

General Terms and Conditions Vemcon-System and Vemcon-Cloud

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 This Agreement governs the terms and conditions for the use of the Vemcon-System or the Vemcon-Cloud within the legal relationship between the End Customer and the Provider.

2. Definitions

- 2.1 "**End Customer**" means a natural or legal person who uses or intends to use the Vemcon-Cloud or Vemcon-System.
- 2.2 "**Licensed Data**" means the data stored in a Vemcon-System.
- 2.3 "**Materials**" shall mean all works and services protected by or eligible for protection under copyright, trademark law, patent law, utility model law, design law or other intellectual property rights, whether embodied (e.g. documents, objects, data carriers, models, drawings) or not embodied, and irrespective of the development stage, including the professional or technical know-how. In the case of software, this includes in particular the source code, scripts, interfaces/APIs and their descriptions.
- 2.4 "**Vemcon-App**" means a software application that is installed on the Vemcon-System, either on the Provider's side or via the Vemcon-Cloud. The Vemcon-Apps may be protected by Materials of the Provider or of third parties.
- 2.5 "**Vemcon-Cloud**" means a software platform hosted by the Provider on which data from the Provider's hardware and software is displayed and processed.
- 2.6 "**Vemcon-System**" means an IT-System, which can access the Vemcon-Cloud, consisting of a combination of the Vemcon-System-Hardware and/or other Vemcon-Hardware, and/or the Vemcon-System-Software and/or Vemcon-Apps. The Vemcon-System is intended to enable the Provider and the End Customer to process data on the use of devices and machines and evaluate it for their own business purposes. Vemcon GmbH is considered to be the data owner. Examples of a Vemcon-System are the Tooltracker-System as well as the CoPilot-System.
- 2.7 "**Vemcon-System-Hardware**" means a hardware component consisting of a computing unit, which can be equipped with a display, and typically sensors connected to the hardware unit. The Vemcon-System-Hardware is pre-installed with the Vemcon-System-Software from the Provider. The Vemcon-System-Hardware is protected by the Provider's Materials.
- 2.8 "**Vemcon-Software**" is the Vemcon-Apps, as well as the Vemcon-Cloud Software and the Vemcon-System-Software.
- 2.9 "**Vemcon-System-Software**" means the software installed on the Vemcon-System-Hardware that is required for the operation of the Vemcon-System-Hardware. The Vemcon-System-Software is protected by Provider's Materials.
- 2.10 "**Affiliate**" means any affiliated company within the meaning of § 15 et seq. of the German Stock Corporation Law (AktG) which directly or indirectly controls or is controlled by a Party or is subject to joint control with a Party by virtue of management control or

ownership of more than 50% of the voting shares or a similar interest in the said company.

3. Subject Matter of Agreement; Rights and Obligations of the Provider

- 3.1 The Provider is obliged to provide the Vemcon-System and/or the Vemcon-Cloud subject to the Contract in accordance with the terms of these GTC. The End Customer is entitled to use these on this basis.
- 3.2 The Provider is not obliged to establish and maintain an Internet connection between the Provider's web server and the End Customer's Internet access point.
- 3.3 The remedy of defects and damage caused by improper handling by the End Customer, by the influence of third parties or by force majeure is not the subject of this Agreement but may be commissioned in individual cases as a professional service in accordance with the GTC Vemcon GmbH.
- 3.4 The Provider is entitled to use subcontractors in connection with the provision of all services under this Agreement.
- 3.5 The Provider is authorized to update the Vemcon-Software at any time. In particular, the Provider is authorized to update the Vemcon-Software in order to improve the IT security of the Vemcon-Software through security updates.

4. Rights to Use the Vemcon-System, the Vemcon-Cloud and Licensed Data

- 4.1 Upon conclusion of the Contract, the End Customer shall receive the non-exclusive, spatially and temporally unlimited right to use the software of the Vemcon-System exclusively in connection with the Vemcon-Hardware in order to use the acquired Vemcon-System. The license may be subject to further license restrictions resulting from the product description or agreed between the parties (e.g. in an offer document). The license can only be transferred to third parties together with the Vemcon-Hardware.
- 4.2 Insofar as agreed, the End Customer also receives the right to use the Licensed Data to the extent corresponding to Paragraph 4.1.
- 4.3 The rights of use pursuant to Paragraph 4.1 and 4.2 may only be sublicensed by the End Customer to Affiliates of the End Customer.
- 4.4 In particular, the rights of use pursuant to this section do not entitle the End Customer to allow the use of the Vemcon-Cloud or to transfer Licensed Data exported via the Vemcon-Cloud to third parties who are not Affiliates of the End Customer. The End Customer's own work results, which are based on its own evaluations of the Licensed Data, may be made available by the End Customer to third parties.
- 4.5 The rights of use under this section also do not entitle the End Customer to copy or modify the software or other Materials and to change, improve, adapt, decompile or compile, reverse engineer or translate or otherwise create derivative works from the software, parts of it or other Materials. Reverse engineering is only permissible to the extent expressly permitted in § 69e of the German Copyright Law (UrhG) to the extent necessary for the purpose of obtaining information required to establish interoperability with independently developed software.
- 4.6 In addition to the End Customer, the Provider as well as other End Customers or customers and any intermediaries may also have access to the data obtained and processed, provided that they acquire the necessary license from the Provider.

