



## **Terms of Service of GroupKom GmbH**

**Dated: 01.02.2022**

### **Preface**

GroupKom GmbH makes the EVALARM service available to customers, their employees and any affiliated external business partners within the framework of the following terms and conditions. Users are responsible for using EVALARM themselves. The same applies to content that users input during use (e.g. alarm texts).

We expressly point out that users should only transmit and publish content that they want to share with third parties without hesitation. If a support and maintenance contract is concluded with GroupKom in addition to the licensing, the General Terms and Conditions will also apply to this.

### **1. Content of contract**

(1) The subject of this contract is the provision of the SaaS service EVALARM and the provision of support and maintenance services. The scope of the services to be provided in relation to the service results from the current service description (<https://wiki.evalarm.de>) and the order concluded with the customer.

(2) In addition to these general terms and conditions, the usage and data protection provisions of the EVALARM service apply. Users must accept these when using them and thus agree.

(3) GroupKom offers the EVALARM service free of charge or against payment of an agreed license fee depending on the scope of services. GroupKom can revoke the free use of the EVALARM service at any time with a notice period of 3 months.

(4) GroupKom may offer free services that go beyond the contractual agreement. The customer has no claim to this and cannot derive any claims from this.

### **2. Provision and Use**

(1) GroupKom sets up the contractually agreed modules for the customer and provides the necessary access details.

(2) GroupKom guarantees that EVALARM corresponds to the tried and tested state of the art and informs the customer in writing in good time about possible changes and their content. If the functionality of the solution is restricted for technical or other reasons that are independent and/or beyond GroupKom's control, GroupKom has the right to discontinue the solution completely and/or partially temporarily and/or permanently.

(3) GroupKom is constantly developing EVALARM so that the form and type of service provided may be subject to change without notice. GroupKom has the right and expressly reserves the right to discontinue the provision of EVALARM temporarily or permanently for individual or all users.



(4) GroupKom regularly offers software updates to expand the scope of services and functions and to eliminate possible defects. The customer undertakes to accept these and make the appropriate updates. In addition, to avoid a defect, GroupKom can also provide instructions as a temporary workaround solution, which the customer accepts as far as it is economically reasonable. GroupKom's obligation to permanently eliminate defects remains unaffected.

The prerequisite for any rectification of defects is that

- a) the customer reports the defect or disruption to GroupKom services as quickly as possible via the service desk at <https://servicedesk.evalarm.de> or via email to [support@evalarm.de](mailto:support@evalarm.de);
- b) it is a non-functional deviation;
- c) it is reproducible;
- d) GroupKom receives from the customer all documents and information necessary for the elimination of defects in a detailed and comprehensible form; and
- e) GroupKom is granted access to the hardware and software during normal working hours.

(5) The customer is only entitled to a reduction in the fee due to defects or disruptions if he has reported them in accordance with 2.4.

(6) GroupKom will only bear the expenses required for the inspection and supplementary performance to remedy defects if there is actually a defect. However, if there is no defect and/or it is within the customer's area of responsibility, GroupKom can demand compensation from the customer for the costs incurred from the unjustified request for rectification of defects (in particular inspection and travel costs), unless the reason for the apparently incorrect behavior was not recognizable for customers with reasonable effort.

(7) The use of EVALARM or connections to the Internet or the sending of SMS, calls, etc. may result in additional costs for which GroupKom is not responsible or which are billed according to the order.

(8) EVALARM and the application data are stored by GroupKom. GroupKom is entitled to delete the application data (history) created by the customer that is older than 3 months, unless there is an individual written agreement with a longer storage period. In order to comply with possible legal retention periods, the customer can download the relevant data from the system and save it independently.

(9) Customer's Safe Use Obligations

a) The Customer shall take the necessary precautions to prevent unauthorized persons from using EVALARM.

b) The customer shall be liable for EVALARM not to be used to racist, discriminatory, youth protection, politically extreme or other purposes violations or other purposes infringed against official regulations or requirements, and / or stored in particular application data, and / or stored on the server.

