

## **EPLAN ePULSE Portal - Terms of use**

### **Preamble**

The EPLAN Software & Service GmbH & Co. KG ("EPLAN") operates a web-based portal under the website [www.epulse.com](http://www.epulse.com) which provides registered users access to various cloud-based applications ("ePULSE Portal"). Access is reserved for registered users and may be gained via a web browser or via EPLAN software which the user operates in EPLAN products ("EPLAN products").

The following terms of use regulate the use of the ePULSE portal and the applications available on the portal, which includes the ePULSE Data Portal. During the registration process the User agrees to these Terms of Service. These terms of use are divided into sections A. General Terms of Use for the ePULSE Portal and B. Supplementary Terms of Use for paid applications within the ePULSE Portal.

### **A. General Terms of Use for the ePULSE Portal**

#### **§ 1 Subject matter of the contract**

- 1.1** EPLAN grants the user the right to use the ePULSE Portal and the applications available therein to the extent granted to him by these terms of use. The provisions in Section B of these Terms of Use shall also apply to the use of applications subject to payment.
- 1.2** The use of the ePULSE portal requires the user to register. The user may provide the following information: Name\*, e-mail address\*, country, department (the information marked with an asterisk is mandatory information that is required for registration on the ePULSE Portal). The user is obliged to provide truthful information during the registration process. In addition, he/she shall assign a personal password that enables access to the ePULSE portal.
- 1.3** Both parties may terminate the contract of use at any time. In the case of applications subject to charges, the regulations in § 2 in section B. must be observed.
- 1.4** The user shall also have the option to delete his account within the ePULSE portal. In this case, the contract of use shall also end with immediate effect.

#### **§ 2 Remuneration**

The use of the ePULSE portal is generally free of charge for the user. However, certain applications within the portal are subject to a fee. They may be used by on-premise customers of EPLAN, for whom appropriate payment information has already been stored, following an order for which a fee is payable. The provisions in Section B. of these Terms of Use also apply to applications subject to payment.

#### **§ 3 Type and scope of services, access**

- 3.1** EPLAN provides all services on the ePULSE Portal in unembodied form. The user may access the ePULSE portal via the website [www.epulse.com](http://www.epulse.com). In addition, he has the possibility to access the ePULSE Portal via EPLAN products and the software available in these products.

- 3.2** The user shall be responsible for connecting the devices used by the user up to the ePULSE Portal and the necessary hardware and software environment as well as for maintaining the Internet connection.
- 3.3** A specific availability of the ePULSE Portal shall not be deemed agreed. In particular, EPLAN is entitled to carry out maintenance work on the ePULSE Portal at any time during the operating period. EPLAN shall endeavour not to allow such maintenance work to lead to unreasonable restrictions for the user and to ensure a high availability of the ePULSE Portal. This does not apply in the case of chargeable applications; in this case, the regulations in section B. of these terms of use apply.
- 3.4** Within the applications available in the ePULSE portal, in particular within the application "ePULSE Data Portal", the user shall be granted access to product data of parts, components and devices of various types from various manufacturers ("digital product data"). The User is entitled to further use the Digital Product Data within the scope of the Terms of Use. However, it shall be the sole decision of EPLAN or the respective manufacturers as to which digital product data are made available to the user in what manner and to what extent. EPLAN has compiled this data with great care. However, it is not possible for EPLAN to check the completeness, correctness and up-to-dateness. It cannot be ruled out that individual digital product data may be incorrect, incomplete or not up-to-date. EPLAN accepts no liability for this, nor for the usability of the data or the fulfilment of specific purposes by the user.
- 3.5** The manufacturer's data sheet is solely decisive for the product specification of individual products described in the digital product data. An identification of the digital product data in the applications with the actual specifications of the parts, components and devices is not guaranteed. In case of doubt, the user must contact the respective manufacturer for verification of product specifications. However, within the portal he is given the opportunity to communicate any questions regarding incorrect, incomplete or outdated digital product data as well as any difficulties and problems in connection with these data directly to the respective manufacturer via a built-in "feedback function".
- 3.6** EPLAN shall insert the digital product data into the applications in accordance with the agreements made with the manufacturers. This also applies to subsequent updates. In this context, EPLAN will include the data of all manufacturers with the same value, and will not actively favour or discriminate against any manufacturer (due to motives or purposes driven by EPLAN). However, user activities, e.g. the user's download behaviour, etc., cannot prevent certain manufacturers from displaying or positioning themselves as favourites in any way. In addition, EPLAN grants the respective manufacturers the option of accompanying advertising in a suitable form and as part of the technically feasible implementation (e.g. "banner switching"). Furthermore, additional functionalities may enable higher-quality results to be achieved compared with the standard functionality, e.g. within the scope of presentation and evaluation.

