

TERMS AND CONDITION OF SUPPLY OF THE BAXI MERCURIUS APPLICATION

July 2024

These terms and Conditions (“**Terms of Use**”) apply when the online Mercurius application (the “**Application**”), including any of its interfaces (APIs), compilers, libraries, (embedded) communication software etc. offered by **Baxi Heating Uk Limited**, a limited liability company established under the laws of the England and Wales (“**Service Provider**”) is made available remotely through an internet connection to a client (“**Client**”). . The above parties, including the Service Partner, hereinafter each a “**Party**”.

1. DEFINITIONS

If not already defined above, the following capitalized terms have the following meanings in these Terms of Use:

- 1.1. **Agreement:** the agreement concluded between Service Provider and the Client, including documents referred to therein, if any.
- 1.2. **Communication Module:** the Mercurius hardware communication module that is connected to the Device and which enables the transfer of Data from the Device to the Application.
- 1.3. **Confidential Information:** information relating to a Party, its Group Companies, staff, officers and/or hired persons and (i) with regard to which the disclosing Party has indicated that it is confidential or (ii) which is of such nature that its confidential nature should reasonably be understood by the receiving Party. Confidential Information with respect to Service Provider includes, without limitation, confidential information with respect to the Application including the source code of the Application.
- 1.4. **Data:** the data, including Personal Data, that are sent to the Application from the Devices as well as those that are uploaded and/or created through the Client’s use of the Application.
- 1.5. **Data Processing Addendum:** the data processing addendum in which the rights and obligations with respect to the Personal Data processing are laid down.
- 1.6. **Devices:** the district heating devices and, as the case may be, other types of devices from which the Data can be retrieved, which devices can be supplied by Service Provider or the Partner.
- 1.7. **GDPR:** the General Data Protection Regulation (REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC).
- 1.8. **Fees:** the fees payable for the use of the Application and, as the case may be, for other Services.
- 1.9. **Group Company:** a company in which a Party has effective control, by which it is controlled or with which it is jointly controlled.

- 1.10. **Incidents:** a technical problem with the Application, e.g. non-availability of the Application or the Data, slow processing of the Data or other processes in the Application, problems with access to the Data.
- 1.11. **Intellectual Property Rights:** the intellectual property and industrial and related rights, anywhere in the world, including but not limited to copyrights, database rights, patents, trademarks, trademark rights, domain names, including all claims to such rights.
- 1.12. **Log In Details:** the log in details that allow Users to remotely access and use the Application (or parts thereof).
- 1.13. **Personal Data:** the personal data, as defined in the GDPR, processed by Service Provider on behalf of the Client, as further detailed in the Data Processing Addendum.
- 1.14. **Services:** the services provided by Service Provider, consisting of making available the Application, support services with respect to the Application and additional Services agreed with the Service Provider, as the case may be.
- 1.15. **SLA:** the service level agreement (also an “Agreement”) that is concluded separately, if any, in which certain service levels of the Services are expressed.
- 1.16. **System Requirements:** the requirements for the Client’s and Users’ (operating) systems, software and hardware, and, as the case may be, other requirements for the access to and use of the Application.
- 1.17. **Term of Use:** the term during which the Client is entitled to use the Application.
- 1.18. **Update:** a new version of the Application.
- 1.19. **Usage Limitation:** means the agreed limitations on the use of the Application, e.g. a certain amount of (concurrent) Users or specific purposes and in any event the limitations and purposes indicated in [section 3.1](#).
- 1.20. **User:** a person that make use of the Application under the Client’s authority.

2. GENERAL

- 2.1. Service Provider may make the Application available to the Users of
 - a) The Clients;
 - b) The Client’s customer’s;
- 2.2. Each User is bound to comply with these Terms of Use, thereby taking into account that:
 - a) The Service Provider’s Clients are directly responsible and liable for their own Users as well as the Users, and shall procure that such Users comply with these Terms and Conditions;
 - b) The Client is directly responsible and liable for its customer’s Users and shall procure their compliance with these Terms of Use.
- 2.3. A breach of these Terms and Conditions by a User is deemed to be a breach by the relevant Client.
- 2.4. Should a User not comply with these Terms and Conditions, the relevant Client shall, upon Service Provider’s first request, take all the necessary actions required to ensure that the User remedies the non-compliance, without affecting the Service Provider’s own rights and available remedies, including the right to block

