

The following terms and conditions of use for the minoo app form an inseparable part of the purchase agreement for the product concluded between midge medical MPS GmbH with headquarters at Colditzstrasse 34-36, 12099 Berlin, Germany (hereinafter “**we**” or “**us**”) and yourself (hereinafter “**you**” or “**your**”).

By clicking on the “*I ACCEPT*” box next to “*TERMS AND CONDITIONS OF USE*” or by downloading or installing the Minoo app or by concluding a purchase agreement concerning the product, whichever comes first, you confirm that you have read and understood the terms and conditions of use and the associated privacy policy for the Minoo app (hereinafter referred to jointly as “**Conditions**”) and that you agree to their legal applicability without limitation.

If you do not accept these Conditions, it is prohibited to use the app.

Definitions:

“**App**” designates the mobile software application developed and operated by us as described in the operating manual for (1) our minoo test platform and (2) our minoo SARS-COV-2 test kit.

“**Instructions**” designates all printed and digital materials, identification markings and links that have been developed by us or in our name and which are contained in the app and/or associated product or are distributed with such. This includes e.g. the operating manual, information sheets on the product, instructions in the app or on the product in the latest version subject to routine updating by us.

“**Test station**” – designates our “minoo test platform” as a medical test station component for the product;

“**Backend**” – designates the database in the cloud, in which calculations are performed for testing and the test result is determined;

“**HCP**” (healthcare professional) – designates members of health professions, medical specialists or medical service providers who offer the product as part of the provision of health treatment and consultancy based on formal training and experience;

“**Product**” – designates the combining of our **test station** with the **app** and **test kit**;

“**Software**” – designates the **app** and the software integrated in the **test station**;

“**Test kit**” – designates the minoo SARS-COV-2 test kit;

“**You**” – means You as our contractual partner, our customer and user of the app.

1. Area of application

1.1 The product is intended in accordance with the operating manual to detect SARS-CoV-2 viral RNA, the cause of disease COVID-19. The product is approved for use by HCPs only for the throat swab-based testing of persons suspected of being infected with SARS-CoV-2.

1.2 You assure and guarantee that You will use the product exclusively within Your capacity as a HCP. Use of the product by non-health care professionals is expressly prohibited.

- 1.3 Before using, You must download the app on Your smartphone. If downloading the app from the Apple App Store, the specific Apple terms and conditions also apply (see below). If downloading the app from the Google Play Store, the specific Google terms and conditions also apply (see below).
- 1.4 When using the app, You must follow the step-by-step instructions included in the app. You can then use the app to control the test station and to obtain test results that are transferred to Your smartphone from the test station and displayed to You via the app.
- 1.5 We expressly point out that it is not permitted to use the product with the associated app on test persons below the age of 3 years in accordance with the operating manual.

2. Safety provisions for use

- 2.1 You assure and guarantee that You have read and understood the instructions (including all contained warning notices and precautionary measures) and these provisions and intend to follow these in connection with accessing or using the product including the app. You are permitted to use this product, including the app, on yourself or other persons exclusively in accordance with the instructions and these provisions.
- 2.2 Specific information on Your minoo SARS-COV-2 test result is provided via the app.

Please note that a negative test result for this test means that no SARS-CoV-2 RNA above the detection threshold was detected in the sample. A negative result, however, does not exclude the presence of COVID-19 disease and therefore should not serve as the sole basis for decisions on patient treatment/care. Negative results should be treated as assumptions only. If negative results do not concur with clinical signs and symptoms or if regarded as necessary for other reasons of patient care, results should be reviewed using other approved molecular testing methods.

Please always consider the possibility of a false negative result where a patient has been recently exposed and clinical signs and symptoms are consistent with COVID-19. The possibility of a false negative result is a particular consideration where the patient has been recently exposed or his/her clinical symptoms suggest COVID-19 and diagnostic testing for other causes of disease (e.g. other respiratory illnesses) are negative. If COVID-19 continues to be suspected based on history of exposure in conjunction with other clinical indications, re-testing should be considered in consultation with health authorities.

