

General Terms of Use Allplan Bimplus, Allplan Share and Allplan Exchange

(Last update: 01/07/2021)

1. Subject matter of the contract, scope of application

1.1 The following Terms of Use shall govern the provision of the cloud products Allplan Bimplus, Allplan Share and Allplan Exchange and the software applications ("Services") contained on these platforms by ALLPLAN Deutschland GmbH ("ALLPLAN") as well as the conditions of use of the Services by the customers of ALLPLAN ("Customer") and other users ("Authorised Users").

1.2 The Customer shall be given the possibility to use the Services by means of a telecommunications connection (Internet) within the framework of the respective underlying user contract against payment of a user fee (unless agreed otherwise). The Customer can register either via the ALLPLAN Connect platform or via <https://exchange.allplan.com/home>. The Terms of Use of these platforms shall apply in addition to these Terms. In case of conflict, these Terms shall prevail.

1.3 Deviating, conflicting or supplementary general terms and conditions of the Customer shall only become part of the contract if and to the extent that ALLPLAN has expressly agreed to their validity in writing. This requirement for consent shall also apply if ALLPLAN provides the Services without reservation while being aware of the Customer's general terms and conditions.

2. Scope of Services, provision of the Services

The type and scope of the contractual Services and the user fee to be paid are set out in the respective user contract and in these General Terms of Use.

2.1 Use of the Services requires the creation of a user account. The user account shall be created by ALLPLAN. Should the Customer not yet have a user account, they shall receive the necessary access data from ALLPLAN.

2.2 ALLPLAN shall keep the Services available on central servers for use by the Customer. The current technical specifications of the software, hardware and network configurations required by the Customer and of the supporting browsers and the data formats are included in the information provided in the "System Requirements", which are available on the Internet under the link (<https://connect.allplan.com/de/support/sysinfo.html>) – see the user manual under this link. ALLPLAN shall not be responsible for the suitability and the quality of the required hardware and software on the part of the Customer or the telecommunications connection between the Customer and ALLPLAN. Furthermore, ALLPLAN shall not be obliged to support the Customer's operation of the Services.

2.3 When registering for the cloud products, the Customer is requested to provide truthful and complete information about themselves as specified in the respective registration form and to update such information where required. If false information is provided, ALLPLAN reserves the right to bar the Customer in whole or in part from using the Services.

3. Rights of use

3.1 ALLPLAN shall grant the Customer the non-exclusive, non-sublicensable and non-transferable right, limited in time to the term of the respective user contract, for the contractually agreed number of users to use the contractually agreed Services by means of access via a browser or via an application connected via API. No further rights shall be granted.

3.2 The Customer may only copy the Services or parts thereof where this is required for their intended use (e.g., use of main memory). This shall not include temporary installation, storage on data carriers of the hardware used by the Customer or the printout of the program code.

3.3 Reworking shall be permitted only to the extent it is required for eliminating errors. However, this shall be subject to ALLPLAN (a) being in delay with the elimination of the fault, (b) refusing to eliminate the fault or (c) being unable to eliminate the fault. The right to decompile according to Section 69e of the *UrhG* [German Act on Copyright and Related Rights] shall remain unaffected.

3.4 If ALLPLAN makes third-party software applications available for use, i.e., software applications not created by ALLPLAN, the rights of use granted to the Customer shall be limited in scope to the rights of use granted to ALLPLAN by the third party. In this case, ALLPLAN shall be obliged to disclose to the Customer the scope of the rights of use granted to it by the third party.

4. User group and use

4.1 The user group for the cloud products Allplan Bimplus, Allplan Share and Allplan Exchange shall not be subject to any restrictions. The Customer may use the respective Services for professional and private purposes if they comply with the legal and contractual provisions applicable to the type of use and do not use the Services for unlawful purposes. Authorised Users according to clause 10.2 of these Terms of Use may only use the applications during their business operations; private use shall not be permitted.

4.2 Unless it has been expressly authorised in writing by ALLPLAN to do so, the Customer shall not be entitled to use the Services beyond the use permitted in accordance with the relevant user contract and these General Terms of Use or to have

them used by third parties or to make them accessible to third parties. In particular, the Customer shall not be permitted to reproduce or sell the Services or parts thereof or make them available to third parties for a limited or unlimited period, especially not to rent or lend them either commercially or free of charge. The provisions of clause 10.2 of these Terms of Use shall remain unaffected.

