



everon

EVERON SUBSCRIPTION TERMS

Last updated: 18.06.2020

We are happy you are about to choose a Subscription with us. Please read these Subscription terms ("**Terms**") carefully as they contain important information about your legal rights, remedies and obligations related to this Subscription. These Terms apply to each Subscription offer to the fullest extent relevant. Your use of the Platform is governed by the Everon [Terms of Use](#).

Unless stated otherwise in the Platform, Subscriptions are offered and provisioned by Everon B.V., a limited liability company under Dutch law, located at Fred. Roeskestraat 115, 1076 EE, in Amsterdam, registered in the trade register of the Chamber of Commerce in the Netherlands under number 74602187 and registered for VAT under number NL859964036B01. When the Terms mention "Everon", "we", "us", "our", it refers to the relevant Everon entity offering the Subscription services to you.

If Everon at any given time does not enforce any clause of these Terms, this cannot be interpreted as a waiver to later rely on the said Terms.

1. Definitions

In these Terms, capitalised terms shall have the meaning given to them in this clause 1 (*Definitions*) and as otherwise determined in these Terms, unless the context requires otherwise:

"Application" means Everon's user interfaces through which the Subscription can be accessed;

"Business Days" means every day except Saturdays, Sundays and official public holidays in the country of the relevant Everon entity offering the Subscription services to you;

"Charging Station" means a facility, including all associated and underlying installations, through which electric energy is delivered for the purpose of electric vehicle charging;

"Consumer" is a term interpreted according to the applicable law determined in clause 14.2 of these Terms;

"Documentation" means all documents or information provided by Everon to you under these Terms in relation to the Subscription service, including user guide and manuals;

"Error" means any material, verifiable and reproducible failure of the Platform or Products to conform in all material respects to features and functions as described in the Documentation (specifically excluding any nonconformity resulting from Misuse);

"Everon Network" means the collection of all Charging Stations accessible with the Token;

"Intellectual Property Rights" means

(a) patents, utility models, right to inventions, copyright and related rights (including software rights), goodwill, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), database rights, design rights, trademarks and service marks, business names and domain names; semiconductor topography rights;

(b) all registrations or applications to register and the right to apply for and be granted registration, renewal or extension of, and right to claim priority from, any of these rights; and

(c) all equivalent or similar rights or forms of protection;

(d) together with all rights of action, powers and benefits arising from ownership of any such rights;

"Misuse" shall mean any use of the Subscription otherwise than in accordance with the Terms, the Documentation or any other instructions provided by Everon and/or applicable laws;

"Party/Parties" means Everon and/or you, as applicable;

"Platform" means the charging management solution offered by Everon, including any modifications, enhancements, additions, extensions, translations and derivative works, programming code and other associated technologies related thereto;

"Subscription" means the service, whereby Everon grants you access to functionalities of the Platform for a Charging Station and/or Token, as described in the Documentation;

"Token" means the card, key ring, digital ID or any other means provided by Everon by which you can identify yourself at a Charging Station;

"Updates" means updates, enhancements, improvements to and translations of the Platform, any of the related services, and new features or versions;

"Workaround" means a suggested set of actions or recommendations intended, when properly implemented, to correct an Error in the Subscription service, including the Platform, and/or to restore its functionality or to provide equivalent or similar, but not inferior, functionality.

2. Scope of Subscription service

2.1 **Related to a Token.** On our Platform dashboard you can activate your Token to be able to charge at your Charging Station(s) and start tracking your transactions. Different subscription plans may be available. Fees may apply and will be communicated to you prior to entering into any Subscription.

2.2 **Related to a Charging Station.** On our Platform dashboard you can activate your Charging Station to manage your Charging Station and track all charging sessions. Different subscription plans may be available. Fees may apply and will be communicated to you prior to entering into any Subscription. If you have a business account and depending on the applicable laws, when activating your Charging Station, you may activate it for guest use by other end-users and set a chargeable rate for such guest use.

3. OUR obligations

3.1 Everon will use reasonable care and skill with respect to the provision of the Subscription service.

3.2 Everon reserves the right to make any reasonable changes to the specifications or settings of the Platform, Applications and/or payable Subscription service. Additionally, Everon has the right to make any changes to all free of charge Subscription services.

3.3 Everon has the right to monitor the use of the Platform, Application and/or Subscription service, and to verify whether such use is in compliance with these Terms.

3.4 Everon has the right to involve its affiliates or subcontractors in the performance of the services described in these Terms, if this is necessary for the good performance thereof. You agree that we can share any relevant data provided by you hereto with such party.