(10) Breach of the provisions of (9) by the customer

a) If the customer violates the regulations of (9) for reasons for which he is responsible, GroupKom may block the customer's access to EVALARM or the application data after a one-time prior written warning to the customer, if



b) If the customer, despite a corresponding written warning from GroupKom, continues to violate or repeats the regulations according to (9), and he is responsible for this, GroupKom can terminate the contract extraordinarily without observing a period of notice.

c) If the customer is responsible for the breach of duty, GroupKom can claim damages.

d) GroupKom is not liable for any infringement of the rights of third parties by the customer if and to the extent that this infringement results from exceeding the rights of use granted by this contract. In this case, the customer shall release GroupKom from all third-party claims at the first request.

#### (11) Rights to Use EVALARM

a) The customer receives from "EVALARM" a simple (non-sublicensable and non-transferable) right of use limited to the term of this contract in accordance with the following regulations.

b) The customer uses the application on the server via the access software. The application is not transferred to the customer. The customer may only use the application for his own business activities.

c) The customer is not authorized to make any changes to EVALARM himself.

d) If GroupKom provides new versions, updates, upgrades or other new deliveries with regard to the application during the term, the above rights also apply to these.

e) The Customer is not entitled to any rights not expressly granted to the Customer above. In particular, the customer is not entitled to use or allow use of EVALARM beyond the agreed use. In particular, it is not permitted to reproduce, sell or transfer EVALARM for a limited period of time, in particular not to rent or lend it or otherwise allow third parties to use it without the consent of GoupKom.

f) The delivery of the licenses, the use of the EVALARM service and other services (performance of the contract) are subject to the proviso that the performance does not violate national or international export control regulations, in particular embargoes or other sanctions.

The contractual partners undertake to provide all information and documents required for the export/transfer/import. Delays due to export checks or approval procedures override deadlines and delivery times. If the required approvals are not granted, the contract with regard to the affected parts is deemed not to have been concluded; Claims for damages are excluded in this respect and due to the above-mentioned exceeding of the deadline.

GroupKom is entitled to terminate the contract without notice and to discontinue the EVALARM service if termination is necessary to comply with national or international legal regulations. In the event of termination, the assertion of claims for damages or the assertion of other rights due to the termination is excluded.

### **3. Technical requirements and availability of EVALARM**

(1) Additional software is required to use the EVALARM service.

(2) The current technical requirements can be viewed at <https://www.evalarm.de/systembedingungen>.



(3) GroupKom is responsible for the availability and technical usability of EVALAR. If the EVALARM service is offered free of charge, the availability and technical usability may deviate from the paid services. Our cloud partner confirms the availability of the data center infrastructure and network availability at 99.9% on an annual average. If the security of network operation or the maintenance of network integrity is at risk, access to the services can be temporarily restricted as required.

(4) In order to ensure technical usability, the user must grant the authorizations specified in the usage and data provisions on his mobile end device.

(5) In the event of an error or defect (bugs) in the operating systems, GroupKom assumes no liability for the technical usability of individual functions or of EVALARM as a whole. GroupKom assumes no liability for the technical availability and proper functioning if other applications and services on the end devices have an undesirable effect on EVALARM.

#### **4. Liability & Warranty**

(1) GroupKom does not guarantee that interactive processes will reach the user correctly and that access to the Internet will be guaranteed at all times. GroupKom does not guarantee that the data will be exchanged at a specific transmission speed. GroupKom is not liable for disruptions resulting from defects or interruptions in the respective end device of the user or the communication paths from the user to the server or from misuse of the user name and email address. GroupKom is not liable for the proper receipt and processing of reports from third-party systems.

(2) The customer is liable for all consequences and disadvantages that arise for GroupKom through the improper or illegal use of EVALARM. The customer shall indemnify GroupKom against any claims or demands of third parties at first request, which third parties assert due to infringement of rights by the user himself or due to user-created content, including reasonable legal costs and. The user undertakes to support GroupKom in defending against such claims.

(3) GroupKom is not liable for any direct, indirect, special loss and/or damage of users resulting from the use of EVALARM and associated with a disruption in the communication or power lines, failures of mobile operators, harmful software actions from third parties whose purpose is unauthorized access and/or the decommissioning of GroupKom software and/or hardware, and are associated with circumstances of force majeure. In such cases, GroupKom is not obliged to reimburse users and customers for losses.