4.3 Should the Services be provided for use without authorisation, the Customer shall provide ALLPLAN immediately upon request with any and all information required to assert claims against the third-party user, particularly its name and address. Non-compliance by the Customer regularly results in the revocation of the usage permit. ALLPLAN reserves the right to take further steps under civil and criminal law. Additionally, the Customer shall be obliged to compensate ALLPLAN for any and all losses resulting from an intentional or negligent breach of the aforementioned obligations or from the intentional or negligent violation of its own rights or the rights of third parties; this shall also include indirect and financial losses. The Customer shall indemnify ALLPLAN from and against any and all claims of third parties resulting from such a violation.

4.4 The Customer shall ensure that the rights of third parties are not directly or indirectly infringed by the Customer's way of using the various Services. Reference is made to clause 10.3 of these Terms of Use.

5. Maintenance

ALLPLAN shall be entitled to temporarily suspend or restrict the availability of the Services, even during business hours, to carry out necessary maintenance work or improvements to the Services. ALLPLAN shall inform the Customer in due time, where possible, of the start and duration of the maintenance work by sending an e-mail to the e-mail address provided by the Customer. Business hours shall be all working days from Monday to Friday, excluding public holidays at ALLPLAN's headquarters, from 9.00 a.m. to 5.00 p.m. CET.

6. User fee and terms of payment

6.1 The user fee specified in the user contract shall be paid for the use of the Services. The user fee shall be invoiced in advance for the agreed contract term and shall be due for payment within 30 days if a SEPA direct debit mandate has been issued, otherwise within 14 days after the invoice date. Any discounts granted shall be subject to the provisions of clause 17.2 of these Terms of Use.

6.2 ALLPLAN may increase the contractually agreed user fee by giving three (3) months' written notice once per calendar year to an appropriate and reasonable extent, and by a maximum of 3%. The increase shall take effect upon invoicing at the start of a billing period or on the date specified in the notification.

6.3 The relevant user fee shall not include the statutory value added tax.

6.4 If the Customer is in default of payment, ALLPLAN shall be entitled to demand the statutory default interest in accordance with Section 288 of the *BGB* [German Civil Code] as compensation for such default. ALLPLAN expressly reserves the right to claim further damages. ALLPLAN shall also be entitled, if the Customer is in arrears with a not merely insignificant part of the user fee, to temporarily suspend the contractual Services until the user fee has been fully paid.

6.5 The Customer may only offset due claims of ALLPLAN against counterclaims that are undisputed or established as final and absolute.

7. Surrender of project data

The Customer shall remain the sole beneficiary of the right of disposal and ownership of all data ("Project Data") entered and transmitted by them or their employees, so that they can demand the surrender of individual or all "Project Data" at any time. The right to demand surrender shall expire six (6) weeks after the contract ends. All of the Customer's Project Data shall be deleted 6 (six) weeks after the contract ends.

8. Backup of Project Data

8.1 The Customer undertakes to back up the Project Data uploaded by them or their employees regularly and according to the significance of such Project Data and to create own backup copies to allow for Project Data and information to be reconstructed in the event of loss.

8.2 Project Data that have been deleted by the Customer or by Authorised Users are not subject to any data backup and cannot be restored at any later point in time. No "recycle bin" function is offered.

9. Customer's obligations to cooperate

9.1 The operation of the Services via the Internet requires that the Customer is in possession of corresponding technical devices. In this respect, the Customer shall ensure that their workstation is equipped with a proper connection to the Internet, which complies to the current standard, and thus to the Services. Moreover, the Customer shall be responsible for the performance of their provider. The Customer knows that the use of the Services requires certain software and hardware. The use of cookies must be enabled in the browser to ensure optimum operation of the Services. The Customer shall also ensure that other software products from their infrastructure (such as its firewall) do not interfere with the operation of the Services.

9.2 The Customer undertakes to use the Allplan CAD software installed on its facilities only in its current version or in the last previous main version. The prerequisite for optimum performance of Allplan Share and Allplan Exchange is that the Customer uses the latest Allplan version.

