

## Terms of use for ViCare (United Kingdom)

Viessmann Limited, Hortonwood 30, Telford, TF1 7YP, telephone: 01952 675000, email: [info-uk@viessmann.com](mailto:info-uk@viessmann.com), as manufacturer and licensor (hereinafter "**Licensor**" or "**we**"), allows you, the user and licensee (hereinafter "**Licensee**" or "**you**"), the use of the ViCare app (hereinafter the "App") in accordance with these terms of use for end customers (hereinafter "Terms of Use").

### § 1 Subject matter and scope of the Terms of Use

1. The subject and purpose of these Terms of Use is to grant rights of use to the proprietary components (cf. § 3 Para. 1 below) of the Licensor's App to the Licensee for certain Viessmann systems and accessories and the regulation of the use of App functions currently available. The App can be used within the scope of the operation of certain Viessmann systems (e.g. heating systems, electricity storage) and accessories (e.g. water softeners) (hereinafter collectively referred to as "**Viessmann system**") which the Licensee uses for the control or monitoring of their basic functions. For this purpose, an internet connection must be available for the Viessmann system. Further technical requirements, suitable Viessmann systems and installation instructions can be found in the product leaflets [here](#). Connectivity with Viessmann systems may vary depending on the country. There is no fee for installing the App and using the basic functions ("**free App**"). However, the Licensor also offers extension functions (so-called "**Add-ons**") for a fee. More information on Add-ons can be found in the description in § 5. Use of the App requires registration in accordance with § 4 and acknowledgement of the Privacy Policy for ViCare. You can find the Privacy Policy [here](#).

2. The App is aimed exclusively at consumers. A consumer is an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession. The App may thus not be used within the scope of the Licensee's commercial or self-employed activity.

### § 2 Provision and provision period; conclusion of contract

1. The App consists of the object code of the App as provided by the Licensor for download and installation on the respective end device used. The same applies to additional Add-ons offered by the Licensor.

2. The period for which the Licensor provides the App to the Licensee corresponds to the term of the respective contract for the use of the free App or any Add-ons that may have been purchased.

3. A contract is concluded in accordance with these Terms of Use when a Licensee registers for the first time and accepts these Terms of Use. If necessary, the Licensor will ask the Licensee to accept new Terms of Use (e.g. by clicking on a checkbox) in the event of significant changes to the Terms of Use. In this case, the existing contract continues in accordance with the then applicable modified Terms of Use. For changes to the Terms of Use to a reasonable extent, the Licensor also may use the procedure of § 12 (2).

### § 3 Granting of rights of use, open source software, availability

1. The App is protected by intellectual property rights (including copyright). They contain components which are licensed as open source software (hereinafter referred to as "**Open Source Components**") and components which may be used exclusively under the licence

conditions in §§ 3 (2) to 3 (4) (hereinafter referred to as "**Proprietary Components**"). The Open Source Components are listed in a menu on the App with the respective relevant licence texts as follows:

- For Android within the App Settings menu item "Legal Notices" -> "Open Source Licences"
- For iOS within the device settings (iOS) in the menu item "ViCare" -> "Open Source Licences".

The Licensee may view the copyright notices, licence texts, disclaimers/liability exclusions and any other notices in accordance with the applicable open source licences in the menu item of the App.

2. Upon registration, the Licensor grants the Licensee (see § 4 on the obligation to register) simple rights to use the Proprietary Components of the App within the UK, on the end devices supported for this purpose, for the term of the respective existing contract. These rights of use to the Proprietary Components of the App are granted for the use of the App in accordance with these Terms of Use only for purposes in connection with Viessmann systems.

3. Insofar as the Licensee makes use of functions it has paid a fee for, the right of use to the Proprietary Components of the App shall also extend to the respective Add-ons to the same extent upon payment of the respective fee pursuant to § 5. In the event that the Licensee receives Add-ons against payment of, for example, a monthly fee, the aforementioned right of use shall be limited to the duration of the ongoing payment of the monthly fee.

