

General conditions of contract for the use of the THERMOSTAT App

Between:

BTicino S.p.A., a Legrand Group company incorporated in Italy, with registered office at Viale Borri 231, Varese (Italy), acting through its current legal representative, hereinafter referred to as the “Principal”, and the user, hereinafter referred to as the “Client”, collectively referred to as the “Parties”.

DEFINITIONS

- i. THERMOSTAT shall mean the BTicino App for the management of the connected functionalities available on the Wi-Fi Chrono Thermostat;
- ii. “Chrono Thermostat” shall mean the BTicino SMARTHER Wi-Fi Chrono-Thermostat developed, manufactured and marketed by the Principal;
- iii. “Functionalities” shall mean the Chrono Thermostat’s features and/or functions that can be managed via the App, for a description of which please refer to the SMARTHER documentation;
- iv. “User/Client” shall mean the person who intends to use the service and accepts the related conditions, as set out below;
- v. “Principal” shall mean BTicino S.p.A., the company which is offering the Service to and is entering into an Agreement with the Client for the exchange of management and information flows between the Client and the Principal through a dedicated control apparatus;
- vi. “Login” shall mean the alphanumeric identification code held by the User and associated exclusively with him/her used for electronic identification.
- vii. “Password” shall mean the alphanumeric keyword associated with the specific login and known only by its owner.

Whereas, the Wi-Fi Chrono Thermostat allowing interaction with the heating and/or cooling system for the purpose of adjusting temperature locally or remotely has been developed and is marketed and owned exclusively by BTicino,

the Parties hereby agree as follows:

SUBJECT MATTER OF THE AGREEMENT

Article 1

The preamble, definitions and documents referred to hereunder, together with any amendments and supplementations thereof, shall be construed as an integral and substantial part of this Agreement. These General Conditions of Contract terminate and supersede all prior Agreements between the parties.

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Article 2

The subject matter of this Agreement shall be the provision to the signatory thereof of the service for the control, via the App, of the connected functionalities available on the Chrono Thermostat and the remote management of the same by the signatory.

CONNECTION – EQUIPMENT – ACCESS

Article 3

In order to be able to use the service, the Client must first obtain the necessary technical equipment to gain access to the Internet, as per specific Agreement between the Client and a chosen ISP (Internet Service Provider), in relation to which the Principal plays no role whatsoever. In order to be able to use certain services provided by the Principal in addition to the standard functions available on the Chrono Thermostat, the Client must first install the APP on his/her smartphone.

Article 4

The Client shall access and use the Service through his/her own devices, after they have been equipped with the necessary software to enable and manage the connections and applications required to link to the Internet, making the necessary adjustments.

The services offered via the APP imply that interaction can take place with the Chrono Thermostat remotely, through the Internet network, or locally, through the home Wi-Fi network. In these cases, successful operation and integration between the Chrono Thermostat and the APP may be affected by:

- a) quality of Wi-Fi signal and bandwidth
- b) type of home internet access contract
- c) type of smartphone data contract.

BTicino may not be held liable for any malfunctioning when any of these 3 elements fail to comply with specified requirements for product operation.

The service provided remotely by the Principal via the APP involves the usage of data and the related cost depends on the type of contract in place between the Client and the ISP (Internet Service Provider) and shall be at the Client's expense.

Since the service works via push notifications, the Client shall make sure that push notifications have not been disabled on the smartphone.

Article 5

Access to the App may be made exclusively via a personal login and password (access credentials).

Article 6

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The User shall take the utmost care in protecting his/her access credentials. Access credentials are strictly personal and may not be disclosed or communicated to third parties. The User shall be responsible for protecting his/her access credentials and using them correctly and shall be held accountable for any improper use of the same against the Principal or any claims against the Principal made by any one third parties. Should the User become aware of any improper use of his/her access credentials, due, for example, to theft of the same by a third party, the User shall immediately inform the Principal via a suitable means that is able to provide confirmation of receipt. The Principal shall promptly block the service with no delay and proceed to issue new codes. In the period between receipt of the information and actual blocking of the codes, responsibility for any improper use shall remain with the User.

PROVISION AND SUSPENSION OF THE SERVICE

Article 7

The App-based THERMOSTAT service shall be activated following user registration and execution of the first installation as required by the App.

Article 8

Upon acceptance of the Agreement, the Principal will proceed to send the temporary first access password to the e-mail address indicated by the Client; after his/her first access the Client will be required to change the password.

Article 9

In case of unforeseeable circumstances or force majeure (including, without limitation: interruption of telematic connections and/or electricity supply), the Principal reserves the right to suspend or interrupt the Service, without notice.

Force majeure shall mean any and all occurrences of an exceptional nature - beyond the reasonable control of the party claiming force majeure - which impedes the regular performance of the activities by which the Service is delivered.

