Appendix 2: General Sales and Distribution Terms and Conditions

Section 1
Scope; protective clause

(1) These general sales and distribution terms and conditions (hereinafter "T&Cs") apply to all of our business relationships with our customers, buyers, and distribution partners ("Partner(s)"). They particularly apply to agreements on the sale (purchase agreement) of end devices, including the use of appropriate software applications enabling an intelligent heating and/or air conditioning system, as well as to any and all kinds of services (e.g. maintenance, training, developments or adaptations). However, they are only deemed to apply insofar as the Partner is a contractor within the sense of section 14 of the German Civil Code (Bürgerliches Gesetzbuch, hereinafter "BGB"), a legal entity under public law or a special fund under public law.

(2) Our T&Cs shall apply exclusively, even if we unconditionally accept orders, render services, or refer directly or indirectly to letters etc. which contain the Partner's or third-party terms and conditions in knowledge of the Partner's terms and conditions. Any opposing, deviating or supplementary terms and conditions of the Partner shall only be acknowledged by us if we explicitly agree to their validity in writing.

(3) Our T&Cs shall also apply in their respectively valid version as a framework agreement (section 305(3) BGB) for any and all future offers and agreements of the aforementioned kind with the same Partner without us having to refer to these again in each individual case; in such cases, we agree to inform the Partner in the event of any amendment to our T&Cs without undue delay.

Section 2
Contract conclusion; written form; representation

(1) Our offers are subject to change without notice and are not binding unless they have been expressly classified as binding or contain a specific term of acceptance. The order by the Partner shall be deemed to be a legally binding offer up to the conclusion of one of the aforementioned agreements. Unless otherwise stated in the offer, we may accept it within ten working days of receipt.

(2) Acceptance on our part shall be in text form (e.g. by our order confirmation or by our delivery note). The content of the written declaration is essential to the content of the agreement. Declarations and notifications of legal relevance which the Partner submits to us after concluding the agreement (e.g. deadlines, reminders, notices of defects) shall not be deemed to be valid unless made in text form.

(3) The written agreement including these T&Cs, which represent a constituent part of the written agreement, shall reflect the full scope of agreements made regarding the subject of the agreement between us and the Partner. Verbal agreements made prior to concluding the written agreement shall not be deemed to be legally binding and shall be substituted in full scope by the written agreement, unless it is expressly stipulated that they shall continue to apply mandatorily thereafter. Individual agreements shall be deemed to take precedence over these T&Cs.

Section 3
Knowledge and expertise industrial property rights; terms of use

(1) The Partner acknowledges our knowledge and expertise, as well as our industrial property rights. Unless otherwise agreed, we shall retain all property and industrial property rights and copyrights to illustrations, drawings, calculations and other documents. We shall also retain all rights to developments or other adaptations that we make on behalf of the customer.

(2) We draw attention to the fact that the use of our products by the end user requires the acceptance of our (software) terms of use for the end user and that our products may only be operated pursuant to these terms of use and with the agreement of the end user. The current applicable terms of use can be downloaded at (https://www.tado.com/gb/terms-and-conditions). We reserve the right to modify or adapt these terms of use.

(3) The Partner shall bear all risk and responsibility for ensuring that the end customer accepts the aforementioned terms of use.

Section 4
Delivery; deadlines

(1) Deadlines for delivery/delivery schedules promised by us for deliveries and services (delivery deadlines) shall only be deemed to be approximate. This shall not apply insofar as an explicit delivery deadline has been promised or agreed upon.

(2) A delivery deadline shall be deemed to be complied with insofar as the Partner has received our delivery note/notification that the goods are ready for collection or – if this has been agreed upon – we have handed the goods over to the forwarding agent. If we foresee that we will not be in a position to comply with the delivery deadline, we shall inform the Partner without undue delay and shall notify the Partner of the anticipated new delivery deadline.

