

CONDITIONS OF USE FOR CONDAIR DEVICES, CONDAIR PORTAL AND CONDAIR APP

Condair Group AG, Pfäffikon SZ, Switzerland, as manufacturer and licensor (collectively, the “**Licensor**”), permits you, the user and licensee (the “**Licensee**” or “**you**”), to use the Condair Mobile App (hereinafter referred to as the “**Mobile App**”) and Licensor’s Service Backoffice Site and all related sites and subdomains which link to these Conditions of Use (collectively referred to herein as the “**Condair Portal**”) in accordance with the following General Conditions of Use (“**Conditions of Use**”).

Conditions of Use for Condair Portal and Mobile App

PLEASE READ THESE CONDITIONS OF USE CAREFULLY. BY USING THE MOBILE APP AND CONDAIR PORTAL, YOU ACCEPT AND AGREE TO BE BOUND AND COMPLY WITH THESE CONDITIONS OF USE AND OUR PRIVACY POLICY, FOUND AT [CONDAIR DATA PROTECTION](#) (THE “**PRIVACY POLICY**”), INCORPORATED HEREIN BY REFERENCE. THESE CONDITIONS OF USE CONSTITUTE A BINDING LEGAL AGREEMENT BETWEEN YOU AND THE LICENSOR. BY USING THE MOBILE APP AND CONDAIR PORTAL, YOU UNCONDITIONALLY AGREE TO ALL EXCLUSIONS AND LIMITATIONS OF LIABILITY HEREIN, AND WARRANT THAT YOU HAVE FULL AUTHORITY AND CAPACITY, LEGAL AND OTHERWISE, TO USE THE MOBILE APP AND CONDAIR PORTAL. IF YOU DO NOT AGREE TO THESE CONDITIONS OF USE OR THE PRIVACY POLICY, YOU MUST NOT ACCESS OR USE THE MOBILE APP AND/OR CONDAIR PORTAL.

1. Subject and Scope of the Conditions of Use

1.1 These Conditions of Use apply to:

- a) Services provided through the Condair Portal
- b) Access to the Mobile App
- c) Connecting your Equipment (as defined below) to the Condair Cloud to enable remote functionalities

The Condair Portal and the Mobile App may be used in connection with the operation of Licensee’s Condair air humidifiers (the “**Equipment**”). In order to use the Condair Portal and Mobile App, the Equipment must fulfil the technical requirements for communicating with the Condair Portal and with the Mobile App and it must be equipped with an 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, provided that Licensee must obtain at Licensee’s own expense the means, device, and Internet connection to access the Mobile App. Use of the Condair Portal and the Mobile App requires registration and consent to the Privacy Policy for the Condair Portal and the Mobile App.

1.2 The Condair Portal is used for remote monitoring of the Equipment 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 a service agreement with the Licensee (the “**Services**”). The Licensee acknowledges that all rights to the Condair 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. These Conditions of Use and the actual use of the Condair Portal do not entitle the Licensee to any rights of use of the Condair Portal other than those granted in Section 4.

1.3 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, subject to Appendix 1 and 2, respectively) 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 The Licensor may, but is not required to, update the Condair Portal from time to time. Updates will be installed automatically.
- 2.2 The Licensor may, but is not required to, update the Mobile App from time to time 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. Any such updates will be installed by the Licensee. In providing such updates, the Licensor may at its discretion adjust the functions of the Mobile App without special notice. The Licensor may give the Licensee prior notice of material adjustments through the platforms (such as Apple Mobile App Store or Google Play Store). The Licensor recommends that updates are always promptly installed. These Conditions of Use will continue to apply to any such updates made to the Mobile App unless a new Conditions of Use is provided.
- 2.3 The Licensor may, but is not required to, provide updates for the Equipment firmware. Equipment firmware updates for private end users are downloaded and installed automatically via internet connection. For Equipment which is integrated and used in industrial processes, Equipment firmware updates are installed only with Licensee's prior consent through the affected Equipment, provided that Licensor reserves the right to install functional and safety-related updates to the Equipment firmware without the consent of the Licensee.
- 2.4 The Licensor may use the Mobile App (push notification), or other communication means to notify Licensee of firmware updates. The Licensor is not responsible for, and disclaims all liability for damage or loss sustained by the Licensee which could have been prevented by a Mobile App or firmware update provided by the Licensor.
- 2.5 The Licensee is not entitled to the provision of any Condair Portal updates, Mobile App updates and Equipment firmware updates for the purpose of extending the functions.
- 2.6 The Licensee acknowledges and agrees that the Licensor will only provide support for the most recent version of the Mobile App and Condair Portal. The Licensor has no obligation to support any prior versions of the Mobile App or Condair Portal.