4. Limited warranty

4.1 Everon warrants that the Platform will perform substantially in accordance with the Documentation and will undertake reasonable efforts to provide support and maintenance services to this end as provided in clause 5 (*Support, repair, maintenance and updates*) below.

- 4.2 Although Everon will use reasonable efforts to allow internet access to the Platform, we can make no guarantee that you will be able to access the Platform at any given time, that your access will be uninterrupted or that the Platform (and any features thereof) will always be fully available and functional.
- 4.3 Your exclusive remedy for damage or loss arising from breach of the warranty as set out in this clause shall be, at Everon's option, but agreed with you:
- (a) the replacement of the service concerned at no cost to you;
 - (b) a Workaround and/or Update to address the Error in a manner that provides you with reasonably equivalent functionality as provided in the Documentation, at no cost to you; or
 - (c) in the event Everon is unable to replace or correct such Error by exercising commercially reasonable efforts for a reasonable period of time, either Party may terminate, as the case may be, the Subscription. Your sole remedy shall be for Everon to provide a pro-rata refund of any pre-paid fees for periods after the effective date of termination.
- 4.4 Everon's warranty for Errors in the Platform enters into force on the date of commissioning of the Platform and covers a period of twelve (12) months from the date of commissioning. It is expressly agreed that the Platform provided is version OCPP 1.6 JSON (or later versions, if so commercialized by Everon in your country) and any implementation or modification due to new regulations (including new protocol versions) are excluded from this warranty.
- 4.5 Other than as provided in this clause and to the maximum extent permitted under applicable law, the Subscription services are provided "AS IS" and Everon makes no representations or warranties, express or implied, of any kind whatsoever (including, without limitation, satisfactory quality, fitness for a particular purpose, custom or usage in trade). In particular, Everon does not guarantee that the Subscription services shall be without Errors and shall function without interruption. Everon further makes no representations or warranties regarding, without limitation, the security, integrity, efficiency or capabilities of the Platform. Everon may not be able to respond to or resolve all your queries and makes no guarantees or assurances to that extent.

5. Support, repair, maintenance and updates

- 5.1 You can contact the Everon support centre to report any Error and ask questions about the operation of the Platform at the telephone number (on Business Days between 9 and 18h CET) or the e-mail address as provided on the Everon website.
- 5.2 Everon will use reasonable efforts to repair Errors in the Platform, to the extent possible, within a reasonable time. Everon is entitled to apply problem avoiding restrictions and/or Workarounds, as well as postpone repair until an Update is issued.
- 5.3 Everon has the right to suspend access to the Platform due to scheduled downtime [longer than three (3) hours (informing you two (2) Business Days in advance)] for maintenance purposes and unscheduled maintenance.
- 5.4 In our own full discretion and according to our own timetable (although preferably during planned maintenance), Everon may issue Updates to the Platform. You only have access to the latest version of the Platform. Everon reserves the right, when issuing an Update to the Platform, to remove any existing feature or functionality and you have no right to demand those features or functionalities to be supported by Everon. Where such removal would have a material impact on your Subscription, Everon will inform you thereof reasonably in advance but no later than thirty (30) days prior to implementing the Update unless where such notice would be impossible or impractical due in particular but not exclusively to legal or security requirements or performance related issues.

6. Pricing

- 6.1 **If you are a business user.** All fees for the Subscription are set in the currency as stated in the Platform and are exclusive of VAT and other applicable taxes and contributions. Everon reserves the right to (i) index the fees for Subscription on annual basis with effect from anniversary of the Subscription based on the Services producer price index (SPPI) of the quarter preceding the anniversary; and (ii) increase the fees upon renewal of the Subscription.
- 6.2 **If you are a Consumer.** All fees for the Subscription are set in the currency as stated in the Platform and are inclusive of VAT, but exclusive of other applicable taxes and contributions. Everon reserves the right to index the fees for Subscription on annual basis with effect from anniversary of the Subscription based on the Consumer Price Index on March 1 of the applicable

jurisdiction (see clause 14.2 of these Terms). Everon shall only index its fees if you have signed up for a payable Service more than three (3) months prior to the indexation date.

7. Payment

7.1 Everon will at activation automatically charge your selected payment method (such as your credit card or debit card) for any payable Subscription service, including any applicable taxes, if not otherwise agreed. If we cannot charge your payment method for any reason (such as expiration or insufficient funds), you remain responsible for any uncollected amounts, and we will attempt to charge the payment method as you may update your payment method information.

7.2 If no automatic payment is agreed and unless otherwise agreed, payment of the Subscription services is to take place within a payment term of thirty (30) days from the invoice date. If you do not agree with the invoice, you must notify Everon in writing within the payment term, giving the reasons for your objections.

