



ResMed EMEA General Commercial Terms and Conditions (September 2023 Version)

1. **Definitions**
 - 1.1 Unless otherwise defined in the Commercial Agreement, the following words and expressions as used in these Terms shall mean:
 - 1.2 **"Commercial Agreement"** means an agreement for the purchase of products and/or services executed between ResMed and Customer which incorporate these general commercial terms and conditions.
 - 1.3 **"Customer"** means the customer whose details are set out in the Commercial Agreement.
 - 1.4 **"Customer Personal Data"** means any personal data provided by Customer to ResMed and/or its affiliates pursuant, or in relation, to these Terms and the Commercial Agreement.
 - 1.5 **"Digital Services"** has the meaning set out in Clause 2.2 of these Terms.
 - 1.6 **"ResMed"** means the ResMed entity whose details are set out in the Commercial Agreement.
 - 1.7 **"Taxes"** has the meaning set out in Clause 4 of these Terms.
 - 1.8 **"Terms"** means these general commercial terms and conditions.
 - 1.9 **"Terms of Service"** has the meaning set out in clause 2.1 of these Terms.
 - 1.10 **"Terms of Use"** has the meaning set in Clause 2.2 of these Terms.
2. **Terms of Service; Terms of Use**
 - 2.1 Where applicable, services purchased by Customer from ResMed are subject to additional terms and conditions (**"Terms of Service"**) governing the provision of those services to Customer, and Customer acknowledges and agrees that such services shall be provided subject to and in accordance with those Terms of Service. Those Terms of Service shall be communicated in writing separately by ResMed to Customer, and are hereby incorporated into these Terms by reference.
 - 2.2 All references in these Terms to the subscription, sale, selling, quote or purchase of services which are software programs or data services (**"Digital Services"**) shall mean the sale of the applicable end user license or terms of service with respect to such software programs or data services. Customer agrees to use all/any Digital Services in accordance with the terms and conditions of use (**"Terms of Use"**) that accompany, or are otherwise designated by ResMed or its affiliate (as applicable) as governing the use of, such Digital Services and that are available at the following website(s) or any successor or other website or location as may be designated by ResMed or its affiliate (as applicable) and which are hereby incorporated into these Terms by reference:
<https://airview.resmed.eu/info/licenseagreement>.
 - 2.3 If Customer's principal place of business for accessing and using the Services is in France, Customer undertakes to comply, in addition to the Terms of Use, with the **French Data Hosting Agreement**
https://document.resmed.com/documents/fr/Contrat_d_h%C3%A9bergement_de_donn%C3%A9es.pdf.
3. **Price(s), Payment and Charges**
 - 3.1 The prices to Customer for each of the products and/or services are set out in the Commercial Agreement or as otherwise communicated by ResMed from time to time. ResMed may change currency, prices (including but not limited to prices in the Commercial Agreement or on any ResMed issued price List) and/or discounts and other applicable price related incentives and benefits on thirty (30) days written notice to Customer.
 - 3.2 Payment is due thirty (30) days from date of invoice, unless otherwise agreed between ResMed and Customer in writing. Any payment overdue will be subject to interest charges which shall accrue at a rate of 1.5% per month (18% annually), or the maximum rate permitted by law, whichever is less, from the due date until the total invoice amount has been paid in full.
 - 3.3 **Renewal of Services.** ResMed may, at its sole discretion, make certain services generally available on a recurring term basis. If any services purchased from ResMed are auto-renewing or recurring, then subject to applicable laws and ResMed's issuance of a renewal invoice, at the end of the current term of such services, those services will automatically renew for successive terms of the same duration. The price for each renewal term of the services shall be the then current price (plus Taxes). At the end of the then current term, ResMed may issue Customer with an invoice for that renewal price for the next renewal term. If Customer provides written notice within 14 days after the renewal invoice that Customer does not agree to renew, ResMed reserves the right to terminate the services.
4. **Orders and Acceptance**
 - 4.1 Orders for products and/or services shall be submitted to ResMed by Customer in writing via the ResMed Online Store (ROS), via electronic data interchange or via such other order procedures communicated by ResMed to Customer in writing from time to time. ResMed may, at its discretion, also accept to receive orders by phone, fax or email. Customer orders for products and/or services are subject to acceptance by ResMed, including approval by ResMed's credit department, and shall not be considered accepted by ResMed unless/until communicated by ResMed in writing and/or processed by ResMed.
 - 4.2 Notwithstanding the foregoing, ResMed may reject orders for any reason including but not limited to the following (i) Customer's failure to follow ResMed order procedures, (ii) Customer has not paid amounts due to ResMed, or (iii) Customer exceeds its credit limit (if any). ResMed shall use its reasonable efforts to notify Customer of the rejection of an order within a reasonable time following receipt of Customer's order.
5. **Delivery, Import/Export**
 - 5.1 Unless otherwise agreed between ResMed and Customer in writing, any physical products to be delivered pursuant to the Commercial Agreement shall be shipped to Customer in accordance with the following Incoterms:



- 5.1.1** If the Customer's delivery address in the Commercial Agreement is located in a country in the European Economic Area and Switzerland (other than Norway), the Incoterm shall be **CIP (INCOTERMS 2020)**;
- 5.1.2** If the Customer's delivery address in the Commercial Agreement is located in Norway or the United Kingdom, the Incoterm shall be **DAP (INCOTERMS 2020)**;
- 5.1.3** If the Customer's delivery address in the Commercial Agreement is geographically located outside the European Economic Area, Switzerland or the United Kingdom, the Incoterm shall be **FCA (INCOTERMS 2020)**.
- 5.2** Physical products shall be delivered to the location designated in the Commercial Agreement (or such other location agreed between ResMed and Customer in writing). ResMed's delivery obligation for the relevant physical products shall be complete, and risk of loss with respect to those products shall pass to Customer according to the applicable INCOTERMS referred to above. Unless otherwise agreed between ResMed and Customer, Customer shall bear all applicable Taxes, duties and similar charges related to transit or import clearance of the product and/or services to the designated location. ResMed shall select and instruct the carrier as to these agreed terms. All freight, insurance, and other shipping expenses, as well as any special packing expense, shall be paid by Customer if required by ResMed or its affiliate (if applicable). ResMed reserves the right to change the aforementioned Incoterms at any time on thirty (30) days' notice in writing to Customer.
- 5.3** Any services shall be delivered to Customer at Customer's location designated in the Commercial Agreement (or such other location agreed between Customer and ResMed in writing) in accordance with the applicable Terms of Service. Further, ResMed reserves the right to fulfil any Digital Services by making such Digital Services available to the Customer for download from a website or accessible via a link as designated by ResMed. In this case, delivery shall occur when such electronic (remote) access to the Digital Services has been made available for download or has been made accessible via a link to Customer.
- 5.4** ResMed may make partial shipments. No partial shipment of an order shall constitute the acceptance of the entire order. Where an order has been accepted by ResMed, delay in shipment or delivery of any particular instalment shall not relieve Customer of its obligation to accept remaining shipments.
- 5.5** ResMed will use reasonable commercial efforts to minimize delivery delays; however, Customer's sole remedy if any scheduled delivery is delayed for more than sixty (60) days will be to cancel the order for the products and/or services which are the subject of that delivery in writing, without further liability to either party. Unless expressly agreed between the parties, delivery times are approximate only.
- 5.6** Subject to the applicable INCOTERMS referred to above, Customer will be responsible for obtaining any required import and export licenses and making proper customs entry for delivery of the products and/or services to Customer's delivery address.
- 5.7** Customer will obtain and maintain all licenses, permissions, authorisations, consents and permits needed by the Customer to import, export, transport, receive, store, handle or otherwise to use the product and/or services in accordance with the written and manual instructions provided by ResMed.
- 6. Credit Limit.**
A credit limit (if any) may be set by ResMed at its sole discretion, and ResMed reserves the right to require full or partial payment in advance of product and/or services shipment or delivery. Customer shall provide ResMed such financial information as ResMed deems necessary to determine Customer's creditworthiness. ResMed may increase or decrease such credit limit from time to time as it deems appropriate. The total amount owed by Customer to ResMed at any time shall not exceed Customer's credit limit (if any) set by ResMed, and orders to ResMed above the credit limit shall be paid in cash in advance of delivery or by other means of secured payment chosen by ResMed.
- 7. Taxes**
All prices and amounts payable by Customer under the Commercial Agreement are exclusive of any tax, levy or similar governmental charge that may be assessed by any jurisdiction, including, without limitation, any federal, state or local sales, excise, use or goods and services taxes, or the equivalent, whether based on the delivery, possession or use of the products or services, the execution or performance of the Commercial Agreement or otherwise ("**Taxes**"). Any such Taxes to be collected by ResMed shall be the responsibility of the Customer and shall appear as a separate item on Customer's invoice (unless ResMed receives a valid tax exemption certificate, relating to qualifying goods and/or services, from Customer prior to shipment).
- 8. Return and Repair**
- 8.1 Return.** Any Customer's claims related to apparent defects or non-compliance (quantity missing, packaging damaged, etc.) of product and/or services delivered must be noticed in writing to ResMed within three days from the date of delivery. If such notice is not given within this time period, the products and/or services shall be deemed to be conformed, without apparent defects and duly accepted by Customer. In the event of any apparent defects raised in due time and accepted by ResMed, ResMed will proceed to the return of the non-compliant product and/or service and to its replacement.
- 8.2 Repair and maintenance.** Products and/or services purchased from ResMed may be returned to ResMed for repair or maintenance in accordance with ResMed and its affiliates' [Repair and Maintenance Terms and Conditions](#) and/or in accordance with applicable law.
- 9. Limited Warranty**
- 9.1** ResMed makes limited warranties directly to users of its products and/or services regarding the use and functionality of those products and/or services, solely as described in the documentation and/or the Terms of Use and/or Terms of Service (where applicable) accompanying those products and/or services. ResMed will honour the warranties it makes to users of its products and/or services, in accordance with the terms of the documentation and/or Terms of Use and/or Terms of Service (where applicable) accompanying those products and/or services.
- 9.2** To the fullest extent permitted by law (save as agreed otherwise in writing by ResMed), ResMed makes no representations and grants no warranties to Customer, whether express or implied, by statute, usage of trade, course of dealing or otherwise, under these Terms or the Commercial Agreement. Without limiting the foregoing, ResMed



