WAGO Cloud Terms of Use

(March 25, 2022)

A. General information

1. These WAGO Cloud Terms of Use ("***Terms of Use***") apply to the use of the WAGO Cloud web portal and the software that is stored and running on the same as described in Appendix 1 ("***WAGO Cloud Services")***. The WAGO Cloud Services are maintained and operated by WAGO GmbH & Co. KG, Germany (the "***Operator***") and made available by the Operator's affiliate, which is Operator's authorized distributor for the WAGO Cloud Services in the applicable jurisdiction (the "***Contractor***"). Subject to receipt of all fees due and payable, and compliance with these Terms of Use, the customer registered user (the "***Customer***") is permitted to use the WAGO Cloud Services through an Internet connection. These Terms of Use are a contract solely between Customer and the Contractor.
2. The WAGO Cloud Services are intended for use by legal entities in an industrial commercial setting. By consenting to these Terms of Use, the Customer affirms that it (a) is a legal entity acting in a business capacity and not in his or her capacity as an individual or household and (b) will expressly comply with all applicable statutory and other provisions, especially on the protection of the personal data of natural persons. Registration with the WAGO Cloud Services or any other use of the WAGO Cloud Services is deemed to be Customer's consent to the present Terms of Use.
3. These Terms of Use are subject to the laws of that jurisdiction in which the Contractor is located. These Terms of Use are available in various language versions, which is provided merely as a convenience for the parties. The English language version of these Terms of Use is the governing version and has exclusive application over Customer's use of the WAGO Cloud Services (except for Germany, Austria und Switzerland where the German language version applies, and except for China where the Chinese language version applies).

B. Performance information

4. The Contractor warrants an average of 99% availability of the WAGO Cloud Services per calendar month (excluding scheduled downtime), provided however that Customer's sole remedy and WAGO's sole liability for any unscheduled downtime shall be as set forth in Appendix 2 to these Terms of Use. Telemetry data transmitted from devices (e.g., WAGO controllers) to the WAGO Cloud Services is stored for the duration of the period set by the Operator on the WAGO Cloud Services. To help ensure against data loss, this telemetry data is stored in a redundant manner in a data center and additionally mirrored to another data center. WAGO Cloud Services that receive this telemetry data from devices is, on the average, 99.9% available per calendar month (excluding scheduled downtime). All further application data provided by the Customer to the WAGO Cloud Services is stored for thirty (30) days and can be restored to this extent by Operator upon request by Customer to Contractor.

C. Registration and test phase

5. In order to use the WAGO Cloud Services the Customer must register on the WAGO Cloud web portal (https://cloud.wago.com/login), and an individual user account is created through registration. Through this account, the Customer can use the WAGO Cloud Services offered by Contractor (whereas it is expressly clarified that no contractual relationship exists or is intended to exist between the Customer and the Operator, but exclusively between Customer and Contractor).
6. During any free test phase made available in Contractor's discretion, the Customer may use the WAGO Cloud Services without charge. Simply registering on the WAGO Cloud Services web portal is sufficient. The test phase duration and the number of test license points are limited. The available test duration and number of test license points are in the Contractor's absolute discretion in consultation with Operator and are displayed in the WAGO Cloud Services to Customer in each case. For the avoidance of doubt, the Customer is not permitted to register multiple times or repeatedly with the same or different email addresses in order to take advantage of the free test phase multiple times or repeatedly or for extended use of chargeable WAGO Cloud Services.
7. Operator is expressly made and intended to be made a third party beneficiary of these Terms of Use with the ability to enforce the same against the Customer. If the Customer should violate these Terms of Use, the Operator and/or the Contractor (together hereinafter "***WAGO***") are entitled to immediately block the relevant user account and to delete the stored data, which rights and remedies are in addition to and not in lieu of any other rights and remedies available to WAGO at law or in equity. Further rights (particularly to damages, including against Customer breaching these terms and conditions) remain unaffected.