7.3 **If you are a business user.** If you do not pay within the agreed payment term, you are automatically in default and Everon shall be entitled to:

(a) without requirement of a notice of default, as from the due date until the moment of full payment, payment of an interest of 1% per (part of a) month on the outstanding amount with a minimum of EUR 40 (forty euro), or an equivalent amount in the agreed currency;

(b) recovery of all judicial costs and extrajudicial collection costs incurred by Everon in order to achieve fulfilment of the obligation. The extrajudicial collection costs amount to 15% of the outstanding invoice amount, with a minimum of EUR 40 (forty euro), or an equivalent amount in the agreed currency;

(c) at Everon's option, suspend, terminate or rescind the execution of the Subscription, without prejudice to the right of Everon to recover/claim any incurred damages;

(d) prompt payment of any amounts under any invoice issued by Everon, whether or not such invoices are due at the time of non-payment.

7.4 **If you are a consumer.** If you do not pay within the agreed payment term, Everon will send you a reminder. If you do not pay within the term as set in the reminder, you are automatically

in default and Everon shall be entitled to collect the statutory legal interest rate as well as debt collection costs. Everon is then also entitled to suspend the provision of the Subscription until full payment is received, or to terminate or rescind the Subscription if such is reasonable. If we suspend the provision of the Subscription service, you remain obligated to pay the full price for the agreed Subscription.

7.5 In addition to the previous clauses, Everon is at all times entitled to demand security from you for the proper and timely fulfilment of your payment obligations.

8. Your obligations

8.1 You agree to:

- (a) pay all the fees related to the Subscription services, including but not limited to Subscription fees and fees for charging your electric vehicle at a Charging Station;
- (b) provide Everon with such information and materials as we may reasonably require in order to supply the Subscription and ensure that such information is complete, accurate and correct;
- (c) provide all reasonable assistance and information required in order to respond and/or resolve an incident, problem and/or Error discovered by or reported to Everon;
- (d) inform Everon immediately upon becoming aware of any facts and circumstances which may impact the proper performance by Everon in providing the Subscription;
- (e) comply with all laws and regulations that are applicable to your use of the Subscription service;
- (f) observe any and all policies and rules of the owner of the Charging Station and/or the property where the Charging Station is located; and
- (g) not gain access or use the Platform/Application in a way intended to avoid incurring fees, if fees are applicable.

8.2 In the event of breach of any obligation set out in this clause 8:

- (a) you shall, within the shortest term possible after becoming aware of it, notify us and shall, without prejudice to our other rights and remedies, assist us, at your own cost and

expense, in any way we see fit to remedy such breach and/or to limit its consequences; and/or

- (b) you shall bear exclusively any costs and losses directly or indirectly arising thereof and reimburse us on written demand for such costs or losses sustained or incurred by us or any of our partners.

9. Right of withdrawal

THIS CLAUSE 9 ONLY APPLIES TO CONSUMERS.

- 9.1 The Subscription services are regarded as a distance contract ("Distance Contract"), which means a contract concluded in the context of an organised system for distance selling or servicing without simultaneous physical presence of Everon and you and where, up to and including the moment when the Distance Contract is concluded, only on or more techniques for distance communication is used;
- 9.2 You have the right to withdraw ("Right of Withdrawal") from the Distance Contract within 14 days, commencing on the day the Subscription was concluded ("Withdrawal Period").
- 9.3 You agree with that the Right of Withdrawal prematurely lapses after full completion of these Terms to provide the Subscription.
- 9.4 If you wish to exercise the Right of Withdrawal, you are required to inform us using the model form: [click here](#). We shall confirm your confirmation of receipt of withdrawal without delay by email if you have declared withdrawal via electronic means.
- 9.5 If you exercise the Right of Withdrawal, you shall owe Everon a sum of money that is equivalent to that proportion of the Subscription services that Everon has fulfilled at the moment of withdrawal, in comparison with fulfilling the Subscription services entirely. Everon shall reimburse any money owed to you no later than fourteen (14) days after the day on which you reported the withdrawal. Everon will use the same payment method that was initially used by you, unless you agree to another method.

