

TERMS OF USE FOR AEROTOOL

Stand: (8/2023)

AEROCOMPACT® SERVICES GMBH
(HEREINAFTER REFERRED TO AS “AEROCOMPACT®”)

PREAMBLE

“AEROCOMPACT®” provides its contractual partners with paid access to the digital platform AEROTOOL, which it operates. The digital platform AEROTOOL is used for fast, intuitive and simple planning of solar plants in real time and independent of location. These Terms of Use shall apply equally to any successor platform to AEROTOOL and to any other digital services and offers provided by AEROCOMPACT®.

1. SCOPE

- 1.1. These Terms of Use apply to the use of the AEROTOOL digital platform and any successor platforms as well as other digital services and products offered by AEROCOMPACT® (hereinafter collectively referred to as “AEROTOOL”).
- 1.2. The terms and conditions of the contracting party shall only become part of the contract insofar as AEROCOMPACT® has expressly agreed to their validity in writing. Even if AEROCOMPACT® refers to a letter that contains or refers to the terms and conditions of the contracting party, this does not constitute an agreement to the validity of those terms and conditions without such express written consent.

2. CONTRACTORS

- 2.1. AEROCOMPACT® grants access to and use of AEROTOOL exclusively to entrepreneurs (as defined by § 1 para 1 Z 1 KSchG), i.e. to natural or legal persons or partnerships with legal capacity who act in the exercise of a commercial or independent professional activity, as well as to corporations under public law.
- 2.2. The contracting party expressly declares to AEROCOMPACT® that it is an entrepreneur within the meaning of the point of these terms of use.
- 2.3. The conclusion of contracts with consumers does not take place.
- 2.4. In this sense, all those who are entitled to access and use the AEROTOOL on the basis of a legally effective legal transaction and who have submitted to these terms of use are deemed to be contractual partners.
- 2.5. The use of AEROTOOL requires relevant knowledge necessary for the use of products and implementation of projects with products from AEROCOMPACT®. AEROCOMPACT® is not obliged to check whether contractual partners have this knowledge and skills.

3. SCOPE OF USE

- 3.1. AEROCOMPACT® grants the contracting party access to and use of AEROTOOL against payment to the extent and for the duration to be specified separately in the contract. Access to AEROTOOL currently takes place via the URL <https://www.aerocompact.com/aerotool>.
- 3.2. AEROCOMPACT® is entitled to change, without prior notice, the address of the website through which access to the AEROTOOL is provided and, if applicable, the technical requirements for access to or use of the AEROTOOL.
- 3.3. It is the responsibility of the contractual partner to create the technical requirements for the use of the AEROTOOL.
- 3.4. The Contractual Partner acquires the non-exclusive right to use AEROTOOL for the purposes of its business, limited in time to the separately contractually regulated duration.
- 3.5. The contractual partner is exclusively entitled to use the AEROTOOL within the company. Furthermore, the use of the AEROTOOL is permitted exclusively for the agreed purposes.
- 3.6. The transfer against payment or free of charge or other granting of access authorization to the AEROTOOL for use by third parties, for example by way of rental, requires the express prior written consent of AEROCOMPACT® and is not permitted in the absence of such consent.
- 3.7. The use of the AEROTOOLS is permitted exclusively for the planning and implementation of projects with PV substructure products from AEROCOMPACT®. Commercial use of the AEROTOOLS for planning and implementation with products that cannot be purchased from AEROCOMPACT® or its affiliates or whose use is not expressly recommended or approved by AEROCOMPACT® or its affiliates is prohibited.

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4. REMUNERATION / COMPENSATION PROHIBITION

- 4.1. The fee is payable in advance and must be paid within 14 days of the start of the contract. The annual usage fee is to be paid in advance at the beginning of the calendar year by January 31st at the latest, irrespective of any advance payment request by AEROCOMPACT®.
- 4.2. If no agreement has been reached on the fee, AEROCOMPACT® shall have a claim against the contracting party for an appropriate usage fee.
- 4.3. If a contractual relationship begins or ends during the current calendar year, the fee is owed on a pro rata basis.
- 4.4. The offsetting of counterclaims of the contractual partner or the withholding of payments due to such claims is only permissible insofar as these counterclaims are undisputed or have been legally established or arise from the same contract.