D. Acquisition of rights of use

8. After any free test phase, use of the WAGO Cloud Services is dependent upon Customer's payment of license fees. License fees are non-refundable. Use of the WAGO Cloud Services consumes license points, thus reducing the license points in Customer's account. Each WAGO Cloud Service has its own license point consumption model, as defined in the WAGO Cloud Services. If individually agreed, the Customer may also pay for WAGO Cloud Services retroactively. If the license points in Customer's account are exhausted or if the Customer fails to make due payments, the WAGO Cloud Services will be suspended and blocked (e.g., data transfer, visualization and export, monitoring and notification functions). The stored data remains intact even after blocking and suspension, which is displayed in the WAGO Cloud Services, for thirty (30) days. Thereafter WAGO will have no obligation to maintain or provide the Customer the stored data and may, in its sole discretion and without liability, delete all stored data in its systems or otherwise under its control. The WAGO Cloud Services may be reactivated within aforesaid thirty (30) days through recharging the license points in Customer's account through the payment for an additional license fee before the stored data is deleted. In the event Customer is entitled to any service credits under Appendix 2, service credits may also be eligible to be redeemed for license points.

E. Fees

9. The respective amount of the fees for the rights to use WAGO Cloud Services arises from the applicable price list. The fees to be paid by the Customer are owed directly to the Contractor plus the accrued statutory amount of applicable taxes (e.g., withholding tax) and charges. All fees and prices are exclusive of any applicable taxes. If local law requires withholding tax or similar taxes and charges to be withheld and paid, the Customer must do so in a prompt and proper manner. The amount the Customer is to pay to the Contractor from the respective invoice shall not be reduced through the deduction of withholding tax or similar taxes and charges. All fees are due in euros (or the equivalent amount in the respective local currency) within thirty (30) days of the invoice date. In non-US countries, in certain cases, the reverse-charge procedure is to be used. Value-added tax is not shown on the invoice in these cases, but it shall be referred to through a textual note on the use of the reverse-charge procedure. In certain cases, the Contractor is obligated to document a valid value-added tax identification number issued to the Customer by an EU member state. The Customer undertakes to inform the Contractor of its valid VAT ID number for these purposes.

F. Obligations of Customer

10. To use the WAGO Cloud Services, the Customer is solely responsible for meeting and maintaining the system requirements set forth in Appendix 1. NEITHER OPERATOR NOR CONTRACTOR MAKES ANY REPRESENTATION, WARRANTY, OR GUARANTEE THAT THE WAGO CLOUD SERVICES WILL MEET CUSTOMER'S NEEDS, OR THAT ANY DATA AVAILABLE THROUGH THE WAGO CLOUD SERVICES IS ACCURATE OR RELIABLE. WAGO DOES NOT REPRESENT, WARRANT, OR GUARANTEE (A) THE SECURITY, QUALITY, OR TIMELINESS OF THE WAGO CLOUD SERVICES OR (B) THAT THE WAGO CLOUD SERVICES OR ANY DATA AVAILABLE THROUGH THE WAGO CLOUD SERVICES WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE OR (C) THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED OR CORRECTABLE OR (D) THAT THE WAGO CLOUD SERVICES ARE FREE FROM VIRUSES OR OTHER MALICIOUS CODE. EXCEPT AS EXPRESSLY SET FORTH IN APPENDIX 4, WAGO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUALITY, ACCURACY, NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE IN TRADE. The Customer is obligated to thoroughly verify the intended usefulness of the WAGO Cloud Services for their applicability to the specific situation and to perform sufficient testing in a safe / nonproductive environment prior to initial operation. WAGO SHALL NOT BE RESPONSIBLE FOR, AND EXPRESSLY DISCLAIMS LIABILITY FOR ANY DELAY OR FAILURE OF PERFORMANCE CAUSED IN WHOLE OR IN PART BY CUSTOMER'S DELAY IN PERFORMING, OR FAILURE TO PERFORM, ANY OF ITS OBLIGATIONS CONTAINED HEREIN.
11. The Customer shall take appropriate precautionary measures (e.g., through data backup, fault diagnosis, regular review of output, emergency planning) in case the WAGO Cloud Services should fail to function properly, entirely or in part. The Customer is obligated to keep all access data, such as user names and passwords, safe, confidential and secure against third-party access. Despite all the care taken, computer viruses and the like can be transmitted during communication by email. The Customer must take appropriate security precautions in order to prevent damage to its systems. Emails can be read by third parties and WAGO does not represent that the delivery of the WAGO Cloud Services are secure. The Customer is aware of this risk and knowingly accepts such risk. IN ANY EVENT WAGO'S LIABILITY IS EXPRESSLY LIMITED AS SET FORTH IN APPENDIX 5.
12. The Customer undertakes to refrain from: (i) uploading any content or data to the WAGO Cloud Services that is prohibited by law or otherwise unlawful; and (ii) transmitting or using any programs containing viruses or other malware in connection with the WAGO Cloud Services. The Customer shall not use the WAGO Cloud Services to offer or support unlawful goods, services, or other activities. Moreover, the Customer is obliged to comply with all applicable export control and embargo regulations, especially (but not exclusively) those of the Federal Republic of Germany, the European Union, the United States of America and People's Republic of China. In case of government audits, the Customer shall cooperate in accordance with the applicable statutory provisions, particularly supplying all requested information to the responsible authorities.