4. The rights of use to the Proprietary Components of the App granted to the Licensee shall be subject to the following conditions:

a. The Licensee acknowledges the Licensor's intellectual property rights in the App and in particular the Licensee shall not alter or remove any copyright notices identifying the Proprietary Components of the Apps. The modification and removal of copyright notices, trademarks, logos, proprietary notices, and other features identifying the open source components are governed solely by the applicable open source licenses.

b. The Licensee shall not modify and/or decompile the Proprietary Components of the App. If the Licensee makes changes to the Proprietary Components of the App or influences the communication with the Viessmann system or the Licensor's backend, for example by using his own software, the Licensor is entitled to immediately block his account. The Licensor is not liable for damages resulting from such a change or influence.

5. The Licensee shall also be entitled to use the open source components to the extent described in §§ 3 (2) to 3 (4). The Licensee may acquire further rights of use to the open source components from the respective rights holders if the Licensee concludes licence agreements with such rights holders under the terms of the respective open source licences. In this case, the use of the open source components shall not be covered by this Agreement, but shall be governed solely by the respective applicable open source licences.

6. The owners of the open source components exclude some types of losses from their liability for the software they provide free of charge. The Licensee can find the exact text of the respective disclaimers in the licence texts in the menu item of the App (see § 3 (1)). The disclaimers refer only to the liability of the owners and contributors of the respective open source components. Warranty rights of the Licensee are not limited by these disclaimers.

7. To the extent that the Licensor permits the transfer of rights to use the Proprietary Components by the Licensee to a third party, the Licensee shall ensure that the third party

also acknowledges these Terms of Use and enters into all rights and obligations resulting therefrom.

8. Some of the App's functions require a connection to a system ("backend") of the Licensor via the internet. The Licensor guarantees an availability of 95% on an annual average. The Licensor shall provide at least seven (7) days' notice to the Licensee of planned maintenance work (max. 5 hours/week averaged over the year), which shall not be taken into account for the availability of 95%. The Licensor shall use reasonable endeavours to carry out such maintenance work during time windows in which the App is rarely used.

#### **§ 4 Registration**

1. For the proper use of the App, the Licensee is obliged to register and create a user account. Here, the correct and complete information about the Licensee's identity, e-mail address, customer number if applicable and further user data such as installation location must be entered and updated in the event of changes. Furthermore, the Licensee shall inform the Licensor if it is no longer entitled to use the installation location (e.g. if the house in which the installation location is operated is sold to a new owner). A breach of this obligation entitles the Licensor to suspend the Licensee's use of the App and to terminate this contract if the Licensee does not remedy the breach within 30 days of notification by the Licensor by e-mail to the Licensee's e-mail address stored on the user account.

2. The Licensor may block a user account if there are indications that the user account has been used in an unauthorised manner and/or it has been attempted or is being attempted to gain unauthorised access from the user account to the App or one of the features of the App, the communication with a Viessmann system or the underlying systems of the Licensor ("backend"), for example by using its own software ("hacking"). In such case, the Licensor will immediately notify the Licensee concerned via the e-mail address stored on the user account and will only allow the Licensee access again by creating a new user account, unless there are circumstances which suggest that the Licensee has attempted to gain unauthorised access to the Licensor's systems.

3. If the Licensee only uses the free App, the Licensor can terminate this contract without notice and delete the user account if the Licensor's backend cannot be permanently connected to the Licensee's system (for a period of more than 6 months) through no fault of the Licensor and the Licensor has notified the Licensee of this by e-mail to the Licensee's e-mail address stored on the App, and remedial action has not been taken within 8 weeks of this notification.

#### **§ 5 Chargeable Add-ons**

1. In addition to the free App, the Licensor offers additional functions for payment of a fee as an Add-on, such as "geofencing". The availability of additional Add-ons may vary depending on the country. The currently available Add-ons and the respective valid prices can be viewed in the App. The use of the additional functions is compensated for with the payment of the usage fee to be paid for the respective usage period. The Licensor may expand the range of additional functions at any time.

2. Insofar as the use of a function in the App (including the retrieval of content) is only possible against payment of a fee ("**chargeable Add-on**"), the Licensee will receive an online notification of the incurring costs, the terms of payment and the other relevant details in each case before access to the respective feature is available. Afterwards, the Licensee will be able to use the respective feature by clicking on the corresponding button.

