

Terms of Use myLinde Pre-Op Check App

The Linde Material Handling GmbH, Carl-von-Linde-Platz, 63743 Aschaffenburg, Germany („**Licensors**“) has developed a solution consisting of an app and a web portal that enables vehicle assignment and vehicle inspection through checklists. The licensor therefore grants the customer („**Licensee**“) the use of this solution based on this agreement and provides the Licensee with an app and a web portal in their respective current versions. The provision is limited to the duration of this agreement. Permanent usage rights are not granted. The use takes place under the following conditions:

1. Definitions

For the interpretation of this Terms of Use, the following definitions apply:

- 1.1 „**App**“, means the application known as the "**myLinde Pre-Op Check App**" or "**myFenwick Pre-Op Check App**", namely an application for devices with the Android mobile operating system (from version 9 onwards), which is provided to the Licensee exclusively in object code form. Provision is made in digital format via the Google Play Store for download.
- 1.2 „**User Account**“ User accounts are created per user in the web portal. Currently, available roles are Driver, Dispatcher, and Administrator.
- 1.3 „**Google Play Store**“ is a service operated by Google LLC (100 Amphitheatre Parkway, Mountain View, California 94043, USA) through which the Licensor offers and provides the App and for which separate agreements between the Licensee and Google LLC are required for its use.
- 1.4 „**Solution**“ refers to the **myLinde Pre-Op Check** offering of the Licensor, which consists of the App and the use of the Web Portal. **myLinde Pre-Op Check** is the exclusive property of the Licensor and/or its licensors. The content and structure of **myLinde Pre-Op Check** are protected by copyright and may only be used in accordance with this Terms of Use. Reproduction of information or data, in particular the use of texts, parts of texts or images, requires the prior consent of the Licensor.
- 1.5 „**Client**“ means a user group in which an arbitrary number of users can be combined as an organizational unit and managed with the Solution. Clients can be set up in unlimited numbers in the Web Portal by the Licensee.
- 1.6 „**Registration**“ is the creation of a company profile on the web portal, including an initial associated User Accounts with the role of administrator.
- 1.7 „**Web-Portal**“ refers to the online system operated by the Licensor within the framework of **myLinde Pre-Op Check** at <https://my.linde-mh.com>.

2. Subject Matter of the Terms of Use

- 2.1 The subject matter of this Terms of Use is the use, limited to the term of this agreement, of the App described below as well as the Web Portal, including the granting of the rights required for their contractual use pursuant to Clause 3.
- 2.2 The App enables, in cooperation with further components, in particular the Web Portal, the assignment of vehicles to forklift drivers working in warehouses via the mobile devices they use, as well as the possibility to check vehicles using checklists.
- 2.3 The App communicates with the Web Portal by initially verifying the user's authorization during onboarding by means of a unique code. After the first onboarding process is completed, the App user is shown a list of available vehicles. The user can select a vehicle for which he or she wishes to perform a pre-shift check. After completing the pre-shift check, the user's responses and all related data are transferred to the Web Portal. Fleet managers with appropriate access rights can view and analyze the data of the pre-shift checks within the Web Portal.
- 2.4 The Licensee acknowledges that the availability of the Web Portal may be restricted due to malfunctions or maintenance work. The Licensor ensures, during its business hours in Germany, i.e., Monday to

Friday between 9:00 a.m. and 5:00 p.m., provided these are working days, an average availability of 98% per year. No availability is warranted outside of these times.

- 2.5 In addition to obtaining the App from the Google Play Store, its use requires the Licensee to have completed registration on the Web Portal and for one or more user accounts to have been created by the Licensee. During registration, the Licensee is obliged to provide accurate data (in particular, the names of contact persons and contact details) and to keep these up to date and correct during the term of this agreement.
- 2.6 The warranted characteristics of the App are conclusively set out in this Terms of Use and in any documentation materials provided by the Licensor. The Licensor reserves the right to modify both the design and functionality of the App. Insofar as this significantly restricts usability for the Licensee, the Licensee shall have the right to terminate this agreement for good cause. In this case, no further claims may be asserted by the Licensee.
- 2.7 Installation and configuration services are not subject matter of this Agreement but may be agreed separately between the parties.
- 2.8 Insofar as the Licensee and Licensor have made their own contractual arrangements in individual cases, for example through a separate offer from the Licensor and a corresponding acceptance by the Licensee, these individual contractual arrangements shall take precedence over the provisions of this agreement if they contradict one another.
- 2.9 The Licensee is an undertaking within the meaning of § 14 BGB [German Civil Code]. Use of the Solution by consumers is not envisioned and not permitted.
- 2.10 User Accounts are set up for the Licensee in connection with services booked with the Licensor. Insofar as the services are used by a natural person, such as an employee of the Licensee, the Licensee shall ensure that such person is authorized accordingly and is entitled or authorized to set up or use a User Account access and that this person will also comply with the obligations under these Terms of Use.
- 2.11 User Accounts are assigned to and managed by the Licensee. The Licensee may at any time request the Licensor to block User Accounts for individual or all products and to deliver the data contained in the User Accounts. The Licensee shall secure, in advance, from the affected natural persons any rights that may conflict with this in the internal relationship.

