



## Terms and Conditions of the GroupKom GmbH

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### Preface

EVALARM is, in the context of the following Terms and Conditions, provided to customers, their coworkers, and if applicable, external business partners. The users themselves are responsible for the use of EVALARM. That also applies for the content, that users add within use (e.g. alarm texts).

We explicitly indicate that the users only transmit content, that they want to transmit to third parties without hesitation. As far as a support and maintenance agreement (SLA) is arranged in addition to a licensing, the Terms and Conditions will also be relied upon.

### §1 Contractual content

- (1) The purpose of this contract is the preparation of the EVALARM SaaS service in exchange for payment of an arranged licensing fee. The scope of the performance relative to the service to provided is a result of the respective current performance description and the order negotiated with the customer.
- (2) Additional software is required to use the EVALARM service.
  - a. Internet browsers in a current version (see §4).
  - b. Apps for mobile smartphones and tablets for the Android and iOS operating systems in the current version, whatever that may be (see §4). The customer can independently download these on the Play Store/App Store. The user of an app ensures independently that the version of the operating system running on the smartphones corresponds to the instructions and performance description of EVALARM.
  - c. Windows and Java in a current version, whatever that may be (see §4).
  - d. The provided Terms and Conditions serve as a basis for the Terms of Use of the EVALARM service.
- (3) GroupKom offers, if applicable, further complimentary services, that go beyond the contractual agreement. The customer has no entitlement to this, or cannot construe any entitlements from this at all.

### §2 Provision and Use

- (1) GroupKom establishes the contractually negotiated modules for the customer, as well as the corresponding authorizations, and provides the necessary access data.
- (2) GroupKom guarantees that EVALARM is state-of-the-art, and punctually informs the customer in writing about possible changes and their content. Should the functionality of the solution be limited due to technical or other reasons independent of GroupKom, GroupKom has the right to fully and/or partially discontinue the service temporarily or permanently.
- (3) GroupKom always enhances EVALARM, so the type and kind of the provided service can be subject to changes without announcement. GroupKom has explicitly reserved the right to discontinue the provision of EVALARM for individual or all users, temporarily or permanently.



- (4) GroupKom regularly offers software updates in order to expand upon the scope of service and functions, and to remove potential faults. The customer is obligated to assume and carry out these applicable updates. Furthermore, in order to prevent a fault, GroupKom can provide operating instructions as a temporary workaround, which the customer accepts, as far as it is economically reasonable for him/her. With that, GroupKom's obligation to permanently eliminate faults remains unaffected.
- (5) Through the use of EVALARM/connections to the Internet, or the sending of SMS, additional costs may arise, which are not to be covered by GroupKom.
- (6) EVALARM and the application data are secured on GroupKom's servers. GroupKom is authorized to delete the application data (history) created by the customer that are older than 3 months. For the protection of potential legal retention periods, the customer can download the respective data from the system and secure it independently.
- (7) Obligations of the customer for secure use
  - (a) The customer takes the necessary precautions to prevent the use of EVALARM by unauthorized persons.
  - (b) The customer is liable that EVALARM is not used for purposes that are racist, discriminatory, endangering to child protection, politically extreme or any other illegal purposes or for purposes contrary to regulatory provisions, or in violation of sanctions or that respective data, especially application data, is not created and/or stored on the server.
- (8) Violation of conditions by the customer according to §7
  - (a) Should the customer violate the regulations of §7 for reasons of his/her own making, GroupKom can block the customer's access to EVALARM or the application data, after a single previous written warning, if the violation can be demonstrably remedied in this way.
  - (b) Should the customer continue to violate the regulations of §7, or violate them again, and this is his/her own responsibility, GroupKom can irregularly cancel the contract without complying with a cancellation period.
  - (c) Should the customer be responsible for a breach of duty, GroupKom can claim damages.
  - (d) GroupKom is not liable for a violation of third-party rights by the customer, as far as this violation takes place as a result of a breach of the rights of use granted by this contract. In this case, the customer exempts GroupKom upon first request of all claims of third parties.
- (9) Rights of use for EVALARM
  - (a) The customer obtains a simple (non-sublicensable and not transmittable) right of use to "EVALARM" limited to the duration of the contract according to the following regulations.
  - (b) The customer uses the application on the server through the access software. A surrender of the application to the customer does not take place. The customer may only use the application for his/her own commercial activities.
  - (c) The customer is not authorized to make unilateral changes to EVALARM.
  - (d) As long as GroupKom provides new versions, updates, upgrades, or other new deliveries regarding the application during the contract period, the aforementioned rights also apply to these.
  - (e) The customer is not entitled to rights that are not explicitly mentioned above as granted to him/her. The customer is especially not authorized to use EVALARM, or to allow EVALARM to be used, beyond the negotiated use. It is especially not permissible to reproduce, sell, or temporarily surrender EVALARM, especially not to rent or lend it.

