

# WAGO Cloud Terms of Use

(March 27, 2019)

## A. General information

1. These Terms of Use apply to the use of the WAGO Cloud, which is operated by WAGO Kontakttechnik GmbH & Co. KG, Germany (the “**Operator**”). The Customer is permitted to use the software that is stored and running on the servers of the WAGO Cloud through an Internet connection and to store and process its data with the help of the software. In addition, devices (such as WAGO controllers) can be easily managed and monitored along with their data and applications. A detailed description of the services offered is found in [Appendix 1](#).
2. The WAGO Cloud services are addressed to entrepreneurial legal entities only (i.e. legal persons or partnerships with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession). By consenting to these Terms of Use, the Customer affirms that it is a legal entity (and not a mere consumer) and will expressly comply with all applicable statutory and other provisions, especially on the protection of the personal data of natural persons. Use of the Cloud Services is deemed to be Customer’s consent to the present Terms of Use.
3. The contractual relationship with the Customer is subject to the laws of that jurisdiction in which the contracting WAGO group company (the “**Contractor**”) is located. These Terms of Use are available in various language versions. In case of conflicts or ambiguities, the English language version has exclusive application (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 for any unscheduled downtime shall be as set forth in these Terms of Use (see [Appendix 2](#) et. seq.). Telemetry data transmitted from devices (e.g., WAGO controllers) to the WAGO Cloud (productive data) is stored for the duration of the period set on the WAGO Cloud web portal. To prevent data loss, this telemetry data is stored triply redundant in a data center and additionally mirrored to another data center. The service that receives this telemetry data from devices is, on the average, 99.9% available per calendar month (excluding scheduled downtime). All further application data needed for the provision of

service is stored for thirty (30) days and can be restored to this extent by WAGO if required.

## 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 cloud services offered (whereas it is expressly clarified that no contractual relationship is thereby formed between the Customer and the Operator, but exclusively between Customer and Contractor).
6. During the free test phase, the Customer may use the WAGO Cloud services without needing a chargeable license key. Simply registering on the WAGO Cloud 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 Operator’s absolute discretion and are displayed in the WAGO Cloud 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 cloud services.
7. 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. Further rights (particularly to damages, including against Customer breaching these terms and conditions) remain unaffected.

## D. Acquisition of rights of use

8. After the test phase, the acquisition of rights of use depends on credits, the fees for the purchase of license keys are paid with various values. Redeeming a license key in the WAGO Cloud and the associated loading of the license point account make it possible to use WAGO Cloud services in accordance with these Terms of Use. Credits and license fees are non-refundable. Use of the services consumes license points, thus reducing the license point account. Each service has its own license point consumption model, as defined in the WAGO Cloud. If the license point account is exhausted, the WAGO Cloud services requiring a license are blocked (e.g., data transfer, visualization and export, monitoring and notification functions). The stored data remains intact even after blocking, which is displayed in the WAGO Cloud, for thirty (30) days and is not permanently deleted until thereafter. Beyond that 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 are, however, reactivated through recharging the license point account before the stored data is deleted.

#### **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 contacting WAGO group company plus the accrued statutory amount of value-added tax and any other taxes (e.g., withholding tax) and charges. 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. If local law should provide for withholding tax or similar taxes and charges to be withheld and paid, the Customer undertakes to 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.

#### **F. Obligations of Customer**

10. To use the WAGO Cloud services, the Customer must meet the system requirements set forth in [Appendix 1](#). The Customer assumes personal responsibility for this. In addition, 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 his systems. Emails can be read by third parties and WAGO does not represent that the delivery of the services are secure. The Customer is aware of this risk.

12. The Customer undertakes to refrain from uploading any content or data that is prohibited by law or else unlawful or unlawful in relation to individual third parties and to refrain from using any programs containing viruses or other malware in connection with the WAGO Cloud. The Customer expressly undertakes to refrain from using the WAGO Cloud to offer unlawful goods or services. 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. The WAGO Cloud services have the qualities stipulated in these Terms of Use. When the WAGO Cloud does not perform the stipulated functions, the Customer may open a support case. 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. The Customer may enter into a separate agreement with the Contractor for support, service and maintenance services that may be offered.

#### **H. Data Privacy**

14. The Customer is at any time the sole owner of all data stored by the Customer in the WAGO Cloud. 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 guarantees that it is authorized to do so under applicable (particularly data protection) rules. 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 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 as contracted and for billing purposes, and only to the extent permitted by law. WAGO takes no cognizance of the content of the stored or processed Customer's data and categorically does not inspect content used with the WAGO Cloud. 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 the Operator), 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. Information which shall be treated confidentially 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 the telemetry data which is transmitted from devices that are connected to the WAGO Cloud. In clarification, however, it is agreed that, to assist the Customer in support cases, WAGO is entitled to access the Customer's data to the extent necessary unless the Customer promptly objects. In clarification, it is further agreed that WAGO is authorized to collect and analyze data about the connected devices (such as type information, firmware version, technical setting, etc.) and about the use of WAGO Cloud services to a reasonable extent in anonymized form for purposes of product improvement.

#### J. Indemnification

19. The Customer shall indemnify WAGO to the full extent for all claims asserted by public authorities or other third parties against WAGO for, or resulting from, Customer's non-compliance with any of its obligations under these Terms of Use, and the Customer undertakes to reimburse WAGO upon the

first demand for all losses and expenditures it incurs in conjunction with this.

#### K. Subject to change

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.

### 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 easily managed and monitored along with their data and applications. To use WAGO Cloud services and for the Contractor to fulfill the main contractual obligations contained herein, the system requirements set forth in the present Terms of Use must be met by the any Customer. The Customer bears full responsibility for this. The services of the WAGO Cloud shall be made available at the router output of the data center (the "**Handover Point**"). The necessary software, processing power for usage, storage and data processing space at the Handover Point shall be provided by WAGO. WAGO is not 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. WAGO points out to the Customer that the services rendered may be 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. The hardware and software and technical infrastructure utilized by the Customer can also have an influence on the performances of WAGO. To the extent such circumstances have an influence on the availability or functionality of the performance rendered by WAGO, this shall remain free from legal consequences.

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).

- Devices approved by WAGO shall be used with the cloud services (see Quick Start Guide or manual).

## 2. Functional description

The services described below are currently supplied to the Customer in the WAGO Cloud. This scope of functions will be continually expanded.

### Management of devices

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

- Connecting devices with the WAGO Cloud
- Correlating devices with customers, locations and facilities, for example
- Monitoring current connection parameters and process data
- Access 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 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 this service. 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 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 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 has 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 online services appropriately 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. System availability is determined retrospectively on a monthly basis.

Service credits require that the Customer send the Operator 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 Operator within one month after the end of the calendar month in which the incident which is the object of the claim occurred.

### 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 combina-

tion 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 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 Customers. The Customer is, however, 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).

In all other respects, the services satisfy the criterion of fitness for practical use and the underlying software is of customary quality, but not necessarily error-free. Errors that do not compromise fitness for practical use are thus not significant. 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. 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, liability claims depend on fault of WAGO and expressly do not exist in the case of performance or availability problems based on or resulting from:

- 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 this 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 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 Euros. 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 WAGO or any of its licensors, service providers, or suppliers be liable in connection with the delivery of 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 and reputation; or (f) consequential, incidental, indirect, exemplary, special, enhanced, or punitive damages, regardless of whether such persons were advised or the possibility of such losses or damages or such losses or damages were otherwise foreseeable, and notwithstanding the failure of any agreed or other remedy of its essential purpose.