#### **§ 4 Obligations of the user to cooperate**

- 4.1** The User shall ensure the proper handling of the ePULSE Portal and the applications available therein in accordance with these Terms of Use.
- 4.2** The user shall ensure that he/she backs up his/her data within the usual framework and at appropriate intervals. Insofar as EPLAN provides the user with a solution for data backup within the framework of the ePULSE Portal, the user shall fulfil his obligation by using the solution for data backup in accordance with its intended purpose.
- 4.3** If the ePULSE Portal is used by the User within the scope of using EPLAN products, the User shall create and maintain those system requirements which EPLAN has communicated to him for the use of EPLAN products. He shall ensure the installation of a functional, sufficiently dimensioned hardware and software environment which takes into account the capacity and performance requirements of the applications used.

#### **§ 5 Rights of use**

- 5.1** EPLAN grants the user the non-exclusive, non-transferable and non-sublicensable right, limited in time to the duration of the usage agreement, to use the ePULSE Portal and the applications included therein to the extent granted to him by these terms of use. The user has no right to disclosure of the source code of the software of the ePULSE Portal or individual applications contained therein. Making the ePULSE Portal, including the applications contained therein, accessible or passing it on or making it available to third parties (a) for (complete or partial) transfer and/or (b) for licensing or sublicensing and/or (c) for the provision of services for third parties is not permitted without the expressed prior consent of EPLAN.
- 5.2** The User may not pass on the access data assigned to him/her for the ePULSE Portal to third parties. He shall keep them protected from access by third parties and shall change his personal password at regular intervals.
- 5.3** The user shall be entitled to use the ePULSE portal and the applications available therein both privately and for business purposes. He/she may download, process and store the digital product data (also in systems such as ERP, PDM or PLM systems). Data in (\*.edz) format may only be inserted by the user in connection with EPLAN products and in projects created or edited by the user for this purpose and may only be passed on to third parties as part of the project documents and files. Any other and/or further use is prohibited. In particular, any disclosure of data to third parties which are not in part of individual project documents and files in the above-mentioned context of the use of EPLAN products is prohibited.
- 5.4** Under no circumstances shall the user be permitted to use content for the reproduction and/or other imitation of the ePULSE portal or the applications available therein. He is not entitled (a) to misuse the ePULSE Portal, (b) to gain access to unauthorized areas of the applications, (c) to transmit or provide illegal, immoral or offensive content or (d) to knowingly transmit or provide data with harmful components or spam or (e) to otherwise interfere in a harmful manner with the functioning of the ePULSE Portal.
- 5.5** If the user violates the obligations imposed on him under these terms of use, in particular those set out in § 5.4, EPLAN may, after prior written notification of the user, temporarily

block his access to the ePULSE Portal if the violation can be remedied by this. The block shall be lifted as soon as the reason for the block no longer exists. If the user continues to violate or repeatedly violates his obligations despite receiving a written warning, EPLAN may terminate the usage contract without notice for exceptional reasons and permanently delete the account of the user. EPLAN also reserves the right to assert further statutory rights.