G. Support by WAGO

13. In the event the WAGO Cloud Services do not meet the requirements of Appendix 1, Customer may open a support case with Contractor. If the Customer opens a support case, it shall provide a description of the respective malfunction that is as detailed as possible in order to facilitate the most efficient correction of possible defects and cooperate with WAGO in its attempts to identify the same. Contractor will use commercially reasonable efforts to assist in resolving support cases with Operator. WAGO makes no representations, warranties, or guarantees that any support case will be resolved. WAGO has no other support obligations under these Terms of Use. The Customer may enter into a separate agreement with the Contractor for any additional support, service and maintenance services that may be offered by WAGO.

H. Data Privacy

14. The Customer is at any time the sole owner of all data stored by the Customer in the WAGO Cloud Services. Accordingly, the Customer is solely responsible for all content used and data processed by it. Accordingly, the Customer shall observe all applicable data protection regulations. Customer, shall obligate its employees engaged in connection with the WAGO Cloud Services and its performance to legal data secrecy unless they are already generally obligated accordingly.

15. If the Customer collects, processes or uses personal data, the Customer represents and warrants that it is authorized to do so under applicable (particularly data protection) laws, rules, and regulations. For the avoidance of doubt, the Customer shall be deemed the controller in terms of data protection law with regard to all personal data, and shall therefore continually review whether the processing of such data through the use of the WAGO Cloud Services is permitted by applicable law.

16. As technical service provider, WAGO shall store and process personal data of the Customer only to the extent necessary to provide the rights to use the WAGO Cloud Services as required by these Terms of Use, for billing purposes, for aggregation and anonymization as contemplated below, and as otherwise permitted by law. WAGO takes no cognizance of the content of the stored or processed Customer's data and does not inspect content used with the WAGO Cloud Services. WAGO will, however, use best efforts to ensure that personal and other data transmitted from within the European Economic Area, the United States and China will be processed and stored on Microsoft servers that are physically located in the respective area.

I. Confidentiality

17. Confidential Information of one of the parties (including in the case of the Contractor, information of the Operator and its other affiliates), such as but not limited to technical or business data, knowledge, know-how, software, source codes or trade secrets, must be treated confidentially by the other party (including the Operator) and may not be made available to third parties. "Confidential Information" is only that which is expressly denoted as confidential by the party supplying the information as well as such information, whose confidentiality is clearly apparent from the circumstances in which it is delivered or from the nature of the information. In addition, all disclosed confidential information must not be disassembled and/or decompiled, decoded, reproduced, redesigned and/or reverse engineered.

