

[Swapfiets “e-Kick” Rental Terms](#)

[Swapfiets e-Scooter Rental Terms \(e-SRT\)](#)

Swapfiets Rental Terms

1. General | Scope

- 1.1. These Swapfiets Rental Terms (“SRT”) apply between you as a consumer (Verbraucher) within the meaning of § 13 of the German Civil Code (“BGB”) and Swaprad GmbH, Pliniusstraße 8, D-48488 Emsbüren (“we” or “us”). They regulate the rental of a bicycle (“Swapfiets”) provided to you by us at any given time.
- 1.2. For the purposes of these SRT, the Swapfiets could be (i) a regular bicycle ‘Original 1+’, (ii) a regular bicycle ‘Deluxe 7’, (iii) an electric bicycle ‘Power 7’ and/or (iv) any other type of Swapfiets as agreed between you and us in your Subscription (as defined below). These SRT form part of the contract concluded between you and us (“Subscription”) and apply to the exclusion of all others. Terms which deviate from, conflict with or supplement these SRT shall only become part of the contract if we have expressly consented to them in writing.
- 1.3. Legally relevant declarations and notices which you would like to give to us after the conclusion of the contract (e.g. setting deadlines, reminders, declarations of withdrawal from the contract), must be made at least in text form in order to be valid, unless expressly provided otherwise in these SRT.

2. Subject Matter of the Subscription | Conclusion of the Subscription | Swapfiets Territory

- 2.1. During the Subscription Period, we will make a Swapfiets available to you. The details of your Subscription and the details of the Swapfiets are agreed as part of the online ordering process on our website (“Order Process”).
- 2.2. Completing the Order Process results in an offer made by you to us to take out a Subscription. After the Order Process is complete, we may send you a confirmation of your order by email. This order confirmation is the acceptance of your offer to enter into a Subscription. Following that, we will agree the time and location for the delivery of the Swapfiets.

- 2.3. When we deliver the Swapfiets, we will check your personal details together with you (e.g. by you producing an official identity document). At the time of delivery, you are obliged to confirm to us in writing the receipt of the Swapfiets, the payment method chosen by you (e.g. by issuing the direct debit mandate in accordance with Clause 6.4) and that the personal details you have provided to us are correct. You are obliged to notify us without undue delay of any changes in your personal details during the Subscription Period (e.g. if your address changes).
- 2.4. You may only use the Swapfiets in the territory / the city which is specified in your Subscription ("Swapfiets Territory"). A change of the Swapfiets Territory is only possible after our express consent to this.
- 2.5. We do not save the text of the contract after concluding the Subscription.
- 2.6. A digital verification process of the correct identification document could be part of the order process upon delivery. Product will not be delivered when renter is not able to handover the correct identification documents. Swapfiets will report to the police when verification of the identity documents shows that there is a possibility of fraud.

3. Making Available the Swapfiets | Advertising

- 3.1. During your Subscription Period, we will make a Swapfiets available to you. Details about making available the Swapfiets to you are agreed as part of the Order Process.
- 3.2. You are not entitled to a particular Swapfiets or to a particular design, fit-out or configuration of the Swapfiets.
- 3.3. The Swapfiets and all objects provided to you in connection with the Swapfiets (e.g. the key and the battery) shall remain in our ownership or in the ownership of our partner companies at all times.
- 3.4. After giving prior notice, we are entitled to inspect the Swapfiets at any time, to wholly or partially replace it, and to carry out maintenance and repairs to the Swapfiets.
- 3.5. We reserve the right to put advertisements on the Swapfiets at any time and at our discretion (nach billigem Ermessen). If an advertisement attached to the Swapfiets or printed on the Swapfiets is damaged, removed, unreadable or otherwise no longer visible, you are obliged to inform us of this immediately.

4. Usage Rules | Non-Commercial Use Only

4.1. Certain rules apply to you in relation to the use of the Swapfiets, which you must comply with at all times:

- The use of the Swapfiets shall be in your sole responsibility.
- Prior to using the Swapfiets, you are obliged to familiarise yourself with how the Swapfiets functions.
- Prior to each use of the Swapfiets, you must check the Swapfiets for road safety, proper functioning and the absence of defects. For that purpose, in particular you must check the tightening of all screws which are of relevance to safety, the proper condition of the frame, the handlebars and the saddle, the tire pressure, the functionality of the lights, the battery, the computer and the braking system. If a defect exists at the start of your use of the Swapfiets or a defect occurs while you are using it, you must refrain from using the Swapfiets or cease using it.
- The Swapfiets is intended solely for your personal use. Consequently, you must not entrust the Swapfiets to third parties, you must not allow third parties the use of the Swapfiets in another form or sell it, hire it out, sub-let it, pledge it or otherwise encumber the Swapfiets with security interests or rights of third parties.
- The Swapfiets is a high-quality object. Consequently, you must not damage or destroy the Swapfiets or carry out any modifications, lacquering, painting or other changes to the Swapfiets, its battery or the computer including the software.
- You must secure the Swapfiets effectively against theft (Clause 7).
- You are only allowed to use the Swapfiets in the generally accepted customary manner, avoiding unusual strain on it and only on paved routes and streets.
- You must use and take care of the Swapfiets, its battery and its computer including the software (if any) in accordance with the instructions given by us.
- You must not use the Swapfiets whilst under the influence of drugs, medication or alcohol.
- You are only allowed to use the luggage carrier(s) of the Swapfiets in an appropriate manner in accordance with its / their intended purpose and in particular you must not transport any persons on it / them.
- You are only allowed to use the Swapfiets in the Swapfiets Territory.

For the purposes of these SRT, use of the Swapfiets shall be deemed to also include pushing, parking and storing the Swapfiets.

- 4.2. When using the Swapfiets, you are obliged to always comply fully with all applicable legal provisions, in particular with all road traffic rules (e.g. the StVO (German Road Traffic Regulation)). In addition, you must always make sure that the Swapfiets is not detrimental to road safety, that other road users and pedestrians are not endangered, harmed or impeded and that the use of the Swapfiets does not interfere with, damage or endanger other vehicles or other property of third parties or other rights of third parties.
- 4.3. You are not allowed to use the Swapfiets for commercial purposes, such as the delivery of goods and/or food.. In the event of a breach of your obligation under this Clause 4.3, you shall pay to us a contractual penalty in an adequate amount, however not more than EUR 2,000. The precise amount of such contractual penalty shall be determined by us at our discretion, whereby, in case of a dispute, the adequacy of the amount shall be reviewed by a competent court upon your request. Such contractual penalty shall be deducted from any damage actually suffered by us and shall be without prejudice to any other rights we may have under your Subscription, including but not limited to a right to claim damages and to terminate your Subscription in accordance with Clause 11.
- 4.4. In deviation from Article 4.3, if you choose the Subscription Power 7 Heavy Use, you are entitled to use the Swapfiets also for commercial purposes, such as the delivery of goods and/or food. This does not apply to the Subscription Power 7 Normal Use. “Power 7 Heavy Use” means: a Subscription for the electric bicycle (Power 7), whereby you may ride an unlimited amount of kilometres per month, and “Power 7 Normal Use” means: a Subscription for the electric bicycle (Power 7), whereby you may ride less than 1,000 km per month in total.
- 4.5. We reserve the right to check the mileage of the Swapfiets e-bike during the Swapping and/or other contact moments. During the check, the average usage per 30 days is examined, calculated from the moment of the first delivery or the last appointment made for the Swapping until the moment of the check. If during the check it appears that the average use in this period is more than is permitted under the Subscription, we are entitled to retroactively charge the difference in price between the Subscription chosen by you and the higher Subscription that does allow a higher average use over the deviated period, plus an amount of EUR 25 for administration costs. The foregoing

shall be without prejudice to any other rights of us including but not limited to the right to claim damages and to terminate the subscription in accordance with Clause 11.

5. Swapping

5.1. In accordance with the terms of this Clause 5, you have a right to “Swapping” free of charge. By Swapping or “Swap”, we mean:

- Repairing defects in the Swapfiets free of charge within your Swapfiets Territory; and/or
- Exchanging the Swapfiets free of charge within your Swapfiets Territory;

The type and extent of a Swap is determined by us according to our discretion.

5.2. During your Subscription Period you can request an unlimited number of Swaps. You do not incur any additional costs for Swapping. Swapping is covered by payment of the Swapfiets Rent. However, we can refuse a Swap until such time as you have paid any outstanding Swapfiets Rent, fees or other sums to us.

5.3. You can request a Swap via the Swapfiets App, by telephone, email or WhatsApp (“Swap Request”). We will agree on the place and time of the Swap on an individual basis with you.