specifically disclaims any and all representations, warranties and conditions, whether express, implied or statutory, regarding the products or any parts or the services including any warranties of title, quality, merchantability, suitability or performance, or fitness for a particular purpose and non-infringement of third-party rights. ResMed does not warrant that the operation of the products and/or services will be uninterrupted or error free or that the products and/or services will be satisfactory. Nor does ResMed make any warranty with regard to the use of names, people, trademarks, registered, unregistered or copyrighted designs or works of art or architecture depicted in any marketing materials.

10. Limitation of Liability

- 10.1** To the full extent permitted by law, the maximum cumulative and aggregate liability of ResMed and its affiliates, subsidiaries and related companies, and their employees, officers, and directors, for all costs, losses or damages from claims (“Claim”) arising or related in any way to these Terms or the Commercial Agreement, whether in contract, tort (including negligence) or otherwise, is limited to Customer’s direct damages only and shall not exceed the total price paid by the Customer to ResMed under the Commercial Agreement for the products and/or services with respect to which such Claim is made.
- 10.2** Further, to the extent permitted by law, in no event shall either party be liable for special, indirect, immaterial, incidental, consequential, punitive, or exemplary damages or for loss of profits, revenues, contracts, customers, loss of use, loss of data, business interruption, cost of replacement goods or services, or failure to realise expected cost savings even if advised of the possibility of same or same were reasonably foreseeable.
- 10.3** These limitations shall not apply in the event of death, or personal injury caused by negligence or any other liability that cannot be excluded or limited under applicable laws.
- 10.4** Customer acknowledges that the price and/or fees paid by the Customer for the products and/or services fairly reflect this allocation of risk.

11. Medical Devices Regulations

Customer acknowledges and agrees to be bound by ResMed’s applicable quality and regulatory agreement which can be accessed **at** https://document.resmed.com/documents/fr/Accord_QualiteC3%A9_MDR.pdf, and which is hereby incorporated into these Terms by reference.

12. Data Protection

- 12.1** ResMed shall process all Customer Personal Data necessary to fulfil its rights and obligations pursuant to these Terms and the Commercial Agreement, such as for order management, in its capacity of independent data controller and in accordance with ResMed’s [Privacy Notice](#).
- 12.2** Subject to the foregoing Section 12.1, if and to the extent ResMed processes any Customer Personal Data without independently determining the means and the purposes of the processing, then the Customer, acting as Controller (as such terms are defined in the GDPR), appoints ResMed as a Processor (as such terms are defined in the GDPR) to fulfil the purposes of these Terms and the Commercial Agreement. ResMed shall act in compliance with Article 28(3) GDPR, which is hereby incorporated by reference in particular:

12.2.1 ResMed shall ensure that appropriate technical and organizational measures are in place to ensure a level of security appropriate to the risk of processing Customer Personal Data, having regard to the state of technological development and the cost of implementation; and

12.2.2 The Customer authorizes ResMed to utilise sub-processors (both third parties and ResMed affiliates) to fulfil the purposes of these Terms and the Commercial Agreement. ResMed shall enter sub-processor into a written agreement incorporating terms which are substantially similar to those set out in these Terms and the Commercial Agreement. ResMed shall remain fully liable to the Customer for the performance of the sub-processors.

13. Compliance with laws

- 13.1** Customer shall comply with all applicable laws and regulations including, but not limited to, (a) transparency and anti-corruption laws; (b) export controls, economic sanctions and customs laws, and (c) all applicable health, safety and product laws and regulations.
- 13.2** In addition, the Customer agrees and acknowledges that it shall comply with ResMed and its affiliates’ [Third-Party Code of Conduct](#) which is incorporated herein by reference.