9.3 The Customer shall protect the Software against unauthorised access by third parties by taking appropriate precautions, e.g., by using up-to-date antivirus software.

9.4 The Customer shall keep its access data in a safe place and shall ensure internally that persons who have not been registered with ALLPLAN as Authorised Users do not gain knowledge of such data.

9.5 The Customer shall ensure that the data transmitted do not contain any virus, Trojan horse, or similar malware. If this happens anyway, the Customer shall inform ALLPLAN without delay and shall support the elimination measures. Further claims of ALLPLAN shall remain unaffected.

9.6 The Customer undertakes not to use or store any data in the Services that are illegal or violate the law, official requirements, or rights of third parties.

9.7 The Customer undertakes to inform ALLPLAN immediately in writing or in text form once the Customer becomes aware of any malfunction of the contractual Services. Moreover, the Customer shall notify ALLPLAN without delay in the event of any change regarding the Customer's identity (general legal succession), any change to their address, name, legal form, company name or shareholders/partners.

9.8 Apart from that, the Customer shall support ALLPLAN, where required, in its efforts to fulfil its performance obligations and shall take corresponding cooperative actions.

10. Use by third parties, violation of rights

10.1 The Customer shall not be entitled to make the access data or methods to the Services allocated to them available to third parties. The User shall expressly not be permitted to sublease the Services. It undertakes to arrange its contractual relationships with third parties so that any free use of the Services is excluded.

10.2 However, the Customer shall be permitted to invite third parties (such as parties involved in the construction project) via the system to use the Services. Such parties shall then receive from the system the access data via e-mail and shall henceforth be authorised to use the Services to the same extent as the Customer, following registration and acceptance of the Terms of Use ("Authorised Users").

10.3 Should acts or posted content of the Customer, its employees or any Authorised User invited by the Customer violate any statutory provisions or rights of third parties (e.g., copyrights), the Customer shall indemnify ALLPLAN from and against any and all liability and shall reimburse ALLPLAN for all costs incurred by ALLPLAN due to such violation. ALLPLAN shall not be obliged to check the data for potential legal violations. If ALLPLAN determines or is informed by others that a specific content triggers civil or criminal liability, ALLPLAN shall delete such content where this is technically feasible and reasonable for ALLPLAN.

11 Industrial property rights of third parties

11.1 To ALLPLAN's knowledge, there are no industrial property rights of third parties affecting the contractual use of the Services. However, no guarantee is given that the granting of the rights of use on which this contract is based will not infringe the industrial property rights or copyrights of third parties or cause third parties to incur losses. This shall not apply in cases where conflicting rights of third parties or losses are known to ALLPLAN at the time the contract is concluded or are unknown due to gross negligence. At the time the contract takes effect, ALLPLAN is not aware of any such rights. ALLPLAN and the Customer shall inform each other about claims asserted by third parties.

11.2 If the contractual use of the Services is impaired by industrial property rights of third parties, ALLPLAN shall have the right, to the extent reasonable for the Customer, to acquire licences and/or to modify the Services or to replace them in whole or in part at its discretion and at its expense. If this fails, the Customer shall have the right to reduce the user fee appropriately or to terminate the contract. Termination shall not be permitted if the defects of title affecting the Services are of only insignificant nature. Any claims for damages shall be governed exclusively by clause 15. of these Terms of Use.

12. Control rights

The Customer shall grant ALLPLAN the right to read and verify the user data transmitted by the Customer if hotline requests of the Customer need to be answered or if ALLPLAN must assume, in view of reasonable considerations, that the electronic data are associated with illegal activities in whole or in part.

Moreover, the Customer shall grant ALLPLAN the right to access all user data stored on the Services used by the Customer, provided that such access is required for proper administration of the Services.

13. Blocking

Access to the Services may be blocked if (a) the Customer's actions pose a threat to ALLPLAN's facilities or public safety, (b) the Customer uses the Services for illegal purposes (e.g., storage of copyright-infringing content), or (c) the Customer otherwise gives cause for termination of the user contract without notice.