5.4. We make every effort to carry out a Swap within 48 hours after receipt of your Swap Request. However, if we do not meet this target time, you may not use this as the basis for any claims for compensation or any other claims.

5.5. If we exchange the Swapfiets, you are obliged to hand over the present Swapfiets, the battery (if any) and the key to us.

5.6. If there is a defect in the Swapfiets, you are entitled to a Swap provided that the defect has arisen in the course of your use of the Swapfiets in accordance with the terms of the Subscription including these SRT.

5.7. If the Swapfiets is stolen or lost, you are only entitled to a Swap if you are not responsible for the theft/loss. Clause 9 applies.

5.8. If you make a Swap Request without being entitled to a Swap, we reserve the right to charge you a fee of EUR 20 per incident. This also applies if you fail to attend an agreed Swap appointment.

- 5.9. If you do not notify us about a defect in the Swapfiets or do not notify us immediately, you are obliged to compensate us for any losses arising from this. This includes all additional expenses incurred by us for the purposes of repairing the damage as well as third parties' compensation claims which would have been avoided if notice of the defect had been given in good time.

6. Rent | Fees | Time for Payment | Payment Terms

- 6.1. In return for us making the Swapfiets available to you, you owe us the monthly rent agreed with us in the Order Process ("Swapfiets Rent"). The Swapfiets Rent is due for payment in advance at the beginning of each calendar month for the whole calendar month. If your Subscription starts or ends during a calendar month, the Swapfiets Rent will be charged by us on a pro rata basis for such a month.
- 6.2. We reserve the right to adjust the Swapfiets Rent during your Subscription Period with effect for the future. We will inform you in text form about any changes in the Swapfiets Rent in good time prior to changes taking effect.
- 6.3. To the extent agreed in the Order Process, we may also charge you a one-time fee.
- 6.4. Payment of the Swapfiets Rent as well as any other fees shall be made by means of SEPA direct debit scheme. Consequently, you are obliged to issue us a corresponding direct debit mandate in advance, giving details of your IBAN and BIC numbers. We will collect a monthly direct debit payment for the Swapfiets Rent. We may also request that you pay the Swapfiets Rent not to us, but instead to one of our partner companies.
- 6.5. If a direct debit payment is not made due to a lack of funds or for other reasons for which you are responsible or if a direct debit is subsequently cancelled by you, you will be in default in relation to the relevant payment. You will receive a reminder from us to settle such payment within 14 days. If the amount due is not paid within 14 days, we reserve the right to instruct a collection agency to recover the debt. All additional administration costs and out of court debt collection costs will be borne by you.

7. Securing the Swapfiets against Theft | Key

- 7.1. We provide the Swapfiets to you together with one or more locks (e.g. ring lock, chain lock or other security measures).
- 7.2. In order to prevent the loss/theft of the Swapfiets or any damage to it, you are obliged to always secure the Swapfiets with all locks which have been provided to you. The

Swapfiets should always be secured to a fixed object (e.g. fixed bicycle stands). When connected to the Swapfiets, the battery (if any) must always be secured with the lock provided.

- 7.3. We will also provide you with a key to use with the locks. You are not allowed to make any additional keys or have them made (e.g. replacement key, copy, duplicate key). We may keep additional keys for the locks in our possession. You are obliged to protect the key for the Swapfiets against loss, theft and unauthorised use at all times and you are not allowed to pass the key on to third parties.
- 7.4. If your key gets lost, stolen or damaged, you must inform us immediately. In these circumstances we will deliver a new key to you within the Swapfiets Territory and will charge you a fee of EUR 15 per key for this. On delivery of the new key, you must confirm receipt of it to us. If you find a key which has been notified to us as having been lost, you must send it to us immediately by post at your own cost.

8. Damage to the Swapfiets

- 8.1. You are obliged to inform us of any damage to the Swapfiets within 24 hours of becoming aware of the damage occurring. This applies regardless of the extent of the damage and of whether you have caused the damage or not.
- 8.2. If you have caused the damage to the Swapfiets or it otherwise results from your breach of the usage rules in these SRT (in particular of Clause 4), we reserve the right to claim compensation from you.
- 8.3. In the event of damage to the Swapfiets due to the fault or contributory fault of a third party, you are obliged to give us the identity and contact details of this third party. If the damage has occurred in connection with an accident, you are obliged to send us an accident diagram sketch signed by you and the third party. You can use the accident form at <https://swapfiets.de/europeanclaimform> for that purpose. If you do not send us the contact details of the third party, although you have them, we reserve the right to invoice you in full for the losses which we incur.

9. Theft/Loss of the Swapfiets | Dishonesty supplement

- 9.1. You are obliged to inform us of the theft/ loss of the Swapfiets or of individual components of the Swapfiets (e.g. its battery) within 24 hours of you becoming aware of it. In the event of theft/loss of the Swapfiets, you must hand over or send to us all of the keys for the Swapfiets which you have received from us. You are obliged to support

us, to the extent that is reasonable, in relation to reports to the police or bringing any other legal action.

- 9.2. In the event of theft/loss of the Swapfiets and/or of the battery (if any) we may charge you a deductible per incident in the amount applicable to the relevant type of Swapfiets and/or battery as follows:

Swapfiets Original	EUR 40
Swapfiets Deluxe 7	EUR 60
Swapfiets Power 7	EUR 220
Battery for Swapfiets Power 7	EUR 500

- 9.3. If the Swapfiets and/or the battery which has been notified to us as lost or stolen are found again, at our discretion and subject to the technical and optical condition of the relevant Swapfiets and/or battery, we may reimburse you any deductibles paid.

You are free to prove that we have not suffered any loss or that such loss is significantly lower than the retention fee. We reserve the right to claim more extensive damages.

- 9.4. In the event of theft/loss of individual components of the Swapfiets other than the battery, we may charge you a deductible in the sum of the value of the stolen or lost components up to a maximum amount applicable to the relevant type of Swapfiets as follows:

Swapfiets Original	EUR 40
Swapfiets Deluxe 7	EUR 60
Swapfiets Power 7	EUR 220

You are free to prove that we have not suffered any loss or that such loss is significantly lower than the retention fee. We reserve the right to claim more extensive damages.

- 9.5. If you do not secure the Swapfiets as described in Clause 7.2 and, as a consequence, the Swapfiets is damaged, lost or stolen, you are obliged, in addition to any deductibles

under Clauses 9.2 and 9.3, to pay us a fee in the amount applicable to the relevant type of Swapfiets as follows:

Swapfiets Original	EUR 60
Swapfiets Deluxe 7	EUR 90
Swapfiets Power 7	EUR 300

You are free to prove that we have not suffered any loss or that such loss is significantly lower than the retention fee. We reserve the right to claim more extensive damages.

9.6. If you do not fulfil your obligations under Clause 9.1, in particular, if:

- you do not inform us about the theft/loss of the Swapfiets; or
- you do not hand over or send to us all of the keys for the Swapfiets which you have received from us,

we will charge you a deductible in the amount applicable to the relevant type of Swapfiets as follows:

Swapfiets Original	EUR 350
Swapfiets Deluxe 7	EUR 450
Swapfiets Power 7	EUR 2.000

You are free to prove that we have not suffered any loss or that such loss is significantly lower than the retention fee. We reserve the right to claim more extensive damages.

9.7. If it turns out that you have made false statements to our detriment, we shall be entitled to charge you a dishonesty supplement in the sum of EUR 100. This sum must be paid in addition to any amounts due under this Clause 9.

10. Accessories

- 10.1. This Clause 10 only applies if you have chosen an add-on subscription regulating the rental of one or more accessories for the Swapfiets provided to you by us (“Accessory Subscription”). The provisions set out in these SRT governing the Subscription shall apply mutatis mutandis to the Accessory Subscription, unless this Clause 10 specifies otherwise. To this end, where the terms ‘Swapfiets’ and ‘Subscription’ are used in these SRT, these shall be replaced with the terms ‘accessory(ies)’ and ‘Accessory Subscription’ accordingly.
- 10.2. The Accessory Subscription is a separate and independent contract and can be terminated independently of the Subscription. Conclusion of the Accessory Subscription is subject to the availability of the respective accessory in the Swapfiets Territory as well as to our confirmation of the Accessory Subscription chosen by you.
- 10.3. In the event of theft/loss of an accessory, you are obliged to report this to us within 24 hours of you becoming aware of it. In these circumstances, we will deliver a new accessory to you within the Swapfiets Territory and will charge you a deductible applicable to the relevant accessory. The applicable deductible for each type of accessory is defined as follows:

Type of Accessory	Deductible
Basket, Child seat	EUR 25

- 10.4. If an accessory is damaged and becomes unusable as a result of vandalism, you are obliged to report this to us within 24 hours of you becoming aware of the vandalism. In these circumstances, we will deliver a replacing accessory to you within the Swapfiets Territory and will, at our discretion and depending on the individual case, charge you an adequate compensation for the damage.
- 10.5. The use of the respective accessory shall be in your sole risk and responsibility. We are not liable for damages of any kind resulting from or in connection with the use of the accessory by you.