- 5.6** The ePULSE portal is protected by copyright. All rights to the ePULSE Portal and the applications available therein are owned by EPLAN. The original digital product data are the exclusive property of the respective manufacturers. The user may not remove, alter or otherwise suppress any copyright notices or marks of EPLAN or the respective manufacturers.

## **§ 6 Warranty of EPLAN**

If the user uses the ePULSE portal free of charge, a warranty of EPLAN in case of material defects and defects of title is excluded. This shall not apply if EPLAN fraudulently conceals a legal or material defect of the ePULSE Portal at the time of the conclusion of the contract of use. The provisions in Section B. of these Terms of Use shall apply in a different manner to the use of applications for which a fee is charged.

## **§ 7 Liability of EPLAN**

- 7.1** EPLAN shall be liable to the user in the event of breach of contractual and non-contractual obligations in accordance with the statutory provisions. In this respect, EPLAN shall only be liable for intent and gross negligence. Notwithstanding this § 7.1, the provisions in Section B of these Terms of Use shall apply to the use of applications for which a charge is made.
- 7.2** The statute of limitations for the user's claims for damages shall be governed by the statutory provisions. The period of limitation with regard to the user's claims for damages due to defects is one year.
- 7.3** The use of the ePULSE portal and the applications available therein shall be at the sole responsibility of the User, i.e. the User shall be responsible for correctly interpreting the data provided to him in the context of the applications and for making further decisions on this basis. EPLAN shall not be liable for the usability of the data and contents at the user's premises.
- 7.4** Although EPLAN always endeavours to keep the ePULSE Portal free of viruses, a freedom from viruses cannot be guaranteed. Before downloading data, the user shall ensure that appropriate security measures and virus scanners are in place.

## **§ 8 Data protection**

In operating the ePULSE Portal, EPLAN observes the applicable data protection regulations, insofar as personal data is collected or processed. The privacy policy for the ePULSE portal applies.

## **§ 9 Changes to services or terms of use**

EPLAN is making every effort to improve the ePULSE portal and the applications it contains and to provide the user with new functions. However, this does not give rise to any claims whatsoever. EPLAN reserves the right to change the services at its discretion, to adapt the terms of use or to change the offer of the ePULSE Portal at a later date or to discontinue it partially or completely. The provisions in Section B of these Terms of Use shall apply in a different manner to applications subject to payment.

## **§ 10 Miscellaneous**

- 10.1** All contractual relations between the parties shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 10.2** If the user is a merchant, the exclusive place of jurisdiction for all disputes arising from and in connection with the contract of use shall be the registered office of EPLAN. However, EPLAN shall also be entitled to take legal action at the courts having jurisdiction over the user.
- 10.3** Insofar as the written form is provided for in these Terms of Use, this is ensured by compliance with the text form pursuant to § 126b BGB.
- 10.4** General terms and conditions of the users are not applicable to these terms of use. This also applies if the General Terms and Conditions are not expressly contradicted.
- 10.5** The parties are aware that the software behind the ePULSE portal and the applications available therein may be subject to export and import restrictions. In particular, licensing requirements may exist or the use of the software or related technologies abroad may be subject to restrictions. The User shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union and the United States of America, as well as all other relevant regulations. Fulfilment of the contract by EPLAN is subject to the proviso that there are no obstacles to fulfilment due to national and international regulations of export and import law or any other legal requirements.

### **B. Additional terms of use for chargeable applications within the ePULSE portal**

The following terms of use apply to applications of the ePULSE Portal, which are provided by EPLAN to the user against payment, in addition to the general terms of use in section A.

## **§ 1 Payment information, ordering chargeable applications**

- 1.1** The chargeable applications may be used by on-premise customers of EPLAN, for whom complete and correct payment information has already been stored.
- 1.2** Paid applications can be selected by the user within the framework of various service packages on the ePULSE portal and ordered by the user subject to payment.

