

Terms of Use EPLAN Cloud



1. Subject matter of the contract

- 1.1. The subject of these Terms of Use is the use of the Cloud environment (hereinafter "EPLAN Cloud") operated by EPLAN GmbH & Co. KG, An der alten Ziegelei 2, 40789 Monheim am Rhein. Germany (hereinafter "EPLAN"), the use of the EPLAN Cloud software products provided via the EPLAN Cloud as well as the access to the EPLAN on-premises software products of the EPLAN platform (hereinafter "EPLAN software products") by the user.
- 1.2. The use of the EPLAN Cloud as well as access to the EPLAN software products requires registration of the user. The following information about the user is required in particular: Name, company of the user, e-mail, country. The user assigns a personal password that enables access to the EPLAN Cloud.

2. Conclusion of the contract

- 2.1. By registering the user and pressing the button "**Create EPLAN ID**", a contract of use for the use of the EPLAN Cloud and for the EPLAN software products is concluded between EPLAN and the user in accordance with these Terms of Use. The user hereby creates an account, which the user can update at any time.
- 2.2. The contractual relationship between EPLAN and the user is governed exclusively by these Terms of Use. The user's general terms and conditions shall not become part of the contract. This shall apply even if EPLAN does not object to or expressly object to the user's general terms and conditions.
- 2.3. Special terms of use may apply to the use of individual EPLAN software products . If individual applications contain special terms of use, these shall apply in addition and supplementary to these Terms of Use. Third-party terms of use are the sole responsibility of those third parties.

3. Scope of use

- 3.1. Unless otherwise agreed, the scope of use of the EPLAN software products is limited solely to the use of its account and to the EPLAN cloud applications and services made available by EPLAN free of charge. EPLAN is not obliged to provide any further scope of use. In particular, the user has no claim to the use of cloud applications provided by third parties in the EPLAN Cloud against payment or free of charge.
- 3.2. Insofar as further cloud applications are provided free of charge in the EPLAN Cloud, the user also has no claim to a specific availability of such cloud applications. In this respect, EPLAN reserves the right to remove such cloud applications at any time.

4. Availability

- 4.1. The user is responsible for the functionality of the devices used to access the EPLAN Cloud as well as for the existence of the required hardware and software environment and for maintaining the internet connection. The user shall be obliged to treat its credentials confidentially and not to disclose them to third parties.
- 4.2. The user is obliged to back up its data regularly so that the data can be restored at any time even in the event of a system disruption or failure. EPLAN shall not be liable for the loss of data of the user if the damage is due to the fact that the user failed to back up the data and thus to ensure that the lost data can be restored with reasonable effort.
- 4.3. The user is obliged to notify EPLAN immediately of any disruptions or malfunctions of the EPLAN Cloud and/or of the EPLAN software products after their discovery. The user shall take all measures that enable the respective disruption or malfunction and its causes to be determined and facilitate or accelerate its elimination.
- 4.4. The user is not permitted to make the access codes for the EPLAN Cloud, including the software applications on it, accessible to third parties without the express prior consent of EPLAN. The consent must be in writing.
- 4.5. The user is not entitled to (a) misuse the EPLAN Cloud and/or the EPLAN software products, (b) gain access to unauthorized areas of the applications, (c) store illegal, immoral or offensive content in the EPLAN Cloud or (d) knowingly provide sequences with harmful components, (e) transmit unsolicited advertising messages (spam) via the EPLAN Cloud or (f) otherwise interfere with the functioning of the EPLAN Cloud and/or the EPLAN software products in a damaging manner.

- 4.6. If the user violates the obligations imposed on it by these Terms of Use, EPLAN may immediately block the user's access to the EPLAN Cloud as well as the EPLAN software products. The block shall be lifted as soon as the reason for the block has ceased to exist. If the user continues to violate its obligations or repeatedly violates them despite a corresponding warning in writing, EPLAN may terminate the contract without notice and permanently delete the user's account. EPLAN reserves the right to assert further legal rights.
- 4.7. EPLAN is only responsible for the proper functioning of the applications available in the EPLAN Cloud up to the internet node of the data center in which the applications are operated. EPLAN is not responsible for the failure-free operation of the other data line connections. The applications are considered "available" until the user reports a disruption or until EPLAN detects the disruption. The measurement of the downtime starts when EPLAN receives the message or when EPLAN recognizes the disruption.
- 4.8. Service disruptions based on any of the following events are not considered downtime:
- a) necessary maintenance work;
 - b) disruptions, failures and performance obstacles originating from the user's domain;
 - c) failures that are due to the influence of third parties (e.g. denial-of-service attack) or force majeure.

5. Rights of use, evaluations

- 5.1. If new or modified contents are created by processing digitally displayed samples, templates, products or work results (contents) of the user using the software provided by EPLAN, to which an independent industrial property right can be established, the results are exclusively entitled to the author. An evaluation of specific contents generated by means of the EPLAN software products shall only take place with the express consent of the respective author.
- 5.2. EPLAN is allowed to record and evaluate the use of the EPLAN software products, including frequently used functions, typical operating steps and the use of digitized component data. An evaluation of the data is made in pseudonymized form. EPLAN shall use the knowledge gained in this process to improve the ease of use, range of functions and performance of the EPLAN software products. EPLAN is entitled to use the findings to identify the commercial markets and target groups.

5.3. As far as the user uses the free application EPLAN eSTOCK, EPLAN will share digital component data in anonymized, statistical form to third parties for the purpose of product improvement and market analysis.