Whenever the Chrono Thermostat's firmware and/or the App need to be updated, the Principal will send a notification to the Client and the Client will be required to update the same in order to continue to use the service in the best possible manner. The Principal reserves the right to suspend the service until the Client has updated the firmware. BTicino is relieved from any all liability deriving from failed or improper operation of the App when the Client has failed to update the firmware as requested.

Article 10

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In the event of interruption or suspension of the service, the Principal reserves the right to give notice of the same to the email address provided during registration.

Article 11

In order to ensure the efficiency and security of the Service, the Principal reserves the right to make any and all changes to the technical specifications as may be required, without notice, using its best endeavours to protect the seamless continuation of the Service.

In order to provide the best possible service and identify and correct any anomalies, it is possible that anonymous information is transmitted automatically via mobile applications to allow to analyse the issue. In the event of malfunctioning suffered by the User, the App allows to send the information required to analyse the problem.

Information transmitted include: operating system version, smartphone model, the function which generated the error and other technical information.

LIMITATION OF LIABILITY

Article 12

In consideration of the technical characteristics of the Internet - which is used for the provision of the Service - the Client declares that he/she is entirely aware of and fully accepts the risks associated with or deriving from the provision and transmission of data through the Internet.

FEES AND PAYMENT TERMS

Article 13

The right to use the App is granted free of charge with each Chrono Thermostat purchase.

TERM AND RIGHT OF WITHDRAWAL

Article 14

This Agreement shall come into force on the date of execution and shall continue in force until 31 January 2020 and may not be renewed automatically. As from 1 February 2020, the User will be required to accept a new agreement upon his/her first access.

Any Client signing said Agreement in his/her capacity as a consumer shall have the right to withdraw from the same with no charges and with no need to provide explanations through the dedicated account delete function available on the APP or by notice to BTicino SpA, Viale Borri 231, 21100 Varese, Italy, through the format available at

https://www.myhomeweb.com/htdocs/en_EN/browser/attachments/help/withdrawal_form.pdf

BTicino reserves the right to withdraw from this Agreement by giving the Client a 30-day notice.

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TAX

Article 15

Any and all tax, charges or contributions to be paid in relation to this Agreement or to the fees or services that constitute its subject matter, including in the future, shall be at the exclusive expense of the Client, without prejudice to any capital or income tax to be paid by the Principal.

NO ASSIGNMENT

Article 16

The Client may not assign or transfer this Agreement and/or any of the rights and/or obligations arising from it to any third parties without the Principal's prior written consent.

The Principal shall be entitled to assign all or part of this Agreement and/or of the rights and/or obligations arising from it and the Client agrees to any such assignment as from now.

Tolerance by either party of any behaviour by the other party in breach of any of the provisions of this Agreement shall not be construed as a waiver of the rights arising from provisions in question.

PERSONAL DATA

Article 17

As required under Regulation (EU) 2016/679 of the European Parliament on the "protection of natural persons regarding the processing of personal data and on the free movement of such data", the Client authorises processing of his/her personal data as learnt or disclosed for the performance of this Agreement. For said purpose, the Principal invites the Client to view and undersign the attached Privacy Policy, reminding the Client that authorisation to process the data collected is required for the performance of this Agreement and that failure to provide the same will make it impossible to perform this Agreement.

In any and all other matters regarding compliance with the above legislation, please refer to the relevant documentation as attached to this Agreement – PRIVACY POLICY PURSUANT TO ARTICLES 13 and 14 of REGULATION (EU) 2016/679 ("GDPR").

GOVERNING LAW AND JURISDICTION

Article 18

This Agreement is governed by the laws of Italy.

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When the Client may be classed as a “consumer”, the parties mutually and expressly acknowledge that the provisions of the so-called “Consumer Law” (Italian Legislative Decree No. 206/2005) shall prevail on those set out in this Agreement.

Any and all disputes that may arise in relation to the interpretation, validity or performance of this Agreement shall be submitted to the exclusive jurisdiction of the Court of Milan.

Before legal proceedings can be instituted, in accordance with this article, in respect of whatsoever dispute that may have arisen between the parties, an attempt should be made at solving the matter through an amicable procedure to be undertaken in writing (including via the e-mail), through which the persons between whom the dispute has arisen are convened, at the request of the most diligent party, before a "negotiator", who shall attempt to settle the matter amicably and who must be a lawyer. The negotiator shall conduct his/her hearings at the venue that he/she deems most fit, including via a computer link.

The notice shall contain the reasons of the claimant and shall indicate a deadline of no less than 5 days from the date of receipt of the notice, within which the respondent shall be required to notify his/her reasons in writing to the claimant and to the arbitrator.

The negotiator shall then convene the parties, in person if he/she deems appropriate, within a maximum of 10 days from the date set under the previous paragraph. Should the parties fail to appear, or should one of the parties fail to appear, the conciliation attempt will be regarded as failed and the parties will be allowed to institute legal proceedings in accordance with this article.

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