(4) Customer and user claims for damages are excluded. It is excluded from the user's claims for damages from the violation of life, body, health, as well as liability for other damages based on a deliberate or grossly negligent breach of duty by GroupKom, legal representatives or vicarious agents. Furthermore, the liability for the violation of duties, the fulfillment of which makes the proper execution of EVALARM possible in the first place and the observance of which the user may regularly trust (cardinal duties), remains unaffected.

In the case of a slightly negligent breach of these contractual obligations, GroupKom is only liable for typical, foreseeable damage - up to a maximum of the total remuneration to be paid according to the order (excluding VAT) for one year, but no more than EUR 75,000. This does not apply to claims for damages by the customer and user from injury to life, limb or health.

Liability for personal injury and under the Product Liability Act remains unaffected.



(5) GroupKom is not liable for damage caused by criminal offenses to the customer or third parties. GroupKom is also not liable for consequential costs that may arise from the use of the EVALARM service, e.g. B. by using the police, fire brigade or a security company.

(6) All devices and components sold by GroupKom that are demonstrably defective or unusable as a result of inferior materials or incorrect assembly will be replaced or repaired free of charge at GroupKom's discretion.

Excluded from this are errors and damage during transport and as a result of wear and tear of the material, faulty maintenance, disregard of operating and behavioral instructions, improper handling and other reasons for which GroupKom is not responsible.

The warranty expires if the device is accessed without permission, software not verified by GroupKom is installed and if the customer or a third party makes changes or repairs to the goods.

Unless otherwise agreed, the warranty period is 12 months from the delivery date. The warranty period for replaced parts expires at the same time as that of the entire delivery.

(7) To the extent permitted by law, GroupKom expressly excludes any further warranty.

## **5. Other services of GroupKom**

(1) GroupKom provides the customer with a user help in the form of EVALARM of a wiki available. The customer accepts this as a manual. When EVALARM is updated, the user help is also adjusted accordingly. The customer is entitled to save and print out the documentation provided and to reproduce it in a reasonable number for the purposes of this contract while maintaining existing proprietary rights notices.

(2) Further services by GroupKom can be agreed in writing at any time, in particular training courses on EVALARM. Such additional services are provided by GroupKom or a qualified partner against reimbursement of the proven expenses at the prices generally applicable at the time of the order.

(3) For the execution of further services, the customer already approves with the assignment of the other services access to application data. Access by GroupKom is only granted to the extent necessary to perform other services.

## **6. Terms of Payment / Price List**

(1) The remuneration for the services to be provided for the grant of use with regard to EVALARM results from the currently valid GroupKom price list and the contract concluded with the customer. Additional agreed services will be billed according to the current price list.

(2) GroupKom reserves the right to change the price of the services. In the event of a price change, GroupKom will inform the customer of the changed prices at least three months before they come into effect. In the case of price increases of more than 5% within 12 months, the customer is entitled to terminate the contract in writing with a period of notice of one month after receipt of the notification of the price increase at the time the price increase takes effect. The price increases do not apply to periods for which the customer has already made payments.

(3) During the delay, the fees are subject to interest at the applicable statutory default interest rate. GroupKom expressly reserves the right to claim further damage caused by delay. From the second reminder, GroupKom charges a reminder fee.

(4) GroupKom is entitled to adjust the license model. In particular, GroupKom can discontinue free services and support at any time.

(5) The customer can only offset undisputed or legally established claims and only assert a right to refuse performance or a right of retention because of such claims. The counter rights of the customer in the case of defects remain unaffected.

(6) Objections to the amount of usage-based fees charged for services must be made in writing within 30 days of receipt of the invoice. The omission of a timely objection is considered approval. GroupKom will point out the consequences of not objecting in good time on the invoice.

(7) GroupKom prices do not include VAT and transport costs.

## **7. Privacy Policy**

Insofar as GroupKom receives data from the customer or the user, stores it, digitizes it and makes it available to the customer and the user in digitized form as a data record, this is data processing on behalf of the customer.

According to Art. 4 GDPR, the customer is responsible for the processing of the data.

The personal data transmitted by the customer are processed and used by GroupKom exclusively for the customer and according to his instructions.

