

## 1 INTRODUCTION

- 1.1 These terms and conditions (together with the documents referred to in them) (the **Terms and Conditions**) apply to your use of the Gas Trak Online mobile application (and any services accessible through the mobile application, including any updates, upgrades or additional features) (the **GTO App**), the related website portal available at <https://portal.agas.co.uk> (the **Website**) and the reports available on our Website (the **Reports**) (together, the **Services**), and are made between you (**User** or **you**) and A-Gas Limited of Banyard Road, Portbury, Bristol BS20 7XH (**A-GAS, us** or **we**).
- 1.2 By using the Services you are entering into a legally binding agreement (even if you are using the Services (as defined below) on behalf of a company) and you agree to accept these Terms and Conditions. You also agree to our Privacy Policy which covers how we collect, use, share and store your personal information. If you do not agree with these Terms and Conditions or our Privacy Policy, please do NOT download our GTO App and do not access or otherwise use our Services.
- 1.3 If any open-source software is included in the GTO App, the terms of any applicable open-source licence may override some of the terms of these Terms and Conditions.
- 1.4 We may change these Terms and Conditions at any time by contacting you in accordance with paragraph 3.6 below or by confirming the changes on the Website. The new Terms and Conditions may be displayed on-screen and you may be required to read and accept them to continue your use of the Services.
- 1.5 We may update the Services from time to time, and may change, suspend (other than for any maintenance we may perform) or discontinue the Services provided at any time on thirty days' notice.
- 1.6 From time to time updates to the GTO App may be issued through the Appstore. Depending on the update, you may not be able to use the Services until you have downloaded or streamed the latest version of the GTO App and accepted any new terms.

**You should print a copy of these Terms and Conditions for future reference.**

Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

## 2 THE SERVICES

- 2.1 **GTO App.** The GTO App is free to download and allows you to record the use of fluorinated greenhouse gases (F-Gases) and calculate the global warming potentials and carbon dioxide equivalent values.
- 2.2 You are responsible for ensuring that the data you record in the GTO App is accurate. The calculation of global warming potentials and carbon dioxide equivalent values are dependent on the data you input.
- 2.3 We use global warming potential data from independent third party sources. To the best of our knowledge and belief this data is accurate and reliable.
- 2.4 **The Website.** The Website allows you to access and generate Reports relating to the usage of F-Gases that you record in the GTO App. The Website also allows you to manage your account including permissions, customers, locations, equipment and to create and assign jobs.
- 2.5 **The Reports.** The Reports you are able to access and generate on the Website are created from the data you provide. Such Reports are only for your benefit and are only to be used by you save that if you have subscribed to the Enhanced Service such reports shall be for the benefit of, and may be used by, all Users registered against the relevant subscription. They may vary from any images of the Reports we may make available on the Website which will be for illustrative purposes only.
- 2.6 We offer two subscriptions:
- (a) free subscription – this gives you use of the GTO App, the Website and the basic Reports; and
  - (b) Enhanced Service – this gives you use of the GTO App, the Website and the basic Reports and enhanced reporting functionality which can be tailored by you to suit your business needs. The Enhanced Service also allows you to link multiple Users to the same subscription to enable, amongst other things, Reports consolidating the data provided by all such Users, and the recording of additional data including but not limited to the use of refrigerants. If you are a subscriber to the Enhanced Service then references in these Terms and Conditions to "Services" shall be construed as including the Enhanced Services.
- 2.7 If you would like to purchase a subscription for our Enhanced Services please contact the GTO support team using the contact form available at [www.gastrakonline.com](http://www.gastrakonline.com) or by telephoning 01275376600. The GTO support team is available Monday to Friday between the hours of 08:00–17:00.