3. Intellectual Property

- 3.1 The Licensee acknowledges and agrees that the Condair Portal and the Mobile App are the property of the Licensor, and that all content (except content created by users) on the Condair Portal or Mobile App, including, without limitation, all text, graphics, audio, video, music, icons, images, hyperlinks, advertising copy, displays, products, HTML code and scripts (collectively, the "**Portal/App Content**"), and the collection, arrangement and assembly of the Portal/App Content, is the property of the Licensor and its sponsors, distributors, or licensors, and is protected by copyright law and other U.S., national and international laws and treaties. The Licensee may not modify, publish, transmit, participate in the transfer or sale of, reproduce, create derivative works from, distribute, perform, display, incorporate into a website or in any way exploit the Portal/App Content, or any portion thereof, without the express written permission of the Licensor. The Portal/App Content is provided under licence, and not sold, to the Licensee. The Licensee does not acquire any ownership in the Condair Portal, Mobile App, or Portal/App Content, 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 reserves and shall retain its entire right, title, and interest in and to the Condair Portal and the Mobile App's software and all intellectual property rights arising out of 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 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.
- 3.3 All rights regarding any trademarks, trade names, service marks, logos and/or trade dress (collectively, "**Marks**") contained in, or used in connection with, the Condair Portal and/or the Mobile App are expressly reserved by the Licensor. The Marks, and all associated logos or images, are registered and/or common law trademarks, and are protected by U.S., national and international laws and treaties. No license with respect to the use of the Marks is granted to the Licensee under these Conditions of Use or by virtue of Licensee's use of the Condair Portal and/or the Mobile App. The Marks may not be copied, imitated or used, in whole or in part, without the prior written consent of the Licensor or the applicable rights holder.
- 3.4 The Licensee understands and agrees that the Licensor does not control and is not responsible for any content made available on the Condair Portal and/or the Mobile App by other users. The Licensee's use of, or reliance on, any information contained in such third-party content is at Licensee's sole risk. Under no circumstances will the Licensor be liable for any such third-party content or for any loss or damage resulting from the Licensee's use of, or reliance on, such third-party content.

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

- 4.1 On registration, the Licensee grants to Licensor, free of charge, the non-exclusive right to access and use the functional parameters of the connected Equipment collected by the Condair Portal and the Mobile App.
- 4.2 On registration, the Licensor grants to Licensee, the non-exclusive, non-assignable and non-sublicensable right to access and use the Condair Portal and/or the Mobile App (the "**License Agreement**"). The right to access and use the Condair Portal and/or the Mobile App according to these Conditions of Use is granted solely for use in connection with the Equipment on an end device owned or used by the Licensee. No rights to the Condair Portal and the Mobile App such as rights of reproduction etc. other than access to and use of the Condair Portal and access to, installation and use of the Mobile App on the end device are granted. All rights not expressly granted are reserved by the Licensor. This limited license may be revoked at any time by the Licensor.
- 4.3 The grant of rights to Licensee under Section 4.2 is subject to Licensee's compliance with Section 5.1 hereof.
- 4.4 If the Licensor permits the transfer of rights of use by the Licensee to a third party, the Licensee shall ensure that the third party also accepts these Conditions of Use and assumes all pertinent rights and duties.