## **§ 2 Term, termination**

**2.1** Unless otherwise agreed, the contract of use for chargeable applications shall begin at the time specified in the respective service package and shall run for a period of one year. The term shall be extended by a further year in each case if the usage agreement is not terminated in text form (e-mail to [info@eplan.de](mailto:info@eplan.de)) or in writing with a notice period of three months to the end of the term.

**2.2** The right of the parties to terminate the contract of use for applications subject to payment for good cause remains unaffected. In particular, EPLAN shall have the right to terminate the contract for extraordinary reasons if the user seriously infringes his obligations under these Terms of Use, provided that a period of time required for remedy in accordance with § 314 Paragraph 2 of the German Civil Code (BGB) has expired without success. A right of extraordinary termination by EPLAN shall also exist if the user is in arrears with payment of the remuneration for two consecutive dates, or in a period extending over more than two dates is in arrears with payment of the remuneration to an amount equivalent to the remuneration for two months, and a reasonable period set for the user to remedy the situation has expired without result.

**2.3** The termination of a service package via chargeable applications by the user has no effect on the user's account in the ePULSE portal. This account shall continue to exist and provide access to the free applications until the user completely deletes his account.

## **§ 3 Terms of payment**

**3.1** The remuneration to be paid by the user consists of a usage fee for the provision of the service packages booked by him within chargeable applications. The remuneration shall be invoiced at the beginning of the term for one year in advance. An invoice for this will be sent to the user by e-mail. All prices are subject to the statutory value added tax.

**3.2** Objections to the invoice amount must be made in writing to EPLAN immediately, at the latest within two weeks of receipt of the invoice. If the payment date is exceeded, EPLAN shall be entitled - without prejudice to all other claims - to charge interest at a rate of 5 percentage points above the basic interest rate.

## **§ 4 Liability of EPLAN for chargeable applications**

**4.1** EPLAN shall be liable to the user for damages in accordance with the statutory provisions:

- a)** for damage caused by intent or gross negligence on the part of EPLAN, its legal representatives or its executive staff,
- b)** for damages resulting from injury to life, body or health,
- c)** in the event of the assumption of a guarantee, in the event of fraudulent intent and for damages in accordance with the Product Liability Act,
- d)** for damages resulting from a slightly negligent breach of essential contractual obligations or of obligations the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the contractual partner may regularly rely (cardinal obligations).

- 4.2** Insofar as damage is caused by EPLAN through the breach of essential contractual obligations or cardinal obligations through slight negligence, EPLAN's liability shall be limited to foreseeable damage typical of the contract.
- 4.3** Notwithstanding the above provisions, strict liability of EPLAN for defects which already existed at the time of conclusion of the contract is expressly excluded.
- 4.4** Notwithstanding the foregoing provisions, any contributory negligence on the part of the user shall reduce the amount of any claim for damages in accordance with the respective contributory negligence share.

## **§ 5 Availability of chargeable applications**

- 5.1** Unless otherwise regulated in a service level agreement, the availability of the ePULSE Portal and the included applications shall be 98% per month. If the average availability falls below the value of 98% to up to 95% for reasons for which EPLAN is responsible, the user shall receive a credit note amounting to 20% of the remuneration for the respective service packages booked at the end of the relevant contractual period. If availability falls below a value of 95%, the user shall receive a credit note amounting to 30%. The credit is calculated pro rata for the month affected by the lower availability within the contractual period. A proportional refund on software service contracts is however excluded. Credit notes can be offset against the remuneration. If the contract of use ends, the user will receive a refund. Further claims are not substantiated - without prejudice to the rights to which the user is entitled according to the following § 6 and by law - with the indication of the average availability.
- 5.2** Interruptions to the service based on one of the following events are not considered downtime and are not taken into account in the calculation of availability: a) necessary maintenance work; b) malfunctions, failures and problems attributable to the user; c) failures attributable to the influence of third parties (e.g. DDoS attack) or force majeure (natural disasters, lockout, etc.). EPLAN carries out regular maintenance work, including the installation of updates and upgrades. If maintenance work leads to interruptions in performance, EPLAN will inform the user in advance. EPLAN will minimise any adverse effects of maintenance work.
- 5.3** EPLAN shall only be responsible for the proper functioning of the ePULSE Portal and the applications available therein up to the Internet node of the data center in which it is operated. EPLAN shall not be responsible for the fault-free operation of other data line connections. The applications shall be deemed "available" until the user reports the fault or until EPLAN detects the fault. The measurement of the downtime begins when the user reports the fault to EPLAN or when EPLAN detects the fault, and ends when the user is notified that the applications are once again available.
- 5.4** The user shall be obliged to back up his data regularly so that they can be restored at any time. EPLAN shall not be liable for the loss of the user's data if the damage is due to the fact that the user has failed to carry out a data backup, thereby ensuring that the lost data can be restored with reasonable effort.

