

## **Terms of use of peiker CEE GmbH (Peiker) for services provided to users via the smartphone app Ceecoach Plus (App)**

### **1 General/Conclusion of the contract**

1.1 The following Terms of Use govern the use of the App provided by Peiker. The User must first accept the Terms of Use in order to use the App. The contract of use between Peiker and the User shall be concluded exclusively subject to the following terms and conditions.

1.2 Any deviating terms and conditions of User shall not apply, even if Peiker makes reference to their applicability and does not explicitly object to them. Any deviation from these Terms and Conditions shall only be effective if confirmed in writing by Peiker.

### **2 Scope of services/requirements**

The app allows the user to configure the CEECOACH Plus and install software updates. The configuration parameters include language settings, volume settings and the setting of a switch-off timer. Furthermore, the user receives current messages about new functions or software releases.

### **3Registration , login data**

Peiker uses an e-mail address, Apple ID, Facebook ID or Google ID for registration. The user sets an individual password himself. The disclosure or transfer of this data to third parties is not permitted. If the User nevertheless discloses the data to a third party, the User shall indemnify Peiker upon first demand against all claims asserted against Peiker and resulting from the use by the third party or another party.

### **4Availability, exclusion of warranty**

4.1 Insofar as the App is provided free of charge, the User has no claim to a specific availability of the Services, either in total or for specific dates. For chargeable services an annual total availability of the services of at least 98.5 % is granted. The delivery point is the router exit of Peiker's data center.

4.2 The User is requested to report any malfunctions, bugs and errors to Peiker without undue delay. Insofar as the App is provided free of charge, Peiker shall not be liable for any success expected from the use of the data provided by means of the Services.

4.3 With regard to free Services Peiker shall be entitled at any time to carry out maintenance and system servicing work. During such work the Services may not be available. Peiker shall endeavour, but shall not be obliged, to carry out lengthy maintenance work, which only serves to eliminate errors but not to maintain the system, outside the main service times, if possible during times with lower user traffic (e.g. at night in the period from 22.00 hrs. to 6.00 hrs. in the morning).

4.4 Peiker shall provide a monthly maintenance window of 3 hours on weekdays (Mon. - Fri.) from 7:00 p.m. to 7:00 a.m. for the system maintenance of fee-based Services. The use of the maintenance window will be announced 2 calendar weeks in advance. These maintenance windows do not count as downtimes and therefore do not reduce the percentage of the total availability according to section 4.1.

4.5 If a reduction or discontinuation of services occurs with regard to a free service, the user shall not be entitled to any warranty or compensation in particular.

### **5Set-off/right of retention**

User may set off counterclaims against claims of Peiker only if such counterclaim is undisputed or has been finally adjudicated; User may exercise a right of retention only to the extent that such right is based on claims of User arising out of the same legal transaction.

### **6 Rights of use/results**

6.1 Peiker does not provide source or machine code.

6.2 The app may be used by the user unchanged for his own purposes, in particular for the configuration of CEECOACH Plus as well as for the installation of software updates.

6.3 In the event that the User should determine a use of the Services in breach of contract or an inadmissible influence on the App, e.g. through third-party activations, DDos attacks, etc., the User shall be obliged to inform Peiker thereof without undue delay.

### **7Liability**

7.1 Peiker shall only be liable as follows:

- a) for damages caused intentionally or by gross negligence as well as in cases of culpable injury to life, body or health within the scope of the statutory provisions;
- b) for damages resulting from the non-observance of any guarantees given in writing to the extent of the User's pecuniary interest covered by the purpose of the guarantee and recognizable to Peiker at the time it was given;
- c) in cases of product liability in accordance with the mandatory provisions of the Product Liability Act;
- d) without prejudice to the liability according to the cases mentioned in letters a to c, for the damages caused by the violation of so-called cardinal obligations. Cardinal obligations are such fundamental contractual obligations which were decisive for the conclusion of the contract by the User and on the observance of which the User could rely. If Peiker has breached cardinal obligations due to slight negligence, Peiker's liability shall be limited to the foreseeable damage which is typical for this type of contract. In this case Peiker shall be liable for the sum of all liability cases only up to the total amount the User has paid for the App.

7.2 Any further liability of Peiker, irrespective of the legal ground, is excluded.

7.3 User shall be responsible for its own data backup. In case of loss of data Peiker shall not be liable beyond the effort and expense required for the import of a current backup of the User.

7.4 The above limitations of liability in Sections 7.1, 7.2 and 7.3 shall also apply in favour of Peiker's legal representatives, employees and vicarious agents.

### **8 Setting the system**

Peiker may discontinue the services of the App in whole or in part at any time in its sole discretion.

### **Data protection**

9.1 Peiker shall comply with the applicable laws on data privacy protection, in particular the German Data Protection Regulation (Datenschutz-Grundverordnung - DS-GVO) and the national laws implementing it, with regard to User's personal data.

9.2 Peiker shall process User 's personal data if, to the extent and for the duration necessary for the establishment, performance and termination of this contractual relationship. Any further

processing of User's personal data shall only take place if required or permitted by law or if User has consented thereto.

9.3 Peiker relies on external service providers, which are referred to as processors under the GDPR, to provide services within the scope of the app provided. A transfer of personal data is justified by the fact that Peiker carefully selects external service providers as processors within the scope of Art. 28 (1) DS-GVO, regularly reviews them and contractually obligates them to process all personal data exclusively in accordance with Peiker's instructions and to comply with the DS-GVO.

9.4 For further information on data protection, in particular on the data subject rights to which you are entitled, please refer to the following link: <https://www.peiker-cee.com/datenschutzerklaerung/>.

## **10. Place of jurisdiction/applicable law**

10.1 If User is a merchant, a legal entity under public law or a special fund under public law within the meaning of § 38 para. 1 German Code of Civil Procedure (ZPO), the exclusive place of jurisdiction for all present and future claims arising out of or in connection with this contractual relationship shall be the court at Peiker's registered office in Bad Homburg v.d. Höhe. Peiker shall in any case also be entitled to bring an action at User's place of business. This shall also apply if User has no place of jurisdiction in Germany.

10.2 Insofar as different language versions of the Terms of Use exist, versions other than the German language version are for information purposes only; only the German language version is legally binding.

10.3 The present contractual relationship shall be governed exclusively by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

Peiker

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