- 2.8 Our FAQs page has more detail about the tiers of subscription, how we will invoice you and subscription activation for Enhanced Services.
- 2.9 **Personal Data.** We only use your personal information in accordance with our Privacy Policy. [Privacy Policy](#). Please read our Privacy Policy as it contains important information which will apply to you.
- 2.10 If you submit and store any personal data in respect of which you are data controller (e.g. you store personal data about your customers) then we shall:
- (a) undertake processing of personal data only within the scope of instructions received from you and to the extent necessary for the purpose of performing the Services; and
  - (b) provide appropriate technical and organisational measures against unauthorised or unlawful processing, accidental loss or destruction or damage of the personal data.

**Personal data** and **processing** shall have the meanings given to them in the Data Protection Act 1998 and for the purposes of this paragraph 2.10 references to ‘personal data’ are to the personal data of which you are data controller.

- 2.11 **Third Party Sites.** The Services may contain links to other independent third-party websites (**Third-party Sites**). Third-party Sites are not under our control, and we are not responsible for and do not endorse their content or their privacy policies (if any). You will need to make your own independent judgement regarding your interaction with any Third-party Sites, including the purchase and use of any products or services accessible through them.

### 3 YOUR OBLIGATIONS

- 3.1 **Eligibility.** To use the GTO App and the Website, you agree that: (1) you are at least 18 years old; (2) you are F-Gas certified; and (3) you are using the Services in relation to your business and/or trade.
- 3.2 **Your account.** You agree to: (1) provide correct information requested by us about you including upon registration; and (2) use a secure password and keep such password secure and confidential at all times. You are responsible for all activity on your account using your log-in information. If you suspect that anyone else knows your log-in details, please notify us promptly at [support@gastrakonline.com](mailto:support@gastrakonline.com) .
- 3.3 For Enhanced Services purchased by another party for you to use (e.g. by your employer), the party paying for the Enhanced Service controls such account and may terminate your access to it.

- 3.4 You may only download or stream a copy of the GTO App onto one device (being a personal computer, mobile handset or other relevant device).
- 3.5 If you purchase our Enhanced Services, you agree to pay us the applicable fees and taxes. If you do not pay these by the due date as notified to you this may result in the termination of the Enhanced Services.
- 3.6 **Contacting you.** From time to time we may need to contact you. You agree that we may contact you, or otherwise provide notices to you, by (1) a banner notice on the Website or the GTO App; (2) emailing the email address you provided; or (3) through other means including mobile number or mail. You agree to keep your contact information up to date.
- 3.7 **Other rules or policies:** We license use of the GTO App to you on the basis of these Terms and Conditions and subject to any rules or policies applied by any appstore provider or operator from whose site (**Appstore**), you download the GTO App (**Appstore Rules**). You agree to comply with such rules or policies in relation to your use of the GTO App.
- 3.8 **Operating system requirements.** The GTO App requires a smart phone or handheld device on which the GTO App will be downloaded, and you will also require the iOS, Android or Windows operating system to use the Services. You will need internet access to enable initial log-in to the App and to log-in and use the Website, and for synchronising data. Your use of the Services may be affected by the performance of these factors.
- 3.9 **Availability.** You acknowledge and agree that we have no obligation to store, maintain or provide you with a copy of any data that you provide, except to the extent required by applicable law or as otherwise set out in our Privacy Policy. We may issue updates to the service which necessitate us removing any or all data you submit through the GTO App. You are responsible for backing up your own system, including any data stored on your system. We are not a backup service and you agree that you will not rely on the Services for the purposes of data backup or storage.

