

# General Terms and Conditions Vemcon GmbH

## 1. Preamble

- 1.1 Vemcon GmbH (hereinafter: Provider) is a Provider of various hardware-based and/or software-based products to monitor and control construction machinery and attachment and installation devices for construction machinery as well as accessories and additions to the products.
- 1.2 Customer wants to buy or use these Contractual Products from the Provider.

## 2. Subject Matter of Contract; Scope of Services

- 2.1 “**Contractual Products**” means the hardware-based and/or software-based products for the monitoring and control of construction machinery, including accessories and additions, and including any professional services to be provided by Provider under the Contract or other goods or services related to other Contractual Products.
- 2.2 Insofar as the Contract covers the use of the Vemcon-System or the Vemcon-Cloud, the General Terms and Conditions Vemcon-System and Vemcon-Cloud shall apply in addition to these GTC. Insofar as the Customer intends to resell products the use of which requires access to the Vemcon-Cloud, the Customer shall be obliged to inform the buyer of the conditions for use, in particular of the applicability of the GTC Vemcon-System and Vemcon-Cloud.
- 2.3 The Customer purchases from the Provider the Contractual Products specified in the offer in accordance with the specifications set forth in the offer.
- 2.4 An owner's manual and/or a user's manual shall only be owed if it is expressly set forth in the offer or if the Provider is required by law to include an owner's manual and/or a user's manual. The provision of these documents and any further documentation, if owed, can be made on a download portal, which allows the stored data to be permanently downloaded to other data carriers and the data content to be printed out.
- 2.5 Services may be provided by the Provider as professional services upon separate assignment.
- 2.6 The Provider is entitled to use subcontractors in connection with the provision of all services under the Contract.

## 3. Delivery; Passing of Risk; Obligation to Give Notice of Defects

- 3.1 Delivery times are generally predictions and are only binding if they have been expressly designated as binding.
- 3.2 Any agreed binding delivery time shall be subject to timely self-delivery to the Provider if and to the extent that the Provider had already concluded a congruent hedging transaction at the time of agreeing on the delivery time, which would have enabled the Provider to deliver to the Customer on time, if the delivery to the Provider would have been according to the agreement, and if the Provider is not responsible for the non-timely delivery by its supplier. The same applies if the Provider has concluded a congruent hedging transaction after the conclusion of the Contract, which would have enabled the Provider to deliver to the Customer on time, if the delivery to the Provider would have been according to the agreement, and if the Provider is not responsible for the non-timely delivery by its supplier.

- 3.3 Set-up, installation, briefing, training, maintenance of operating system software and standard drivers as well as maintenance and repair of the Contractual Products shall not be owed unless expressly agreed otherwise.
- 3.4 In the event of delivery of physical objects as Contractual Products, the Customer shall ensure to be ready for acceptance of the goods at an announced delivery date. In this case, the Customer must immediately inspect the transport/outer packaging for visible damage and must immediately notify the carrier of any such damage and, if necessary, refuse to take the delivery and immediately notify the Provider of any damage or other unusual occurrences in writing or in text form. If the Customer does not claim any defects, the Contractual Products shall be deemed to be free of defects upon delivery, insofar as the defect claimed later would have been recognizable upon performance of the agreed inspection.
- 3.5 The Customer must immediately put all Contractual Products into operation, regardless of whether they are physical objects or not, in order to test their functionality. Defects discovered in this process shall be reported immediately to the Provider. If the Customer does not claim any defects, the Contractual Products shall be deemed to be free of defects upon delivery, insofar as the defect claimed later would have been recognizable upon performance of the test.

#### **4. Retention of Title**

- 4.1 If the Contractual Products are physical objects (hereinafter: Reserved Goods), they shall remain the property of the Provider until all claims arising from the respective order have been met. If the Customer acts in breach of Contract, in particular if the Customer is in default with the payment of a claim from an order, the Provider has the right to withdraw from the Contract after the Provider has set a reasonable time limit of at least 14 days for performance. Transport costs incurred in the event of return shall be borne by the Customer.
- 4.2 The Customer must treat the Reserved Goods with care. At its own expense, the Customer must insure the Reserved Goods sufficiently against fire, water and theft damages at their replacement value. If maintenance and inspection work is required, the Customer must carry it out in a timely manner at its own expense.
- 4.3 The Customer may use the Reserved Goods and resell them in the ordinary course of business as long as the Customer is not in default of payment. However, the Customer may not pledge the Reserved Goods or transfer them by way of security. Customer's claims for payment against its customers from a resale of the Reserved Goods as well as those claims of the Customer regarding the Reserved Goods that arise for any other legal reason against Customer's customers or third parties (in particular claims in tort and the right to receive insurance payments), including all balance claims from the current account, shall be assigned by the Customer to the Provider in full already now by way of security. The Provider accepts this assignment.
- 4.4 The Customer may collect these claims assigned in accordance with Paragraph 4.3 for its own account in its own name on behalf of the Provider, as long as the Provider does not revoke this authorisation. The right of the Provider to collect these claims shall not be affected thereby; however, the Provider shall not collect the claims and revoke the collection authorization as long as the Customer duly fulfils its payment obligations.
- 4.5 However, if the Customer acts in breach of Contract, in particular if it is in default of a claim for payment, the Provider may demand that the Customer discloses to the Provider the assigned claims and the respective debtors, notifies the respective debtors of the assignment and hands over to the Provider all documents and provides all information required by the Provider to enforce the claims.