11. Subscription Period | Termination | Return

- 11.1. The term of your Subscription (the “Subscription Period”) is agreed upon in the Order Process. To the extent agreed in the Order Process, Swapfiets may charge Renter with a one-time fee.
- 11.2. If the Subscription is concluded by completing the registration form on the website www.swapfiets.de and you are a consumer, you have the right to terminate the Subscription during the 14-day withdrawal period without giving reasons. The foregoing does not apply insofar as the Subscription was carried out during the withdrawal period with your explicit consent and insofar as you have waived his right to terminate the Subscription.
- 11.3. If we have agreed on a monthly Subscription, the Subscription Period is one month from the date stated in the Order Process and automatically extends on a month-by-month basis, unless terminated in accordance with these SRT. You or we may terminate a monthly Subscription at any time for convenience with a notice period of one month.
- 11.4. If we have agreed on a minimum Subscription Period, the Subscription Period begins on the date stated in the Order Process and remains in effect for the minimum term agreed in the Order Process. Early termination with effect prior to the end of the minimum term will not be possible, subject to the provisions of Clause 11. Upon expiry of the minimum Subscription Period, the Subscription turns into a monthly Subscription specified in Clause 11.3.
- 11.5. Your right and our right to extraordinary termination of your Subscription without notice for an important reason (§ 314 BGB) remains unaffected. An important reason, which entitles us to termination without notice exists in particular if:
- you are in default in relation to more than two Swapfiets Rent payments;
 - you use the Swapfiets outside the Swapfiets Territory;
 - you use the Swapfiets contrary to the usage rules in Clause 4; or
 - you make false statements to us or you repeatedly make use of our services in an improper manner (e.g. by making intentionally false statements or unjustified Swap Requests).
- 11.6. Every notice of termination must be given in text form (email is sufficient).

- 11.7. If you have terminated your Subscription, prior to returning the Swapfiets to us you can cancel your termination at any time and reactivate your Subscription by email free of charge. After returning the Swapfiets to us, free of charge reactivation is not offered.
- 11.8. When the termination of your Subscription takes effect, you are obliged to return the Swapfiets and any other objects provided by us (in particular keys) at your own cost and risk to us or, if we notify you thereof, to one of our partner companies. If you return the Swapfiets to us prior to the termination of your Subscription taking effect, your rights under your Subscription end at the time of return; however, we reserve the right to charge the Swapfiets Rent accruing up until when the termination of your Subscription takes effect.
- 11.9. If you do not return the Swapfiets to us in good time when the termination of your Subscription takes effect, we will charge you a late fee in the sum of EUR 5 per day, up to a maximum of EUR 35 until you return the Swapfiets to us, reactivate your Subscription in accordance with Clause 11.7 or take out a new Subscription. You are free to prove that we have not suffered any loss or that our loss is significantly lower than the late fee. We reserve the right to claim more extensive damages.
- 11.10. If you do not return the Swapfiets to us within 7 days after the termination of your Subscription taking effect and you do not reactivate your Subscription in accordance with Clause 11.6 or take out a new Subscription in accordance with Clause 11.10, we reserve the right to take legal action. In these circumstances, we may charge you a retention fee in the amount applicable to the relevant type of Swapfiets as follows:

Swapfiets Original	EUR 350
Swapfiets Deluxe 7	EUR 450
Swapfiets Power 7	EUR 2.000

You are free to prove that we have not suffered any loss or that such loss is significantly lower than the retention fee. We reserve the right to claim more extensive damages.

- 11.11. We are at all times entitled to terminate the Subscription in the event of theft or on one of the grounds stated in this Clause, to track down the Swapfiets and confiscate it immediately. In the case of an e-bike, we may use the GPS tracker to track the location

of the Swapfiets.

12. Trading in Your Old Bicycle for a Swapfiets

- 12.1. During the first month of your Subscription, you can offer us to buy your old bicycle. We can then decide at our discretion whether we will buy your old bicycle and grant you a one-off discount on the Swapfiets Rent in the amount of the purchase price (“Old Bicycle Bonus”). You are only allowed to offer us one bicycle per Subscription.
- 12.2. We are not obliged to buy an old bicycle from you or to grant you an Old Bicycle Bonus of a particular amount. If we do, property in your old bicycle passes to us unconditionally when the old bicycle is handed over to us or to one of our partner companies.
- 12.3. You warrant that the old bicycle offered by you is your property, you are entitled to freely dispose of it and that by handing over the old bicycle to us or to one of our partner companies you are not infringing any third parties’ rights or legal interests. Where there are substantiated indications of the breach of this warranty, we reserve the right to terminate your Subscription with immediate effect and to take legal action against you, in particular by reporting you to the police.

13. Prohibition on Set-off | Restriction on the Right of Retention

- 13.1. You are only allowed to set off any claims against our claims to the extent that your claims have been finally determined in a binding judgment which is not subject to appeal, are undisputed or are accepted by us.
- 13.2. You are only allowed to enforce a right of retention (in particular over the Swapfiets) if such right is based on the same contractual relationship as our claim.

14. Data Protection

We are obliged to comply with the applicable statutory provisions on the protection of personal data.

15. Our Liability

- 15.1. Our liability shall be unlimited (i) in respect of losses caused by acting intentionally or with deliberate recklessness on the part of Swapfiets or for damages that cannot be excluded on the grounds of mandatory statutory provisions, (ii) in respect of breaching

essential contractual obligations, namely those obligations which must be complied with in order to make it possible for the contract to be properly performed at all and which you normally rely on being fulfilled and may so rely (cardinal obligations), (iii) in respect of defects which have been fraudulently concealed, (iv) in respect of losses arising from death, bodily injury, or harm to health, (v) in respect of claims under the Law on Product Liability (Produkthaftungsgesetz), and (vi) in the event that we expressly assume a guarantee as to quality. Any more extensive liability for us is excluded.

- 15.2. We shall not be liable without being at fault in respect of defects in the Swapfiets which exist at the start of the Subscription Period (first scenario in § 536a (1) BGB).

16. Final Provisions

- 16.1. We have not entered into any collateral agreements with you, whether written, oral or implied.

- 16.2. We can unilaterally amend these SRT at any time for technical, commercial or legal reasons with effect for the future. We will notify you of an amendment to these SRT in text form at least 1 month before the amendment takes effect. You can agree to the amendment or object to it prior to it taking effect; however, your agreement shall be deemed to have been given if you do not object to the amendment before it takes effect. We will draw your attention specifically to this in our notice of amendment. We reserve the right to terminate your Subscription if you object to an amendment to these SRT.

If the amendment results in you being provided with a performance which materially differs from the original performance, you, being a consumer, will have the right to terminate the Subscription as of the date on which the amended SRT come into effect. You will not be permitted to terminate the Subscription due to a price change, unless the change takes place within three months of the conclusion of the Subscription and you are a consumer.

- 16.3. In the event that a provision of these SRT is or becomes wholly or partially void, invalid, impracticable or unenforceable, the validity and the enforceability of the remaining provisions of these SRT shall not be affected. In those circumstances, we and you shall be obliged to agree on a provision to replace the defective provision which comes as close as possible to what we and you would have agreed if we had realised that the provision was defective, taking into account the spirit and purpose of these SRT and

within the scope of what is legally possible. The same applies to any gaps in the regulations in these SRT. This Clause 16.3 is not intended to merely have the effect of reversing the burden of proof but is intended to exclude the application of § 139 BGB in its entirety.

- 16.4. Your Subscription and these SRT, as well as all rights arising out of or in connection with them, shall be exclusively subject to German law excluding those rules of private international law which lead to the application of the law of a country other than Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 16.5. The jurisdiction of the courts over disputes between you and us in connection with your Subscription and these SRT shall be governed by the statutory provisions. If, after concluding the contract, you move your domicile or habitual residence to another country outside Germany, we can bring proceedings against you before the courts in Berlin.
- 16.6. The German version of these SRT takes precedence over the English version. The English version of these SRT is merely a non-binding translation.

