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PESS WebApp  
*WATTWORKS*

GENERAL TERMS OF USE

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## 1. GENERAL INFORMATION

- (1) PESS (PILLOT ENERGY STORAGE SOLUTIONS), (hereinafter "PESS" or "we") provides services, performances and data (hereinafter jointly "Services") via a variety of PESS websites (such as the WATTWorks Portal), mobile apps (such as the WATTWorks App) and integrated applications (such as the PESS Energy Simulator) (hereinafter jointly "Digital Services") on the basis of the following General Terms of Use (hereinafter "GTCs").
- (2) Depending on the digital service, use may be limited or extended to entrepreneurs as defined by Article L. 121-1 of the French Commercial Code or to more narrowly defined groups of people (e.g., installers, consumers) (hereinafter collectively referred to as "users") and may be subject to a registration requirement. Any such limitation or extension is detailed in the Specific Terms of Use (hereinafter "STU"), which can be found in the section "Specific Terms of Use for Digital Services". The use of the Digital Services on behalf of third parties (e.g., system operators) is governed by the section "Use of PESS Energy Digital Services" (paragraph 7 et seq.) of these General Terms and Conditions (GTCs).

## 2. AREA OF APPLICATION

- (1) These GTCs regulate the access to and the use of the PESS Digital Services made available on by PESS. The GTCs must be accepted at the beginning of use or when registering for your PESS account (hereinafter "PESS ID"). A contract of use is established, which is subject to these GTCs. You can view the GTCs, save them in PDF format and print them out.
- (2) Special terms of use (hereinafter "STCs"), which are expressly included upon use, may apply to individual Digital Services (hereinafter "Special Services"). You will find the STCs in section Special terms of use for Digital Services of this document. If products or services are offered for purchase during use of a Digital Service, the corresponding terms and conditions of sale, service or warranty contracts will be displayed to you during the ordering process and will be expressly included. The presentation of the services and products offered against payment in the Digital Services does not constitute a legally binding offer. The conclusion of a binding contract for fee-based services and products is subject solely to the STCs applicable in each case.
- (3) The user of the Digital Services expressly acknowledges by agreeing to these terms of use that when using fee-based services, inclusion of the user's

general terms and conditions is precluded and the user does not have the right to demand such an inclusion. This is also applicable when within the framework of an on-going business relationship between the user in question and PESS the general order conditions or purchasing conditions of the user apply for services or products other than the fee-based service.

### **3. USING THE PESS DIGITAL SERVICES**

- (1) Use of the Digital Services is only available to users who have an PESS ID user account and are registered there for the Digital Services useable by them
- (2) When registering the account, the user is obligated to provide only true information that is not misleading.
- (3) Upon successful registration, the user will receive a password as well as a user identifier (in the following “access data”). The user is obliged to treat this access data as confidential and to keep it safe. The access data must not be passed on to third parties. Should you nevertheless allow third parties to use your PESS ID user account (including access to information about PESS ID user account viewing activity), you hereby agree that such persons are acting on your behalf and that you are bound by any changes such persons make to your PESS ID user account. Use is only permitted for the official PESS Digital Services.
- (4) If the user to be registered is a legal entity such as a company, a (non-profit) organization or educational institution, it must be ensured that an authorized, natural representative of this organization agrees to these Terms of Use. With an PESS ID Corporate account, an administrator within your organization can assign you an PESS ID user account. This administrator may enforce additional rules and may access or deactivate your PESS ID user account.
- (5) The approval of a user, the limitation and the exclusion of an approved use or application are at the discretion of PESS. Insofar as fee-based services are concerned, PESS, however, is entitled to restrict access in each case or completely exclude to the extent necessary where the conditions set for access or use in accordance with section Using the PESS Digital Services paragraph (7) ff. and section Duties and Obligations of the Contract Parties paragraph (2) as well as any of the respective applicable STCs are no longer satisfied.
- (6) This registration entitles the user to use the PESS Online Services only in the context of the content and services offered and pursuant to these GTCs and if applicable to the STCs in place for the extended services.
- (7) Insofar as the access to or the use of Digital Services affects data of a third party, e.g. the data transmitted to the Digital Service from PV systems fitted