## §3 Use of EVALARM as an in-house solution for the customer

- (1) EVALARM is essentially provided on the GroupKom's servers, if something else is not explicitly negotiated. Through a special contractual agreement, EVALARM can also be installed on the customer's servers.
- (2) These present Terms and Conditions are also applied if EVALARM is provided on the customer's servers. However, GroupKom is not liable for errors or faults, if the customer has defective hardware, or the hardware recommendations and instructions indicated by GroupKom are not followed.

## §4 Technical requirements and availability of EVALARM, reaction and restoration times

GroupKom is responsible for the availability and technical usability of EVALARM.

Our Cloud partner confirms the availability of the infrastructure of data centers and network availability as an annual average of 99.9%. Should the security of the network operation or the maintenance of the network integrity be jeopardized, the access to services can be temporarily limited where necessary.

The following technical requirements apply for the EVALARM service:

### **Web interface:**

Fully supported browsers: Chrome, Edge, Safari, Firefox, Opera  
Limited: Internet Explorer 5.0 – 9.0

### **Desktop client:**

Windows 7, 8, 8.1, 10  
Java SE 7-11

### **Android app:**

Android 4.0 - 8.1

### **iOS:**

iOS 8.0 - 12.0.1

Faults are eliminated within a reasonable period of time, the fault classification is as follows:

### ***Severe fault:***

Reaction: 8 hours / Restoration - Elimination of the fault: 24 hours  
A severe fault exists if the use of EVALARM is impossible or severely limited.

### ***Heavy fault:***

Reaction: 24 hours / Restoration - Elimination of the fault: 3 workdays  
A heavy fault exists if the use of EVALARM is not impossible or severely limited, yet at the same time the use limitation(s) is/are not merely irrelevant, and cannot be worked around with reasonable organizational or otherwise economically reasonable means.

### ***Light fault:***

Reaction: 2 workdays / Restoration - Elimination of the fault: 8 workdays  
Another shortage exists if the use of EVALARM is not immediately and/or not significantly/relevantly damaged.

## §5 Liability

- (1) GroupKom offers no guarantee that interactive processes properly reaching the user and that the access to the Internet is guaranteed at any time. GroupKom does not guarantee that the exchange of data occurs at a certain transmission speed. GroupKom is not liable for disruptions that arise from faults or interruptions of the respective user terminal devices, or from the communication paths from the user to the server, or from the misuse of the username and email address.
- (2) The customer is liable for all results and disadvantages that arise from the misuse or illegal use of EVALARM. The customer exempts GroupKom from any claims or demands of third parties upon first request, that third parties claim due to violation of rights by the user himself/herself or because of content created by the user, including appropriate legal and attorney fees. The user is obligated to support GroupKom in the defense against such claims.
- (3) GroupKom is not liable for any of the user's direct, indirect, special losses and/or damages that arise from the use of EVALARM and are connected to a destruction in the lines of communication or electricity, outages of the mobile network operators, effects of damaging softwares, unfair actions of third parties with the aim of an unauthorized access and/or the decommissioning of the software and/or hardware of GroupKom, as well as acts of God. In such circumstances, GroupKom is not obligated to refund user's losses.
- (4) Customers' and users' claims of damages are excluded. An exception from these are users' damage claims from the violation of life, the body, health, as well as liability for other damages that are based on the intentional or severely negligent breach of duty by GroupKom, their legal representatives or agents. Furthermore, also exempt is the liability for the breach of duty, whose fulfillment allows for the ordinary implementation of EVALARM in the first place, and the compliance to which users may trust (cardinal duties). In the case of the lightly negligent violation of these contractual obligations, GroupKom is only liable for the contractually typical, predictable damage, unless damage claims of the customer and user from a violation of life, the body, or health are involved. The liability for personal injuries remains unaffected according to the product liability law.
- (5) GroupKom excludes every further guarantee, as far as is legally allowed.