- 4.5 Licensee acknowledges that the use of the Condair 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 Condair Portal and Mobile App 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 Condair Portal and Mobile App 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 Licensee will not rely on the Condair 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 Use of and access to the Condair Portal and Mobile App 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 or rebate for such suspensions. Licensor does not offer any specific uptime guarantee for the Condair Portal and Mobile App.
- 4.7 The Condair Portal and Mobile App will not be accessible without: (i) a working network in Licensee's facility/site/home that communicates reliably with the Equipment; (ii) a user 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 Condair Portal and Mobile App 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 Licensee's sole duty and responsibility to be sure they are compatible and properly configured to work with the Equipment, the Mobile App and Condair Portal.
- 4.8 Licensor or its Affiliate may provide Licensee with information regarding the Equipment. Such information is provided "as is" and "as available". Licensor cannot guarantee that such information is correct or up to date. In critical cases, accessing Equipment information through the Condair Portal and Mobile App 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:
- use (including making any copies of) the Mobile App or the Condair Portal beyond the scope of the licence provided under these Conditions of Use;
 - 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 Portal or any part of both;
 - combine the Mobile App and/or the Condair Portal or any part of both with, or incorporate the Mobile App and/or the Condair Portal or any part of both in, any other programs;
 - 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 Portal or any part of both;
 - 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 Portal, including any copy of both;
 - rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Mobile App and/or the Condair Portal, or any features or functionality of the Mobile App and/or the Condair 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;
 - use the Mobile App and/or the Condair 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
 - use the Mobile App and/or the Condair 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 Licensor'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 Portal, and any of Licensor's confidential information.

6. Supported End Devices and Supported Hardware and Software

- 6.1 The Licensor 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 Portal, the Licensor'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 Portal must only be used after approval by the Licensor. Compliance with the system requirements is the sole responsibility of the Licensee. Questions regarding interoperability must be referred to the Licensor.

7. Registration

- 7.1 Proper use of the Mobile App and/or the Condair 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. By providing such information, Licensee authorizes the Licensor and/or its agents to record, process, and store such information for the purposes described herein. In addition, the Licensee must inform the Licensor when the Licensee is no longer entitled to use the Equipment activated in the Mobile App and/or the Condair Portal (e.g., if the building in which the unit is operated is sold to another owner). Infringement of this obligation will entitle the Licensor to terminate the Licensee's access to the Mobile App and/or the Condair Portal.
- 7.2 Licensor 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 Portal or the Licensor's underlying systems (e.g., hacking). In such cases the Licensor will inform the Licensee in question 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 Licensor's systems.
- 7.3 In exceptional cases, the Licensor may terminate the contract with the Licensee without notice and delete the user account, if the Licensor'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 Licensor 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 must be 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 with respect to the Equipment or for problems arising from its incorrect configuration by Licensee.
- 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 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 Portal, the Licensor may notify the Licensee of the potential problems arising from incorrect configuration of the Equipment.
- 8.3 The Licensor does not guarantee that the Mobile App's and/or the Condair Portal's functions will match the Licensee's requirements.
- 8.4 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.
- 8.5 The deviation from the functions stated in the currently valid Mobile App and/or Condair Portal documentation or otherwise separately agreed is only considered as a defect if it is reproducible. The Licensee must describe such defect in sufficient detail. If the Mobile App or the Condair 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 these Conditions of Use. This does not apply in the case of minor defects. There is no right to a price reduction of the Equipment or the Condair 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 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 Portal shall prevail over this Section 8 of the Condition of Use in the event of any inconsistency or conflict between the warranty or service agreement and the terms of this Conditions of Use.
- 8.6 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 EXCEPT AS OTHERWISE SET FORTH HEREIN, LICENSOR DOES NOT MAKE ANY WARRANTIES CONCERNING THE MOBILE APP, CONDAIR PORTAL, OR SERVICES OR REPRESENT THAT THE MOBILE APP, CONDAIR PORTAL, OR SERVICES ARE ERROR-FREE OR CAPABLE OF OPERATING ON AN UNINTERRUPTED BASIS. THE MOBILE APP AND CONDAIR PORTAL ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT WARRANTY OF ANY KIND. TO THE FULLEST EXTENT ALLOWABLE UNDER APPLICABLE LAW, ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES. IN SUCH JURISDICTIONS, THE FOREGOING DISCLAIMER MAY NOT APPLY TO YOU.