10. Term and Termination

- 10.1 **If you are a business user.** Unless otherwise agreed, any Subscription is concluded for an initial term of one (1) year from activation of the Subscription. After this initial term, the Subscription is continuously renewed for that same period, unless you notify Everon that you do not wish to renew the

Subscription sixty (60) days prior to the end of the term.
Subscription cancellation form: [click here.](#)

If you are a Consumer. Unless otherwise agreed, any Subscription is concluded for an initial term of one (1) year from activation of the Subscription. After this initial term, the Subscription is extended for an indefinite period and you may terminate the Subscription giving us a one (1) month notice that you wish to stop using the Subscription service, unless you have agreed to renew the Subscription services with another year. Subscription cancellation form: [click here.](#)

- 10.2 If you fail, or Everon has reasonable grounds to suspect that you fail to comply with any of the provisions of these Terms, Everon may, without notice to you, suspend the provision of or terminate the Subscription service. The following examples of events shall be considered as a breach by you upon which Everon can suspend and/or terminate the Subscription service: (a) any form of Misuse of the Platform, Application or Subscription; (b) any infringements on Everon's Intellectual Property Rights; (c) any non-compliance with payment obligations.
- 10.3 In the event you do not agree to material changes to the services as set out in clause 3.2 of these Terms, you will be entitled to terminate the Subscription taking into account a 30 (thirty) days written notice period.
- 10.4 After termination of the Subscription, any outstanding amounts up to the termination date payable by you are due immediately.

11. Intellectual property

- 11.1 Everon (and its licensors, where applicable) owns all right, title and interest, including all Intellectual Property Rights in and to the Subscription service, including the Platform, Token and Application, as well as the processed (electronical) data.
- 11.2 These Terms does not convey to you any rights of ownership in or related to the Subscription service, or any other Intellectual Property Right owned by Everon (or its licensors, where applicable) except as explicitly provided in these Terms, in which case the right of use shall in any case be revocable, non-exclusive, non-transferable and non-sublicensable.
- 11.3 You agree that you will not use the Intellectual Property Rights or any of Everon's proprietary information in any way whatsoever, except for use of the Subscription services and the Platform in compliance with these Terms. In particular you shall not:

- (a) modify, rent, loan, sell, distribute, assign or in any other way transfer the Subscription services or content in any manner, unless expressly permitted by these Terms;
- (b) exploit the Subscription services or the Platform in any manner not expressly authorised;
- (c) copy, reproduce, translate, adapt, modify, alter, temper with or make derivative works of all or any part of the Subscription services or the Platform;
- (d) remove, change or otherwise use our logos and trademarks, unless agreed otherwise.

12. Personal data

12.1 If you are a business user. Terms beginning with a capital letter in this article shall have the meaning assigned to them in the Personal Data protection Laws, namely Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (hereinafter referred to as the "GDPR"), as well as any legislation or regulations concerning the protection of Personal Data and applying to the Data Processing carried out pursuant to the Subscription.

The processing of personal data related to your company's Charging Station/s, insofar this constitutes personal data, and your account details is subject to the terms of the Everon privacy policy, which is available at everon.io. Concerning these purposes, Everon acts as Data Controller.

Parties also process personal data related to electric vehicle (EV) drivers to which your company has issued a Token for the purposes of Token distribution, charge management and incident response & maintenance services ("Joint Processing Activities"). Your company determines the purposes of the processing of personal data, whereas Everon determines its means. Therefore, the relationship between your company and Everon for Joint Processing Activities is that of joint control. The respective obligations of your company and Everon for Joint Processing Activities are as follows:

- (a) Both Parties acknowledge that they are fully aware of the obligations under the Personal Data Protection Law(s) and the recommendations of the relevant supervisory authorities, which apply to them in their respective capacity as Joint Controller.

- (b) Your company undertakes to direct the EV-drivers in relation to Joint Processing Activities to Everon' privacy policy at everon.io and to inform these EV-drivers that the Joint Processing Activities are performed by both Parties and the Joint Processing Activities are subject to the terms of the Everon privacy policy.
- (c) Both Parties shall properly manage EV-driver requests in relation to Joint Processing Activities within the time-limits of the GDPR, or shall immediately forward these requests to the other Party if the other Party is better suitable to manage these requests; in the latter case the other Party shall then properly manage these requests within the time-limits of the GDPR.
- (d) Parties shall set-up and maintain a proper process for managing requests from EV-drivers in relation to Joint Processing Activities.
- (e) Both Parties undertake to include the Joint Processing Activities in their records of processing activities pursuant to Article 30 GDPR.
- (f) In the event that a Party would process personal data related to EV-drivers for its own independent purposes, or if a Party would process such personal data outside the Platform, that Party acknowledges that it is a sole data controller within the meaning of the GDPR, and that it would be subject to all relevant obligations of the GDPR, including informing the respective EV-drivers of such processing activity.
- (g) Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of Data Subjects, Parties warrant that for Joint Processing Activities they have implemented appropriate technical and organizational measures to ensure a level of security and confidentiality appropriate to the risk.
- (h) Parties undertake to adopt all relevant internal rules and procedures governing the various obligations of the GDPR in regard to Joint Processing Activities.
- (i) Parties shall set-up and maintain a proper process for identifying and managing personal data breaches in regard to Joint Processing Activities.