## §6 Rights of the customer

- (1) Should GroupKom not completely comply with the negotiated obligations in §§ 2-4, the following regulations do not apply.
- (2) Should GroupKom be in default with the operating provision of EVALARM, the customer is authorized to withdraw from the contract, if GroupKom does not abide by a two-week grace period set by the customer, in other words, does not present the full negotiated functionality of EVALARM within a grace period.
- (3) Should a use of EVALARM not be restored within the negotiated time period after GroupKom has obtained awareness of the fault, the customer can irregularly cancel the contract regardless of the reason of the non-fulfillment, without compliance to a time period.

## §7 Other services of GroupKom

- (1) Along with the provision of EVALARM, GroupKom provides the customer with user assistance in the form of a wiki. The customer accepts this as a user handbook. In the case of updates of EVALARM, the user assistance is updated respectively. The customer is authorized to store, print



out, and for purposes of this contract, to make an appropriate number of copies of the provided documentation while upholding existing trademarks.

- (2) Further services of GroupKom can be negotiated in writing at any time, especially training seminars on EVALARM. Such additional services are provided by GroupKom or a qualified partner, and at a proven fee at the prices of GroupKom valid at the time of the order.
- (3) The customer authorizes the access to application data for the purpose of additional implementation by ordering additional services. The access through GroupKom only extends as far as necessary to implement the additional services.

## **§8 Compensation**

- (1) The compensation for the services to be provided of the granting of use of EVALARM is a result of GroupKom's price list, whichever is current. The compensation is determined by the contract negotiated with the customer. Additionally negotiated services are calculated according to the price list, whichever is current.
- (2) GroupKom is authorized to appropriately raise the negotiated prices for the contractual services due to balancing rises in the cost of personnel and other costs, as well as improvements that result from software development. GroupKom will announce these price increases to the customer in writing or per email; the price increases are not valid for time periods for which the customer has already paid.
- (3) Compensations are owed with the value added tax (VAT) added at the legally applicable level.

## **§9 Privacy conditions**

- (1) The parties will take into consideration the applicable privacy conditions, especially those valid in Germany, and will obligate their employees in connection with the contract and its implementation to privacy secrecy according to the GDPR, insofar as they are already not generally obligated to that.
- (2) Should the customer collect, process, or use personal data, it is his/her responsibility that he/she is authorized to that according to the applicable conditions, especially the privacy conditions, and in the case of a violation, exempts the GroupKom from the claims of third parties. Insofar as the data to be processed is personal data, there is contract data processing, and GroupKom will take into consideration the legal requirements of contract data processing and customer instructions (e.g. to follow obligations to delete and block). The instructions must be shared in writing in a timely manner.
- (3) GroupKom takes the technical and organizational safety precautions and procedures according to Article 32 of the GDPR. GroupKom especially protects the services and systems it has access to, along with the application data of or regarding the customer stored on the server, and other data if applicable, against unauthorized perusal, storage, changing, or any other kind of unauthorized accesses or attacks – be they from technical procedures, from viruses or other damaging programs or data, or from physical attack – by employees of GroupKom or third parties, regardless of how these occur. In this instance, the suitable and customary procedures apply, which are offered state-of-the-art, especially virus protection and protection against similar damaging programs, as well as other security of its facility, including the protection against burglary.
- (4) GroupKom will only collect and use customer data to the extent the implementation of this contract requires. The customer agrees to the collection and use of such data to this extent.