14. Confidentiality

- 14.1** Customer shall hold in confidence, and shall not disclose, all confidential information relating to these Terms and the Commercial Agreement disclosed by ResMed. Confidential Information means information which (i) relates to ResMed’s products, business, customers, suppliers, intellectual property, pricing, finances, data, processes, approaches, plans, or projects, including but not limited to trade secrets, know-how, materials, samples and other confidential material or (ii) which is designated as confidential, or (iii) which, by its nature, is reasonably considered to be confidential. The obligations of confidentiality shall not extend to a) information which is in the public domain at the time of its transmittal or which subsequently comes into the public domain without violation of an obligation of confidence assumed hereunder; b) information rightfully received from a third party without violation of an obligation of confidence; or c) information which Customer can show to have been in its lawful and rightful possession at the time of transmittal.
- 14.2** Customer shall protect ResMed’s Confidential Information to prevent unauthorized disclosure by using the same degree of care, but no less than a reasonable degree of care, as Customer uses to protect its own confidential information of a like nature. This confidentiality provision shall survive the expiration of these Terms and the Commercial Agreement for five (5) years.

15. Force Majeure

Neither ResMed nor the Customer shall be held liable in the event of their non-compliance with any of these Terms or the Commercial Agreement, except the obligation of payment, when such non-compliance can be shown to be a direct result of a Force Majeure Event. A Force Majeure Event shall mean an event which is not within either party’s reasonable control, including, without limitation (a) an act of God, flood, earthquake, or other natural disaster; (b) an epidemic or pandemic; (c) a terrorist attack, civil war, armed conflict, impositions of sanctions, embargo, or breaking off of diplomatic relations, nuclear or chemical contamination; (d) any labour or trade dispute, strikes, or any



industrial actions or lockouts; or (e) non-performance by suppliers or subcontractors to the extent the non-performance is due to the events in (a) to (d).

If the Force Majeure event affects the ability of ResMed to deliver a given order and such Force Majeure event continues for a period of more than ninety (90) days from the date of the Notice of Force Majeure Event, either Party shall be entitled, at its sole discretion, to cancel the relevant order without compensation being due to the other Party.

16. Relationship of the Parties

Nothing in the Terms or the Commercial Agreement are intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

17. Waiver

Neither a failure nor a delay on either party in exercising any right, power or privilege under these Terms and the Commercial Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege.

18. Third-Party products and services

Any third-party hardware, software and/or services that is delivered by ResMed for use either standalone or in conjunction with ResMed products and/or services, shall be subject to the third-party terms and conditions and/or license agreements between Customer and the third party. Such third-party hardware, software and/or services is provided by ResMed "AS IS," without any warranty of any kind. Any representations or warranties as to such hardware, software and/or services shall only be as granted by the applicable third parties, if any, that accompany such products and/or software and/or services. Any representations, warranties, or other similar obligations with respect to such third-party hardware, software and/or services flow directly from the third party to Customer and ResMed shall have no responsibility at all for any such representations, warranties, obligations or lack thereof.

19. Assignment

ResMed may assign all or any of its rights or obligations under these Terms or the Commercial Agreement and they shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of ResMed. Customer may not assign all or any part of the Customer's rights or obligations under these Terms or the Commercial Agreement without ResMed's express written consent.

20. Changes to products and/or services, Terms and policies

ResMed may add, change or stop selling any products and/or services at any time without notice. Customer shall have no claim for ResMed's failure to sell the model, design or type of products and/or services previously sold or for failure to modify products and/or services previously sold. ResMed may change these Terms, or any of the documents or policies referred to herein, at any time on thirty (30) days' notice in writing to Customer.

21. Severability

If and to the extent any provision of these Terms or the Commercial Agreement are held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof will be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the extent of its illegality,

invalidity, or unenforceability and will be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the parties. The illegality, invalidity, or unenforceability of such provision in that jurisdiction will not in any way affect the legality, validity, or enforceability of such provision or any other provision of these Terms or the Commercial Agreement in any other jurisdiction.

22. Entire Agreement

The Commercial Agreement and these Terms (together with the documents incorporated herein by reference) constitute the entire agreement between ResMed and Customer, and supersede all prior agreements, negotiations and discussions, whether oral or written and there are no warranties, representations or other agreements between ResMed and Customer in connection with the subject matter hereof except as specifically set forth in the Commercial Agreement and these Terms. Customer further acknowledges that no additional or different terms and conditions submitted on any documents or purchase order issued by the Customer, including in any pre-printed terms, shall be applicable to the Commercial Agreement or these Terms or binding on ResMed unless specifically agreed to in writing by an authorised representative of ResMed.

23. Notices

Notices given pursuant to these Terms shall be in writing and addressed to a party at the address of that party set out in the Commercial Agreement.

24. Governing Law and Jurisdictions

The Commercial Agreement (including these Terms) shall be governed by and construed under the laws of Denmark. The parties submit to the exclusive jurisdiction of the courts in Denmark.