By clicking on the corresponding button, the Licensee bindingly accepts the offer to make the chargeable Add-on available, and a further contractual relationship is concluded on basis of these Terms of Use.

3. If a time-bound usage fee is to be paid, the selected Add-on shall be available for the duration of the paid period (e.g. one month or one year) from the time of its download. Payment of the usage fee shall be made in advance by way of direct debit in accordance with the respective agreed usage period (e.g. monthly in advance for a monthly usage period or annually in advance for an annual usage period). For time-reimbursed Add-ons, the minimum contract term is based on the agreed period of use (e.g. one month or one year, with a maximum of two years). From the expiry of the minimum contract term, the contract shall be extended for an indefinite period, unless one party terminates the contract by giving (i) one month's notice in the case of a minimum contract term of longer than one month or (ii) 3 weeks' notice in the case of a minimum contract term of one month, prior to the expiry of the minimum contract term or the respective end of the term. The use of the other functions of the App continues after the termination takes effect, provided that the Licensor has no reason to block the user account or to discontinue the App.

## **§ 6 Warranty**

1. The Licensee shall be responsible for configuring the App in accordance with the instructions provided in the App.
2. The description of the nature of the functions made available via the App is included in the description for the iOS operating system [here](#) and for Android [here](#).
3. If the Licensee wishes to assert warranty rights, the Licensee shall give the Licensor the opportunity to verify whether the Licensee's digital environment was compatible with the technical requirements of the App pursuant to § 8 at the relevant time. The Licensee is obliged to cooperate in this respect if the Licensor intends to use technical means that represents the least intrusion for the Licensee to determine whether this is the case.
4. The prerequisite for liability for defects of functions of the App is reproducibility or other clear proof of the defect. The Licensee must describe this sufficiently.
5. If the App provided by the Licensor is defective, the defect shall be remedied by the Licensor within a reasonable period of time from the time the Licensor informs the Licensee of the defect by rectification or - at the Licensor's option - by subsequent delivery of the App, unless rectification or subsequent delivery is impossible or only possible for the Licensor at disproportionate cost. If the rectification fails, the Licensee shall only be entitled to a reduction or termination of the contract with regard to the rectification of the defect. Damages in addition to performance shall not be excluded hereby; § 9 shall apply in this respect.

## **§ 7 Updates**

1. The Licensor shall provide updates (hereinafter referred to as "**Updates**") required for installation in order to maintain the contractual compliance of the free App and the ordered Add-Ons. This ensures the security of the App, takes into account a change in the functions of the App and adapts the App to the progressing technical development. In doing so, the Licensor may adapt the scope of functions of the free App in order to increase user-friendliness, to enable compatibility with new and modified devices, to correct errors, to implement results of usage analyses and/or to eliminate defects, but without significantly restricting functionality and without incurring additional costs for the Licensee. The Licensor shall inform the Licensee of such adaptations, unless the Update is made only to maintain compliance with the contract. § 7 (1) S. 3 and 4 shall also apply to the chargeable Add-ons.

2. The Licensor recommends that Updates are always installed promptly. If Updates are not installed by the Licensee even after information has been provided in the App and to the Licensee's e-mail address and if the failure to install the Update is not based on faulty installation instructions provided by the Licensor, the Licensor shall not be liable insofar as defects are based on this. In such a case, the Licensor may terminate this contract 30 days after an unsuccessful reminder and delete the associated user account, provided that the Licensee only uses functions for which no price is payable. The same applies to Add-ons if the uninstalled update also concerns security risks for the IT infrastructure of the Licensor.
3. Beyond the above, the Licensee shall have no claim in relation to the provision of Updates, in particular not for the purpose of extending functions. Extensions may be offered as additional Add-ons for permanent or time-limited use at the Licensor's own discretion.
4. The Licensee accepts that the Licensor will only maintain the current status of the App and the Add-ons ordered in each case.