- 9.2 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; OR (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.
- 9.3 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 BY THE LICENSEE TO THE LICENSOR FOR THE EQUIPMENT WHICH ARE THE SUBJECT OF THE CLAIM.
- 9.4 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 ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.
- 9.5 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 SERVICE PROVIDERS.

10. Term and Termination

- 10.1 Licensee's license to use the Mobile App and/or Condair Portal commences upon registration by Licensee. Licensee may use the Mobile App and/or Condair Portal throughout the warranty period or during a period specified in 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 and Maintenance Agreement for the Equipment with an Affiliate of Licensor, the right to use and access the Mobile App and/or the Condair Portal shall automatically terminate as well.
- 10.3 Either party may terminate these Conditions of Use 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 license granted to the Licensee 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 Portal by Licensee.
- 10.5 Upon termination of the Licensee's license, all rights and obligations of the parties under these Conditions of Use 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 amended at the Licensor's sole discretion. In this case, registered Licensees may be informed of such change in electronic form (e.g., via the e-mail address provided by the Licensee via the Mobile App or the Condair Portal itself or by the product's information service). 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.
Licensee 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, including Appendix 1 and Appendix 2 attached hereto and incorporated herein, and Licensor's Privacy Policy constitute the sole and entire agreement between the Licensee and the Licensor regarding the Mobile App and the Condair Portal and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.
- 11.5 The Mobile App and the Condair Portal may include links to third party websites not operated by the Licensor. These links are provided for Licensee's convenience and in no way signify any endorsement of any such websites or the content thereof. ACCESS TO ANY SUCH LINKED SITE IS AT THE LICENSEE'S OWN RISK, AND THE LICENSOR WILL NOT HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO SUCH SITES AND/OR THEIR CONTENT, OR FOR ANY DAMAGES OR

LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH ANY USE OF OR RELIANCE ON ANY SUCH CONTENT, OR ANY GOODS OR SERVICES, AVAILABLE ON OR THROUGH ANY SUCH SITE.

12. Applicable law, Arbitration

12.1 For customers subject to U.S. jurisdiction only:

12.1.1 THESE CONDITIONS OF USE LIMIT THE REMEDIES AVAILABLE IN THE EVENT OF A DISPUTE AND REQUIRE THAT ALL DISPUTES BE RESOLVED THROUGH BINDING ARBITRATION. THIS MEANS THAT YOU AGREE TO RESOLVE DISPUTES INDIVIDUALLY ACCORDING TO THE ARBITRATION PROVISIONS MENTIONED HEREIN RATHER THAN IN A COURT OF LAW OR THROUGH A CLASS ACTION LAWSUIT. IN ARBITRATION, THERE IS NO JUDGE OR JURY AND THERE IS LESS DISCOVERY AND APPELLATE REVIEW THAN IN COURT.

12.1.2 Any dispute, claim, or controversy arising out of or relating to these Conditions of Use will be resolved by binding mediation in Columbus, Ohio.

12.1.3 If binding mediation is unsuccessful after a period of thirty (30) days, the dispute will be escalated to mandatory binding arbitration administered by the American Arbitration Association (AAA) in accordance with its Commercial Arbitration Rules, and the judgment of its arbitrator(s) may be entered by any court of competent jurisdiction

12.1.4 Licensee agrees that the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and THE PARTIES FURTHER AGREE THAT EACH IS WAIVING ITS CONSTITUTIONAL RIGHT TO A TRIAL BY JURY AS WELL AS THE RIGHT TO BRING OR PARTICIPATE IN A CLASS ACTION OR MULTI-PARTY ACTION. ALL CLAIMS AND DISPUTES RELATED TO LICENSEE'S USE OF THE MOBILE APP OR CONDAIR PORTAL OR ARISING UNDER THESE CONDITIONS OF USE MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. ANY DISPUTE, CLAIM, OR CAUSE OF ACTION THAT LICENSEE MAY HAVE ARISING OUT OF OR RELATING TO THE MOBILE APP, CONDAIR PORTAL, OR THESE CONDITIONS OF USE MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION WILL BE PERMANENTLY BARRED.