18. WAGO agrees to treat as Confidential Information the telemetry data which is transmitted from devices that are connected to the WAGO Cloud Services. Notwithstanding the foregoing, WAGO may use and access any and all data to the extent necessary for purposes of providing the WAGO Cloud Services and support as required by these Terms of Use. In addition, WAGO may use and access any and all of Customer's data about the connected devices (such as but not limited to type information, firm-ware version, and technical setting) and about the use of the WAGO Cloud Services in order to create aggregated and anonymized data sets, which WAGO may use for any purpose, including but not limited to product improvement.

J. Indemnification

19. The Customer shall defend Contractor, and its affiliates (including without limitation, Operator) and their respective employees, affiliates, contractors, officers and directors to the full extent for all claims asserted by public authorities or other third parties for, or resulting from, Customer's content or data used in connection with the WAGO Cloud Services, Customer's use of the WAGO Cloud Services for any unlawful purposes, or Customer's non-compliance with any of its obligations under these Terms of Use. In addition, Customer shall indemnify and hold harmless all such indemnified parties upon the first demand for all costs, fees, fines, damages, expenses, losses and expenditures (including without limitation reasonable attorneys' fees and court costs) it or they may incur as a result of or in conjunction with any such claims.

K. Miscellaneous

20. WAGO reserves the right to modify these Terms of Use at any time if it is necessary based on statutory provisions, as a result of system modifications or likewise compelling reasons. In the event of such modifications, Contractor will notify Customer of such changes through the notifications function of the WAGO Cloud. In the event Customer rejects any such within a period of four weeks in writing or by email, the contractual relationship ends and WAGO will terminate Customer's access to the WAGO Cloud Services as set forth above.

21. Neither party shall be deemed to have waived any of its rights under these Terms of Use by lapse of time or by any statement or representation other than by an authorized representative in an explicit signed, written waiver. No waiver of a breach of these Terms of Use by either party will constitute a waiver of any other breach of these Terms of Use.

22. All provisions of these Terms of Use that by their nature are intended to extend beyond the termination or expiration of these Terms of Use for any reason shall survive the termination or expiration of these Terms of Use.

23. Any provisions of these Terms of Use (or portion of any provision) held unenforceable, impossible or otherwise invalid shall be severed and the remaining provisions shall continue in full force and effect to be interpreted to maintain the parties' intent to the fullest extent permissible.

24. These Terms of Use shall not be construed as creating any agency, partnership, joint venture, or other similar legal relationship between the parties; nor will either party hold itself out as an agent, partner, or joint venture party of the other party. Both parties shall be, and shall act as, independent contractors. Neither party shall have authority to create any obligation or make any commitments on the other party's behalf.

25. These Terms of Use constitute the entire agreement between the parties with regard to their subject matter herein and supersede all prior or contemporaneous negotiations, discussions, understandings or agreements between the parties. Neither party has relied upon any such prior or contemporaneous communications. The parties agree that any amendment to these Terms of Use must be in writing and accepted by both parties.

Appendices

Appendix 1 – System and functional description

1. System description

The WAGO Cloud Services offer the opportunity to collect and analyze data centrally. In addition, devices (such as WAGO controllers) can be managed and monitored along with their telemetry data and applications. To use WAGO Cloud Services and for the Contractor to fulfill the main contractual obligations contained herein, the system requirements are as follows:

The WAGO Cloud Services shall be made available by Contractor at the router output of the data center maintained by Operator (the "***Handover Point***"). The necessary software, processing power for usage, storage and data processing space at the Handover Point shall be provided by WAGO. Neither Contractor nor Operator are required to create and maintain the data connection between the Customer's IT systems and the Handover Point.

The WAGO Cloud Services are hosted in a Microsoft data center and are reachable through a public Internet address. The Customer understands and agrees that availability of the WAGO Cloud Services is subject to limitations or impairments which are beyond WAGO's sphere of influence. This particularly includes acts of third parties who do not act on behalf of WAGO, technical conditions of the Internet which WAGO cannot influence as well as force majeure events. The hardware and software and technical infrastructure utilized by the Customer can also have an influence on the performances of the WAGO Cloud Services. WAGO has no liability for any failure of the WAGO Cloud Services arising in any way from such conditions outside of WAGO's reasonable control.