Swaprad GmbH

Commercial Register: Amtsgericht Osnabrück HRB 212904

www.swapfiets.de

April 2021 version 5.0

Swapfiets “e-Kick” Rental Terms

Version: December 2019

1. General | Scope

- 1.1 These e-Kick Rental Terms (“**e-KRT**”) apply between you as a consumer (*Verbraucher*) within the meaning of § 13 of the German Civil Code (“**BGB**”) and Swaprad GmbH, Pliniusstraße 8, D-48488 Emsbüren (“**we**” or “**us**”). They regulate the rental of an electric kick scooter (“**e-Kick**”) provided to you by us at any given time.
- 1.2 These e-KRT apply to the exclusion of all others. Terms which deviate from, conflict with or supplement these e-KRT shall only become part of the contract if we have expressly consented to them in writing.
- 1.3 Legally relevant declarations and notices which you would like to give to us after the conclusion of the contract (e.g. setting deadlines, reminders, declarations of withdrawal from the contract), must be made at least in text form in order to be valid, unless expressly provided otherwise in these e-KRT.

2. Subject Matter of the Contract | Conclusion of the Contract | e-Kick Territory

- 2.1 During the contract term we will make an e-Kick available to you by means of renting it to you. The details of the contract concluded between you and us (“**Subscription**”) and of the e-Kick arise from the online ordering process on our website. These e-KRT form an integral part of your Subscription.
- 2.2 When you fully complete the online ordering process on our website, this is an offer to take out a Subscription made by you to us. After the online ordering process is complete, we will send you a confirmation of the order by email. This order confirmation is at the same time the acceptance of your offer to enter into a contract. Therefore, a Subscription comes into existence when you receive the confirmation. Following that, we will agree the time and location for the delivery of the e-Kick.
- 2.3 When we deliver the e-Kick, we will check your personal details with you (e.g. by you producing an official identity document). At the time of delivery, you are obliged to confirm to us in writing the receipt of the e-Kick, the payment method chosen by you (e.g. by issuing the direct debit mandate in accordance with Clause 6.3) and that the personal details you have provided are correct. You are obliged to notify us without undue delay, of any changes in your personal details during the Subscription period (e.g. if your address changes).
- 2.4 You may only use the e-Kick in the territory / the city which is specified in your Subscription (“**e-Kick Territory**”). A change of the e-Kick Territory is only possible after our express consent to this.
- 2.5 We do not save the contract text after concluding the contract.

3. Provision of the e-Kick | Advertising

- 3.1 During your Subscription period we will make a e-Kick available to you to rent. Details about providing the e-Kick to you arise from the online ordering process on our website.
- 3.2 You do not have any right to a particular e-Kick or to a particular design, fit-out or configuration of the e-Kick.
- 3.3 The e-Kick and all objects provided to you in connection with the e-Kick (e.g. the key) shall remain in our ownership or in the ownership of our partner companies at all times. You do not become the owner of the e-Kick or of any objects provided to you in connection with the e-Kick.
- 3.4 After giving prior notice, we are entitled to inspect the e-Kick at any time, to wholly or partially replace it, and to carry out maintenance and repairs to the e-Kick.
- 3.5 We reserve the right to put advertisements on the e-Kick at any time and at our discretion. If an advertisement attached to the e-Kick or printed on it is damaged, removed, unreadable or otherwise no longer visible, you are obliged to inform us of this immediately.

4. Usage Rules | Non-Commercial Use Only

- 4.1 Certain rules apply to you in relation to the use of the e-Kick, which you must comply with at all times:
 - The use of the e-Kick shall be in your sole responsibility.
 - Prior to using the e-Kick, you are obliged to familiarise yourself with how the e-Kick functions.

- Prior to each use of the e-Kick, you must check the e-Kick for road safety, proper functioning and defects. For that purpose, in particular you must check that all screws which are of relevance to safety are tightened, the proper condition of the frame, the handlebar, the tyre pressure, the functionality of the lights, the computer and the braking system. If a defect exists at the start of use or occurs while you are using it, you are obliged to refrain from using the e-Kick or to cease using it.
 - You must ensure that the e-Kick's insurance plate is not removed from the e-Kick and is clearly visible when in use.
 - The e-Kick is intended solely for your personal use. Consequently, you must not entrust the e-Kick to third parties, you must not allow third parties the use of the e-Kick in another form or sell it, hire it out, sub-let it, pledge it or otherwise encumber the e-Kick with security interests or rights of third parties.
 - The e-Kick is a high-quality object. Consequently, you must not damage or destroy the e-Kick and you must not carry out any modifications, lacquering, painting or other changes to the e-Kick or the computer including the software.
 - You must secure the e-Kick effectively against theft (Clause 7).
 - You may only use the e-Kick in the generally accepted customary manner, avoiding unusual strain on it and only on paved routes and streets.
 - You must use and take care of the e-Kick and the computer including the software in accordance with the instructions given by us.
 - You must not use the e-Kick whilst under the influence of drugs, medication or alcohol.
 - You may only use the e-Kick in accordance with its maximum weight limit of 100kg.
 - You must not transport any persons on it / them.
 - You may only use the e-Kick in Germany.
 - In order for us to insure our vehicles, a yearly renewed license plate is mandatory. You are obliged to contact us every year to request a new license plate and to schedule a Swap to attach the new license plate to the e-Kick. The new license plate must be attached to the e-Kick every calendar year no later than the 1st of March. You must contact us at least 7 days in advance, allowing us sufficient time to schedule an appointment and change the license plate.
- 4.2 When using the e-Kick, you are obliged to always comply fully with all applicable legal provisions, in particular all road traffic rules (including but not limited to the StVO (German Road Traffic Regulation) and the eKFV (German Regulation on Personal Light Electric Vehicles)). In addition, you must always make sure that the e-Kick is not detrimental to road safety, that other road users and pedestrians are not endangered, harmed or impeded and that the use of the e-Kick does not interfere with, damage or endanger other vehicles or other property of third parties or other rights of third parties.
- 4.3 For the purposes of these e-KRT, use of the e-Kick shall be deemed to also include pushing, parking and storing the e-Kick.
- 4.4 You are obliged to fully compensate us for and indemnify us from any and all fees, fines or other payments imposed on us by third parties (e.g. by public traffic authorities) on grounds of a breach of any of your obligations under your Subscription. In this context we may provide your name and address to such third parties.
- 4.5 You are not allowed to use the e-Kick as an entrepreneur (*Unternehmer*) within the meaning of § 14 of the BGB in exercise of your trade, business or profession (i.e. using the e-Kick for e.g. the professional delivery of goods is prohibited). In the event of a breach of your obligation under this Clause 4.5, you shall pay to us a contractual penalty in an adequate amount, however not more than **EUR 550**. The precise amount of such contractual penalty shall be determined by us at our discretion (*nach billigem Ermessen*), whereby, in case of a dispute, the adequacy of the amount shall be reviewed by a competent court upon your request. Such contractual penalty shall be deducted from any damage actually suffered by us and shall be without prejudice to any other rights we may have under your Subscription, including but not limited to a right to claim damages and to terminate your Subscription in accordance with Clause 9 of these e-KRT.

5. Swapping

- 5.1 In accordance with the terms of this Clause 5, you have a right to “**Swapping**” free of charge. By Swapping or a “**Swap**”, we mean:
- Repairing defects in the e-Kick free of charge within your e-Kick Territory.
 - Exchanging the e-Kick free of charge within your e-Kick Territory.
- 5.2 The type and extent of the Swap is determined by us according to our discretion. During your Subscription period you can request an unlimited number of Swaps. You do not incur any additional costs for Swapping. Swapping is covered by payment of the e-Kick Rent. However, we can refuse a Swap until such time as you have paid any outstanding e-Kick Rent, fees or other sums to us.
- 5.3 If there is a defect in the e-Kick, you are entitled to a Swap provided that the defect has arisen in the course of your use of the e-Kick in accordance with the terms of the contract.
- 5.4 If the e-Kick is stolen or lost, you are only entitled to a Swap if you are not responsible for the theft or loss. Clause 8 applies.
- 5.5 You can request a Swap by telephone, email or WhatsApp (“**Swap Request**”). We will agree the place and time of the Swap on an individual basis with you.
- 5.6 We make every effort to carry out a Swap within 24 hours after receipt of your Swap Request. However, if we do not meet this target time, you cannot use this as the basis for any claims for compensation or any other claims.
- 5.7 If we exchange the e-Kick, you are obliged to hand over the previous e-Kick and the key to us.
- 5.8 If you make a Swap Request without being entitled to a Swap, we reserve the right to charge you a fee of **EUR 20** for this. This also applies if you fail to attend an agreed Swap appointment.
- 5.9 If you do not notify us about a defect in the e-Kick or do not notify us immediately, you are obliged to compensate us for losses arising from this. This includes all additional expenses incurred for the purposes of repairing the damage as well as third parties’ compensation claims which would have been avoided if notice of the defect had been given in good time.