(3) We shall not be liable for the impossibility or delay of our deliveries/services insofar as these circumstances are due to force majeure or other events that were unforeseeable at the time the agreement was concluded and for which we are not to blame.

(4) In this event, the delivery terms shall be automatically extended by the duration of the event plus an appropriate start-up time. We shall furthermore be entitled to rescind the agreement and/or to terminate the agreement for cause, if such events make it substantially difficult or impossible for us to deliver the services and are not of a temporary nature. If it is no longer deemed to be reasonable for the Partner to accept the service on the grounds of the delay resulting from such an event, the Partner shall also be entitled to rescind and/or immediately terminate the agreement in writing.

(5) We shall be entitled to make partial deliveries, insofar as a partial delivery can be used by the Partner within the scope of the contractual intended use, the delivery of the remaining services is guaranteed, and the Partner does not have to face any additional work or expense as a result of the partial delivery.

(6) If we default with regard to a delivery or service or if we are unable to deliver the service for any reason, our liability in terms of damages shall be limited pursuant to section 6 of these T&Cs.

Section 5
Payment and default; assignment; right of lien and offsetting

(1) Our invoices shall be due and payable in euros and without deduction within 14 calendar days after receipt of the invoice.

(2) We shall be entitled to assign our claims against the Partner to a third party at any time.

(3) With the expiry of the payment deadline the Partner shall automatically default in payment. Interest shall be due and payable on the remuneration owed during the period of default and according to the applicable statutory default interest rate. In the case of default, we shall also be entitled to the statutory late payment fee pursuant to section 288(5) sentence 1 BGB. We reserve the right to enforce further default damages. This shall not affect our entitlement to commercial maturity interest (sections 352 and 353 of the German Commercial Code (Handelsgesetzbuch, hereinafter "HGB")) from the date on which payment becomes due.

(4) If the Partner defaults in payment we shall be entitled to demand that any and all other claims against the Partner to which we are entitled become due and payable with immediate effect. The Partner shall bear any, and all costs, fees and expenses incurred in connection with any successful assertion of legal rights against the Partner outside of Germany.

(5) The Partner shall be only be entitled to offset or to enforce a lien insofar as the counter claim it uses as a basis for the lien is either (a) uncontested or has been established as final and absolute or (b) is ready for a decision in the event of process-related enforcement at the time of the last hearing or (c) entails mutuality (of obligation) with the principal claim.

(6) Incoming payments of the Partner shall always be offset as set forth in section 366 (2) BGB. Deviating determinations of the Partner shall not apply.

Section 6
Liability for damages

(1) We shall be liable for damages in unlimited scope – irrespective of the legal grounds – for damage caused by wilful or grossly negligent breach of duty by us or by one of our legal representatives or vicarious agents.

(2) In the event of merely simple or marginally negligent breach of duty on our part or on the part of our legal representatives or vicarious agents, we shall only be liable:

- – albeit in an unlimited scope – for damage resulting from of injury to life, body or health;
- damage resulting from the violation of essential contractual obligations. Essential contractual obligations are such obligations whose fulfilment makes the due and proper execution of the agreement possible and compliance with which the Partner regularly trusts in and may trust in. However, in this case our liability is limited to the extent of the typical contractual damage foreseeable at the point of concluding the agreement.

(3) In the event of a simple or marginally negligent breach of duties on our part or on the part of our legal representatives or vicarious agents, our associated liability for damages resulting from the breach of essential contractual obligations (section 6 (2), second bullet point) shall furthermore be limited to the revenue the partner has generated with us in the 12 months prior to occurrence of the damage.

(4) The limitations of liability resulting from paragraph 2 shall not apply if we fraudulently conceal a defect, have taken over a quality guarantee for the product or have assumed a procurement risk. In addition, this shall not affect any essential mandatory liability, and particularly those set forth in the German Product Liability Act (Produkthaftungsgesetz).