with inverters and data communication devices, this access may only take place if the user obtained the express prior consent of each eligible third party for use in accordance with these terms of use (including the acceptance of the data protection declaration by the third party). Insofar as the user logs in and registers a third party or his system for the use of services, the user confirms with the registration and acceptance of these terms of use that he or she has obtained express prior consent of the respective authorized third party for registration and making settings in the respective system and for the use in accordance with these terms of use (including the third party's acceptance of the data protection declaration).

- (8) The user is obliged to substantiate to PESS the agreement of the respective third party or of the system operator upon the request of PESS before or after the registration. You absolve PESS of all claims made by third parties inclusive of authorities in connection with a use not covered in the previously named agreement of the use of the services.
- (9) PESS reserves the right to exclude registered users from accessing and using services when and if the user can not sufficiently prove to be authorized by the respective authorized third party. In the event of doubt, the instructions of the authorized third party, e.g. the system operator, to PESS take precedence over the registered user, who in this case has no claim against PESS on the continued or unimpeded use of the services.

#### **4. USE LIMITATIONS**

- (1) The Digital Services made available for use and the products available therein have been developed by PESS and are subject to copyright protection. PESS and, where applicable, the respective licensor, possesses all use and distribution rights.
- (2) The user may only use information called up and the results of the Digital Services within the framework of these GTCs and in the event of the use of fee-based services in accordance with the respective valid STCs of PESS for these. The use of computer programs for the automatic capture of data, such as crawlers, is prohibited in all cases.
- (3) The content available via the Digital Services may not be copied, distributed or made otherwise public without the agreement of the respective rights owner. No elements may be added to, changed or otherwise modified in the Digital Services. In particular, the user is not permitted to copy, extract or otherwise use graphic elements or attempt to decompile the source code of the app. This does not apply if decompilation is permitted by law in accordance with Article L. 122-6-1 of the French Intellectual Property Code

(Code de la Propriété Intellectuelle). Any additional use of the retrieved information and results of the Digital Services offered by PESS is allowed only with the express written permission of PESS.

## **5. USER'S OWN CONTENT**

- (1) If some Digital Services allow the posting of user content within the Digital Services, this will be regulated in the corresponding STCs. There is no obligation to provide content for Digital Services.
- (2) When creating user content, the user is obliged to protect and to refrain from violating the rights of third parties, in particular trademark rights, copyright and personal rights. PESS is entitled to prevent violations and to delete user content in the event of a violation or if there are concrete indications of a violation of these GTCs or the relevant STCs or if the content is otherwise unlawful. There is no entitlement to the recovery of deleted content.

## **6. DUTIES & OBLIGATIONS OF THE CONTRACT PARTIES**

- (1) The user must observe sections Using the PESS Digital Services, Use Limitations and User's Own Content as well as all other obligations arising from the STCs.
- (2) In the event of loss or the suspicion of misuse of the access data, PESS has to be informed immediately. If PESS becomes aware of this, PESS may take the necessary countermeasures and in particular in the case of misuse exclude the respective user from further use or application after prior warning and threat of blocking. Misuse exists in particular if the user does not follow the obligations laid out in section Using the PESS Digital Services, Use Limitations, and User's Own Content, uses the Digital Services for criminal or other illegal purposes, conducts disruptive access that leads to an excessive load of the Digital Services (e.g. sending mass notifications or messages [Spam]) or leads to an unreasonable nuisance to other users as well as any type of electronic attack on the Digital Services or on individual users (e.g. hacking or the use of and/or the distribution of viruses, worms, Trojan horses). A warning regarding blocking or exclusion is unnecessary if the infringement is so serious that PESS cannot reasonably be expected to continue to adhere to a contractual relationship. In such a case, PESS shall be entitled to terminate the contractual relationship without notice.
- (3) It is the duty of PESS to secure its systems and the app against viruses. However, PESS cannot completely rule out the possibility of viruses. In the case of messages that are sent to users bearing PESS's name, PESS expressly

advises that users always check the sender address first before opening such messages. In such cases of misuse, users should notify PESS.