- 4.6 Any processing or transformation of the Reserved Goods by the Customer shall always be carried out for the Provider. If the Reserved Goods are processed with other goods that do not belong to the Provider, the Provider shall acquire co-ownership of the new goods in the ratio of the value of the Reserved Goods (final invoice amount including VAT) to the other processed goods at the time of processing. Moreover, the same shall apply to the new goods created by processing as to the Reserved Goods.
- 4.7 If the Reserved Goods are inseparably combined or mixed with other goods not belonging to the Provider (e.g. by installation in the Customer's system), the Provider shall acquire co-ownership of the new goods in the ratio of the value of the Reserved Goods (final invoice amount including VAT) to the other combined or mixed goods at the time of combination or mixing. If the Reserved Goods are combined or mixed in such a way that the Customer's goods are to be regarded as the main goods, the Customer and the Provider hereby agree that the Customer shall transfer co-ownership of such goods to the Provider on a pro rata basis. The Provider accepts this transfer.
- 4.8 The sole ownership or co-ownership of goods arising in accordance with the preceding paragraphs shall be stored by the Customer for the Provider.
- 4.9 In the event of pledges of the Reserved Goods by third parties or in the event of other third-party interventions, the Customer must point out the Provider's ownership and must notify the Provider in writing without undue delay so that the Provider can enforce its ownership rights. If the third party does not refund the judicial or extrajudicial costs incurred by the Provider in this connection, the Customer shall be liable for them.
- 4.10 If the Customer so requests, the Provider shall be obliged to release the securities to which it is entitled to the extent that their realizable value exceeds the value of any outstanding claims against the Customer by more than 10%. However, the Provider may select the security to be released.

## **5. Price; Purchase Price; Remuneration**

- 5.1 The remuneration to be paid by the Customer is set out in the offer. All agreed prices are subject to the applicable statutory value added tax, unless otherwise agreed.
- 5.2 The remuneration is due for payment after the conclusion of the Contract and within 14 calendar days of receipt of an auditable invoice, unless otherwise agreed. Invoicing can be done electronically.
- 5.3 Offsetting and rights of withholding are excluded, unless the underlying counterclaim is accepted or has been legally established.
- 5.4 Professional services are generally provided based on an hourly rate of 165 EUR plus VAT, unless a different remuneration rate or remuneration according to a flat rate or a fixed price has been expressly agreed.
- 5.5 Professional Services are generally billed after the services have been performed and are due for payment upon receipt of a proper invoice by the Customer.

## **6. Conformity of the Contractual Product; Export Compliance**

- 6.1 The legal regulations and standards applicable at the Provider's registered office apply to conformity.
- 6.2 The Parties acknowledge that the export of the Contractual Products and related technical data may be subject to compliance with applicable export laws. The Customer is obliged to comply with the applicable export laws and not to take any action that would violate such laws.

## **7. Branding**

The Contractual Products are sold exclusively under the brand name of the Provider. Labels of the Provider may not be removed as part of the installation or resale.

## **8. Defects Liability**

- 8.1 The selection of the Contractual Products in accordance with the offer shall be based on the requirements determined by the Customer for its business and its purposes of use. Specific requirements of the Customer for the Contractual Products shall only constitute an agreed quality and shall only be decisive for the contractual use if these have been defined by the Customer (e.g. in a separate specification or in a specification sheet) and accepted by the Provider. Damages to Contractual Products caused by a use for which the Contractual Product was not intended according to its normal use, or caused by improper handling or by an environment that is excessively demanding for the Contractual Product compared to normal use, shall not constitute defects. Furthermore, mechanical damages occurring after the transfer of risk shall not constitute defects.
- 8.2 If the delivered Contractual Product is defective, the Provider may initially choose whether to provide supplementary performance by remedy of the defect (rectification of defects) or by replacement of the corresponding Contractual Product with a defect-free product (replacement delivery). If the type of supplementary performance chosen by the Provider is unreasonable for the Customer in an individual case, the Customer may reject it. The right of the Provider to refuse supplementary performance under the statutory conditions shall remain unaffected.
- 8.3 The Provider shall be entitled to make the supplementary performance owed dependent on the Customer paying the due remuneration. However, the Customer shall be entitled to retain a part of the remuneration that is reasonable in relation to the defect.
- 8.4 If a modification has been made to a Contractual Product, the Customer must prove that the respective modification was not the cause of a claimed defect. The same shall apply in particular if hardware housings have been opened.
- 8.5 Rights based on warranty for defects expire within one year after delivery to the Customer.
- 8.6 Defects must be reported in writing or in text form. Therefore, Customer must use the form provided by the Provider on the website under "service". Alternatively, the form can also be requested from the customer service by telephone or email.
- 8.7 The Customer must give notice of defects immediately after discovery of a defect.
- 8.8 The Customer shall be responsible for backups of the data and programmes in advance to the removal of defects. In the event of data loss, the Provider shall only bear the expenses occurring for restoring the destroyed data from a data backup as well as the program status.
- 8.9 The Customer shall give the Provider at least two opportunities to analyse and remedy the defect within a reasonable period of time. In doing so, the Provider shall have the choice of attempting to remedy the defect by telephone or by remote maintenance as a first step. If necessary, the Parties shall conclude a separate data processing agreement for remote maintenance in accordance with the European General Data Protection Regulation (GDPR) and supplementary provisions of the German Federal Data Protection Act (BDSG). The Provider may, at its own discretion, remedy a hardware defect by supplying new hardware.