12.1.5 If any portion of this Section 12.1. is held invalid, it is agreed that the remaining provisions shall continue in full force and effect. Likewise, Licensee agrees that if any legal action is brought, it must be brought in Columbus, Ohio.

12.1.6 Notwithstanding the foregoing, Licensee agrees that the Licensor may seek injunctive or other appropriate relief in the appropriate state or federal court should Licensee violate or threaten to violate the intellectual property rights of the Licensor or our partners, suppliers, or licensors, and the Licensee consents to exclusive jurisdiction and venue in such courts.

12.2 For customers subject to the jurisdictions of the rest of the world:

12.2.1 These Conditions of Use shall be governed by the substantive laws of Switzerland (excluding the UN International Sales of Goods Treaty), without giving effect to any conflict-of-laws provisions that would cause the application of the laws of any jurisdiction other than Switzerland.

12.2.2 **Exclusive place of jurisdiction is Pfäffikon SZ/Switzerland.** Licensor, however, may also bring action in any other competent court. If provided by mandatory applicable law, 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.

12.2.3 If any portion of this Section 12.2. is held invalid, it is agreed that the remaining provisions shall continue in full force and effect. Likewise, Licensee agrees that if any legal action is brought, it must be brought in Zurich, Switzerland.

12.2.4 Notwithstanding the foregoing, Licensee agrees that the Licensor may seek injunctive or other appropriate relief in the appropriate court should Licensee violate or threaten to violate the intellectual property rights of the Licensor or its partners, suppliers, or licensors, and the Licensee consents to exclusive jurisdiction and venue in such courts.

13. Questions

13.1 For any questions concerning these Conditions of Use, please contact us at:

For U.S. customers:

Condair Inc.
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Racine, WI 53403
United States of America

Phone +1 866.667.8321
Mail: na.info@condair.com

For the rest of the world

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Last Updated: November 4, 2024

APPENDIX 1 – Conditions of Use

Supplemental Terms and Conditions for Use of the Mobile App with Apple Devices and Apple Products

These terms and conditions supplement and are in addition to the terms of the Conditions of Use for users who install the Mobile App on an Apple Device:

1. **Acknowledgement:** Licensor and you acknowledge that the Conditions of Use is concluded between Licensor and you only, and not with Apple, and Licensor, not Apple, is (solely to the extent provided in the Conditions of Use) solely responsible for the Mobile App and the content thereof. No Licensor-provided usage rules in the Conditions of Use shall apply to the extent they are in conflict with the Apple Media Services Terms and Conditions or the Volume Content Terms as of the effective date (which Licensor acknowledges that it has had the opportunity to review and which you acknowledge you have had the opportunity to review).
2. **Scope of License:** The license granted to you for the Mobile App is a non-transferable license to use the Mobile App on any Apple-branded products that you own or control, and as permitted by the Usage Rules set forth in the Apple Media Services Terms and Conditions, provided that the Mobile App may be accessed, acquired, and used by other accounts associated with you via Family Sharing, volume purchasing, or legacy contracts.
3. **Maintenance and Support:** Licensor is solely responsible for providing any maintenance and support services with respect to the Mobile App, as may be specified in the Conditions of Use, or as required under applicable law. Licensor and you acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Mobile App.
4. **Warranty:** Licensor is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed in the Conditions of Use. In the event of any failure of the Mobile App to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price (if any) for the Mobile App to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Mobile App, and, as between Apple and Licensor, any other claims, losses, liabilities, damages, costs, or expenses attributable to any failure to conform to any warranty will be Licensor's sole responsibility, solely to the extent expressly provided in the Conditions of Use.
5. **Product Claims:** Licensor and you acknowledge that Licensor, not Apple, is (solely to the extent applicable in the Conditions of Use) responsible for addressing any of your claims or any third party's claims relating to the Mobile App or your possession and/or use of the Mobile App, including, but not limited to: (i) product liability claims; (ii) any claim that the Mobile App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy, or similar legislation (including in connection with the Mobile App's use (if any) of the HealthKit and HomeKit frameworks). The Conditions of Use does not limit Licensor's liability to you beyond what is permitted by applicable law.
6. **Intellectual Property Rights:** Licensor and you acknowledge that, in the event of any third party claim that the Mobile App or your possession and use of the Mobile App infringes that third party's intellectual property rights, Licensor, not Apple, will be solely responsible for the investigation, defense, settlement, and discharge of any such intellectual property infringement claim (solely to the extent expressly provided in the Conditions of Use).
7. **Legal Compliance:** You represent and warrant that (i) you are not located in a region that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" region; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
8. **Third-Party Terms of Agreement:** You must comply with any applicable third-party terms of agreement when using the Application, including any wireless data service agreement.
9. **Third Party Beneficiary:** Licensor and you acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Conditions of Use, and that, upon your acceptance of the terms and conditions of the Conditions of Use, Apple will have the right (and will be deemed to have accepted the right) to enforce the Conditions of Use against you as a third-party beneficiary thereof.