6. Rent | Time for payment | Payment Terms

- 6.1 In return for the use of the e-Kick, you owe us the monthly rent agreed with us (“**e-Kick Rent**”). The e-Kick Rent is due for payment in advance at the beginning of each calendar month for the whole calendar month. If your Subscription starts or ends during a calendar month, the e-Kick Rent will be charged by us on a pro rata basis in each case for such a month.
- 6.2 We reserve the right to adjust the e-Kick Rent during your Subscription period with effect for the future. We will inform you in text form about changes in the e-Kick Rent in good time prior to changes taking effect.
- 6.3 Payment of the e-Kick Rent as well as any other fees arising shall be made by means of the direct debit authorisation scheme (SEPA direct debit scheme). Consequently, you are obliged to issue us a corresponding direct debit mandate in advance, giving details of your IBAN and BIC numbers. We will collect a monthly direct debit payment for the e-Kick Rent. We may also request during the Subscription period that you pay the e-Kick Rent not to us, but instead to one of our partner companies.
- 6.4 If a direct debit payment is not made due to a lack of funds or for other reasons for which you are responsible or a direct debit is subsequently cancelled by you, you will be in default in relation to the relevant payment. You will receive a reminder from us to settle the payment due within 14 days. If the amount due is not paid within 14 days, we reserve the right to instruct a collection agency to recover the debt. All additional administration costs and out of court debt collection costs will be borne by you.

7. Securing the e-Kick against Theft | Key

- 7.1 We provide the e-Kick to you together with one lock (e.g. chain lock).
- 7.2 In order to prevent the loss or theft of the e-Kick or damage to it, you are obliged to always secure the e-Kick with the lock which has been provided to you. The e-Kick should always be stored indoors. To the extent that indoor storage is not possible, you are obliged to secure the e-Kick to a fixed object (e.g. bicycle stands).

- 7.3 If you do not secure the e-Kick in the way described in Clause 7.2 above and as a consequence of this the e-Kick is damaged, lost or stolen, you are obliged to pay us a fee in the amount of **EUR 80**. This fee arises in addition to any deductible under Clauses 8.5 and 8.6.
- 7.4 We will also provide you with a key to use with the e-Kick lock. You are not allowed to make any additional keys or have them made (e.g. replacement key, copy, duplicate key). We can keep additional keys for the e-Kick lock in our possession.
- 7.5 You are obliged to protect the key for the e-Kick against loss, theft and unauthorised use at all times and you are not allowed to pass the key on to third parties.
- 7.6 If your key gets lost, stolen or damaged, you must inform us immediately. In these circumstances we will deliver a new key to you within the e-Kick Territory and will charge you a fee of **EUR 15** per key for this. On delivery of the new key, you must confirm receipt of it to us. If you find a key which has been notified to us as having been lost, you must send it to us immediately by post at your own cost.

8. Damage | Theft and Loss

- 8.1 You are obliged to inform us of any damage to the e-Kick within 24 hours of becoming aware of the damage occurring. This applies regardless of the extent of the damage and of whether you have caused the damage or not.
- 8.2 If you have caused the damage to the e-Kick or it otherwise results from your breach of the usage rules in these e-KRT (in particular of Clause 4), we reserve the right to claim compensation from you.
- 8.3 In the event of damage to the e-Kick due to the fault or contributory fault of a third party, you are obliged to give us the identity and contact details of this third party. If the damage has occurred in connection with an accident, you are obliged to send us an accident diagram sketch signed by you and the third party. You can use the accident form at <https://swapfiets.de/europeanclaimform> for that purpose. If you do not send us the contact details of the third party, although you have them, we reserve the right to invoice you in full for the losses which we incur.
- 8.4 You are obliged to inform us of the theft or loss of the e-Kick or of individual components of the e-Kick within 24 hours of you becoming aware of it. In the event of the theft or loss of the e-Kick, you must hand over or send to us the key(s) for the e-Kick which you have received from us. You are obliged to support us, to the extent that is reasonable, in relation to reports to the police or bringing any other legal action.
- 8.5 In the event of the theft or loss of the e-Kick we can charge you a deductible in the sum of **EUR 80**. If, during your Subscription period, the e-Kick which has been notified to us as lost or stolen is found again, at our own discretion and subject to the condition of the e-Kick which has been found again, we may reimburse you these deductibles.
- 8.6 In the event of the theft or loss of individual components of the e-Kick, we can charge you a deductible in the sum of the value of the stolen or lost components up to a maximum amount of **EUR 80**. You can request a list giving details of the value of individual components of the e-Kick from us.
- 8.7 If you do not fulfil your obligations under Clause 8.4 for any reason, in particular, if you (i) do not inform us about the theft or loss of the e-Kick, or (ii) unless you have informed us in accordance with Clause 7.6, do not hand over or send to us the key(s) for the e-Kick which you have received from us, we will charge you a sum of **EUR 550**.
- 8.8 If it turns out that you have made false statements to the detriment of us, we can charge you a dishonesty supplement in the sum of **EUR 100**. This sum must be paid in addition to any amounts due under Clauses 8.5 to 8.7.

9. Subscription period | Termination | Return

- 9.1 Your Subscription period arises from the online ordering process on our website. Unless otherwise stated there, to begin with your Subscription period is one month from the date stated in the online ordering process and extends automatically by a further month each month unless it is terminated in accordance with these e-KRT.
- 9.2 Without stating reasons for doing so, you or we can terminate your Subscription by giving notice of one month prior to the end of any monthly period calculated under Clause 9.1.

- 9.3 Your right and our right to extraordinary termination of your Subscription without notice for an important reason (§ 314 of the BGB) is not affected by this. An important reason, which entitles us to termination without notice exists in particular if:
- You are in default in relation to more than two e-Kick Rent payments;
 - You use the e-Kick outside the e-Kick Territory;
 - You use the e-Kick contrary to the usage rules in Clause 4; or
 - You improperly make false statements to us or you repeatedly make use of our services provided for the purposes of your Subscription in an improper manner (e.g. by making intentionally false statements or unjustified Swap Requests).
- 9.4 Every notice of termination must be given in text form (email is sufficient).
- 9.5 When the termination of your Subscription takes effect, you are obliged to return the e-Kick and any other objects provided by us (in particular the key(s)) at your own cost and risk to us or, if we notify you thereof, to one of our partner companies. If you return the e-Kick to us prior to the termination of your Subscription taking effect, your rights under your Subscription end at that time; however, we reserve the right to charge the e-Kick Rent accruing up until when the termination of your Subscription takes effect.
- 9.6 If you do not return the e-Kick to us in good time when the termination of your Subscription takes effect, we will charge you a late fee in the sum of **EUR 5** per day, up to a maximum of **EUR 35** until you return the e-Kick to us or take out a new Subscription in accordance with Clause 9.9. You are at liberty to prove that we have not suffered any loss or that such loss is significantly lower than the late fee. We reserve the right to claim more extensive damages.
- 9.7 If you do not return the e-Kick to us within 7 days after the termination of your Subscription taking effect and you do not take out a new Subscription in accordance with Clause 9.9 either, we reserve the right to take legal action. In these circumstances, we will charge you a retention fee in the sum of **EUR 550**. You are at liberty to prove that we have not suffered any loss or that such loss is significantly lower than the retention fee. We reserve the right to claim more extensive damages.
- 9.8 If you want to take out a new Subscription within 6 months after terminating your Subscription, we will charge you a start fee in the sum of **EUR 60** for this.
- 10. Prohibition on Set-off | Restriction on the Right of Retention**
- 10.1 You are only allowed to set off your own claims against ours to the extent that your claims against us have been finally determined in a binding judgment which is not subject to appeal, are undisputed or are accepted by us.
- 10.2 You are only allowed to enforce a right of retention (in particular over the e-Kick) if it is based on the same contractual relationship as our claim.
- 11. Data Protection**
- We are obliged to comply with the applicable statutory provisions on the protection of personal data.
- 12. Our Liability**
- 12.1 Our liability shall be unlimited (i) in respect of losses caused by acting intentionally or with gross negligence, (ii) in respect of breaching essential contractual obligations, namely those obligations which must be complied with in order to make it possible for the contract to be properly performed at all and which you normally rely on being fulfilled and may so rely (cardinal obligations), (iii) in respect of defects which have been fraudulently concealed, (iv) in respect of losses arising from death, bodily injury, or harm to health, (v) in respect of claims under the Law on Product Liability (*Produkthaftungsgesetz*), and (vi) in the event that we expressly assume a guarantee as to quality. Any more extensive liability for us is excluded.
- 12.2 We shall not be liable without being at fault in respect of defects in the e-Kick which exist at the start of the Subscription period (first scenario in § 536a (1) of the BGB).
- 13. Final Provisions**
- 13.1 We have not entered into any collateral agreements with you, whether written, oral or implied.