(5) Insofar as our liability is excluded or limited pursuant to the aforementioned provisions, this shall also apply to the personal liability of our organs, legal representatives, officers, employees and vicarious agents.

Section 7
Limitation

(1) The limitation period for claims – including non-contractual claims – on the grounds of material and title defects shall amount to 12 months as of transfer of risk in the case of purchase; this shall, however, not apply to liability for damages in the cases mentioned in section 6(1), (2) and (3) of these T&Cs. In such cases, the relevant mandatory period of limitation shall apply instead.

(2) The statutory provisions relating to claims for return of the defective object and for our fraudulent concealment of any defect, as well as for claims in the supplier's recourse in the event of final delivery to a consumer,) shall also remain unaffected.

Section 8
Place of fulfilment and place of jurisdiction; choice of law; severability clause

(1) The place of fulfilment for our deliveries and the place of exclusive – also international – jurisdiction for any and all disputes arising from or in connection with the business relationship between us and the Partner shall be Munich.

(2) The business relationships between us and the Partner shall be exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods (CISG) shall not apply.

(3) If any of the terms stipulated in these T&Cs are or become null and void or inapplicable in full or in part, this shall not affect the validity of the remaining terms. Insofar as terms have not become a constituent part of this agreement or have become invalid, the contents of the agreement shall primarily comply with the statutory provisions (section 306(2) BGB). Only otherwise and provided that no supplementary contractual interpretation is prioritised or possible shall the parties agree upon an effective provision to replace the invalid or ineffective term, approximating the commercial effect of this provision as closely as possible.

Section 9
Delivery terms; transfer of risk; prices

(1) For all of our deliveries the term "EX WORKS Incoterms (2010)" (relating to the warehouse from which we make deliveries in each case) shall apply unless otherwise agreed.

(2) In deviation of paragraph 1 and only if this has been agreed upon with the Partner, we shall send the goods to the destination indicated by the Partner. This shall take place – even with regard to packaging of the goods and insurance against damage or loss – at the Partner's expense. We shall be authorised to determine the mode of shipment (and particularly the transport company and the dispatch route) and packaging at our dutiful discretion. The risk shall pass to the Partner in the cases outlined in sentence 1 of this paragraph upon receipt of our note that the goods are ready for dispatch by the Partner or – if the latter has not been contractually stipulated – when the goods are handed over to the transport company, forwarding agent or other carrier at the latest. This shall apply even if partial deliveries are made or if we have also undertaken other services.

(3) Unless otherwise agreed, our current net prices plus statutory VAT (value-added tax) valid at the time the agreement was concluded shall always apply. All prices are to be understood in accordance with "EX WORKS Incoterms (2010)". Any transport and packaging costs (see above) and any other taxes and duties shall be charged in addition unless otherwise agreed.

Section 10
Retention of title

(1) The goods delivered by us to the Partner shall remain our property even in the case of sale until all secured claims have been paid in full. These goods and the objects in lieu thereof also covered by the retention of title under the following terms shall be hereinafter referred to as "goods subject to retention of title".

(2) The Partner shall store the goods subject to retention of title without charge on our behalf. It shall treat these goods with due care and shall insure them in sufficient scope and at replacement value.

(3) The Partner shall not be authorised to pawn the goods subject to retention of title or to surrender these as collateral. In the case of seizure of the goods subject to retention of title by a third party or in the event of any other third-party access, the Partner is obliged to explicitly draw attention to our title in the goods and to inform us in writing without undue delay so that we are in a position to pursue our title in the goods. Insofar as the third party is not able to reimburse the judicial or extrajudicial courts arising in this context, the Partner shall be liable to us in this respect.

(4) The Partner is authorised to utilise the goods subject to retention of title until occurrence of the enforcement event (paragraph 7) in the due course of business.