APPENDIX 2 – Conditions of Use

**Supplemental Terms and Conditions for Use of the Mobile App
with Google Devices and Google Products**

These terms and conditions supplement and are in addition to the terms of the Conditions of Use for users who install the Mobile App on a Google Device:

1. **Acknowledgement:** Licensor and you acknowledge that the Conditions of Use is concluded between Licensor and you only, and not with Google. Google assumes no responsibility for the Mobile App and assumes no liability for the Conditions of Use.
2. **License:** Licensor authorizes Google on a non-exclusive, worldwide, and royalty-free basis to: reproduce, perform, display, analyze, and use the Mobile App in connection with (a) the operation and marketing of Google Play; (b) the marketing of devices and services that support the use of the Mobile App and the marketing of the Mobile App on Google Play and devices; (c) the provision of hosting services to Licensor and on Licensor's behalf to allow for the storage of and user access to the Mobile App and to enable third party hosting of such Mobile App; (d) making improvements to Google Play, the Play Console, and the Android platform; and (e) checking for compliance with the Google Play Developer Agreement and the Developer Program Policies.
3. **Family Groups:** Users may be a family group and family members whose accounts are joined together for the purpose of creating a family group. Family groups on Google Play will be subject to reasonable limits designed to prevent abuse of family sharing features. Users in a family group may purchase or download a single copy of the Mobile App (unless otherwise prohibited) and share it with other family members in their family group.
4. **Maintenance and Support:** Licensor is solely responsible for providing any maintenance and support services with respect to the Mobile App, as may be specified in the Conditions of Use, or as required under applicable law. Google has no obligation whatsoever to furnish any maintenance and support services with respect to the Mobile App or handle any complaints about the Mobile App.
5. **Reviews:** Only users who download the Mobile App will be able to rate and review it on Google Play.
6. **Installations:** Users are allowed unlimited reinstalls of the Mobile App distributed via Google Play without any additional fee, unless the Mobile App is removed from the Google Play Store by Licensor or by Google. If the Mobile App is removed from the Google Play Store, users will no longer have a right or ability to reinstall the Mobile App.
7. **Promotions:** Google may, from time to time, run promotional activities offering coupons, credits, and/or other promotional incentives for paid transactions and/or user actions for the Mobile App solely in connection with Google Play promotions and, for gift card promotions, on Google authorized third-party channels. There will be clear communication to users that such promotions are from Google and not from Licensor, any redemption of such promotion will be fulfilled by Google or through a Google authorized third party and not by Licensor, and Google will be responsible for compliance with applicable law for such promotions.

Confirmation of acknowledgement and agreement:

With my signature, I confirm that I have read, understood and accepted the Conditions of Use. I expressly declare that I agree with all provisions of the Conditions of Use.

First Name, Name:

Company:

Job Title:

Place, Date:

Signature:
