

## General Terms and Conditions (GTC)

KIR Group GmbH

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Commercial register number:	523892f
Place of jurisdiction:	Commercial Court of Vienna

### 1. Scope

- 1.1. These General Terms and Conditions (hereinafter referred to as the "GTC") apply to all contracts for the use of the SaaS mobility and vehicle management platform (hereinafter referred to as the "Service") offered by KIR Group GmbH (hereinafter referred to as the "Service") between the Provider and its customers (hereinafter referred to as the "User").
- 1.2. These GTC apply to entrepreneurs within the meaning of § 1 para. 1 no. 1 of the Austrian Commercial Code (UGB), unless there is an explicit differentiation between entrepreneurs and other users in the following provisions.
- 1.3. Deviating or supplementary general terms and conditions of the User do not become part of the contract, unless the provider has expressly agreed to their validity in writing.

### 2. Conclusion

- 2.1. The presentation of the service on the provider's website does not constitute a binding offer to conclude a contract.
- 2.2. By registering on the Website and selecting a paid subscription, the User makes a binding offer to conclude a contract for the use of the Service.
- 2.3. The Provider confirms receipt of the User's offer immediately by email (order confirmation). This order confirmation does not yet constitute acceptance of the offer, but merely informs the User of the receipt of his order.
- 2.4. The contract is only concluded when the Provider expressly accepts the User's offer by means of a further email (order confirmation) or activates the service for the User.

2.5. The contract is concluded in German.

### **3. Prices and payment terms**

- 3.1. The prices for the use of the Service are based on the applicable pricing model, which can be viewed on the Provider's website.
- 3.2. As part of a Freemium Offer, the User is granted the opportunity to use the Service for one (1) Vehicle free of charge for a period of thirty (30) calendar days from the date of initial activation (hereinafter referred to as the "Trial Period"). During this trial period, the User will have access to the same features as a paid subscription. After the end of the trial period, the paid use will automatically begin in accordance with the applicable price conditions, unless the User has terminated the subscription before the end of the trial period in accordance with the cancellation policy. The User will be informed once about the upcoming expiry of the test phase and the start of the obligation to pay seven (7) calendar days in advance via email.
- 3.3. The fee is calculated per connected vehicle and per month.
- 3.4. All fees are net prices, expressed in Euros (EUR), excluding VAT, sales tax, customs or other taxes, public or government fees or tariffs.
- 3.5. The monthly fee for each vehicle connected to the Platform is payable for the entire respective billing period (calendar month). This applies regardless of whether the vehicle is connected to the platform during the entire billing period or not. There is no pro-rata calculation of the fee for parts of a billing period.
- 3.6. A single vehicle can be assigned to several of the services offered by the provider (in particular fleet management solution, corporate car sharing, charging solution) at the same time. The monthly fee for each vehicle is calculated as the sum of the services booked for that vehicle in accordance with the applicable pricing model. A separate fee applies per vehicle for each service booked; there will be no reduction or flat price if several services are used for the same vehicle.

- 3.7. Payment of the monthly fee is made in advance using the payment gateway integration integrated into the User's profile under the payment settings. The fee will be collected after the User has entered the valid credit card data required for this purpose in his profile and the billing period begins. The User is obliged to ensure that the specified account has sufficient funds. The fee is collected no later than the last day of the previous month.
- 3.8. The User hereby gives his/her express consent to the processing of the credit card data provided by the User in the course of the payment process by the Provider or the commissioned payment service provider for the purpose of carrying out the monthly settlement of the service fees. This consent includes the storage and transmission of credit card data to the extent necessary for payment processing. The processing of payment data is carried out in compliance with the applicable data protection regulations.
- 3.9. By providing his/her credit card details, the User grants the Provider the revocable authorization to collect the monthly usage fees due in advance from the specified credit card account. The User undertakes to have the funds of the credit card account necessary to cover the amounts collected.
- 3.10. In the event of unsuccessful debiting of the due usage fee or other late payment, the Provider shall be entitled, without prejudice to its other rights, to temporarily deactivate or suspend the User's access to the Service until the outstanding claim has been paid in full.
- 3.11. The Provider undertakes to notify the User of any open and unpaid invoices within fourteen (14) calendar days.
- 3.12. The Provider reserves the right to change the prices for the Service at any time. Price changes will be communicated to the User by email at least thirty (30) calendar days before the date of entry into force. The User has the right to terminate the contract within a period of thirty (30) calendar days after the announcement of the price change.
- 3.13. The User is not entitled to make a complaint or any other claim if the scheduled availability of one or more Services falls short of the User's subjective expectations or if there are only short-term and insignificant interruptions in the connection of one or more vehicles to the Service. In particular, failures that affect the functionality of the service only temporarily and to a minor extent are irrelevant.

#### **4. Contract Term and Termination**

- 4.1. The contract is concluded for an indefinite period of time and begins with the activation of the service by the provider.
- 4.2. The User can cancel the monthly subscription at any time at the end of the respective calendar month. Cancellation can be made via the function provided for this purpose in the User account or by email to

[support@smartmove.eu](mailto:support@smartmove.eu) . In any case, the termination must be made in writing.

- 4.3. The User is entitled to subscribe to or cancel the individual services offered (in particular fleet management solution, corporate car sharing, charging solution) separately for each vehicle connected to the platform. The notice periods and modalities specified in the contract under point 6 apply to each such additional or deduction of a single service per vehicle. When adding or cancelling services, the User must clearly specify which services are to be added or cancelled for which vehicles. The change to the booked services will take effect at the end of the respective calendar month, provided that the notification of the additional or debiting has been made in due time in accordance with the notice periods.
- 4.4. The Provider may terminate the contract with a notice period of fourteen (14) calendar days to the end of a calendar month.
- 4.5. The right to terminate without notice for good cause remains unaffected by both parties to the contract. An important reason for the provider exists in particular if the User:
  - 4.5.1. violates essential provisions of these Terms and Conditions.
  - 4.5.2. provided false or incomplete information during registration or in the course of using the Service.
  - 4.5.3. misuse the Service or take any action that could affect the functionality or security of the System.
  - 4.5.4. does not meet its payment obligations despite a reminder.
- 4.6. In the event of termination of the Agreement, for any reason, the User's access to the Service will be blocked and the User's stored data will be treated in accordance with the provisions on data protection.

## **5. Data processing and data protection**

- 5.1. The Provider processes the User's personal data in accordance with the provisions of the General Data Protection Regulation (GDPR) and the Austrian Data Protection Act (DSG). The details of data processing are regulated in the Provider's privacy policy, which is available on the Provider's website.
- 5.2. The User retains sovereignty over his/her vehicle data generated and transmitted in the course of using the Service.
- 5.3. The User grants the Provider a non-exclusive, spatially and temporally unlimited right to use the anonymized vehicle data for the purposes of improving the service, for statistical evaluations, for the development of new functions and for internal analysis purposes. This anonymised data will only be passed on to third parties in aggregated and anonymised form.
- 5.4. The anonymization of the data is carried out in such a way that the identification of individual users or vehicles is excluded.

- 5.5. The User is responsible for complying with the provisions of data protection law when handling the data obtained through the Service.
- 5.6. The User gives the Provider consent to include the User's company name, name and logo in a list of reference customers after conclusion of the contract and to use them for marketing and advertising purposes. This consent includes, in particular, the mention on the provider's website, in social media, in presentations and in printed advertising materials. The User is entitled to revoke this consent at any time and without giving reasons in writing by email to [support@smartmove.eu](mailto:support@smartmove.eu) . In the event of revocation, the Provider will remove the User from future publications and will endeavour to remove the User from existing online materials in a timely manner.
- 5.7. The User agrees to be informed by the Provider by email about its own similar products, new functionalities of the Service, updates and relevant offers. The User may object to this sending of marketing information at any time and without giving reasons. An objection can be made by clicking on the unsubscribe link in the respective email or by sending an informal message by email to [support@smartmove.eu](mailto:support@smartmove.eu) . The objection does not incur any costs other than the transmission costs according to the basic rates.

## **6. Warranty and liability**

- 6.1. For entrepreneurs, acc. 1.2, the warranty period is twelve (12) months from the conclusion of the contract. The Provider warrants that the service is free of defects at the time of provision. Defects must be reported to the Provider immediately in writing.
- 6.2. The Provider shall only be liable for damages to the User in the event of intent and gross negligence. The Provider shall only be liable for slight negligence in the event of a breach of essential contractual obligations, the fulfilment of which is essential for the proper execution of the contract in the first place and on the compliance of which the User may regularly rely (cardinal obligations). In this case, the liability of the provider is limited to the typically foreseeable damage.
- 6.3. The above limitations of liability do not apply to damages resulting from injury to life, limb or health as well as to damages based on an intentional or grossly negligent breach of duty by the Provider, its legal representatives or vicarious agents.
- 6.4. The Provider shall not be liable for damages caused by disruptions in the API connection (in particular the API of data providers), errors or delays in data transmission or by the unavailability of the API.
- 6.5. The Provider shall not be liable for any damage caused to the User as a result of the improper use of the Service by third parties.