## **7. REFERENCES AND LINKS, DESCRIPTIONS OF THE PESS SERVICES**

Insofar as the Digital Services contain links or references to third-party websites, the following applies:

- (1) The responsibility for this third-party content lies solely with the provider making this content available. PESS only provides access to this content. PESS has no influence on the current appearance, content or authorship of linked/referenced sites. For this reason, PESS hereby expressly distances itself from all linked/referenced site content.
- (2) The provider of the site that was referenced and not the one that is simply referencing the respective publication via links is solely responsible for illegal, erroneous or incomplete content and, in particular, for damages arising from the use or non-use of third-party information.

## **8. CHANGES TO THE CONTENT AND QUALITY OF THE DIGITAL SERVICES**

- (1) PESS reserves the right to change, add to or delete the design and content of the Digital Services or to cease publication of the services temporarily or permanently. Users are not entitled to the maintenance or provision of a certain state or functional scope of the Digital Services.
- (2) Insofar as fee-based services are affected by this, PESS will inform the user about the changes and offer an alternative of equal value, if available. If no alternative is offered to the user or if the user does not agree to this, he/she will receive a refund for a suitable proportion of the payment made, provided that the user terminates the chargeable service after receipt of the information about the change. For termination, see section Termination; for Digital Services offered against payment, the termination clauses of the corresponding general terms and conditions apply.
- (3) Insofar as claims due to changes to or the discontinuation of services or the portal are granted in these terms of use, the user is not entitled to any claims for damage, compensation claims or other claims.

- (4) PESS is keen to keep the Digital Services in a defect-free condition in line with the state of the art at all times. However, PESS is unable to ensure that the Digital Services are free from errors

## **9. STATUTORY WARRANTY AND LIABILITY**

- (1) PESS assumes no liability for the accuracy, timeliness, correctness, completeness or quality of the information and PESS services provided.
- (2) All liability claims against PESS which refer to damages of a material or intellectual nature caused by the use or disuse of free information presented or by the use of incorrect and incomplete free information are excluded, provided that there are no demonstrably intentional or grossly negligent faults on the side of PESS. In particular, this applies to damages arising from loss of use, data loss or loss of revenue. Liability for data loss is limited to the typical restoration costs, which would have occurred during the regular and risk-pertinent production of back-up copies.
- (3) It is the sole responsibility of the user to examine the contents of the results obtained from the use of the services and their suitability for the respective purpose. The user shall not have any claim to the availability of the Digital Services or 100% data availability.
- (4) Should there be any unauthorized acquisition of personal data by third parties, PESS shall not be held liable if the acquisition cannot be attributed to a fault on the part of PESS.
- (5) PESS shall not accept liability for such defects of the Digital Services that are caused by external influences, operating errors on the part of the user, force majeure or other tampering not carried out by PESS.
- (6) Liability for damages resulting from inappropriate usage is excluded. The user shall exempt PESS from all claims on the part of third parties against PESS in connection with inappropriate usage for which they are responsible, at the request of PESS.
- (7) In addition, the following applies to the provision of services for a fee in the relevant Digital Services, unless otherwise provided in the respective STCs or the general terms and conditions of the relevant Digital Service: When services are provided in return for payment, in addition to intent and gross negligence in the case of damage resulting from the violation of a significant contractual obligation (i.e., an obligation, the satisfaction of which enables the proper implementation of the contract and upon the observance of

which contractual partners regularly rely and may rely), PESS shall be liable for simple negligence, in which case the liability of PESS, its legal representatives and vicarious agents shall be limited to compensation for foreseeable, typically occurring damage. The provisions of the relevant Special Sales Conditions also apply.