3. Granting of Rights

- 3.1 The Licensee is granted the non-exclusive, non-transferable, non-sublicensable right, limited in time to the term of this agreement, to use the App and the Web Portal to the extent granted herein. Further agreements and grants of rights between the parties (e.g. with regard to the Web Portal) shall remain unaffected.
- 3.2 Use in accordance with this Terms of Use includes installation and loading, displaying, and execution of the App, including the use of functionalities offered or brokered via the Web Portal.
- 3.3 Beyond that, the Licensee is only entitled to reproduce, modify, or decompile the App where this is permitted by law, and even then, only if the necessary information is not made available to the Licensee by the Licensor upon request.
- 3.4 The Licensee is not entitled to provide copies of the App received or any backup copies created to third parties. It is not permitted to sell, lend, lease, sublicense or otherwise transfer the App, nor to publicly reproduce or make the App publicly accessible.
- 3.5 The Licensee is not authorized to grant third parties access to the functionalities of the Web Portal via the User Accounts linked to its company profile.
- 3.6 The agreed use further excludes any activity, mechanism, or use of software which endangers the security, operation, or functioning of the Solution, in particular infecting the Solution with malware (e.g.,

viruses, worms, or trojans) or the deliberate overloading of the technical capacities of the Solution through denial-of-service attacks.

- 3.7 If the Licensee violates any of the foregoing provisions, all rights of use granted under this agreement shall become invalid at once and automatically revert to the Licensor. In this case, the Licensee shall immediately and completely discontinue use of the App, delete all copies of the App installed on its devices, as well as any backup copies created, or hand them over to the Licensor.
- 3.8 Upon acceptance of these Terms of Use, the Licensee grants the Licensor permission to collect anonymized information about the use of the App in order to measure the acceptance of its services.

4. Remuneration

The Licensee does not owe any remuneration for use of the Solution under this agreement. However, in order to use the App, registration through the myLinde Portal is required.

5. Conclusion of Contract, Term and Termination

- 5.1 By submitting the request for generation of an opening code or directly accepting this Terms of Use via the Web Portal, the Licensee declares to the Licensor the offer to conclude a contract for the use of the App under inclusion of these Terms of Use. Acceptance of the offer takes place by generation of the respective opening code. The Licensor will reject activation of the App only in key cases, such as in the case of false information or misuse.
- 5.2 The Agreement shall run for an indefinite period. It may be terminated by either party at any time without giving reasons, with four weeks' notice to the end of any month. Termination of the User Account or the Smart Portal shall automatically result in termination of this Agreement.
- 5.3 In addition, each party may terminate this agreement without notice for good cause. Good cause entitling the Licensor to terminate exists in particular if the Licensee
- infringes the Licensor's rights of use by using the software beyond the scope permitted by this agreement and does not remedy the infringement within a reasonable period after a warning by the Licensor;
 - has provided incorrect data at registration, in particular names or contact details. The Licensor reserves the right to verify the plausibility of the data provided at registration using publicly accessible data and third-party databases.
- 5.4 Termination must be given in text form and, on the part of the Licensee, must addressed to support@linde-mh.com. If the Licensee cannot be reached electronically for reasons attributable to the Licensee's responsibility, such as due to incorrect information at registration or failure to update information, it shall be sufficient for the Licensor to block the Web Portal access and to provide a termination declaration posted there.
- 5.5 Upon termination, the Licensee shall cease using the Solution no later than the effective date of termination, remove all installed copies of the App from its devices. Upon effective date of termination, the Licensee's ability to use the App related functions of the Web Portal shall also expire. Data stored there will be retained for three months after the effective date of termination and thereafter deleted.
- #### **6. Warranty**
- 6.1 The Licensor warrants the maintenance of the contractually agreed characteristics of the Solution during the term of this agreement and that no third-party rights hinder the contractual use of the Solution. The Licensor shall rectify any material or legal defects in the Solution within a reasonable time.
- 6.2 The Licensee is obligated to notify the Licensor in text form of defects in the Solution or any other irregularities encountered during use, immediately upon discovery. For material defects, this shall be done with a description of the time and circumstances of occurrence.