5. PROPERTY / COPYRIGHT

AEROCOMPACT® is the sole legal owner of the rights of reproduction, distribution, processing and all copyrights to the AEROTOOL in relation to the contracting party.

6. TERMINATION / DISSOLUTION

- 6.1. The contractual relationship concerning access to and use of the AEROTOOL may be terminated in writing by either contracting party with 3 months' notice to the last day of the month.
- 6.2. The contracting parties are free to terminate the contract immediately for good cause.
Good cause for the immediate termination of this contract exists for AEROCOMPACT® in particular if
 - insolvency proceedings are opened against the assets of the contracting parties or the opening of insolvency proceedings does not take place due to lack of assets,
 - the contracting party fails to meet its payment obligations arising from this contractual relationship within a reasonable period of time despite a reminder under threat of termination of the contract, or
 - the contracting party otherwise commits a breach of contractual or legal obligations which makes it impossible for AEROCOMPACT® to continue the contract.

7. TECHNICAL INFORMATION FROM CONTRACTORS

The contract partner is aware that his technical specifications influence the static calculation by AEROTOOL. The contracting partner is obliged to check the correctness of the entries made by him. AEROCOMPACT® naturally assumes no liability for the correctness of the technical information provided by the contracting partner or persons attributable to him.

8. THIRD-PARTY PRODUCTS

- 8.1. AEROCOMPACT® does not assume any liability for the correctness of technical data of third-party products even if it mentions or refers to third-party products within the scope of AEROTOOL (for example in a planning software). The contracting party shall inform itself regarding the compatibility of third-party products with the goods of AEROCOMPACT®.
- 8.2. It is the responsibility of the contracting party to check (again) after performing a project calculation whether the calculation details of AEROCOMPACT® match the detailed details of third-party products. AEROCOMPACT® expressly assumes no liability. Details that have to be checked separately are, for example, the clamping areas of the modules, the point load bearing capacity of the roof surface, the compatibility of the screws provided with the substructure as well as the total bearing load of the roof taking into account the applied load by the photovoltaic system.
- 8.3. AEROCOMPACT® assumes no liability for the compatibility of its products with third-party products. The contracting party must check this on its own responsibility and ensure that a combination of AEROCOMPACT® goods with third-party products is technically possible and that no damage results from this.

9. PROJECT REPORT

- 9.1. The contracting party may plan projects with AEROCOMPACT® products exclusively with AEROTOOL (or any successor platforms).
- 9.2. By entering project data in AEROTOOL, the contracting party can perform technical calculations for planning a project with AEROCOMPACT® products. Based on the data entered by the contractual partner, the contractual partner can create a project report. The project report shall contain the essential data necessary for the implementation of the specific project, such as the goods of AEROCOMPACT® necessary for this purpose, the plan for the erection of the planned construction, etc., drawn up on the basis of the data entered by the contracting party.

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- 9.3. The contractor acknowledges that the data entered by him in AEROTOOL are not verified by AEROCOMPACT® and AEROCOMPACT® also assumes no liability for the data ejected in the project report.
- 9.4. The project report must always be followed in conjunction with the installation instructions designed for AEROCOMPACT® products as the basis for the use of AEROCOMPACT® products. The assembly instructions contain the general information about the products and their assembly, the project report contains the specific instructions resulting from the project data defined by the contractor.
- 9.5. AEROCOMPACT® shall not be liable in the event that the contractor does not retrieve a project report and does not install AEROCOMPACT® products in accordance with the project report and the installation instructions provided with the AEROCOMPACT® products.
- 9.6. Defects and damages as well as limited or lack of functionality of the products or the photovoltaic system due to incorrect installation and/or installation that deviates from the installation instructions and the project report exclude the warranty and any liability of AEROCOMPACT®.

10. CONTRACTUAL PENALTY

In the event of violations of the obligations of the contracting party regulated herein, in particular of item 3.6., 3.7. and 5., the latter shall owe a contractual penalty in the amount of EUR 100,000 in each individual case, irrespective of fault. The applicability of the judicial right of mitigation is excluded. AEROCOMPACT® expressly reserves the right to claim further damages.