The rights and obligations incumbent on the parties in this respect are specified in the data processing agreement (DPA), which can be viewed at <https://www.evalarm.de/adv>.

## **8. Confidentiality**

(1) The contracting parties shall be silent on all the information to be treated to them in the context of this contractual relationship, or to use them only in the previously written agreement of the other party to third parties - equal to what purpose. The information to be treated as confidential includes information expressly designated as confidential by the party providing the information and information whose confidentiality clearly results from the circumstances of the transfer. In particular, the application data is to be treated confidentially by GroupKom if it becomes aware of it.

(2) The obligations under paragraph 1 do not apply to such information or parts thereof for which the receiving party proves that it

- was known or generally accessible before the date of receipt;
- were known to the public prior to the date of receipt or were generally accessible;
- became known to the public after the date of receipt or became generally available without the party receiving the information being responsible for this.



(3) Public statements by the parties about cooperation will only be made with prior mutual agreement.

(4) The obligations according to Paragraph 2 also exist beyond the end of the contract for an indefinite period of time, for as long as an exception according to Paragraph 2 has not been proven.

Zeit, und zwar so lange, wie ein Ausnahmetatbestand nach Abs.2 nicht nachgewiesen ist.

## **9. Term, Termination**

(1) The contractual relationship begins with the conclusion of the contract. The services will be provided from the time agreed in the order confirmation or separately after acceptance. The contract will be concluded for a period of 12 months unless otherwise agreed. If the contract is concluded at a certain period or has been agreed with the customer a minimum contract period, the contract shall be extended by the agreed time of the minimum term, but at most one year, if he does not with a period of three months at the end of the specified time or expiry of the minimum contract period is terminated by one of the contracting parties.

(2) The right to extraordinary termination and the right to termination according to 6.2 remain unaffected.

(3) GroupKom can terminate the contract without observing a notice period if the customer is in arrears with the payment of the contractually agreed prices or a not inconsiderable part of the prices for two consecutive months.

(4) GroupKom can terminate the contract if the customer repeatedly culpably violates his existing obligations after warning.

(5) Any termination must be in writing (e.g. email).

## **10. Force Majeure**

(1) None of the parties is obliged to fulfill the contractual obligations in the event and for the duration of force majeure. In particular, the following circumstances are to be regarded as force majeure in this sense:

- Fire/explosion/flood, war, mutiny, blockade, embargo, for which the contracting party is not responsible,
- Labor disputes lasting more than 6 weeks and not caused by the party culpably, technical problems of the internet that cannot be influenced by a party.

(2) Each contracting party must immediately inform the other in writing of the occurrence of a case of force majeure.

## **11. Applicable Law, Final Provisions, Place of Jurisdiction**

(1) The law of the Federal Republic of Germany applies to the exclusion of the UN Sales Convention (CISG). This does not apply if the protection granted by mandatory provisions of the law of the state in which the user (consumer) has his habitual residence is withdrawn.



(2) The customer's general terms and conditions do not apply unless their inclusion has been expressly confirmed in writing by GroupKom and an individual agreement has been made.

(3) There are no ancillary provisions outside of this contract and its annexes. Changes or additions to this contract and the annexes must be in writing to be effective. This also applies for the waiver of the written form requirement.

(4) Any invalidity of individual provisions of this contract does not affect the validity of the remaining content of the contract.

(5) If there are gaps in the practical application of this contract that the contractual partners did not foresee, the parties undertake to fill in or replace this gap or ineffective provision in a factual, appropriate manner based on the economic purpose of the contract.

(6) GroupKom reserves the right to update these terms and conditions from time to time. Customers and users will be informed about the change in a timely manner in an appropriate manner (e.g. by email, push notification, notification in the user/customer account, etc.). Use of the solution is governed by the currently valid version of the terms of use. If EVALARM continues to be used after the changes come into effect, the user declares his/her consent to the changed terms of use.

(7) If the customer is a merchant within the meaning of the German Commercial Code, a legal person under public law or a public, legal special fund, the place of business of GroupKom is the place of jurisdiction. The same also applies in the event that the customer does not have a general domestic place of jurisdiction. However, GroupKom is also entitled to sue at the customer's registered office.