

## GENERAL TERMS AND CONDITIONS OF USE

### FOR EB SMART PRODUCT SERVICES

(LAST UPDATED: DECEMBER 2021)

#### 1. BASIC PRINCIPLES

1.1 These General Terms and Conditions of Use for EB SMART PRODUCT Services apply to the provision and use of services in relation to hardware provided by EagleBurgmann Germany GmbH & Co. KG, Aeussere Sauerlacher Str. 6–10, 82515 Wolfratshausen, Germany (hereinafter referred to as “**EagleBurgmann**”), website available at [www.myeagleburgmann.com](http://www.myeagleburgmann.com) (hereinafter referred to as “**EB SMART PRODUCT**”).

1.2 EagleBurgmann’s EB SMART PRODUCT are intended exclusively for businesses and/or commercial users (hereinafter uniformly referred to as “**User**”). EagleBurgmann does not provide EB SMART PRODUCT to consumers.

Use of EB SMART PRODUCT is contingent upon the User first registering for EagleBurgmann’s online services. For this purpose, EagleBurgmann provides a separate registration process in accordance with the “General Terms of Use for Online Services provided by EagleBurgmann” (last updated June 2021).

1.3 EagleBurgmann’s General Terms and Conditions of Use in the form of these General Terms and Conditions of Use for EB SMART PRODUCT Services as well as EagleBurgmann’s General Terms of Use for Online Services valid at the date of registration and user relationship shall apply. The User’s general terms and conditions shall not apply. As a precautionary measure, these are expressly rejected. Any verbal side agreements shall be deemed ineffective, if not expressly confirmed in writing by EagleBurgmann.

1.4 The User shall carefully read and familiarize himself with these General Terms and Conditions of Use for EB SMART PRODUCT Services as well as EagleBurgmann’s General Terms of Use for Online Services prior to registration and use of the online services and EB SMART PRODUCT. In case of any contradictions or ambiguities, these General Terms and Conditions of Use for EB SMART PRODUCT Services shall prevail. If you continue with the registration, it is assumed that you have read and understood the content of these General Terms and Conditions of Use and agree to the same. If you do not agree to these General Terms and Conditions of Use, you may not use EB SMART PRODUCT.

1.5 The EB SMART PRODUCT Services can only be used in combination with the respective EagleBurgmann hardware. The User shall only use the EB SMART PRODUCT Services for the purpose specified in these Terms and Conditions of Use

#### 2. REGISTRATION AND USER RELATIONSHIP

2.1 EagleBurgmann reserves the right to amend the General Terms and Conditions of Use at any time. EagleBurgmann shall inform the User about such amendments at least 30 calendar days prior to the

planned effective date of the changes (hereinafter referred to as “**Notification of Change**”). If the User does not object within 14 days as of receipt of notice and continues to use EB SMART PRODUCT Services after the expiry of the objection period, said changes shall be deemed to have been effectively agreed as of the expiry of the objection period. In the Notification of Change, EagleBurgmann shall include a statement on the User’s right to object and the consequences thereof.

- 2.2 EagleBurgmann reserves the right to further amend the General Terms and Conditions of Use (i) if the amendment is merely beneficial to the User; (ii) if the change is purely technical or process-related, unless it has a significant impact on the User; (iii) if and insofar as EagleBurgmann is obligated to establish the conformity of these General Terms and Conditions of Use with applicable law, especially if the applicable legal situation changes; (iv) if and insofar as in doing so, EagleBurgmann is complying with a court ruling or an official decision against EagleBurgmann; or (v) EagleBurgmann introduces additional services within the scope of EB SMART PRODUCT Services which require a provision in the General Terms and Conditions of Use. EagleBurgmann shall inform the User of such changes.
- 2.3 Furthermore, the provisions of EagleBurgmann’s General Terms and Conditions of Use for Online Services shall apply accordingly.

### **3. SCOPE OF SERVICES**

- 3.1 The purpose of EagleBurgmann’s services is the provision of these services online as well as the granting of corresponding rights of use during the term defined in Clause 12.
- 3.2 EB SMART PRODUCT Services include the display and exchange of data (e.g. measurement data) via the installed hardware where appropriate as further specified in the respective offer to User. Any necessary updates, hotfixes, maintenance, etc. shall be added locally with the hardware or shall be imported via the cloud. This may be customer-specific. If necessary, the Parties shall make individual arrangements.

The User may regularly save the data (e.g. measurement data) on its own accounts.

- 3.3 EB SMART PRODUCT Services are generally available seven (7) days a week, 24 hours a day. No specific minimum availability has been agreed. The User understands and acknowledges that EB SMART PRODUCT Services may not always be available without interruption and/or their performance may be adversely affected, for example by scheduled or unscheduled maintenance.
- 3.4 The Supplier shall fulfil any required security updates, patches or "bug fixes" within the scope of its update obligation for 12 months from delivery (i.e. date of registration for the EB SMART PRODUCT Services or delivery of the EagleBurgmann hardware, whichever occurs later), insofar as the update is necessary to maintain the conformity with the contract from the Supplier's point of view. The Supplier is not obliged to perform upgrades.

EagleBurgmann shall inform the User of updates, this may also include the modification, extension or restriction of EB SMART PRODUCT Services (hereinafter "Actions"). The User shall acknowledge that the EB SMART PRODUCT Services are subject to continuous improvement/ development and may not be considered as static. EagleBurgmann shall with best endeavours try to give the User prior advance notice of any of such afore mentioned Actions, to the extent that such Actions may have an impact on the User's business operations. However, EagleBurgmann shall not be obliged to notify the

User in advance of any unscheduled or emergency maintenance or the like. EagleBurgmann shall be entitled to have the Actions being performed by third parties.