- 13.2 We can amend these e-KRT at any time for technical, commercial or legal reasons with effect for the future. We will notify you of an amendment to these e-KRT in text form at least 6 weeks before the amendment takes effect. You can agree to the amendment or object to it prior to it taking effect; however, your agreement shall be deemed to have been given if you do not object to the amendment before it takes effect. We will draw your attention specifically to this in our notice of amendment. We reserve the right to terminate your Subscription if you object to an amendment to these e-KRT.
- 13.3 In the event that a provision of these e-KRT is or becomes wholly or partially void, invalid, impracticable or unenforceable, the validity and the enforceability of the remaining provisions of these e-KRT shall not be affected. In those circumstances, we and you shall be obliged to agree on a provision to replace the defective provision which comes as close as possible to what we and you would have agreed if we had realised that the provision was defective, taking into account the spirit and purpose of these e-KRT and within the scope of what is legally possible. The same applies to any gaps in the regulations in these e-KRT. This clause is not intended to merely have the effect of reversing the burden of proof but is intended to exclude the application of § 139 of the BGB in its entirety.
- 13.4 Your Subscription and these e-KRT, as well as all rights arising out of or in connection with them, shall be exclusively subject to German law excluding those rules of private international law which lead to the application of the law of a country other than Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 13.5 The jurisdiction of the courts over disputes between you and us in connection with your Subscription and these e-KRT shall be governed by the statutory provisions. If, after concluding the contract, you move your domicile or habitual residence to another country outside Germany, we can bring proceedings against you before the courts in Berlin.
- 13.6 The German version of these e-KRT takes precedence over the English version. The English version of these e-KRT is merely a non-binding translation.

Swaprad GmbH

Commercial Register: Amtsgericht Osnabrück HRB 212904

Version: December 2019

Swapfiets e-Scooter Rental Terms (e-SRT)

Version: January 2021

1. General | Scope

- 1.1 These Swapfiets e-Scooter Rental Terms (“**e-SRT**”) apply between you as a consumer (*Verbraucher*) within the meaning of § 13 of the German Civil Code (“**BGB**”) and Swaprad GmbH, Pliniusstraße 8, D-48488 Emsbüren (“**we**” or “**us**”). They regulate the rental of an electric scooter (“**e-Scooter**”) provided to you by us at any given time.
- 1.2 These e-SRT form part of the contract concluded between you and us (“**Subscription**”) and apply to the exclusion of all others. Terms which deviate from, conflict with or supplement these e-SRT shall only become part of the contract if we have expressly consented to them in writing.
- 1.3 Legally relevant declarations and notices which you would like to give to us after the conclusion of the contract (e.g. setting deadlines, reminders, declarations of withdrawal from the Subscription), must be made at least in text form in order to be valid, unless expressly provided otherwise in these e-SRT.

2. Subject Matter of the Subscription | Conclusion of the Subscription | Swapfiets Territory

- 2.1 During the Subscription Period, we will make an e-Scooter available to you. The details of your Subscription and of the e-Scooter are agreed as part of the online ordering process on our website (“**Order Process**”).
- 2.2 Completing the Order Process results in an offer made by you to us to enter into a Subscription. After the Order Process is complete, we may send you a confirmation of your order by email. This order confirmation is the acceptance of your offer to enter into the Subscription. Following that, you and we will mutually agree the time and location for the delivery of the e-Scooter.
- 2.3 When we deliver the e-Scooter, we will check your personal details together with you (e.g. by you presenting an official identity document). At the time of delivery, you are obliged to confirm to us in writing (i) the receipt of the e-Scooter, (ii) the payment method chosen by you (e.g. by issuing the direct debit mandate in accordance with Clause 7.5), and (iii) the correctness of the personal details provided by you to us. You are obliged to notify us of any changes in your personal details during the Subscription Period (e.g. if your address changes) without undue delay.
- 2.4 You may only use the e-Scooter in the territory/the city which is specified in your Subscription (“**Swapfiets Territory**”). A change of the Swapfiets Territory is only possible after our express consent to this.
- 2.5 We do not save the text of the contract after concluding the Subscription.
- 2.6 A digital verification process of the correct identification document could be part of the order process upon delivery. Product will not be delivered when renter is not able to handover the correct identification documents. Swapfiets will report to the police when verification of the identity documents shows that there is a possibility of fraud.

3. Making Available the e-Scooter | Advertising

- 3.1 You are not entitled to a particular e-Scooter or to a particular design, fit-out or configuration of the e-Scooter.
- 3.2 The e-Scooter and all objects provided to you in connection with the e-Scooter (e.g. the key and the battery) shall remain in our ownership or in the ownership of our partner companies at all times.
- 3.3 After giving prior notice, we are entitled to inspect the e-Scooter at any time, to wholly or partially replace it, and to carry out maintenance and repairs to the e-Scooter.
- 3.4 We reserve the right to put advertisements on the e-Scooter at any time and at our discretion (*nach billigem Ermessen*). If an advertisement attached to the e-Scooter or printed on the e-Scooter is damaged, removed, unreadable or otherwise no longer visible, you are obliged to inform us thereof immediately.

4. Driving License

- 4.1 You confirm that you have attained 21 years of age and are in possession of a valid driving license allowing you to drive the e-Scooter in the Swapfiets Territory.
- 4.2 Upon our request, you are obliged to provide an evidence of your valid driving license together with your identity card (or passport). If it turns out that you have provided false evidence (e.g. a forged driving license), we reserve the right to report this to the police.
- 4.3 In the event that (i) your driving license is permanently or temporary revoked, (ii) you are banned from driving by a court or administrative decision, (iii) your driving license is permanently or temporary confiscated or suspended, or (iv) your permission to drive and/or hold the e-Scooter is otherwise restricted, you are obliged to inform us thereof immediately.
- 4.4 You are obliged to carry your driving license during every drive.

5. Usage Rules | Non-Commercial Use Only

- 5.1 Certain rules apply to you in relation to the use of the e-Scooter, which you must comply with at all times:
 - The use of the e-Scooter shall be in your sole responsibility.
 - Prior to using the e-Scooter, you are obliged to familiarize yourself with how the e-Scooter functions.
 - Prior to each use of the e-Scooter, you must check the e-Scooter for road safety, proper functioning and the absence of defects. For that purpose, you must, in particular, check the tightness of all screws which are of relevance to safety, the proper condition of the frame, the handlebars and saddle, the tire pressure, the functionality of the lights, the battery, the computer and the braking system. If a defect exists at the start of your use of the e-Scooter or a defect occurs while you are using it, you must refrain from using the e-Scooter or cease using it.
 - The e-Scooter is intended solely for your personal use. Consequently, you must not entrust the e-Scooter to third parties, you must not allow third parties the use of the e-Scooter in another form or sell it, hire it out, sublet it, pledge it or otherwise encumber the e-Scooter with security interests or rights of third parties.
 - The e-Scooter is a high-quality object. Consequently, you must not damage or destroy the e-Scooter or carry out any modifications, lacquering, painting or other changes to the e-Scooter, its battery or the computer including the software.
 - You must secure the e-Scooter effectively against theft (Clause 8).
 - You are only allowed to use the e-Scooter in the generally accepted customary manner, avoiding unusual strain on it and only on paved routes and streets.
 - You must use and take care of the e-Scooter, its battery and the computer including the software in accordance with the instructions given by us.
 - You must not use the e-Scooter whilst under the influence of drugs, medication or alcohol.
 - You must always wear an appropriate helmet while driving the e-Scooter.
 - You are only allowed to use the e-Scooter/luggage carrier in accordance with its maximum weight limit of 100kg.
 - You must not transport any persons on the e-Scooter.
 - You must park the e-Scooter only in such public spaces where parking is permitted.
 - You are only allowed to use the e-Scooter in the Swapfiets Territory.
 - In order for us to insure our vehicles, a yearly renewed license plate is mandatory. You are obliged to contact us every year to request a new license plate and to schedule a Swap to attach the new license plate to the e-Scooter. The new license plate must be attached to the e-Scooter every calendar year no later than the 1st of March. You must contact us at least 7 days in advance, allowing us sufficient time to schedule an appointment and change the license plate.

For the purposes of these e-SRT, use of the e-Scooter shall be deemed to also include pushing, parking and storing the e-Scooter.