(5) The Partner's payment claims against its customers arising from a further sale of the goods subject to retention of title as well as the Partner's claims against its customers or third parties on any other legal grounds regarding the goods subject to retention of title(and particularly claims arising from illegal action and claims regarding insurance benefits), including any and all payment balance requests from the outstanding accounts, shall be assigned to us by the Partner by way of security with effect from this date. We hereby accept these assignments.

(6) We hereby grant the Partner the revocable right to collect the claims assigned to us in its own name on our behalf. Our right to collect these claims ourselves shall not be affected by this. We shall, however, not collect these ourselves and shall not revoke the collection authorisation as long as the Partner duly fulfils its payment obligations to us (and particularly does not default in payment), as long as no petition for bankruptcy has been filed regarding the Partner's assets and as long as there is no inability to perform (section 321(1) sentence 1 BGB) on the part of the Partner. If one of the aforementioned situations occurs, we shall be entitled to demand that the Partner notify us of the assigned claims and the respective debtors, inform the respective debtors of the assignment (which we shall also be entitled to do at our discretion) and surrender all documents and information to us that is required to enforce the claims.

(7) If we rescind the agreement on the grounds of conduct contrary to the agreement on the part of the Partner – and particularly on the grounds of default in payment – we shall be entitled to demand

surrender of the goods subject to retention of title from the Partner pursuant to the statutory provisions (enforcement event). Our cancellation of the agreement shall occur upon our demand of surrender of the goods at the latest. The transport costs incurred for return of the goods shall be borne by the Partner.

Section 11
Warranty for defects

(1) With the exception of the cases set forth in section 6(2), (3) and (4) of these T&Cs, we shall not face any warranty obligation if the Partner has modified the goods or has had these modified without our approval and if remediation thereof is rendered impossible or unreasonably difficult as a result. In any event the Partner shall bear the additional costs for remediation incurred as a result of such modification.

(2) The Partner is obliged to examine the goods delivered to it or to a designated third party without undue delay and to notify any possible defects without undue delay. In this respect, sections 377 and 381 HGB and the terms set forth in this paragraph shall apply. The notification of defects without undue delay shall be submitted within seven (7) working days of delivery at the latest or – if the defect was not identifiable upon examination (section 377(2) and (3) HGB) – within three (3) working days of discovery of the defect at the latest. However, if this last designated defect was identifiable by the Partner at an earlier point in time than upon discovery, this earlier point in time shall be decisive for the commencement of the aforementioned period of notification.

(3) Upon our request the reported goods shall be returned to us without undue delay at the expense of the Partner. In the case of a justified defect we shall reimburse to the Partner the costs for the most favourable shipping route; this shall not apply if the costs rise due to the fact that the goods are located at a place other than the site of use according to the terms of the agreement.

(4) If the Partner fails to examine the goods according to the specifications and/or to report any defect, our warranty obligation and any other liability with regard to the defect concerned shall be excluded.

(5) We shall bear the costs of inspection and supplementary performance, and particularly of transport, shipping, labour and material costs, if a defect actually exists. Supplementary performance shall neither include dismantling the faulty object nor reinstallation of the defect-free object if we were not originally obliged to install it. If a request on the part of the Partner to eliminate a defect is deemed to be unjustified, we shall be entitled to demand from the Partner reimbursement of the costs incurred as a result of the request.

(6) If the delivered object is defective, we shall at our discretion be entitled and obliged to make a decision on supplementary performance within an appropriate period and to initially rectify the defect (remediation) or deliver a defect-free object (substitute delivery). In the case of a substitute delivery, the Partner shall return the object to be replaced pursuant to the statutory provisions upon our request. The same shall apply in the case of supplementary performance for replaced spare parts.

(7) We shall be authorised to make the owed supplementary performance dependant on the fact that the Partner pays the due purchase price or, if applicable, the currently due instalment, whereby the Partner shall, however, be authorised to retain an appropriate amount of the due payment in relation to the defect.

(8) Possible claims for damages shall solely exist pursuant to the specifications of section 6 of these T&Cs.

September 2024