- the User's access to the Application and to (temporarily) suspend the Services.
- 2.5. Service Provider is entitled to invoke the provisions of these Terms and Conditions against either the Client and/or any User..
- 2.6. The Service Provider's general conditions of sale apply to the purchase and delivery of the Communication Modules and these Terms and Conditions apply to the provision of the Services. In case of conflict between the above conditions, where relevant for the Services these Terms and Conditions prevail and if these Terms and Conditions do not provide in certain topics, where relevant the general conditions apply in supplementary form.
- 3. USE OF THE APPLICATION**
- The Application shall be used by the Client and/or the User in accordance with the Terms of Use.
- 4. FEES AND PAYMENT**
- 4.1. The Fees are expressed in pounds sterling and if not indicated otherwise, they are exclusive of VAT and travel, lodging and other expenses in relation to the Services.
- 4.2. Provided the (first) Log In Details and the Communication Modules were made available by the Service Provider, even if the Client does not access or make use of the Application, this does not affect the Client's obligation to pay the Fees for the use of the Application.
- 4.3. The Fees for the Services will be charged with the agreed frequency or, in absence thereof, for five years in advance.
- 4.4. The payment term is set out in the Agreement, or in absence thereof, is 30 (thirty) days from the date of invoice. Payments must be made without set-off or discount. Any complaints about an invoice must be made within the payment term and must be substantiated. If the complaint is well-founded, Service Provider will submit a corrected invoice.
- 4.5. In absence of payment within the payment term as well as a payment reminder requesting payment within a term of 15 (fifteen) working days, the Client is in default. Service Provider, in addition to its other rights, has the right to (i) hand over the invoice for collection and to charge Client with the costs thereof as well as the statutory interest, (ii) suspend the Services and (
- 4.6. Service Provider cannot be obliged to repay any amounts paid for Services already rendered, irrespective of the legal ground of such repayment.
- 5. INTELLECTUAL PROPERTY RIGHTS**
- 5.1. Service Provider and/or its licensors retain the Intellectual Property Rights with respect to the Application including any amendments thereto.
- 5.2. The Intellectual Property Rights with respect to changes to the Application created pursuant or in relation to the provision of the Services shall solely vest in Service Provider. The Client hereby assigns to Service Provider its current and future Intellectual Property Rights with respect to changes to the Application, including any feedback, specifications, suggestions and preparatory materials. If such an assignment is not legally permitted or not valid, Client grants Service Provider an unconditional, perpetual, irrevocable, assignable, sub-licensable, unlimited right to use and adapt such materials at its own discretion and agrees to provide the cooperation requested by Service Provider to further execute such assignment, respectively license.
- 5.3. The Application shall be made available through an internet connection only. The Client does not have the right to obtain a copy of the Applications source code, nor the Application in object code (machine readable form).
- 5.4. Service Provider has the right, if a third party sues it for infringement of Intellectual Property Rights, to replace the Application with other software or to modify it, or, if these actions cannot resolve the claim, to terminate the Agreement and/or the Client's right of use without being liable to the Client and/or Partner for damages.
- 5.5. Service Provider indemnifies Client from third-party claims that such third party's Intellectual Property Rights are infringed as a result of the use of the Application, provided that:
- The claim can be wholly attributed to Service Provider;
 - Client does not acknowledge liability towards any third party;
 - Client immediately informs Service Provider of such claim;
 - Client allows Service Provider to take over the defence against the claim and determine the legal support; and
 - Client provides the co-operation required in relation to the defence against the claim.
- 5.6. Should the Partner's Client receive a third-party Intellectual Property Rights claim as indicated above, it must rely on an indemnification by the Partner, and the Partner in turn must rely on the above indemnification; the Partner's Client can therefore not invoke this indemnification directly against Service Provider.
- 5.7. Without prejudice to any other agreed stipulation and only except as agreed in writing, the Application may not in any way be copied or amended by the Client, including the removal of any of Service Provider's Intellectual Property Rights notices.
- 6. LIABILITY**
- 6.1. The extent of Service Provider's total liability under or in connection with this Agreement, the Application or otherwise (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 6.
- 6.2. Subject to clauses 6.3 and 6.5, the supplier's total aggregate liability howsoever arising under or in connection with this agreement shall be limited to the amount equal to the fees paid or payable to the Service Provider by the Client for a 12 month subscription period.
- 6.3. Subject to clause 6.5, the supplier shall not be liable for consequential, indirect or special losses.
- 6.4. Subject to clause 6.5, the supplier shall not be liable for any of the following (whether direct or indirect):
- loss of profit;
 - loss of revenue;