- 2.1 You assure and guarantee that You assume sole responsibility for the use of the product, including the app, by yourself as a HCP and/or by another HCP, and that You assume sole responsibility for all actions and/or omissions that result from or in connection with these provisions and/or from or in connection with accessing the product, including the app, or their use. This guarantee shall be without prejudice to any other conditions in these provisions.

3. Licenses

- 3.1 On condition that You comply with these provisions in full and at all times, We grant You the non-exclusive, non-transferable, non-sublicensable and revocable licence, (a) to install and use on a smartphone owned or controlled by You and running the iOS or Android operating system an

object code for the app downloadable either from the Apple Store or Google Play; and (b) to run and use the object code version of the software integrated in the test station provided this software is integrated in the test station and is required to use the product in accordance with these provisions and instructions.

- 3.2 Provided permissible and feasible according to applicable law, We prohibit You from allowing or permitting third parties, (a) to duplicate, distribute, make publicly available or public ally demonstrate the software; (b) perform changes to the software; or (c) impair or circumvent a function of the software, including a security or access control mechanism. Furthermore, You may not use the software if You are prohibited from doing so under applicable law.
- 3.3 If You provide Us with feedback, tips or suggestions on the product and/or on problems with the app and/or on suggested changes or improvements to the product and/or the app (“feedback”), You hereby give Us the unrestricted, irrevocable, non-exclusive, transferable, sublicensable, free and worldwide right to use, disclose and make use of such feedback in any way and for any purpose, including to improve our product or to develop other products and services, without restriction and/or costs or payable fees. You assure and guarantee that You possess and will possess the full rights to grant the license agreed in this section (3.3).

4. Ownership, ownership rights, copyright

The software is owned by Us or our licensors and is operated by Us or our licensors. The visual interfaces, graphics, design, composition, information, data, computer code (including source code or object code), product, test station, software, services and all other elements of the software (“materials”) that are provided by Us, are protected by agreements and/or laws governing the protection of intellectual property. All materials contained in the software are owned by Us or are owned by third party licensors. We reserve the aforementioned rights over all materials and articles not expressly mentioned in these provisions.

5. Provisions regarding third party providers

- 5.1 The app may contain links to third party websites, e.g. web pages of health authorities. We have no control over websites that are linked to our app and We are not responsible for their content, functionality or for problems/issues that occur from or in connection with such third party websites.
- 5.2 The software may contain and integrate software components from third party providers, which generally are free to procure and grant the recipient extensive rights based on a licence e.g. to copy, modify and distribute these components (“third party provider components”). These provisions apply alongside third party licences and in no way restrict third party licence conditions. Please note, therefore, that You receive third party components subject to the corresponding third party licence conditions and that the use of third party components may be restricted under these third party licence conditions.

6. Prohibited activities

- 6.1 The app may be used exclusively for the application as part of the product (see Section 3).

6.2 Without limiting other conditions in these provisions, You recognise, assure and guarantee that neither You nor a third party:

6.2.1 will use the app in any way that does not comply with the instructions or these provisions or for an illegal and/or non-contractual purpose or in violation of applicable local, national or international laws;

6.2.2 will infringe our rights or the rights of third parties or encourage others to infringe our rights or the rights of third parties, including by way of violating or unlawfully appropriating our rights or the rights of third parties to intellectual property;

6.2.3 (i) will interfere with security-relevant functions of the software; (ii) reverse-engineer, decompile or disassemble the app or otherwise attempt to derive source code, commercial secrets or expertise from the app; (iii) infringe or abuse intellectual property rights that belong to Us with respect to the app or that We control; or (iv) access the app in order to develop, distribute or make accessible products or services that compete with the product or its components;

6.2.4 will attempt to perform any action described in this section (6) or will assist or permit any person to perform an action described in this section (6).

7. Modifications and updates to the app

7.1 We reserve the right to temporarily or permanently modify, adapt or rectify the app at any time and without prior notification (including modifying, restricting access to certain functions of the app or of other components of the product). We assume no liability for any such actions, including suspending or terminating access to the app or its use.

7.2 We may, without obligation, publish updated versions of the app from time to time and discontinue support for previous versions of the app. For the proper functioning of the app, it is necessary that You always have the latest version installed. Future updates may require You to have installed an updated version of the operating system on Your mobile device. The updated version of the operating system may not support Your current mobile device without updating.