14. Claims for defects

14.1 ALLPLAN guarantees the functional and operational readiness of the Services in accordance with the user contract and these General Terms of Use. The statutory warranty regulations of leasing law (Sections 535 et seq. of the *BGB*) shall apply.

14.2 The Customer acknowledges and agrees that computers, software and telecommunications systems are not error-free, and that downtime may occasionally occur. Therefore, ALLPLAN cannot guarantee that the Services will be uninterrupted or error-free at all times.

14.3 If the functions and/or the operation of the Services show defects, the Customer shall report such defects in writing or text form. ALLPLAN shall then remove the defects or, where required, employ third parties for this purpose.

14.4 The Customer shall give ALLPLAN reasonable time and opportunity to remove the defect. For this purpose, ALLPLAN's employees and agents shall be granted free access to the Customer's systems to the required extent.

14.5 ALLPLAN shall be regularly allowed to make two attempts to remove the relevant defect.

14.6 If it is impossible for ALLPLAN to remove the defect or the attempt fails, or if ALLPLAN culpably or unreasonably delays or seriously and finally refuses the removal of the defect, or if the removal of the defect is otherwise unreasonable for the Customer, the Customer shall especially be entitled to reduce the user fee. A right to terminate the relevant user contract for cause shall only be an option if the continuation of the contractual relationship is unreasonable or a not merely insignificant defect persists despite the setting of a deadline for its elimination. Setting a deadline shall not be required if the defect is so serious that setting a deadline does not appear to be suitable for removing the defect and/or restoring confidence.

14.6 The Customer shall not have any warranty claims,

- in case of only insignificant deviation from the agreed quality or in case of only insignificant impairment of the usability of the Services,
- in the event of incorrect operation by the Customer,
- if hardware, software, or other equipment is used which is not suitable for the use of the Services (e.g., electronic communication disruption by services of the Customer such as firewalls, etc.).

14.7 The Customer is aware that ALLPLAN does not operate its own network and does not provide the Customer with Internet access. Therefore, ALLPLAN shall not assume any responsibility for the functionality of the respective Internet access.

14.8 Except for claims for damages, warranty claims based on material defects shall be subject to a limitation period of 2 (two) years or 1 (one) year if the transaction does not involve a consumer. This shall not apply to maliciously concealed defects. Clause 15.3 of these Terms of Use shall apply to the limitation period for claims for damages.

14.9 In all other cases, the statutory warranty provisions shall apply.

15. Liability

15.1 ALLPLAN shall be liable, irrespective of the legal grounds, exclusively in accordance with the following provisions:

ALLPLAN shall be liable without limitation

- for intention or gross negligence,
- for damage arising from injury to life, body or health,
- according to the provisions of the *Produkthaftungsgesetz* [German Product Liability Act], and
- if it has assumed a guarantee.

15.2 Unless clause 15.1 applies, ALLPLAN shall only be liable for slight negligence if ALLPLAN breaches a contractual obligation the fulfilment of which is a prerequisite for the proper performance of the Contract with the Customer, the breach of which jeopardises the achievement of the purpose of the contract and on the compliance of which the Customer may regularly rely (cardinal obligations). In these cases, liability shall be limited to the amount of the foreseeable damage typical for this type of contract, but at most to 200% of the contractual remuneration up to a maximum of EUR 50,000.00 per year. In all other cases, ALLPLAN shall not be liable for slight negligence.

15.3 Claims under this clause 15. shall become statute-barred after 12 (twelve) months, subject to the proviso that the statutory limitation period shall apply to claims under clause 15.1.

15.4 ALLPLAN's strict liability for defects already existing at the time of entering into the contract according to Section 536 a (1) of the *BGB* shall be expressly excluded. This shall not apply in cases of fraudulent intent.

15.5 The Customer shall be obliged to immediately notify ALLPLAN in text form of any damage in terms of the above liability provisions so that ALLPLAN is informed as early as possible and may be able to limit or reduce the damage together with the Customer in good time. Notwithstanding the foregoing, the Customer is also required to take damage limitation measures. If a loss is due both to the fault of ALLPLAN and to the fault of the Customer, the Customer agrees have its contributory negligence to be taken into account. In particular, the Customer shall be responsible for the regular backup of their data. If data is lost and ALLPLAN is responsible, ALLPLAN shall only be liable for the costs of duplicating the data of the backup copies to be made by the Customer and for reconstructing the data that would have been lost even if backup copies had been made at reasonable intervals.