#### **4 USE OF OUR SERVICES**

- 4.1 In consideration of you agreeing to abide by these Terms and Conditions, we grant you a non-transferable, non-exclusive licence to use the Services including but not limited to the GTO App to record data.
- 4.2 Except as expressly set out in these Terms and Conditions or as permitted by any local law, you agree:

- (a) not to copy the GTO App, the Website or the Reports except where such copying is incidental to normal use of the Services, or where it is necessary for the purpose of back-up or operational security;
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Services;
- (c) not to make alterations to, or modifications of, the whole or any part of the Services, or permit the Services or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the GTO App or attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the GTO App with another software program, and provided that the information obtained by you during such activities:
  - (i) is used only for the purpose of achieving inter-operability of the GTO App with another software program;
  - (ii) is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
  - (iii) is not used to create any software that is substantially similar to the GTO App;
- (e) to keep all copies of the GTO App secure and to maintain accurate and up-to-date records of the number and locations of all copies of the GTO App;
- (f) to include our copyright notice on all entire and partial copies you make of the GTO App on any medium;
- (g) not to provide or otherwise make available the App in whole or in part (including object and source code), in any form to any person without prior written consent from us; and
- (h) to comply with all technology control or export laws and regulations that apply to the technology used or supported by the App or any Service (**Technology**),

together, the **Licence Restrictions**.

## 5 ACCEPTABLE USE RESTRICTIONS

You must:

- (a) not use the Services in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms and Conditions, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the GTO App, the Website or any operating system;
- (b) not infringe our intellectual property rights or those of any third party in relation to your use of the Services, including the submission of any material (to the extent that such use is not licensed by these Terms and Conditions);
- (c) not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the Services;
- (d) not use the Services in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and
- (e) not collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service.

## **6 OUR RIGHTS**

- 6.1 As between you and us, you own the data you submit to the Services and you grant A-GAS a perpetual, non-exclusive, worldwide, transferable and sublicensable right to use, copy, modify, distribute, publish, and process, data that you provide through the Services, without any further consent, notice and/or compensation to you or others. We will not include the source of the data (including your details, or the details of the customer or premises from which such data was collected) in any external materials distributed or published by us, and we will not disclose the source of the data to any third party, in each case without your prior written consent unless required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 6.2 All rights, title and interests in and to our Services (excluding your data), the user interface, graphics, our content, scripts and software are and will remain the exclusive property of A-GAS and its licensors. The Services are protected by copyright, trademark and other applicable laws of both the United Kingdom and foreign countries. Nothing in these Terms and Conditions gives you a right to use or reproduce the A-GAS name or any of the trade marks, service marks, logos, domain names, and other distinctive brand features. Any feedback, comments or suggestions you may provide regarding the Services is entirely voluntary and we will be free to use such feedback, comments or suggestions as we see fit and without any obligation to you.

6.3 You acknowledge that rights in the Services are licensed (not sold) to you, and that you have no intellectual property rights in, or to, the Services other than the right to use them in accordance with these Terms and Conditions.

6.4 You acknowledge that you have no right to have access to the GTO App in source-code form.

## **7 LIMITATION OF LIABILITY**

7.1 You acknowledge that the Services have not been developed to meet your individual requirements. Except as expressly stated in these Terms and Conditions, we do not give any representation, warranties or undertakings in relation to the Services. Any representation, condition or warranty which might be implied or incorporated into these Terms and Conditions by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, we will not be responsible for ensuring that the Services are suitable for your purposes.

7.2 We will not be liable to any User for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with:

- (a) any applicable open-source software used in the GTO App;
- (b) use of, or inability to use, the GTO App or the Website; or
- (c) use of or reliance on any Reports and/or other content displayed on our Website.

7.3 We will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of our Website or to your downloading any Reports or any other content on it, or on any third party website linked to it.

7.4 Nothing in these Terms and Conditions shall limit or exclude our liability for:

- (a) death or personal injury resulting from our negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) any other liability that cannot be excluded or limited by English law.

7.5 Subject to Clause 7.4, we will under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with these Terms and Conditions or the subject matter including any reliance that you place on the Reports for:

- (a) any loss of profits, sales, business, or revenue;
- (b) loss or corruption of data, information or software;
- (c) loss of business opportunity;
- (d) loss of anticipated savings;
- (e) loss of goodwill; or
- (f) any indirect or consequential loss.