- (8) The limitation of liability in accordance with section Statutory Warranty and Liability paragraphs (2) and (7) applies in particular to damage arising from loss of use, data loss or yield loss. Liability for data loss is limited to the typical cost to recover the data that would apply when making regular backups appropriate to the risk, unless there was an intentional or grossly negligent act on the part of PESS.
- (9) The limitations of liability in accordance with section Statutory Warranty and Liability paragraphs (2) and (7) do not apply:
  - a. In cases based on loss of life, personal injury or impairment of health
  - b. In the event that and insofar as PESS has fraudulently concealed a defect
  - c. In the event that and insofar as PESS has assumed a warranty for the quality of the Digital Services and their services, or
  - d. For user claims in accordance with the French Product Liability Act

## **10. TERMINATION**

The customer can delete their PESS ID user account independently under the settings in their PESS ID profile management area. Any deletion of all data, except for data that must be retained by PESS for legal reasons under applicable laws, will be carried out by PESS and confirmed to the user.

## **11. CHANGES TO THE TERMS OF USE**

PESS reserves the right to make changes to these GTCs and the STCs at any time in the event that this is necessary for legal or practical reasons. PESS will communicate changes to the GTCs and STCs in a timely manner prior to their coming into force. The changes will become effective if the user does not make an objection within two weeks. Upon communicating these changes, PESS will make the user aware of his/her right to object and the consequences of not doing so.

## 12. DATA PROTECTION AND COOKIES

The data protection declaration applicable for the use of the Digital Services and information on the use of cookies are available for viewing and printing out

## 13. MISCELLANEOUS

- (1) In the event of disturbances to the Digital Services, the user can contact PESS at this address: [monitoring@pessenergy.com](mailto:monitoring@pessenergy.com)
- (2) These GTCs and the STCs of the respective Digital Services are governed by French law (to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods). For consumers, this choice of law applies only insofar as this does not remove the protection afforded by mandatory provisions of the law of the state in which the consumer's habitual residence is located.
- (3) PESS is obligated to inform consumers that an online platform for dispute resolution is maintained by the European Commission. You can access this platform using the following link: <https://ec.europa.eu/consumers/odr/>. In this regard, PESS is also obligated to share PESS's e-mail address with you. This is: [contact@pessenergy.com](mailto:contact@pessenergy.com).
- (4) In the event, the user is a consumer, whose residence or habitual residence is in the European Union or in countries which are contracting parties to the Agreement on the European Economic Area, the following shall apply: PESS is principally in favor of attending a dispute settlement procedure at the General Consumer Conciliation Body of the Center for Conciliation (CM2C) in Paris, France.
- (5) Where the user is a merchant according to the French Commercial Code, is a legal entity under public law or a person governed by public law, Aix-en-Provence will be the exclusive place of jurisdiction for all disputes arising from these GTCs and the STCs of the respective Digital Services.
- (6) Where sections or individual formulations of these GTCs or the respective RTCs do not reflect or no longer fully reflect the prevailing legal norms, the remaining parts shall remain unaffected in their content and validity. In place of the ineffective provision, a provision to be determined through interpretation becomes effective that most closely approximates the ineffective provision legally in respect of the commercial intent and purpose.



# Special terms of use for Digital Services

## **1. RELATION TO THE GENERAL TERMS OF USE ("GTCS")**

The following Special Terms of Use supplement the GTCs for Digital Services of PESS Energy (hereinafter "PESS" or "we") in the case of use of the Digital Services listed below.

## **2. WATTWORKS PORTAL**

### a. General Information

On the basis of the GTCs for Digital Services and these STCs for WATTWorks Portal, PESS provides products, services, and data, e.g. in connection with the collection, management and presentation of data from energy technology devices, systems and plants.