## **§ 8 Supported end devices and supported hardware and software**

1. The Licensor shall make the App available to the Licensee for use as intended on the supported end device. In principle, the App supports the respective current version of iOS and Android as well as the two immediately preceding versions of both operating systems. The currently supported end devices or the minimum requirements for the end devices can be found [here](#) for the iOS operating system and [here](#) for Android.
2. For the use of the App, the system and software requirements specified by the Licensor in the respective current form, which can be found [here](#) for the iOS operating system and [here](#) for Android, must be complied with. Compliance with the system requirements is the sole responsibility of the Licensee. Questions regarding interoperability are to be forwarded to the Licensor.

## **§ 9 Liability**

1. Nothing in this Agreement limits any liability which cannot legally be limited, including liability for (a) death or personal injury caused by negligence; and (b) fraud or fraudulent misrepresentation.
2. The Licensor shall be liable in the event of a negligent breach of its obligations, the fulfilment of which is a prerequisite for the proper performance of the contract and the observance of which the contractual partner may regularly rely on ("cardinal obligations"), but only to the extent that the damage was reasonably foreseeable at the time of conclusion of the contract.
3. The Licensor is not liable for damages resulting from incorrect settings for which the Licensor is not responsible or from the use of terminal equipment that does not meet the system requirements.
4. The Licensor shall not be liable for any further incurring costs when using the App (in particular costs incurred by data transfers via mobile communications, including data roaming). This exclusion of liability does not apply if the Licensor is guilty of gross negligence or intent.

## **§ 10 Right of termination**

1. Insofar as the Parties have not concluded a contract for an Add-on, the Licensor may terminate the contract in regard to the use of the App with 3 months' notice to the end of the month.

2. Insofar as the Parties have not concluded a contract for an Add-on, the Licensee may terminate the contract in regard to the use of the free App at any time.
3. The termination of Add-Ons is regulated in § 5 (3).
4. In addition to the rights of termination already stipulated in these Terms of Use, the Licensor is entitled to terminate these Terms of Use as well as contracts on the use of fee-based Add-ons for good cause, in particular in the event of material breach of these Terms of Use or copyrights to the App, without notice.
5. Termination can be declared in text form (e.g. by e-mail).

## **§ 11 Expiry of right to withdraw**

In the case of distance contracts, i.e. contracts in which the entrepreneur and the consumer exclusively use means of distance communication for the conclusion of the contract, consumers are generally entitled to a statutory 14-day right of withdrawal, which can be exercised without stating reasons.

### **Please note:**

In the present case, there is a contract or several contracts (Add-ons) for the delivery of digital content not on a physical data carrier. In this case, the right of withdrawal expires when we have started the execution of the contract after you have expressly agreed that we start the execution of the contract before the expiry of the withdrawal period and you have confirmed that you were aware that you lose your right of withdrawal through your consent with the start of the execution of the contract. We reserve the right to make the conclusion of the contract dependent on the aforementioned consent and confirmation and that in these cases there is no right of withdrawal.

## **§ 12 Final provisions**

1. If any provision or part-provision of this contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this contract. If any provision or part-provision of this contract is deemed deleted in accordance with this clause, such provision or part-provision shall be replaced by a provision that achieves the intended commercial result of the original provision.
2. Notwithstanding § 2 (3), the following shall apply: The Terms of Use may be amended or supplemented by the Licensor to a reasonable extent for the Licensee if this is necessary due to legal changes, changes in case law, existing ambiguities in the Terms of Use, safety aspects of the Viessmann devices controllable via the App, product changes in the App or in the Viessmann devices controllable via the App or comparable reasons. In the context of such a change, the following regulations of the Terms of Use cannot be changed: The type of contract, the essential business characteristics and the limitation of liability (unless this only results in advantages for the Licensee). In the event of a change, registered Licensees will be informed in text form (e.g. via the e-mail address maintained by the Licensee or via the information service for the product) at least six weeks before the change comes into effect. The amended or supplemented Terms of Use shall apply unless the Licensee objects prior to the effective date after the Licensor has expressly informed the Licensee of the consequences of his silence. If the Licensee objects, the Licensor may terminate this contract with one month's notice after notification of the objection.
3. The Licensor is neither willing nor obliged to participate in a dispute resolution procedure.

4. This contract and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the law of England and Wales.

Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this contract..

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