- c) loss or corruption of data;
- d) loss or corruption of software or systems;
- e) loss or damage to equipment;
- f) loss of use;
- g) loss of production;
- h) loss of contract;
- i) loss of commercial opportunity;
- j) loss of savings, discount or rebate (whether actual or anticipated);
- k) harm to reputation or loss of goodwill;
- l) loss of business; and
- m) wasted expenditure.

6.5. Notwithstanding any other provision of this agreement, the supplier's liability shall not be limited in any way in respect of the following:

- a) death or personal injury caused by negligence;
- b) fraud or fraudulent misrepresentation; or
- c) any other losses which cannot be excluded or limited by applicable law.

6.6. The Client shall indemnify and holds harmless the Service Provider from all reasonable costs and damages related to third-party claims that are the result of the Client's (including its Users) non-compliance with these Terms and Conditions and/or otherwise caused by their use of the Application.

7. FORCE MAJEURE

7.1. A Party cannot be held to perform an obligation if it suffers a force majeure event.

7.2. Force majeure, other than with respect to the Client's payment obligations, shall be, without limitation: failure of electronic communication systems (including without limitation telecommunication systems, computer systems, internet communication), malicious attacks, hacking, DDOS attacks and the like, failure or errors in third-party software or hardware, default under contract of third-party suppliers whether or not hired by Service Provider, strikes, labour-disputes, non-availability of Service Provider staff due to unforeseeable circumstances, force majeure or default of Service Provider' sub-contractors, suppliers or other third parties hired with respect to the performance of the Service Provider's obligations, government imposed or induced measures, failure of electricity systems, shortage of materials, delay in transport, fire, adverse weather conditions, vandalism, war, riots, terrorist actions.

8. TERM AND TERMINATION

8.1. The Agreement and the Term and Conditions have the duration as agreed in the Agreement or, in absence thereof, a term of five (5) years. Before the end of the duration, the Client and Service Provider can agree to extend the Agreement and Term and Conditions with a new agreed term. Service Provider reserves the right to make such an extension subject to different conditions, including new Fees or Usage Limitations. If the Client terminates the Agreement during its term, the Fees remain due for the remainder of the term; in case the Fees were paid in advance, the Client does not have a right to restitution and if the Fees were not paid in advance, the

Client will pay the remainder of the Fees upon Service Provider's first request.

8.2. Service Provider is entitled to, at its choice terminate the Agreement and/or the Client's and/or User's right of use, if the Client is in breach of its obligations under the Agreement, the Usage Limitations and/or these Terms of Use. If the breach can be remedied, Service Provider will grant the Client a term of (5) five working days in a notice of default to remedy the breach. More specific termination clauses (herein) prevail over this clause.

8.3. If Service Provider is in breach of its obligations under the Agreement and/or these Terms and Conditions , termination is always subject to the notification procedure set out in the Terms of Use.

8.4. Service Provider is entitled to, at its choice, terminate the Agreement without notice of default and without liability if (i) the Client requests for or is granted moratorium of payment, provisionally or otherwise, (ii) the Client's bankruptcy is requested or is granted, (iii) the Client becomes insolvent, (iv) a winding-up petition is filed in respect of the Client, (iv) the Client's company is wound up or terminated for reasons other than reconstruction or the merger of companies, (v) a situation occurs in a different jurisdiction with respect to the Client that is similar to any of the aforementioned situations, (vi) the decisive control in the Client is taken over by a third party that is a direct competitor of Service Provider or (vii) it is required to do so by applicable law or regulation or upon a government authority's order.

8.5. If Service Provider decides to stop offering the Application in its entirety, it is entitled to terminate the Agreement by written notice and without liability, thereby taking into account a notice period of three (3) months.