7.6 Subject to paragraph 7.4, our maximum aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with these Terms and Conditions (including your use of any Services) whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to an amount that is the lesser of:

- (a) 100% of the total subscription fees paid for the Enhanced Services (if any) in that calendar year and such limit shall apply in aggregate to all Users registered under the relevant subscription; or
- (b) £1000,

## **8 TERMINATION AND POLICY ON REFUNDS**

8.1 We may terminate these Terms and Conditions immediately by written notice to you:

- (a) if you commit a material or persistent breach of these Terms and Conditions which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so;
- (b) if you breach any of the Licence Restrictions or the Acceptable Use Restrictions; and
- (c) if you use your log-in credentials on more than one device.

8.2 If you do not renew your subscription by paying the then applicable fee on or before the expiration date of your subscription we may terminate your Enhanced Services. If we terminate your Enhanced Services for any reason other than pursuant to paragraph 8.1 (a) – (c) then you will revert to our free subscription Service.

8.3 We may also terminate the Services in accordance with paragraph 1.5. If you have subscribed for the Enhanced Services and we terminate these, we will make a pro-rata refund to you for the remaining unused period of your subscription. Such refund will be made within 30 days of the date of termination of the Enhanced Services.



- 8.4 On termination for any reason:
- (a) all rights granted to you under these Terms and Conditions shall cease;
  - (b) you must immediately cease all activities authorised by these Terms and Conditions;
  - (c) you must immediately delete or remove the GTO App from all Devices;
  - (d) you may retain all copies of the Reports then in your possession, custody or control provided that these are treated as confidential to you and that you do not share them with any third party.
- 8.5 You can end this licence by closing your account and deleting the GTO App. If you have paid a subscription fee for the Enhanced Services this will not be refunded to you.

## **9 COMMUNICATION BETWEEN US**

- 9.1 If you wish to contact us with a query, you may do so by utilising the support centre on the web portal, accessing [www.gastrakonline.com](http://www.gastrakonline.com), calling our support centre on 01275 376600 or by emailing us at [support@gastrakonline.com](mailto:support@gastrakonline.com) or [sales@gastrakonline.com](mailto:sales@gastrakonline.com).
- 9.2 If you wish to contact us in writing, or if any condition in these Terms and Conditions requires you to give us notice in writing, you can send this to us by e-mail at [support@gastrakonline.com](mailto:support@gastrakonline.com) or by prepaid post to A-Gas Limited of Banyard Road, Portbury, Bristol BS20 7XH. We will confirm receipt of this by contacting you in writing, normally by e-mail.
- 9.3 If we have to contact you or give you notice in writing, we will do so by e-mail or by prepaid post to the address you provide to us when you register for the Services.

## **10 OTHER IMPORTANT TERMS**

- 10.1 These Terms and Conditions and the documents referred to in these Terms and Conditions constitute the entire agreement between you and us, superseding any prior terms of use. You acknowledge and agree that in entering into the Terms and Conditions, you have not relied on any statement, representation, undertaking or promise given or implied from anything said or written in communications between you and us prior to you commencing use of our Services. Nothing in this paragraph 10.1 excludes or limits liability for fraud or fraudulent misrepresentation. We may transfer our rights and obligations under these Terms and Conditions to another organisation, but this will not affect your rights or our obligations under these Terms and Conditions.
- 10.2 You may only transfer your rights or obligations under these Terms and Conditions to another person if we agree in writing.

- 10.3 If we fail to insist that you perform any of your obligations under these Terms and Conditions, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 10.4 Each of the conditions of these Terms and Conditions operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 10.5 No term of these Terms and Conditions is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to these Terms of Use made between you and us. The rights of the parties to terminate or agree any variation under these Terms and Conditions are not subject to the consent of any person that is not a party to these Terms and Conditions.
- 10.6 These Terms and Conditions, its subject matter and its formation, are governed by English law. You and we both agree that the courts of England and Wales will have non-exclusive jurisdiction.