- 6.6. Without prejudice to the foregoing provisions of this Section 6, the Provider shall not be liable for any performance or availability problems of the Service resulting from circumstances beyond the direct control of the Provider. These include, but are not limited to, problems caused solely by:
  - 6.6.1. Hardware, software or connection problems of the User or its End Users.
  - 6.6.2. Damage or impairment of User or End User Content.
  - 6.6.3. Acts or omissions of the User, its employees, vicarious agents or other third parties commissioned by the User.
  - 6.6.4. The continued use of the Service by the User after the Provider has recommended a change in its use to the User and the User has not complied with this recommendation.
  - 6.6.5. Unauthorized access to the Service by third parties through the credentials or devices of the User's Authorized Users.
  - 6.6.6. Problems that arise during the use of beta or trial versions of the Service, unless the Provider has made a separate written agreement with the User in this regard.
  - 6.6.7. Problems caused by the User's third-party services that are connected to the Service (e.g. payment gateways).
  - 6.6.8. Attacks on the Service by third parties, in particular through denial-of-service attacks, overloading of the API or comparable threats to system security.
  - 6.6.9. Maintenance windows or downtimes scheduled by the User and communicated to the Provider.

## **7. Intellectual property**

- 7.1. All rights to the service, in particular copyrights, trademark rights and other property rights, belong exclusively to the Provider.
- 7.2. The User only receives a right of use within the framework of these GTC. Further use or exploitation of the service or its components is not permitted without the express written consent of the provider.

## **8. Final provisions**

- 8.1. These T&Cs and all orders as well as the relations between the parties (insofar as they relate directly or indirectly to these T&Cs or an order) shall be governed by the laws of the Republic of Austria to the exclusion of its conflict of law rules and the UN Convention on Contracts for the International Sale of Goods.
- 8.2. The place of performance for all applicable orders is Vienna. For all Users, the court with jurisdiction over the subject matter in Vienna is agreed to be the exclusive place of jurisdiction for all disputes arising from or in connection with this contract.
- 8.3. Should individual provisions of these GTC be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions.

The invalid or unenforceable provision shall be replaced by one that comes closest to the economic purpose of the invalid or unenforceable provision.

- 8.4. The Provider reserves the right to change these T&Cs at any time. The amended T&Cs will be notified to the User by email or via the Service. The changes shall be deemed to have been accepted by the User if he/she does not object to the change within thirty (30) calendar days of notification. The User will be informed of this consequence separately in the announcement.
- 8.5. The T&Cs are executed exclusively digitally. All parts of these T&Cs have been made available to the User prior to signing. The Provider will provide the Customer with digital copies of these and all other parts immediately and free of charge upon request.

# Fleet management

## 1. Description of services and scope of use

- 1.1. The service enables the User to manage his vehicles (according to § 3 KFG 1967 classification of motor vehicles and trailers, the service applies primarily, but not exclusively, to passenger cars of category M1) via an API connection (currently Smartmove API) in a mobility and vehicle management platform.
- 1.2. Through the API connection, the User is shown various data points of his connected vehicles, in particular, but not exclusively: mileage, charge level or fill level, range, GPS coordinates, door status (closed/open, locked/unlocked), status of the immobilizer, ignition, windows and light. The exact amount of data points available depends on the capabilities of the connected vehicle API, the type of vehicle, the model, and the year of manufacture, and is subject to change. More information can be found at <https://fleets.smartmove.eu/compatibility>.
- 1.3. The Provider does not assume any liability for the accuracy, completeness, timeliness and availability of the data retrieved via the API interface. The data is transmitted in the same way as it is provided by the respective vehicle manufacturer or API.
- 1.4. The User is responsible for the correct connection of his vehicles to the Service and bears the costs that he may incur through the use of the Smartmove API or other interfaces.
- 1.5. The User receives a non-exclusive, non-transferable right to use the service to the agreed extent, limited in time to the duration of the contract.
- 1.6. The User undertakes not to misuse the Service and not to perform any actions that could affect the functionality of the Service or the security of the System.
- 1.7. User uses the Service(s) to manage and configure the Service for their own use. The Portal and the User Manual are to be considered as the primary means of support for the Service. Only if support via the User Manual portal fails, is unavailable or inappropriate, the Customer is entitled to contact support by email to [support@smartmove.eu](mailto:support@smartmove.eu).



## **2. Connection of vehicles via Smartmove API**

- 2.1. Vehicles are connected via the Smartmove API. As part of the connection process, the User is redirected to the platform of data providers and must authorize access to the relevant vehicle data there.
- 2.2. The User is responsible for complying with the terms of use and privacy policies of the data providers. The provider has no influence on the data processing by the respective data provider.
- 2.3. The User warrants that he/she has the necessary rights to connect the Vehicles to the Service and to retrieve the relevant data, regardless of the connection method used (API or IoT).
- 2.4. The provider reserves the right to discontinue or change the support of certain API connections at any time. The Provider will inform the User of this thirty (30) calendar days in advance, insofar as this is possible and reasonable.
- 2.5. The User expressly agrees to the terms of use of all Smartmove data providers. In particular:
  - 2.5.1. Smartcar: <https://smartcar.com/legal/terms>
  - 2.5.2. Inverse: <https://invers.com/de/>
  - 2.5.3. Caruso: [https://www.caruso-dataplace.com/dataplace\\_terms\\_and\\_conditions/](https://www.caruso-dataplace.com/dataplace_terms_and_conditions/)
  - 2.5.4. Tesla: <https://www.tesla.com/legal/additional-resources#fleet-api-agreement>