## **§ 6 Malfunctions of chargeable applications within the ePULSE Portal**

**6.1** EPLAN shall remedy any defects in the ePULSE Portal and/or the applications available on it during the term of the contract within a reasonable period of time in accordance with the technical possibilities. In the event of defects, the statutory provisions shall apply.

**6.2** The user shall be obliged to notify EPLAN immediately of any malfunctions of the ePULSE Portal and/or the applications available on it, as soon as they are discovered. He shall take all measures which enable the faults or malfunctions and their causes to be determined and which facilitate or accelerate their elimination, and in particular document any malfunctions which occur.

## **§ 7 Confidentiality obligation of the user**

**7.1** EPLAN shall disclose to the user any Confidential Information within the ePULSE Portal in the context of the use of chargeable applications. The user is aware that this Confidential Information was not previously known or readily accessible, either in its entirety or in its individual details, and is therefore of commercial value and is protected by appropriate confidentiality measures on the part of EPLAN. If any Confidential Information does not meet the requirements of a trade secret within the meaning of the German Trade Secret Act, it shall nevertheless be subject to the confidentiality obligation in accordance with these Terms of Use.

- a) Confidential information within the meaning of these terms of use is all information (whether in writing, electronically, orally, digitally embodied or in any other form) that is disclosed to the user of the ePULSE Portal in the course of use or otherwise comes to the attention of the user in connection with the provision of the ePULSE Portal. This includes in particular:
- b) Trade secrets, products, manufacturing processes, know-how, experience, business relations, business strategies, business plans, financial planning, personnel matters;
- c) Information, data and documents on operational procedures and/or business relations;
- d) any documents and information of EPLAN which are subject to technical and organisational secrecy measures and which are marked as confidential or which are to be regarded as confidential according to the type of information or the circumstances of transmission;
- e) No confidential information is such information,
- f) which were known or generally accessible to the public before being communicated or handed over by EPLAN or a third party commissioned by EPLAN, or which become so at a later date without breach of a confidentiality obligation;
- g) which were demonstrably known to the user prior to disclosure by EPLAN or a third party commissioned by EPLAN and without breach of a confidentiality obligation;
- h) which was obtained by the user himself without using or referring to confidential information of EPLAN; or



- i) which are handed over or made accessible to the user by an authorised third party without violation of a confidentiality obligation.

**7.2** The User shall be obligated to treat Confidential Information as strictly confidential both during the term of the license agreement and beyond and to use it only in connection with the use of the ePULSE Portal and within the scope of the Terms of Use.

## **§ 8 Changes of services or terms of use**

**8.1** EPLAN reserves the right to adapt Section B. of these terms of use to changed legal or technical conditions as long as the functionality of the services is thereby maintained for the user and the adaptations are merely minor adaptations for the contractual rights and obligations of the parties. The user will be informed about such changes at least two months before the planned entry into force of the changes.

**8.2** EPLAN reserves the right to adapt Section B. of these terms of use to changed legal or technical conditions as long as the functionality of the services is thereby maintained for the user and the adaptations are merely minor adaptations for the contractual rights and obligations of the parties. The user will be informed about such changes at least two months before the planned entry into force of the changes.

(as of March 2020)