

# Liebherr SmartMonitoring

## Conditions of Use

The subject of these Conditions of Use is the Liebherr SmartMonitoring Service (hereinafter "SmartMonitoring") as made available by Liebherr-Hausgeräte GmbH (hereinafter "Liebherr").

### 1 Scope of application

- 1.1 The following Conditions of Use apply solely to the use of SmartMonitoring. Smart Monitoring is provided by Liebherr-Hausgeräte GmbH, Memminger Strasse 77-79, 88416 Ochsenhausen.
- 1.2 The use of other offers by companies in the Liebherr Group in connection with the use of SmartMonitoring shall be governed by the conditions of use and data protection declarations of the relevant companies making the offers.
- 1.3 SmartMonitoring is provided solely to users who are operating in the course of their commercial or self-employed professional activities. Any other users are excluded from using SmartMonitoring.

### 2 Subject-matter of SmartMonitoring

SmartMonitoring is a digital, cloud-based service which enables the switching status of components, and the alarm status and temperatures of one or more professional refrigeration and freezer appliances, to be recorded and to be presented visually in a browser-based application. Moreover, measurements by means of sensor technology that can be obtained in different variations as accessories to the SmartMonitoring system, are recorded and presented.

### 3 Right to use

According to these Conditions of Use the user is entitled to use SmartMonitoring exclusively vis-à-vis Liebherr. All rights in and to SmartMonitoring belong to Liebherr. The user is granted a limited, personal, non-transferable, non-exclusive licence, without the right to sublicense, to use SmartMonitoring for internal business purposes only. The right to use is restricted with regard to appliance, and is restricted in time as per clause 5.1 (hereinafter "SmartMonitoring Licence").

### 4 Prerequisites and duties of the user

- 4.1 To be able to use SmartMonitoring the user must obtain at user's expense
  - a refrigeration or freezer appliance suitable for SmartMonitoring with suitable Liebherr cross link hardware ("SmartCoolingHub" or "SmartModule") or compatible "Testo data logger",
  - a valid SmartMonitoring Licence for the respective measuring point, and
  - an active MyLiebherr business account.
- 4.2 The user undertakes to register only the refrigeration and/or freezer appliances licensed by Liebherr for SmartMonitoring and to keep always up to date his or her contact details in the SmartMonitoring user profile.
- 4.3 SmartMonitoring may be used only with refrigeration and/or freezer appliances approved by Liebherr for SmartMonitoring which are installed and used within Australia, the European Union, EFTA countries or UK.
- 4.4 The refrigeration and/or freezer appliances that are approved by Liebherr for SmartMonitoring may be cross linked only with the cross-link solutions licensed by Liebherr.
- 4.5 The user shall not make improper use of SmartMonitoring, in particular the user may not circumvent technical limitations of SmartMonitoring, nor pursue illegal purposes.

### 5 Term and purchase price

- 5.1 The term and the purchase price of the SmartMonitoring Licence are the subject of a separate agreement between the user and the dealer authorized by Liebherr to sell the SmartMonitoring Licence (hereinafter "dealer").



- 5.2 No rights that exceed the rights regulated by these present Conditions of Use can be created by an agreement between the user and the dealer. This does not apply if the dealer is Liebherr.

## **6 Amendments to the system**

In the scope of product development Liebherr is entitled to amend SmartMonitoring, in particular to adjust it to legal, statutory, business and technical conditions.