7. Liability

7.1 The Licensor shall be liable in accordance with statutory provisions

- in cases of willful intent or gross negligence,
- for injury to life, limb or health,
- under the provisions of the German Product Liability Act, and
- to the extent of any guarantee assumed by the Licensor.

7.2 In the event of simple negligence in violation of an obligation essential for the achievement of the contractual purpose (cardinal obligation), the Licensor's liability is limited to the foreseeable and typical damage for the type of business concerned. Cardinal obligation means an essential obligation required of the Licensor and of paramount importance for the achievement of the purpose of this agreement or the fulfillment of which is owed to the Licensee and whose violation may jeopardize the achievement of the purpose of this agreement.

7.3 The Licensor excludes liability for delayed performance or non-performance of the App, insofar as such delay or non-performance is beyond its control or beyond the control of the third rights-holder. This applies in particular to failures of electronic or mechanical equipment or communication channels, access by third parties, telephone or other connection problems, computer viruses, unauthorized access, theft, operator errors, fire, extreme weather including floods, natural events, or orders from regulatory, governmental or supranational authorities, war or civil unrest.

7.4 No further liability on the part of the Licensor exists. In particular, there is no liability for initial defects, except where the requirements of Clause 7.1 or 7.2, sentence 1 are met.

7.5 This limitations of liability also apply to the personal liability of the Licensor's employees, representatives and bodies.

8. Miscellaneous

8.1 When the App is used and when the Licensor's Web Portal is used, the Licensor processes data of the Licensee's employees. Users of the Solution can access a privacy policy in the web portal or in the app under settings. Processing of personal data of the Licensee's employees by the Licensor takes place as part of a commissioned data processing. The parties shall regulate commissioned data processing within the framework of a commissioned data processing contract provided to the Licensee together with the Terms of Use, which can be accessed and downloaded at any time within the Solution. The commissioned data processing contract becomes part of the parties' agreement upon conclusion of the agreement.

8.2 The Licensee may only assign rights and obligations from or in connection with this Agreement to third parties with the written consent of the Licensor.

8.3 Offsetting is only permitted against undisputed or legally established claims of the Licensor.

8.4 Amendments to this agreement shall be offered to the Licensee at least two months before their proposed date of effectiveness in text form. If the Licensee and Licensor have agreed an electronic communications channel in the course of their business relationship (e.g., via the Web Portal), amendments may also be offered in this way. The Licensee's consent is deemed granted unless he notifies his refusal in text form prior to the proposed date the amendments enter into force. The Licensor shall specifically draw the Licensee's attention to this consequence in its offer. The Licensee may terminate this agreement affected by the amendment before the proposed date of entry into force of the amendment, without notice and at no cost. The Licensor shall advise the Licensee of this termination right in its offer.

8.5 General terms and conditions or general purchasing conditions of the Licensee do not apply. This also applies if the Licensor confirms an order after such general terms and conditions or purchasing conditions have been transmitted.

- 8.6 This Agreement shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods dated 11.04.1980 (CISG) and excluding conflict of laws provisions.
- 8.7 The parties are aware that the software may be subject to export and import restrictions. In particular, licensing requirements may exist or the use of the software or associated technologies abroad may be subject to restrictions. The Licensee shall comply with the applicable export and import control provisions of the Federal Republic of Germany, the European Union, and the United States of America as well as all other relevant provisions. The Licensor's obligation to perform under the contract is subject to the condition that no impediments exist due to national and international regulations of export and import law or other statutory requirements.
- 8.8 Place of performance is Aschaffenburg, Germany. Exclusive place of jurisdiction is Aschaffenburg, Germany.
- 8.9 Should individual provisions of this Agreement be invalid, this shall not affect the validity of the remaining provisions. The contractual parties shall endeavor to replace the invalid term with a term that comes closest to achieving the contractual purpose in legal and economic terms.