It is in any event mandatory that the Customer satisfy the following system requirements:

- Computer or smart device with Internet access and state-of-the-art security settings.
- The most up-to-date, currently available version of a browser (Google Chrome, Microsoft Edge, or Mozilla Firefox, Mobile Safari).
- Only devices approved by WAGO may be used with the WAGO Cloud Services (see Quick Start Guide or manual).

2. Functional description

The functionality described below is currently provided to the Customer in the WAGO Cloud Services. This scope of functions may be continually expanded in WAGO's discretion.

Management of devices

Devices can be managed in the WAGO Cloud Services. This includes the following functions:

- Connecting devices with the WAGO Cloud Services;
- Correlating devices with customers, locations and facilities;
- Monitoring current connection parameters and processing data;
- Accessing in case of deviations through alarm and notification functions.

Central data analysis

Machines and equipment can be centrally analyzed by sending their data through local devices (WAGO controllers) to the WAGO Cloud Services and analyzing it there with the use of various tools. This includes the following functions:

- Visualize and compare machine and equipment data;
- Represent measured data over time graphically, (e.g., as trend graphs and bar charts).

Remote access

Local configurations and visualizations are accessed through the WAGO Cloud Services. The scope of functions includes:

- Setting up the devices through web-based management;
- Operation and monitoring of equipment through web visualization.

Data export

Machine and equipment data can be exported outside of the WAGO Cloud Services with other software and tools as follows:

- Data export with tools and software which the REST API or CSV interfaces are able to use.
- Data export occurs periodically or manually.

Alarms

Alarms and notifications can be defined in the WAGO Cloud Services as follows:

- Notifications can be sent by email when thresholds defined by the Customer are exceeded or not met.
- Alarm rules can be defined for devices, connection status and application data.

User/rights management

The WAGO Cloud Services have user management available with the following functions:

- Management of accesses through user management with different authorization levels.
- Set up individual authorizations for different users in the WAGO Cloud.

3. Subject to change

WAGO reserves the right to expand, customize or troubleshoot the WAGO Cloud Services at any time.

Appendix 2 – Availability and service credits

"Availability" for purposes of these Terms of Use means the capability of the Customer to access the WAGO Cloud Services and the stored data. Availability is determined retrospectively on a monthly basis.

Customer may submit a request for service credits for Availability failures. Service credits require that the Customer send the Contractor all information needed to review the claim, particularly (i) a detailed description of the incident, (ii) information on the time and duration of the failure, (iii) number and location(s) of the affected users (if applicable), and (iv) descriptions of the attempts by the Customer to remedy the incident upon occurrence. The claim must be received by the Contractor within one month after the end of the calendar month in which the incident which is the object of the claim occurred. The claim will be reviewed by Contractor in consultation with the Operator. WAGO's decision on the issuance of service credits is final. Credits may not be redeemed for payment, but may be used to purchase additional license points.

Appendix 3 – Third-party components

The WAGO Cloud Services offered may contain open source components. If requested by the Customer or any third party, WAGO will make the OSS source code available in exchange for appropriate reimbursement of expenses if the license terms for the OSS provide for such delivery of the source code.

The Customer and any third party is authorized to use the open source software beyond the intended use in accordance with the applicable OSS license terms if it enters into licensing agreements with the respective holders of rights under the terms of the respective open source license. In such case, mandatory OSS license terms take precedence over these terms of use. The OSS license terms also have priority to the extent that, based on the combination of OSS components with proprietary components, they also grant the user certain rights of use in relation to the proprietary components or such rights of use are to be granted according to the OSS license terms of WAGO.