15.6 To the extent that ALLPLAN's liability is excluded or limited, this shall also apply to the personal liability of ALLPLAN's employees, representatives and vicarious agents.

15.7 If none of the cases under clause 15.1 applies, ALLPLAN's liability to Authorised Users shall be excluded.

16. Force majeure

16.1 If and as long as an event of force majeure exists, the parties shall be temporarily released from their performance obligations.

16.2 Force majeure is an event caused externally from outside the company by elementary forces of nature or by actions of third parties and which is unforeseeable according to human insight and experience, cannot be prevented or rendered harmless by economically acceptable means, even by taking the utmost care reasonably to be expected in the circumstances, and which cannot be just accepted because of its frequency. This particularly includes strikes, lockouts, official orders, the failure of communication networks and gateways, disruptions within the area of the respective service provider of the cloud used by ALLPLAN as well as disruptions within the area of risk of other network providers.

16.3 The parties may terminate this contract if the force majeure event continues for more than ten days and a mutually agreed modification to the contract cannot be reached.

17. Term and termination

17.1 The contract term depends on what has been agreed in the relevant user contract. It shall be automatically extended by the original term, unless it is duly terminated under observance of the notice period stipulated in the user contract.

17.2 If the user contract is automatically extended, any discounts granted for the user fee when the contract was first concluded shall be subject to reservation for the follow-up term.

17.3 The right to terminate for a compelling reason shall remain unaffected.

17.4 Any termination shall be made in writing.

18. Privacy

18.1 The parties shall comply with the statutory provisions on data protection.

18.2 If and to the extent that ALLPLAN has access to the Customer's personal data while providing the service, the parties shall conclude a corresponding data processing agreement before processing is started. In this case, ALLPLAN shall process the corresponding personal data solely in accordance with this agreement and the Customer's instructions.

19. Contract modifications

ALLPLAN reserves the right to modify these General Terms of Use with effect for the future. ALLPLAN shall notify the Customer of any changes and make the modified conditions available to the Customer. By using or continuing to use the Services after a modification, the Customer agrees with the modification and accepts the modified conditions.

20. Final provisions

20.1 No implicit, oral or written collateral agreements have been made. Amendments or supplements to the user contract shall be made in writing. This shall also apply to any amendment or waiver of this written form requirement clause.

20.2 The Customer shall not be permitted to assign or transfer the user contract and/or any of their rights or obligations arising from this contract to third parties without obtaining ALLPLAN's prior written consent. ALLPLAN shall not unreasonably withhold such consent. This clause 20.2 shall not apply to the extent that Section 354a of the *HGB* [German Commercial Code] applies.

20.3 Both contracting parties undertake to use all knowledge of confidential information, company and/or business secrets of the other contracting party obtained within the framework of the contractual relationship only for the purpose of implementing the contract and to keep such knowledge confidential for an unlimited period of time.

20.4 Should any provision of the user contract or of these General Terms of Use be invalid or unenforceable in whole or in part or should they contain a gap, this shall not affect the validity of the remaining provisions. In this case, the invalid provision shall be replaced by a valid and enforceable regulation that comes closest to the economic and legal purpose pursued by the invalid provision. The same shall apply in case of a contractual gap.

20.5 The user contract as well as these General Terms of Use shall be governed by German law to the exclusion of the German conflicts of laws rules and the UN Convention on Contracts for the International Sale of Goods.

20.6 Exclusive place of jurisdiction shall be the headquarters of ALLPLAN, provided that the Customer is an entrepreneur. However, ALLPLAN shall also be entitled to bring an action at the Customer's place of business.

20.7 The EU Commission has created an Internet platform for the online resolution of disputes. This platform serves as a contact point for the out-of-court resolution of disputes concerning contractual obligations arising from online sales contracts. More information is available at the following link: <http://ec.europa.eu/consumers/odr>. ALLPLAN is neither prepared nor obliged to participate in a dispute resolution procedure before a consumer arbitration board.