### b. User's Own Content

Insofar as users posting their own content on WATTWorks Portal is allowed, the following applies:

1. The users may post their own content or allow other people to do so (including links to the websites of third parties) as long as the data room made available for this is sufficient. Users have no claims on the publication of submitted content or to permanent storage of content on the WATTWorks Portal. PESS accepts no responsibility for the content, the correctness or the form of the information posted.
2. Posting content glorifying violence, pornographic content, discriminatory content, content that infringes on personal honor or other content that violates the law or morality is not permitted.

### c. Statutory Warranty and Liability

In addition to the clauses in the GTCs for Digital Services, the following applies in connection with the statutory warranty and liability:

PESS explicitly points out that the yield information provided is only intended to inform the user, and in particular is not intended for billing purposes or to provide proof of claims concerning the feed-in of energy against grid operators.



### **3. WATTWORKS MOBILE APP**

#### **a. General Information**

With the PESS WATTWorks App (in the following “WATTWorks App”) for iOS and Android devices based on the following terms of use, PESS Energy (“PESS”) makes available services and data (collectively “services”) e.g. in connection with the collection, management and presentation of the data of energy technology devices, systems and plants (“systems”) via the Apple App Store (iOS) and Google Store (Android). Users of the WATTWorks App Services may include merchants as defined by Article L. 121-1 of the French Commercial Code, consumers as defined by Article L. 111-1 of the French Consumer Code (hereinafter referred to collectively as “users”). The prerequisite is that the user is the owner of the Energy Storage system, which is registered in WATTWorks Portal.

#### **b. Area of Application**

In connection with the provision of the WATTWorks App, PESS may make use of the services of independent third parties, so-called third-party services. These may be those of the App Store (iOS Store and Google Store) as well as the social media push function of Facebook. These third-party services are not PESS services.

#### **c. Formation of the Usage Contract, Use and Registration**

- (1) In order to be able to use the app, the user must be logged into the WATTWorks Portal as a user and his system must be registered and maintained. To use the WATTWorks App, it is necessary to download and install the WATTWorks App from the App Store. The user must therefore have an account with the App Store and be registered with WATTWorks Portal. By downloading the WATTWorks App from the App Store, the user receives a personal, limited, simple, non-transferable software license, limited to the duration of the user contract, to install the WATTWorks App on mobile terminal devices linked to the App Store account.
- (2) By downloading and installing the WATTWorks App, the user acknowledges these terms of use and enters into a contract of use between himself/herself and PESS in accordance with these terms of use. The user may print out these terms of use.
- (3) After successfully downloading the WATTWorks App and fulfilling the requirements specified in section Formation of the Usage Contract, Use and Registration paragraph (1), the user may use the app to the extent described in section Formation of the Usage Contract, Use and Registration paragraph (1).

1. The WATTWorks App communicates with WATTWorks Portal and requests data from the portal, particularly the name of the system stored in WATTWorks Portal. This data is forwarded to the WATTWorks App.
2. A mobile data connection is required to use the app. PESS expressly points out that, depending on the usage behavior, the app will sometimes require a high data volume and the user may incur costs payable to the operator of the mobile data connection. These costs shall be borne by the user.
3. Contracts, in particular for the purchase of the app and additional functions subject to a fee, are also subject to the conditions of the App Store.

#### d. Use Limitations

The content available via the app, particularly in the News area, may not be copied, distributed or otherwise made public without the agreement of the respective rights owner. Any additional use of the retrieved information and results of the services offered by PESS is allowed only with the express written permission of PESS.

#### e. Duties and Obligations of the Contract Parties

1. PESS is not responsible for any damage or loss of data that may result from the installation of software not provided by PESS on the user's mobile device.
2. It is the responsibility of the user to keep his/her mobile device in a condition that allows the use of the app. The app only works with the officially released operating system versions of Android and iOS, which are determined by PESS. PESS strives to satisfy every user, but due to the large number of network operators, mobile devices and operating system versions, PESS cannot guarantee that the app will function properly everywhere. In particular, PESS cannot guarantee smooth functionality on outdated operating systems. PESS therefore recommends that users inform themselves about compatibility with their mobile devices before downloading.