The availability of updates is displayed. This will either be in the app store and/or as a notification within the app at our discretion. In either case, You will be required to download and install the update within the indicated time frame for the update's availability. We expressly point out that our test station is not compatible with outdated software versions. This means that You can and may only ever use the product with the app if You have installed the latest update.

8. Availability

8.1 The app usually is available around the clock. However, We cannot guarantee that the app will run free of interruption and/or error. The app may become partially or entirely unavailable when We perform or implement necessary backups, maintenance work, improvements or troubleshooting.

8.2 The app requires functioning internet access. In some regions or when travelling abroad, You may not have internet access or Your access may be limited. We strongly recommend that You check the availability of internet access with Your telecommunications provider in advance.

8.3 You are solely responsible for any charges or costs incurred, including data charges, in connection with Your use of the app. We are not responsible for the suitability, functionality or performance of Your mobile device or of Your internet or mobile connection.

9. Use of the app's communication tools

9.1 For communication B2B we will communicate with customers through regular email (e.g. the one provided with purchase order of minoo test station).

10. Data protection / privacy

Please find our Data protection privacy [here](#)

11. Purpose and function of the app

The written agreements on the legal and factual nature from the purchase agreement concerning the product and from these provisions apply exclusively. There are no ancillary express or implicit agreements on the legal and factual nature of the software, in particular though not limited to, marketability, suitability for a specific purpose, function and the non-infringement of third party rights.

12. Liability

We hereby limit our fault-based liability for damages, regardless of reason, as follows:

We shall not be liable for slight negligence on the part of our bodies, legal representatives, employees or other vicarious agents, unless Your claims are based on an infringement of our essential contractual obligations (cardinal obligations). Cardinal obligations are obligations whose fulfilment makes the proper implementation of the terms and conditions of use possible and on whose observance You may consistently rely.

Insofar as We are liable on this basis, our liability shall be limited in scope to contractually typical, foreseeable damages.

Insofar as We provide technical information or provide an advisory service and this information or advice is not part of the scope of service contractually agreed and owed by Us under contract, this is provided free of charge and to the exclusion of any liability.

The aforementioned liability limitations shall also apply to liability on the part of our bodies, legal representatives, employees and other vicarious agents.

The aforementioned liability limitations shall not apply to damage caused intentionally or as a result of gross negligence, to death, physical injury or damage to health with culpable cause, nor to liability pursuant to the Product Liability Act and in the case of further mandatory liability conditions.

You shall be obligated to take appropriate measures to prevent and minimise the occurrence of damage.

The above provisions do not shift the burden of proof away from You.

13. Term and termination

13.1 These provisions shall be deemed contractually agreed when You click on the “*I ACCEPT*” box next to “*TERMS AND CONDITIONS OF USE*” or when You download or install the app or when You conclude a purchase agreement with Us concerning the product, whichever comes first.

13.2 Unless otherwise agreed in the purchase agreement governing the product, these provisions shall in principle apply for an indefinite period.

13.3 You may discontinue using the app at any time without observing a termination period by uninstalling the app.

13.4 We shall be entitled to immediately end Your use of the app for good cause. Good cause includes for example if You violate the provisions in sections 2, 3, 6, 7.2 and 14.1.

14. Final provisions

14.1 We reserve the right to amend these provisions at any time. You will be notified of any change to these provisions. You will be notified during an update and/or by way of a separate notification in the app at our discretion. In either case, You will be required to consent to the amended provisions within the period indicated in the notification informing You of the changes. We expressly point out that You can and may only ever use the product with the app if You have consented to the most recently updated provisions;

14.2 These provisions are subject to the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The place of jurisdiction is Berlin.

14.3 We shall be entitled at any time to transfer to a third party the fulfilment of all services in whole or in part in connection with this app.

14.4 The European Commission provides a platform online at <http://ec.europa.eu/consumers/odr> for the out-of-court settlement of disputes (“OS platform”). We are neither willing nor obligated to participate in any dispute settlement procedures before a consumer arbitration board.

15. Contact

If You have any questions concerning or issues with the app, please contact Us directly: Customer support e-mail: sales-mps@midge-medical.com