- 5.2 When using the e-Scooter, you are obliged to always comply fully with all applicable legal provisions, in particular with all road traffic rules (e.g. the StVO (German Road Traffic Regulation)). In addition, you must always make sure that (i) the e-Scooter is not detrimental to road safety, (ii) other road users and pedestrians are not endangered, harmed or impeded, (iii) and the use of the e-Scooter does not interfere with, damage or endanger other vehicles or other property of third parties or other rights of third parties.
- 5.3 You are obliged to fully compensate us for and indemnify us from any and all fees, fines or other payments imposed on us by third parties (e.g. by public traffic authorities) on grounds of a breach of any of your obligations under your Subscription. In this context, we may provide your name and address to such third parties. For the administrative handling of such incidents we reserve the right to charge you a fee in the amount of **EUR 25** per incident.
- 5.4 You are not allowed to use the e-Scooter as an entrepreneur (*Unternehmer*) within the meaning of § 14 of the BGB in exercise of your trade, business or profession (e.g. using the e-Scooter for the professional delivery of goods is prohibited). In the event of a breach of your obligation under this Clause 5.4, you shall pay to us a contractual penalty in an adequate amount, however not more than **EUR 2,000**. The precise amount of such contractual penalty shall be determined by us at our discretion, whereby, in case of a dispute, the adequacy of the amount shall be reviewed by a competent court upon your request. Such contractual penalty shall be deducted from any damage actually suffered by us and shall be without prejudice to any other rights we may have under your Subscription, including but not limited to a right to claim damages and to terminate your Subscription in accordance with Clause 11.

6. Swapping

- 6.1 In accordance with the terms of this Clause 6, you have a right to “**Swapping**” free of charge. By Swapping or a “**Swap**”, we mean:
 - repairing defects in the e-Scooter free of charge within the Swapfiets Territory; and/or
 - exchanging the e-Scooter free of charge within the Swapfiets Territory.

The type and extent of the Swap is determined by us at our discretion.

- 6.2 During your Subscription Period you can request an unlimited number of Swaps. You will not incur any additional costs for Swapping. Swapping is covered by payment of the e-Scooter Rent. However, we can refuse a Swap until you have paid any outstanding e-Scooter Rent, fees or other sums to us.
- 6.3 You can request a Swap by telephone, email or WhatsApp (“**Swap Request**”). You and we will agree the place and time of the Swap on an individual basis with you.
- 6.4 We make every effort to carry out a Swap within 24 hours after receipt of your Swap Request. However, if we do not meet this target time, you may not use this as the basis for any claims for compensation or any other claims.
- 6.5 If we exchange the e-Scooter, you are obliged to hand over the present e-Scooter, the battery and the key to us.
- 6.6 If there is a defect in the e-Scooter, you are entitled to a Swap provided that the defect has arisen in the course of your use of the e-Scooter in accordance with the terms of the Subscription including these e-SRT.
- 6.7 If the e-Scooter is stolen or lost, you are only entitled to a Swap if you are not responsible for the theft or loss. Clause 10 applies.
- 6.8 If you make a Swap Request without being entitled to a Swap, we reserve the right to charge you a fee of **EUR 20** per incident. This also applies if you fail to attend an agreed Swap appointment.
- 6.9 If you do not notify us about a defect in the e-Scooter or do not notify us immediately, you are obliged to compensate us for any losses arising from this. This includes all additional expenses incurred by us for the purposes of repairing the damage as well as third parties’ compensation claims which would have been avoided if notice of the defect had been given in good time.

7. Rent | Fees | Time for Payment | Payment Terms

- 7.1 In return for us making the e-Scooter available to you, you owe us the monthly rent agreed with us in the Order Process (“**e-Scooter Rent**”). The e-Scooter Rent is due for payment in advance at the beginning of each calendar month for the whole calendar month. If your Subscription starts or ends during a calendar month, the e-Scooter Rent will be charged by us on a pro rata basis for such a month.
- 7.2 In the event that any upfront payment payable by you to us has been agreed in the Order Process, you are obliged to pay such upfront payment to us after the completion of the Order Process without undue delay.
- 7.3 To the extent agreed in the Order Process, we may also charge you a one-time fee.
- 7.4 We reserve the right to adjust the e-Scooter Rent during your Subscription Period with effect for the future. We will inform you in text form about any changes in the e-Scooter Rent in good time prior to changes taking effect.
- 7.5 Payment of the e-Scooter Rent as well as any other fees shall be made by means of SEPA direct debit scheme. Consequently, you are obliged to issue us a corresponding direct debit mandate in advance, giving details of your IBAN and BIC numbers. We will collect a monthly direct debit payment for the e-Scooter Rent. We may also request that you pay the e-Scooter Rent not to us, but instead to one of our partner companies.
- 7.6 If a direct debit payment is not made due to a lack of funds or for other reasons for which you are responsible or if a direct debit is subsequently cancelled by you, you will be in default in relation to the relevant payment. You will receive a reminder from us to settle such payment within 14 days. If the amount due is not paid within 14 days, we reserve the right to instruct a collection agency to recover the debt. All additional administration costs and out of court debt collection costs will be borne by you.

8. Securing the e-Scooter against Theft | Key

- 8.1 We provide the e-Scooter together with one or more locks (e.g. chain lock) to you.
- 8.2 In order to prevent the loss/theft of the e-Scooter or any damage to it, you are obliged to always secure the e-Scooter with all locks which have been provided to you. When connected to the e-Scooter, the battery (if any) must always be secured with the lock provided.
- 8.3 If you do not secure the e-Scooter in the way described in Clause 8.2 above and as a consequence of this the e-Scooter is damaged, lost or stolen, you are obliged to pay us a fee in the amount of **EUR [•]**. This fee arises in addition to any deductible under Clause 10.
- 8.4 We will also provide you with a key to use with the locks. You are not allowed to make any additional keys or have them made (e.g. replacement key, copy, duplicate key). We may keep additional keys for the locks in our possession.
- 8.5 You are obliged to protect the key for the e-Scooter against loss, theft and unauthorized use at all times and you are not allowed to pass the key on to third parties.
- 8.6 If your key gets lost, stolen or damaged, you must inform us immediately. In these circumstances we will deliver a new key to you within the Swapfiets Territory and will charge you a fee of **EUR 30** per key. In addition, Clause 10.6 may apply. Upon delivery of a new key, you must confirm to us receipt thereof. If you recover a key which you had previously notified to us as lost, you must send such key to us immediately by mail at your own cost.

9. Damage to the e-Scooter | Accidents

- 9.1 You are obliged to inform us of any damage to or accident with the e-Scooter within 24 hours of you becoming aware of the damage or the accident. This applies irrespective of the extent of the damage or the accident and of whether you have caused the damage or the accident or not.
- 9.2 If you have caused a damage to or an accident with the e-Scooter or such damage or accident otherwise results from your breach of the usage rules in these e-SRT (in particular of Clause 5), we reserve the right to claim compensation from you.
- 9.3 In the event of damage to the e-Scooter due to the fault or contributory fault of a third party, you are obliged to provide us with the identity and contact details of this third party. If you do not provide us with the contact details of the third party, although available to you, we reserve the right to invoice you in full for the losses and damages which we incur due to this.

- 9.4 In case of an accident with the e-Scooter, you must not accept any liability to a third party (e.g. by acknowledgement of a debt or by giving a comparable statement) without our prior consent. Otherwise, you alone will bear the consequences of such (accepted) liability and you will be obliged to indemnify us from any third party claims in connection with your acceptance of liability. Besides, you are not allowed to accept any liability on our behalf or on behalf of our insurer.
- 9.5 You are obliged to notify all third parties involved in any accident with the e-Scooter that all compensation payable for the physical damages occurred to the e-Scooter shall be made directly to us. If such payments have been made to you, you are obliged to fully forward them to us without undue delay.
- 9.6 In the event of an accident with the e-Scooter, you are obliged to send us the accident form (available under <https://swapfiets.de/europeanclaimform>) signed by you and the third party within 7 days after the accident, irrespective of whether the accident was caused by you or not. If we do not receive such accident form within 7 days after the accident, we reserve the right to charge you all costs incurred by us as a result of a breach of your obligations under this Clause 9.6.
- 9.7 All accident with the e-Scooter must be reported to and registered with the police by you without undue delay. In the event that the police refuse to register the accident and to carry out appropriate police measures in connection with such accident, you are obliged to report this to us and to provide the relevant evidence without undue delay. This applies irrespective of whether the accident was caused by you or not.