6. Defects in quality and title, other service disruptions

6.1. In the event of material defects, EPLAN shall initially provide warranty by means of subsequent performance. For this purpose, EPLAN shall, at its discretion, provide the user with a new, defect-free software version or remedy the defect. The elimination of the defect shall also be deemed to exist, if EPLAN shows the user reasonable possibilities to avoid the effects of the defect.

6.2. In the event of defects of title, EPLAN shall initially provide warranty by means of subsequent performance. For this purpose, EPLAN shall, at its discretion, provide the user with a legally unobjectionable opportunity to use the subject matter of the contract.

6.3. The user shall be obliged to apply a new software version if the contractual scope of functions is maintained and the adoption does not lead to significant disadvantages.

6.4. The user's right to terminate the contract on the grounds of non-granting of use shall be excluded unless the repair or replacement delivery has failed within a reasonable period of time; an insignificant reduction in suitability shall not be taken into account. EPLAN shall pay damages or compensation for futile expenses due to a defect within the limits specified in these Terms and Conditions.

6.5. If EPLAN provides services for troubleshooting or fault elimination without being obliged to do so, EPLAN may demand remuneration for this in accordance with its usual rates. This shall apply in particular if a defect cannot be proven or cannot be attributed to EPLAN. In addition, EPLAN shall be remunerated for any additional expenses incurred due to the fact that the user has not properly complied with its obligations to inspect and give notice of defects.

6.6. If a third party asserts claims that prevent the user from exercising the rights of use granted to it under the contract, the user shall inform EPLAN immediately in writing. The user hereby authorizes EPLAN to conduct the appropriate legal defense against the third party in and out of court on its own responsibility. If the user is sued, it shall coordinate with EPLAN and shall take legal action, in particular an acknowledgment or settlement, only with the consent of EPLAN.

6.7. The user may only derive rights from other breaches of duty by EPLAN if it has notified EPLAN in writing of the breach of duty and has granted EPLAN a reasonable period of grace to remedy the breach. This shall not apply if a remedy is not possible due to the nature of the breach of duty. The specified limits apply to compensation for damages or reimbursement of futile expenses in accordance with these Terms and Conditions.

7. Liability

7.1. EPLAN shall only be liable if EPLAN is at fault, unless the law provides for liability even without fault.

7.2. EPLAN shall be liable without limitation for intent and gross negligence.

7.3. In the event of a degree of fault which falls short of Section 7.2 (simple negligence), EPLAN shall be liable

- a) unlimited in case of injury to life, body or health;
- b) limited to compensation for the foreseeable, typically occurring extent of damage for other damage arising from the breach of an essential contractual obligation. An essential obligation is an obligation the fulfillment of which makes the proper performance of the contract possible in the first place and on the maintenance of which the other contracting party justifiably relies.

7.4. In addition to Section 7.3, EPLAN shall be liable exclusively for direct property damage up to a maximum amount of €100,000.00 per damaging event, whereby the liability for the entirety of all damaging events within a calendar year shall be limited to €500,000.00. Liability for financial loss and any kind of consequential damage is excluded, in particular for loss of profit, for damage resulting from loss of production and for damage incurred by third parties.

8. Statute of limitations

The limitation period for warranty claims of the user is one year. Sentence 1 shall not apply insofar as longer periods are prescribed by law, as well as in cases of injury to life, body or health, in the event of an intentional or grossly negligent breach of duty and in the event of claims for damages under German Product Liability Law.

9. Term of the contract, end of the right of use

- 9.1. Unless otherwise stipulated, the contract of use begins with the registration of the user and is concluded for an indefinite period.
- 9.2. The contractual relationship shall end without the need for a separate declaration if the user has not used its account for a continuous period of at least two years. EPLAN shall inform the user of this and delete all data of the user under setting of a period of two months.
- 9.3. The right of termination without notice for good cause remains unaffected for both parties. In particular, EPLAN shall have the right of extraordinary termination if the user seriously violates its contractual obligations, if a required period for remedy has expired unsuccessfully.
- 9.4. In the event of termination or other termination of the contract of use, EPLAN is entitled to delete the data uploaded by the user within a period of 30 days (deletion period). EPLAN shall inform the user of this by e-mail from the time of termination or other termination of the contract of use. The user has the possibility to export the uploaded data at any time during the term of the contract of use. If the user does not make use of this, there is a risk that the user data will be irrevocably lost upon expiry of the deletion period.

10. Closing provisions

- 10.1. EPLAN reserves the right to adapt these contract conditions to changed legal or technical conditions as long as the functionality of the services for the user is maintained and it is only a matter of insignificant adaptations for the contractual rights and obligations of the parties. The user shall be informed of such changes at least two months before the planned entry into force of the changes.
- 10.2. Insofar as changes to these contract conditions entail significant changes to the functionality or the services and/or affect the fundamental rights and obligations of the parties arising from the contract, the user shall be entitled to object to the change within one month of receipt of the change notification and to terminate the contract with effect from the effective date of the changes notified by EPLAN. The notice of termination must be given in writing to be effective. If the notice period expires without the user giving notice of termination, the changes shall be deemed to have been effectively agreed. EPLAN shall inform the user of its right of termination in the notification of change.

10.3.If the user is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from and in connection with this contract shall be the registered office of EPLAN. If EPLAN files a lawsuit, EPLAN shall also be entitled to file suit against the user at its place of business.

10.4.The law of the Federal Republic of Germany applicable to domestic contracting parties shall apply.

© EPLAN

As of: August 2022