If the digital elements are not necessary for the functionality of the hardware, i.e. if the EagleBurgmann hardware can fulfil its functionalities without digital elements, EagleBurgmann shall not be obliged to carry out Actions.

3.5 EagleBurgmann may store and process customer data including in particular measurement data (in the following “customer data”) in any country in which EagleBurgmann or EagleBurgmann’s hosting and information system providers maintain facilities; the User agrees to such transfer of customer data. The User agrees not to disclose any personal data to EagleBurgmann, with the exception of contact details required for the registration.

3.6 Furthermore, the provisions of EagleBurgmann’s General Terms of Use for Online Services shall apply.

#### **4. ACCESS TO EB SMART PRODUCT SERVICES**

The provisions of EagleBurgmann’s General Terms of Use for Online Services shall apply.

#### **5. USER OBLIGATIONS**

5.1 The User shall refrain from any misuse of EB SMART PRODUCT Services or the EagleBurgmann hardware or software that forms the basis of the service or any use of the same which is not permitted under these Terms and Conditions of Use. The use of the Service for illegal purposes, i.e. in violation of applicable laws or regulations and/or the transmission of illegal content via the Service, is prohibited.

The User is not entitled to grant rights of use to third parties or affiliated companies.

5.2 Furthermore, the provisions of EagleBurgmann’s General Terms of Use for Online Services shall apply.

#### **6. REMUNERATION**

6.1 EB SMART PRODUCT Services are made available subject to the user fee as specified in the offer or contract to User.

#### **7. RIGHTS OF USE AND SANCTIONS**

7.1 EagleBurgmann or licensors of EagleBurgmann shall retain all rights, in particular copyrighted rights of use and exploitation of EB SMART PRODUCT Services and related content. Any rights of the User to their own information entered in their User account shall remain unaffected. In addition, Section 5.8 of the provisions of EagleBurgmann’s General Terms of Use for Online Services shall remain unaffected.

7.2 The User is granted a simple, limited, non-exclusive, non-transferable, non-assignable, entirely revocable right of use in accordance with these General Terms and Conditions of Use for EB SMART

PRODUCT Services, limited to the term specified in Clause 12 to use EB SMART PRODUCT Services for the User's own internal use, with no right to grant sublicenses.

7.3 Furthermore, the provisions of EagleBurgmann's General Terms of Use for Online Services shall apply.

## **8. THIRD-PARTY RIGHTS**

The provisions of EagleBurgmann's General Terms of Use for Online Services shall apply.

## **9. WARRANTY AND LIABILITY**

9.1 Unless otherwise provided in these General Terms and Conditions of EB SMART PRODUCT Services (especially Clause 3 ), EagleBurgmann's liability for damages in case of a breach of contractual or non-contractual obligations is governed by the applicable statutory provisions.

9.2 EagleBurgmann's liability resulting from willful misconduct or gross negligence by itself, or its legal representatives or vicarious agents is unlimited.

9.3 In case of simple negligence, under exclusion of the liability in all further regards, EagleBurgmann shall only be liable:

a) for damages arising from loss of life, personal injury or damage to health for which, EagleBurgmann, its legal representatives or vicarious agents are responsible;

b) for damages resulting from any breach of a material contractual duty (an obligation which, if not performed, renders the proper implementation of the contract impossible and on the performance of which the contractual counterparty regularly relies and may rely, the so-called "material contractual obligation" (Kardinalpflichten)) by EagleBurgmann, its legal representatives or vicarious agents. However, in this case , EagleBurgmann's liability is limited, in terms of its legal basis and extent, to damages that it could reasonably have predicted upon entry into the contract given the circumstances that EagleBurgmann was aware of at that time.

9.4 The limitations of liability mentioned above do not apply insofar as, EagleBurgmann, maliciously concealed a defect or insofar as it has expressly agreed to guarantee certain properties of the Services. Other indispensable statutory liability provisions, in particular according to the provisions of the German Product Liability Act (Produkthaftungsgesetz), remain unaffected.

Furthermore Clauses 10.2 to 10.4 of EagleBurgmann's General Terms of Use for Online Services shall apply.

## **10. CONFIDENTIALITY**

The provisions of EagleBurgmann's General Terms of Use for Online Services shall apply.

**11. DATA PROTECTION**

The provisions of EagleBurgmann's General Terms of Use for Online Services shall apply.

**12. TERM AND TERMINATION**

12.1 The registration and user relationship shall enter into force upon EagleBurgmann's receipt of the registration confirmation (see Clause 2.5. of EagleBurgmann's General Terms of Use for Online Services). The term of the registration and user relationship shall commence on the day of provision of the EB SMART PRODUCT Services or as specified in the EagleBurgmann offer or contract.

12.2 The user relationship shall run for an initial period of 12 months as fixed term and may be terminated thereafter only, such termination may be issued by either Party (in Textform (§126 b BGB) shall be regarded as sufficient e.g. by E-mail) at any time with a 30 days' prior notice effective to the end of the next month.

Upon the end of the term, the User is no longer entitled to use the EB SMART PRODUCT Services. Further details may be specified in the EagleBurgmann offer or contract.

12.3 Furthermore, the provisions of EagleBurgmann's General Terms of Use for Online Services shall apply.

**13. GENERAL PROVISIONS**

The provisions of EagleBurgmann's General Terms of Use for Online Services shall apply.