# Corporate car sharing

## 1. Description of services and scope of use

- 1.1. The service enables the User to manage his vehicles (according to § 3 KFG 1967 classification of motor vehicles and trailers, the service applies primarily, but not exclusively, to passenger cars of category M1) via an API connection (currently Smartmove API) in a mobility and vehicle management platform.
- 1.2. Through the API connection, the User is shown various data points of his connected vehicles, in particular, but not exclusively: mileage, charge level or fill level, range, GPS coordinates, door status (closed/open, locked/unlocked), status of the immobilizer, ignition, windows and light. The exact amount of data points available depends on the capabilities of the connected vehicle API, the type of vehicle, the model, and the year of manufacture, and is subject to change. More information can be found at [link to compatibility page]. These data points are also available to the User as part of the corporate car sharing functionality.
- 1.3. User uses the Service(s) to manage and configure the Service for their own use. The Portal and the User Manual are to be considered as the primary means of support for the Service. Only if support via the User Manual portal fails, is unavailable or inappropriate, the Customer is entitled to contact support by email to [support@smartmove.eu](mailto:support@smartmove.eu).
- 1.4. **Corporate Car Sharing (CCS) Functionality**
  - 1.4.1. Via a separate area within the SaaS platform, the User has access to the specific functionalities for corporate car sharing of his connected vehicles.
  - 1.4.2. The vehicles used for corporate car sharing can be connected to the service via the API connection described in points 3.1 and 3.2 as well as via IoT devices. For the connection and use of IoT devices, the separate General Terms and Conditions for Hardware of the Provider also apply, to which reference is hereby expressly referred.
  - 1.4.3. The User's authorised end-Users will be given the opportunity to book and reserve the vehicles activated for corporate car sharing via a separate mobile application (available in the App Store and Google Play Store) and, where applicable, via the web platform.
  - 1.4.4. As part of the corporate car sharing functionality, authorised end users of the User can open, close, start and switch off the connected vehicles via the mobile application and, if necessary, the web platform to the extent technically possible. The Provider does not assume any liability for the availability and functionality of these control options at all times, as they may depend on various factors (e.g. vehicle equipment, network availability).

- 1.4.5. The User and his authorised end users also have access to the data points of the connected vehicles mentioned in point 3.2 within the corporate car sharing area.

## 2. **Connection of vehicles**

- 2.1. Vehicles can be connected to the service via various interfaces, in particular via the Smartmove API. As part of the connection process, the User may be redirected to the platform of data providers and must authorize access to the relevant vehicle data there. The provisions of this section apply to all API-based connections.
- 2.2. The User is responsible for the correct connection of their vehicles to the Service via the respective APIs and IoTs and bears the costs that they may incur through the use of these interfaces and/or devices. The User is responsible for complying with the terms of use and privacy policy of the respective data providers. The provider has no influence on the data processing by these data providers.
- 2.3. The User warrants that they have the necessary rights to connect the Vehicles to the Service and to retrieve the relevant data, regardless of the connection method used (API or IoT).
- 2.4. The provider reserves the right to discontinue or change the support of certain API connections at any time. The Provider will inform the User of this thirty (30) calendar days in advance, insofar as this is possible and reasonable.
- 2.5. The User expressly agrees to the terms of use of the respective data providers whose interfaces are used to connect his vehicles. This includes, but is not limited to, the Terms of Use of
  - 2.5.1. Smartcar: <https://smartcar.com/legal/terms>
  - 2.5.2. Inverse: <https://invers.com/de/>
  - 2.5.3. Caruso: [https://www.caruso-dataplace.com/dataplace\\_terms\\_and\\_conditions/](https://www.caruso-dataplace.com/dataplace_terms_and_conditions/)

## **2.6. Connection via IoT devices**

- 2.6.1. If vehicles are connected to the corporate car sharing service via IoT devices, the provider's separate general terms and conditions for hardware apply in addition. These contain specific regulations on the installation, use, maintenance and warranty of the IoT devices as well as on the processing of the data collected about these devices.
- 2.6.2. In cases of downtime that are legitimately due to issues related to infrastructure components and IoTs that are under the Customer's control, Customer must conduct a thorough review and test of these components before contacting Customer Support. The Provider shall not be liable for any downtime, unavailability or malfunction of the Service resulting from problems related to hardware components under the control of the Customer.