The following also applies: because the software of the WAGO Cloud Services runs exclusively on the servers of WAGO or authorized service providers, the Customer needs no special copyright-based usage rights to the software, nor does WAGO grant any such rights. The scope of the statutory and contractual warranty of WAGO is limited to those software components that are not open source components, but for which WAGO is either the author or entitled to commercial rights of use. Apart from that, the provisions of Appendices 4 and 5 below shall apply.

Appendix 4 - Warranty

Warranty is strictly limited to Customer purchasing access to the WAGO Cloud Services. The Customer is expressly solely responsible for the use of appropriate security settings on approved devices pursuant to the Quick Start Guide. The Customer is also solely responsible for providing Internet access, the entire Customer-owned IT infrastructure and relevant security measures. Moreover, there is no warranty that WAGO Cloud Services will function in conjunction with third-party systems which the Customer use (e.g. through the use of Cloud Data Export or REST API services).

WAGO warrants solely that the WAGO Cloud Services will meet the requirements of Appendix 1 and in the event of such failure, WAGO's sole and exclusive obligation is the provision of support as set forth above. A functional impairment that results from hardware defects, environmental conditions, faulty operation and the like at the point of use by the Customer is not a deficiency, nor is a merely insignificant reduction in quality is likewise disregarded.

The exclusive remedy for defects of title is that the Contractor will, in its sole discretion, provide the Customer an alternative, materially equivalent opportunity for use.

Appendix 5 - Liability

1. Liability exclusions in general

Subject to subsection 2 et. seq. below, WAGO HAS NO LIABILITY FOR ANY DAMAGES OR CLAIMS ARISING FROM OR RELATED TO:

- factors beyond the control of WAGO (e.g., natural catastrophes, wars, terrorist attacks, riots, government measures, network or device failure outside data centers used, etc. at the site of the Customer or between the Customer's site and the data center used by the Operator),
- the use of services, hardware or software which were not provided by WAGO, including problems in connection with insufficient bandwidth or software or services of third parties,
- problems which were caused by failure to use the WAGO Cloud Services in accordance with these Terms of Use or other WAGO documentation,
- problems which were caused through the use of a service after WAGO instructed the Customer to change the use of the service and the Customer did not follow these instructions, or
- during or relating to a preview, advance version, beta or test version of a service or feature.

2. Limitation of liability under the laws of EU Member States, Switzerland, Norway and UK

WAGO will be liable for willful misconduct, gross negligence and slight negligence.

However, in case of mere slight negligence WAGO's liability shall be limited for the foreseeable damage which sin not event is more than 10,000 USD. This limitation of liability shall not apply in case of personal injury or death or in case of compulsory liability (e.g. under the Product Liability Act).

3. Limitation of liability under US law

UNDER US LAW, IN NO EVENT WILL CONTRACTOR OR ANY OF ITS VENDORS, LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS (INCLUDING WITHOUT LIMITATION, THE OPERATOR) BE LIABLE IN CONNECTION WITH THE DELIVERY OF WAGO CLOUD SERVICES OR ANY OTHER SERVICES CONTEMPLATED HEREIN UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), AND OTHERWISE, FOR ANY: (A) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (B) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES OTHER THAN THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS; (C) LOSS, DAMAGE, CORRUPTION OF RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (D) COST OF REPLACEMENT GOODS OR SERVICES; (E) LOSS OF GOODWILL OR REPUTATION; OR (F) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER CONTRACTOR WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. EXCEPT FOR CONTRACTOR'S WILLFUL MISCONDUCT, IN NO EVENT WILL CONTRACTOR OR ANY OF ITS VENDORS, LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS (INCLUDING WITHOUT LIMITATION, THE OPERATOR) BE LIABLE FOR ANY DIRECT DAMAGES IN EXCESS OF THE FEES ACTUALLY PAID TO CONTRACTOR FOR THE WAGO CLOUD SERVICES GIVING RISE TO THE CLAIM IN THE 12 MONTHS PRECEDING THE CLAIM. THE FOREGOING PROVISIONS APPLY REGARDLESS OF THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.