- (j) Parties shall notify each other without undue delay and, in any event, within 48 (forty-eight) hours upon becoming aware of a personal data breach or circumstances that are likely to give rise to a personal data breach, where such personal data breach may affect the personal data in regard to Joint Processing Activities. In such circumstances, Parties shall provide each other with information on the nature and extent of the personal data breach (in relation to categories of personal data and of data subjects), as well as on the measures taken by each of the Parties to limit its impact.
- (k) Parties undertake to notify the relevant supervisory in the event of a personal data breach in regard to Joint Processing Activities within 72 (seventy-two) hours after becoming aware, and, if necessary, inform the applicable EV-drivers. Each Party commits to notify to the relevant supervisory authority all personal data breaches related to their scope of action. Therefore, this obligation is with Everon for personal data breaches related to the functioning of the Platform and with your company for other personal data breaches (ie. loss of account password).
- (l) Parties undertake to set and not exceed retention periods for personal data related to Joint Processing Activities in accordance with the purposes of processing and all applicable laws.
- (m) Parties undertake to support each other in carrying out a data protection impact assessment if a Party so requests in regard to Joint Processing Activities.
- (n) Parties undertake to carry out any necessary formalities, adequately respond to any information request by and otherwise cooperate with any competent data protection supervisory authority.
- (o) Parties agree that the other Party may share the personal data related to Joint Processing Activities with trusted external partners. For example, Everon may share the personal data related to Joint Processing Activities with a third-party support service provider who manages service incidents and/or first-line support and the Everon group company Platform provider. Parties commit to communicate each other a list of the categories of recipients concerned.

- (p) Each Party acknowledges that it is fully responsible and liable vis-à-vis the other Party for its compliance with the GDPR and other applicable data protection legislation, in relation to its own processing of personal data under the Joint Processing Activities.

12.2 **If you are a Consumer.** By your use of our Subscription services, Everon will process certain personal data, particularly in relation to your use of a Token. This processing of personal data by Everon is subject to the terms of the Everon privacy policy, which is available at everon.io. If, by using a Token, you use charging services of third-party charging station operators, you should make yourself familiar with the privacy policy of these third-party operators.

13. Liability

13.1 Except in case of Everon's fraud, gross negligence or wilful misconduct, and to the extent allowed by law, Everon's liability for a breach of its obligations under these Terms is limited to compensation of proven direct damages that were reasonably foreseeable in accordance with the following principles, which apply cumulatively:

- (a) Everon is not liable for any indirect damage and/or consequential damage, such as but not limited to loss of profit, loss of business, loss of goodwill, loss of income, loss of revenue, loss of anticipated savings, loss of opportunity, claims of logistic service providers or other third parties, damage as a result of loss and/or corruption of data, loss of goodwill and reputational damage.
- (b) Everon is not liable for any damages or costs of you or third parties as a result of your violation of your obligations under these Terms.
- (c) Everon is not liable for damages due to problems in the Subscription services caused by your Misuse, the alteration or modification of the Subscription services, problems arising out of the malfunction of hardware, network services (whether or not internally with you), firewalls, or Errors caused by third party software or hardware or other infrastructure, or the configuration of such items.

14. governing law and JURISDICTION

14.1 **If you are a business user.** These Terms are governed and construed in accordance with the laws of the country where the Everon office who provides the Subscription services is located.

The competent court of the place where the Everon office is located has exclusive jurisdiction and venue over any dispute arising out of or relating to these Terms.

14.2 **If you are a Consumer.** These terms are governed and construed in accordance with the laws of the country where you have your habitual residence. You, as well as Everon, have the right to bring any dispute before the competent court according to applicable law.

15. general provisions

15.1 Everon may decide to transfer part or whole of the rights and obligations under these Terms to a third party. In such we shall inform you through e-mail and/or the Platform. If you do not wish to continue using the Subscription service, then you must send a termination notice in accordance with clause 10.4 of these Terms.

15.2 You are not allowed to transfer all or any of your rights and obligations under these Terms to a third party without the prior written consent of Everon.

15.3 If any provision of these Terms is or becomes illegal, invalid or unenforceable, in any respect it shall not affect or impair the legality, validity or enforceability of any other provision of these Terms; and if such provision would be legal, valid or enforceable to the extent some part of it were deleted, such provision shall apply with the minimum modifications necessary to make it legal, valid or enforceable.