- 8.10 The Customer is only entitled to remedy the defect if the Provider refuses to remedy the defect or if the Provider does not fulfil the obligation to remedy the defect within a reasonable period set by the Customer or if the Provider has unsuccessfully attempted to remedy the defect at least twice.
- 8.11 The Customer shall only be entitled to claim damages in lieu of performance due to a defect if the Provider refuses to remedy the defect or if the Provider does not fulfil its obligation to remedy the defect within a reasonable period set by the Customer or if the Provider has unsuccessfully attempted to remedy the defect at least twice. Section 9 remains unaffected by this Paragraph 8.11.
- 8.12 The Customer must allow the Provider access to the business premises on site during business hours and, by prior agreement, also outside business hours in accordance with its security and access regulations for the purpose of remedying defects.

## **9. Limitation of Liability**

- 9.1 Within the scope of the Contract, the Provider shall only be liable for damages (a) caused intentionally or through gross negligence by the Provider or its legal representatives or vicarious agents or (b) resulting from injury to life, body or health caused by a breach of duty by the Provider or one of its legal representatives or vicarious agents. The Provider shall also be liable (c) if the damage was caused by the breach of an obligation of the Provider, the fulfilment of which is essential for the proper execution of the Contract and on the fulfilment of which the Customer regularly relies and may rely (cardinal obligation).
- 9.2 In the cases referred to in Paragraph 1 of this section, letters (a) and (b), the Provider shall be liable to the extent of the statutory liability. In all other respects, the claim for damages is limited to the foreseeable damage typical for this type of contract. The Parties agree that a maximum damage of 1,000,000 EUR per claim is a foreseeable damage typical for this type of contract. If the Customer is faced with damages that may exceed this amount, Customer is obliged to notify the Provider of this immediately,
- 9.3 In cases other than those referred to in Paragraph 1, the Provider's liability is excluded, regardless of the cause in law.
- 9.4 The liability provisions in the preceding paragraphs also apply to the personal liability of the Provider's bodies, employees and vicarious agents.
- 9.5 Insofar as liability arises under the German Product Liability Act (ProdHG), from the assumption of a guarantee or due to fraudulent misrepresentation, it remains unaffected by the above liability provisions.

## **10. Miscellaneous**

- 10.1 The Provider will only make a binding offer to enter into the Contract or accept the Customer's binding offer if the Customer is a company or a person acting in the course of his business or profession.
- 10.2 The Provider does not accept deviating, conflicting or supplementary general terms and conditions. This also applies if the Provider does not expressly object to the inclusion.
- 10.3 German law shall apply to the exclusion of the provisions of private international law and the UN Convention on Contracts for the International Sale of Goods.
- 10.4 All disputes arising out of or in connection with the Contract (including those concerning its validity) shall be subject to the exclusive jurisdiction of the courts of Munich.

- 10.5 The Provider is entitled to amend the GTC insofar as the changes are reasonable for the Customer. Changes to the GTC will be notified to the Customer in good time at least six weeks before the amended GTC come into effect in writing, by e-mail or in any other appropriate manner. The changes shall be deemed to have been approved and, upon entry into force, shall be deemed to be binding for an existing contractual relationship if the Customer does not object in writing or by e-mail within one month of receipt of the notification of change. The Customer will be specifically informed of this consequence with the notification of change.
- 10.6 Changes and additions to the Contract as well as a waiver of any rights under the Contract must be made in writing or in text form in order to be effective. This also applies to the waiver of the written or text form requirement.
- 10.7 If any provision of the Contract is invalid or unenforceable in whole or in part, or subsequently loses its validity or enforceability, or if a regulatory gap becomes apparent, this shall not affect the validity of the remaining provisions. The Parties undertake to replace the invalid or unenforceable provision or to fill the regulatory gap with an appropriate provision which, to the extent legally permissible, comes as close as possible to what the Parties intended or would have intended according to the meaning and purpose of the Contract if they had known the invalidity or the regulatory gap. If the invalidity or unenforceability of a provision is based on a measure of services or time (deadline or date) specified therein, the legally permissible measure that comes closest to the provision shall be agreed. It is the explicit intention of the Parties that this provision does not result in a mere reversal of evidence, but that § 139 German Civil Code (BGB) is waived overall.