11. WARRANTY AND LIABILITY

- 11.1. AEROCOMPACT® guarantees the functionality of the AEROTOOL for the duration of the contractual relationship.
- 11.2. AEROCOMPACT® is entitled and also required to remedy any defects in the AEROTOOL. Within the scope of the rectification of defects, a temporary restriction of use up to a short-term loss of use is permissible and the contracting party can not derive any claims against AEROCOMPACT® from such a restriction.
- 11.3. The liability of AEROCOMPACT® for a damage of the contracting party caused by a restriction of use that goes beyond such restriction according to point 11.2. shall be limited in amount and for all damages within one calendar year to the amount of the annual usage fee.
- 11.4. AEROCOMPACT®'s liability is excluded in particular if the loss of use occurs due to a circumstance unavoidable for AEROCOMPACT®; this includes unforeseeable and preventable operational disruptions, blackout cases or other unforeseeable and unavoidable impediments.
- 11.5. Any liability of AEROCOMPACT® is limited to cases of gross negligence and intent. Liability for loss of profit is excluded.
- 11.6. The contracting partner is obliged to check the correctness of the entries made by him in AEROTOOL. If, due to incorrect information provided by the contracting party, AEROTOOL issues an evaluation (project report) that is unsuitable for the actual implementation of a project, the contracting party shall have no claims against AEROCOMPACT® arising from this and the contracting party undertakes to indemnify and hold AEROCOMPACT® harmless against third parties. To point 7. of these terms of use is referred to.
- 11.7. In particular, AEROCOMPACT® does not guarantee the accuracy of the automatically ejected calculations and results, which were created based on the contractor's input.

12. PLACE OF PERFORMANCE, APPLICABLE LAW AND PLACE OF JURISDICTION

- 12.1. The place of performance for all rights and obligations resulting from or in connection with the use of AEROTOOL or other products of AEROCOMPACT® is agreed to be the registered office of AEROCOMPACT®.
- 12.2. For the resolution of disputes arising out of or in connection with the use of AEROTOOL or other products - including disputes concerning the existence or non-existence of a contract - it is expressly agreed by mutual consent that the courts at the registered office of AEROCOMPACT® shall have exclusive jurisdiction.
- 12.3. These Terms of Use shall be governed exclusively by the laws of the Republic of Austria, excluding the UN Convention on Contracts for the International Sale of Goods and other conflict of law provisions.

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13. PRIVACY

- 13.1. The contracting party is aware of the privacy policy of AEROCOMPACT®. The privacy policy of AEROCOMPACT® is available on the homepage of AEROCOMPACT® (currently <https://www.aerocompact.com/datenschutz>).
- 13.2. If the contracting party also enters data from third parties into the digital interface when using AEROTOOL or other AEROCOMPACT® products, it undertakes to comply with the data protection regulations and confirms that it is authorized to use this data. The contracting party shall indemnify and hold AEROCOMPACT® harmless against any third party claims in this respect.

14. CHANGES TO THE TERMS OF USE

- 14.1. AEROCOMPACT® is entitled to amend these Terms of Use at any time. AEROCOMPACT® will inform the contracting party of such changes by sending the amended terms of use to the address provided during registration (via e-mail or fax).
- 14.2. Changes to the terms of use entitle the contractual partner to terminate the contractual relationship within a period of one month from notification in accordance with item 14.1. in writing (by e-mail or fax). If the contracting party does not give notice of termination within this period, the amended terms of use shall be deemed to have been agreed and shall be effective from the time of notification pursuant to item 14.1. to the contractual relationship.

15. FINAL PROVISIONS

- 15.1. Should individual provisions of these Terms of Use be invalid in whole or in part, the remaining provisions shall remain valid. In place of the invalid provision, a valid provision shall be deemed to have been agreed which comes closest to the invalid provision in economic terms. The same applies in the event of a gap in the contract.
- 15.2. This English language version of these Terms of Use shall be based on a German language version, which shall remain authoritative as basis for interpretation of these Terms of Use.