## **7 Liability**

- 7.1 Liebherr accepts no responsibility for uninterrupted service of SmartMonitoring based on the state of the internet and any computer systems. Liebherr accepts no liability for the accuracy, completeness, quality and reliability of the information provided via SmartMonitoring nor for any results that may be achieved through the use of that information.
- 7.2 Claims are excluded that are raised by the user for compensation for damage of whatever kind. The limitation on liability also applies in favour of legal representatives and vicarious agents of Liebherr, insofar as the user raises claims against such legal representatives and vicarious agents.
- 7.3 Claims for compensation are excluded from the aforesaid limitation on liability if they result from a wilful or grossly negligent infringement of duty by Liebherr, a legal representative or vicarious agent. Similarly, the at least slightly negligent infringement of substantial contractual obligations shall be excluded from this limitation on liability. Substantial contractual obligations are those the fulfilment of which actually enable the contract to be properly performed, and on the fulfilment of which the user may rely.
- 7.4 A case of strict liability stipulated by law, in particular liability under product liability law, and liability for negligent injury to the life, limb or health of a user shall remain unaffected by the aforesaid limitation on liability.
- 7.5 All conditions and warranties of any type in relation to SmartMonitoring are excluded to the maximum extent permitted by law. However, nothing in this document seeks to exclude the operation or application of the Australian Consumer Law. If a mandatory consumer guarantee applies to the provision of SmartMonitoring, or services related to SmartMonitoring, to the maximum extent permitted by law, Liebherr's liability for breach of the term or guarantee is limited to (a) in the case of goods not of a kind ordinarily acquired for personal, domestic or household use or consumption, either replacement or repair of the goods or payment of the cost of replacing or repairing the goods; and (b) in the case of services not of a kind ordinarily acquired for personal, domestic or household use or consumption, either resupply or the cost of the resupply.

## **8 Availability**

No right exists to uninterrupted use. No warranty is given that the access to or use of SmartMonitoring will not be interrupted or impaired by maintenance work, further developments or otherwise by interference. Liebherr will make every effort to ensure as far as possible uninterrupted use of SmartMonitoring and will inform the user in advance about scheduled maintenance work. However, technical malfunction (such as power failure, hardware and software defects, technical problems in data lines) may cause temporary disturbance or interruption.

## **9 Data protection**

The protection and safety of users' personal data is of great importance to Liebherr.

You will find full information about data protection here: <https://home.liebherr.com/smartmonitoring>

## **10 Copyright, identification rights and other intellectual property rights**

The contents retrievable in SmartMonitoring (texts, data, pictures, logos, graphics, documentation, and sound, video, and other visual representations) are governed by copyright and other laws protecting intellectual property rights. The contents may be neither wholly nor partly reproduced, distributed, stored in other media (such as in other websites) nor changed without the prior express consent of the holder of the rights. No part of SmartMonitoring may be copied, resold, loaned or given to unauthorised third parties. SmartMonitoring may not be reverse-engineered, decompiled, disassembled or manipulated in other usable forms in any way.



## **11 Amendments to the Conditions of Use**

Liebherr reserves the right to amend individual clauses of these Conditions of Use with effect for the future and without giving any grounds, insofar as this takes Liebherr's interests into account and can reasonably be expected of the user. Liebherr will inform the user in good time about any amendments to the Conditions of Use. If the user does not agree to the amended Conditions of Use, the user may cancel the SmartMonitoring Licence within six weeks after the user has been notified about the amendment. Should the user not cancel the SmartMonitoring Licence within the aforementioned period, the amended Conditions of Use shall be deemed accepted.

## **12 Final provisions**

- 12.1 The Conditions of Use and their interpretation shall be governed exclusively by the law of the Federal Republic of Germany, (except for Australian sales, which will be governed by the laws of the State of Victoria, Australia). The application of German or European International Private Law and the UN Sales Convention is excluded.
- 12.2 The exclusive venue for legal disputes arising from or in connection with these Conditions of Use shall be the registered office of Liebherr.
- 12.3 Should any one provision of these Conditions of Use be or become invalid and/or unenforceable this shall not affect the validity of the remaining provisions. Invalid and/or unenforceable provisions shall in the course of additional interpretation of this Agreement be replaced by such valid and enforceable provisions that would most nearly achieve the desired commercial purpose, taking the interests of both parties into account. This shall apply analogously to the filling of any gaps in these Conditions of Use.