For testing and fixing faults and error messages, the customer authorizes, upon conclusion of contract, the access to his/her application data, insofar as this is necessary for testing for and removing errors.

- (5) The obligations according to paragraphs 1-3 exist as long as application data lies in GroupKom's sphere of influence, as well as beyond the end of contract. The obligation according to paragraph 6 also exists beyond the end of contract indefinitely.

#### **§10 Non-disclosure**

- (1) The contractual parties will remain silent about all information that is to be confidentially handled, that is brought to their attention in the context of this contractual relationship, and only use this toward third parties – regardless of the purpose – after a previous written agreement with the respective other party. Information to be confidentially handled includes that which the information-giving party explicitly considers confidential, and such information whose confidentiality obviously results from the circumstances. Information to be confidentially handled by GroupKom, especially application data, should be brought to their attention.
- (2) The obligations according to paragraph 1 lapse for such information, or parts of it, that proves to the receiving party, that
  - it was known or publicly accessible to him/her prior to the date of receipt;
  - it was known or generally accessible to the public prior to the date of receipt;
  - it was known or generally accessible to the public after the date of receipt, without the party receiving the information being responsible for this.
- (3) Public explanations to the parties about a cooperation will only be made in previous mutual agreement.
- (4) The obligations according to paragraph 2 also exist beyond the end of contract indefinitely, and in fact as long as an exception according to paragraph 2 is not proven.

#### **§11 Period of validity, cancellation**

- (1) The contractual relationship begins with the formation of the contract. The delivery of the services takes place from the time of the negotiated order confirmation, or separately after acceptance has been communicated. The contract, as long as no other regulation is affected, is closed for a time of validity of 12 months. Should the contract be closed for a specific time, or a minimum contract period was agreed upon, the contract is extended automatically to the respective time of expiration agreed upon, but at the most for a year, if the contract is not canceled by a contractual party prior to a deadline of one month before the particular expiration time, or prior to the expiration of a minimum contract period.
- (2) GroupKom can cancel the contract without meeting a deadline, if the customer defaults on the payment of the contractually negotiated prices/a considerable part of the price for two months in a row.
- (3) GroupKom can cancel the contract if, after warning, the customer repeatedly culpably violates his/her established obligations.
- (4) Every cancellation must take place in written form (e.g. email).

## §12 Acts of God

None of the parties is obligated to fulfill the contractual obligations in the case of and during acts of God. Especially, the following circumstances are to be viewed as acts of God in this sense:

- fire/explosion/flooding, war, mutiny, blockade, embargo not caused by a contractual party;
- a strike lasting over 6 weeks and not culpably caused by a party;
- technical problems of the Internet not influenced by a party;

Every contractual party must promptly inform the other about the onset of an act of God in writing.

## §13 Applicable law, final clauses, place of jurisdiction

- (1) The law of the Federal Republic of Germany, under the exclusion of the UN Sales Convention (CISG), is valid. This is not valid, provided that because of this, the granted protection is withdrawn by binding clauses of the law of the state in which the user has his/her usual residence.
- (2) Incidental provisions outside of this contract and its annexes do not exist. Changes or additions to this contract and the annexes must be in written form in order to be valid. This is also the case for the waiver to the written form requirement.
- (3) The potential invalidity of single clauses of this contract does not compromise the validity of the rest of the contract's content.
- (4) Should vacancies arise in the practical application of this contract, which the contractual parties have not predicted, this vacancy or void regulation is to be filled out/replaced in a factual, appropriate way guided by the economic purpose of this contract.
- (5) GroupKom reserves the right to update these Terms and Conditions from time to time. Customers and users will respectively be appropriately informed about the change (e.g. per email, push notification, notification in user/customer account, etc.). The use of the solution is determined by the valid version of the Terms of Use. Should EVALARM be used further after the changes take effect, the user agrees with that to the changed Terms of Use.
- (6) If the customer is a merchant in the sense of the commercial code, a juristic person of public law or a special fund under public law, the place of the GroupKom headquarters is understood as the place of jurisdiction. The same is also valid for the case in which the customer has no domestic public place of jurisdiction. Groupkom is however also authorized to sue at the customer's headquarters.