10. Theft/Loss of the e-Scooter

- 10.1 In the event of a theft/loss of the e-Scooter or of any individual components of the e-Scooter (e.g. its battery), you are obliged to inform us thereof within 24 hours of you becoming aware of it.
- 10.2 In the event of theft/loss of the e-Scooter, you must hand over to us all of the key(s) for the e-Scooter without undue delay, however at the latest at the Swap appointment which is scheduled to replace the stolen/lost e-Scooter (if any). To the extent reasonable, you are obliged to support us in our efforts to recover the stolen/lost e-Scooter, including but not limited to by submitting reports to the police or by bringing any other legal action.
- 10.3 In the event of theft/loss of the e-Scooter and/or the battery we may charge you a deductible in the sum of **EUR 250** for the e-Scooter and **EUR 500** for the battery per incident. If the e-Scooter and/or the battery which has been notified to us as lost or stolen is/are found again, we may reimburse the deductibles paid by you at our discretion and subject to the technical and optical condition of the relevant e-Scooter and/or the battery.

You are free to prove that we have not suffered any loss or that such loss is significantly lower than the deductible under this Clause 10.3. We reserve the right to claim more extensive damages.

- 10.4 In the event of theft/loss of individual components of the e-Scooter other than the battery, we may charge you a deductible in the sum of the value of the stolen or lost components up to a maximum amount of **EUR 260**.

You are free to prove that we have not suffered any loss or that such loss is significantly lower than the deductible under this Clause 10.4. We reserve the right to claim more extensive damages.

- 10.5 If you do not secure the e-Scooter as described in Clause 8 and, as a consequence, the e-Scooter is damaged, lost or stolen, we will charge you a sum of **EUR 300**, in addition to any other deductibles due under this Clause 10.

You are free to prove that we have not suffered any loss or that such loss is significantly lower than the deductible under this Clause 10.5. We reserve the right to claim more extensive damages.

- 10.6 If you do not fulfil your obligations under Clause 10.1 or 10.2, in particular, if:

- you do not inform us about the theft/loss of the e-Scooter; or
- you do not hand over to us all of the keys for the e-Scooter without undue delay, however at the latest at the Swap appointment which is scheduled to replace the stolen/lost e-Scooter (if any),

we will charge you a sum of **EUR 1.750** for the e-Scooter and **EUR 500** for the battery.

You are free to prove that we have not suffered any loss or that such loss is significantly lower than the deductible under this Clause 10.6. We reserve the right to claim more extensive damages.

10.7 If it turns out that you have provided false information with regard to the theft/loss of the e-Scooter, we shall be entitled to charge you an unfairness surcharge in the sum of **EUR 100**. This sum must be paid in addition to any other amounts due under this Clause 10.

11. Subscription Period | Termination | Return

11.1 The term of your Subscription ("**Subscription Period**") is agreed upon in the Order Process.

11.2 If you and we have agreed on a monthly Subscription, the Subscription Period is one month from the date stated in the Order Process and automatically extends on a month-by-month basis, unless terminated in accordance with these e-SRT. You or we may terminate a monthly Subscription at any time for convenience with a notice period of one month.

11.3 If you and we have agreed on a minimum Subscription, the Subscription Period begins on the date stated in the Order Process and remains in effect for the minimum term agreed in the Order Process; early termination with effect prior to the end of the minimum term will not be possible. Upon expiry of the minimum Subscription Period, the Subscription turns into a monthly Subscription specified in Clause 11.2.

11.4 Your right and our right to extraordinary termination of your Subscription without notice for an important reason (§ 314 BGB) remains unaffected. An important reason, which entitles us to termination without notice exists in particular if:

- you are in default in relation to more than two e-Scooter Rent payments;
- you use the e-Scooter outside the Swapfiets Territory;
- you breach your obligations under Clause 4 (Driving License);
- you use the e-Scooter contrary to the usage rules in Clause 5; or
- you make false statements to us or you repeatedly make use of our services in an improper manner (e.g. by making intentionally false statements or unjustified Swap Requests).

11.5 Every notice of termination must be given in text form (email is sufficient).

11.6 If you have terminated your Subscription, prior to returning the e-Scooter to us you can revoke your termination at any time and reactivate your Subscription by email free of charge. After returning the e-Scooter to us, free of charge reactivation is not offered.

11.7 When the termination of your Subscription takes effect, you are obliged to return the e-Scooter and any other objects provided by us (in particular the keys) at your own cost and risk to us or, if we notify you thereof, to one of our partner companies. If you return the e-Scooter to us prior to the termination of your Subscription taking effect, your rights under your Subscription end at the time of return; however, we reserve the right to charge the e-Scooter Rent accruing up until when the termination of your Subscription takes effect.

11.8 If you do not return the e-Scooter to us in good time when the termination of your Subscription takes effect, we will charge you a late fee in the sum of **EUR 5** per day, up to a maximum of **EUR 35** until you (i) return the e-Scooter to us, (ii) reactivate your Subscription in accordance with Clause 11.6, or (iii) take out a new Subscription in accordance with Clause 11.10.

You are free to prove that we have not suffered any loss or that our loss is significantly lower than the late fee. We reserve the right to claim more extensive damages.

11.9 If you do not return the e-Scooter to us within 7 days after the termination of your Subscription taking effect and you do not reactivate your Subscription in accordance with Clause 11.6 or take out a new Subscription in accordance with Clause 11.10 either, we reserve the right to take legal action. In these circumstances, we may charge you a retention fee in the sum of **EUR 2.250**. You are at liberty to prove that we have not suffered any loss or that such loss is significantly lower than the retention fee.

You are free to prove that we have not suffered any loss or that such loss is significantly lower than the retention fee under this Clause 11.9. We reserve the right to claim more extensive damages.

12. Prohibition on Set-off | Restriction on the Right of Retention

12.1 You are only allowed to set off any claims against our claims to the extent that your claims (i) have been finally determined in a binding judgment which is not subject to appeal, (ii) are undisputed, or (iii) are accepted by us.

12.2 You are only allowed to enforce a right of retention (in particular over the e-Scooter) if such right is based on the same contractual relationship as our claim.

13. Data Protection

You and we are obliged to comply with the applicable statutory provisions on the protection of personal data.

14. Our Liability

14.1 Our liability shall be unlimited (i) in respect of losses caused by acting intentionally or with gross negligence, (ii) in respect of breaching essential contractual obligations, namely those obligations which must be complied with in order to make it possible for the contract to be properly performed at all and which you normally rely on being fulfilled and may so rely (cardinal obligations), (iii) in respect of defects which have been fraudulently concealed, (iv) in respect of losses arising from death, bodily injury, or harm to health, (v) in respect of claims under the Law on Product Liability (*Produkthaftungsgesetz*), and (vi) in the event that we expressly assume a guarantee as to quality. Any more extensive liability for us is excluded.

14.2 We shall not be liable without being at fault in respect of defects in the e-Scooter which exist at the start of the Subscription Period (first scenario in § 536a (1) BGB).

15. Final Provisions

15.1 You and we have not entered into any collateral agreements with you, whether written, oral or implied.

15.2 We can amend these e-SRT at any time for technical, commercial or legal reasons with effect for the future. We will notify you of an amendment to these e-SRT in text form at least 6 weeks before the amendment takes effect. You can agree to the amendment or object to it prior to it taking effect; however, your agreement shall be deemed to have been given if you do not object to the amendment before it takes effect. We will draw your attention specifically to this in our notice of amendment. We reserve the right to terminate your Subscription if you object to an amendment to these e-SRT.

15.3 In the event that a provision of these e-SRT is or becomes wholly or partially void, invalid, impracticable or unenforceable, the validity and the enforceability of the remaining provisions of these e-SRT shall not be affected. In those circumstances, you and we shall be obliged to agree on a provision to replace the defective provision which comes as close as possible to what you and we would have agreed if you and we had realized that the provision was defective, taking into account the spirit and purpose of these e-SRT and within the scope of what is legally possible. The same applies to any gaps in the regulations in these e-SRT. This Clause 15.3 is not intended to merely have the effect of reversing the burden of proof but is intended to exclude the application of § 139 BGB in its entirety.

15.4 Your Subscription and these e-SRT, as well as all rights arising out of or in connection with them, shall be exclusively subject to German law excluding those rules of private international law which lead to the application of the law of a country other than Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

15.5 The jurisdiction of the courts over disputes between you and us in connection with your Subscription and these e-SRT shall be governed by the statutory provisions. If, after concluding the contract, you move your domicile or habitual residence to another country outside Germany, we can bring proceedings against you before the courts in Berlin.

15.6 The German version of these e-SRT takes precedence over the English version. The English version of these e-SRT is merely a non-binding translation.

Swaprad GmbH

Commercial Register: Amtsgericht Osnabrück HRB 212904

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