8.6. After the Agreement ends:

- a) The Client nor any of its Users shall be entitled to access or use the Application (save for during the exit procedure set out below) and Service Provider is entitled to block Client and the Users from using the Application;
- b) The Client will pay any amounts due and owing to Service Provider until that moment and amounts already paid for the Services that were performed by Service Provider do not have to be repaid;
- c) If Service Provider ends the Agreement due to the Client's breach, all due future amounts become immediately payable and any amounts paid upfront are forfeited and do not have to be repaid;
- d) The provisions of these Terms and Conditions that by their nature are intended to continue after the end of the Agreement will continue to apply (for as long as indicated), including in any event the provisions on the Client's payment obligations, the below exit provisions, provisions related to Intellectual Property Rights, confidentiality, liability and miscellaneous.

8.7. After the Agreement has ended other than due to Client's breach of the Agreement, the Usage Limitations and/or these Terms of Use, Service Provider shall, provided that

all outstanding invoices for the Fees have been paid, during a period of 3 (three) months, allow Client to download the Data from the Application in a format determined by Service Provider. Service Provider may, as permitted by law, charge its then current consultancy Fees for these exit Services. With respect to the return of Personal Data, the relevant provisions in the Data Processing Addendum prevail.

9. MISCELLANEOUS

- 9.1. These Terms and Conditions form an integral part of the Agreement.
- 9.2. The agreements have the following order of prevalence in case of conflict, unless agreed otherwise:
 - a) with respect to the Personal Data processing: the Data Processing Addendum;
 - b) a separate agreement between Service Provider and the Client laying down the terms and conditions of the Client's right of use, including the Usage Limitations;
 - c) the SLA (if applicable);
 - d) the Terms of Use
 - e) these Terms and Conditions.
- 9.3. The Client's terms and conditions do not apply unless these are explicitly accepted by Service Provider in writing.
- 9.4. The Client acknowledges that these Terms and Conditions are binding irrespective of how they were made available, e.g. through the Partner, directly to a User or by reference to an online location, and irrespective of whether the Client has read them or not.
- 9.5. The Client warrants that any User who accepts these Terms and Conditions is authorized to do so on its behalf. The Client warrants that the person or persons signing or agreeing to the Agreement, is/are authorized to bind it. The Client waives any rights it may have in relation to the User, respectively such person or persons not being authorized to bind them.
- 9.6. Service Provider is entitled to hire third parties for the performance of its obligations, including its Group Companies. The Service Provider shall remain responsible for such third party's performance.
- 9.7. Notices are to be sent in writing using the contact details and contact person(s) so indicated by each Party. Where these Terms and Conditions use the term 'in writing' this also means emails or another electronic method addressed at the last known (electronic) address made known by the other Party or known to the sending Party, with which, prior to that, there was successful communication, which is to be evidenced by the sending Party.
- 9.8. When the term 'including' is used, what follows after that term is not deemed to be a limitative enumeration. Where the term 'third party' is used, this does not exclude natural persons, unless explicitly indicated otherwise.
- 9.9. The Client is not entitled to transfer, assign, delegate, encumber or otherwise give in security its rights and/or obligations ensuing from the Agreement and/or these

Terms of Use, whether in whole or in part, to any third party without the Service Provider's prior written consent.

- 9.10. If any provision of the Agreement and/or these Terms and Conditions is invalid or unenforceable, the validity and enforceability of any such provision in any other respect and of the remaining provisions shall not in any way be impaired. The provision shall be deemed replaced by a valid and enforceable provision which is closest to its original intention.
- 9.11. A provision of these Terms and Conditions may be waived only by a written statement. No waiver of any provision of these Terms and Conditions shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
- 9.12. Service Provider is entitled to amend these Terms and Conditions. Service Provider shall give Client reasonable notice of important amendments prior to the start date of the amended Terms and Conditions, e.g. by placing a notification in the Application or by sending an email notification to the email address made known to Service Provider.
- 9.13. The Client gives its consent to the transfer of Service Provider's rights and obligations in relation to the Agreement, including the Data Processing Addendum, to a company that is part of the Processor's group of companies.

10. APPLICABLE LAW

- 10.1. The Agreement, these Terms and Conditions, the Terms of Use and the Data Processing Addendum are governed by the laws of England and Wales and shall be and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with the above, its subject matter or formation (including non-contractual disputes or claims).