5. Further Obligations of the End Customer

- 5.1 Upon request, the End Customer shall provide the Provider with accurate information on the use of the Vemcon-System at all times during the term of the End Customer license.
- 5.2 The End Customer is obliged to back up the entered data outside of the Vemcon-System.
- 5.3 If claims are asserted against the End Customer due to actual or alleged infringement of third party rights as a result of the contractual use of the Vemcon-System, for which the Provider may be liable, the End Customer shall inform the Provider without undue delay. The Parties shall coordinate the defense of such claims in close consultation, with the Provider taking the lead to the extent possible and permissible. The End Customer shall assist the Provider in this regard. If the Provider does not issue instructions regarding the appropriate defense within a reasonable period of time despite a reminder, the End Customer shall be entitled to handle the claims asserted against it at its discretion without further consultation of the Provider.
- 5.4 The End Customer is obligated to inform the respective purchaser of these GTC each time a Vemcon-System is resold. The purchaser as a new End Customer is obligated to agree to these GTC with the start of use.

6. User Consent

The End Customer is obliged to inform the actual user of a device that is connected to a Vemcon-Hardware about the collection of the location data of the respective device and to obtain the user's express, written and separate consent.

7. Contract Duration of the Use of the Vemcon-Cloud

- 7.1 The right to use the Vemcon Cloud has a term of 12 months from the date of initial operation by the End Customer and is automatically extended by a further term of the same duration if it is not terminated with three months' notice to the end of a term, unless otherwise agreed in the offer.
- 7.2 In the event of good cause, the right to terminate the contractual relationship for good cause without notice shall remain unaffected.
- 7.3 In order to be effective, any termination must be made in writing or in text form (e.g. by e-mail or also by online form).

8. Privacy

The Vemcon-Systems are used exclusively for the processing of data from machines, in particular not for the processing of personal data. The End Customer is obliged to use the Vemcon-Systems in such a way that no personal reference arises from the specific use. If the End Customer intends to process personal data with a Vemcon-System, it is obliged to inform the Provider of this so that the Parties can, if necessary, create the required contractual conditions for processing in compliance with data protection regulations.

9. Availability

- 9.1 The Provider offers an annual average availability of 98% for the Vemcon-Cloud.

- 9.2 The Vemcon-Cloud is considered unavailable if it is no longer possible to use it as a whole or can only be used to a very limited extent with significant delays or other disruptions.
- 9.3 For the purpose of calculating actual availabilities, downtime not attributable to Provider shall be considered available time. These harmless downtimes are:
- (i) maintenance or other services agreed with the End Customer as a result of which access to the Vemcon-Cloud is not possible;
 - (ii) unforeseen maintenance work, if such work was not caused by a breach of the Provider's obligations to provide the services (force majeure, in particular unforeseeable hardware failures, strikes, acts of nature, etc.);
 - (iii) downtime due to virus or hacker attacks, insofar as the Provider has taken the agreed, in the absence of an agreement the usual, protective measures;
 - (iv) downtime for the installation of urgently needed security patches;
 - (v) downtime caused by third parties (persons not attributable to the Provider); and
 - (vi) downtime for scheduled maintenance and data backups, if performed between 0:00 and 06:00 (CET) and announced to the End Customer at least 7 days before the work is carried out. The announcement can be made in text form or as a dialog message in the front-end system.

10. Notification of Defects

- 10.1 The End Customer is obliged to notify the Provider of any defects. The notification of defects must be made immediately after discovery of the defect by the Customer.
- 10.2 The End Customer must give the Provider the opportunity to rectify the defect itself. The Provider may, at its own discretion, remedy a defect in hardware by supplying new hardware.
- 10.3 The End Customer shall only be entitled to remedy the defect itself if the Provider refuses to remedy the defect or does not fulfil its obligation to remedy the defect within a reasonable period set by the End Customer or if the Provider has unsuccessfully attempted to remedy the defect at least twice.
- 10.4 The End 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 the obligation to remedy the defect within a reasonable period of time set by the End Customer or if the Provider has unsuccessfully attempted to remedy the defect at least twice. Section 11 remains unaffected by this Paragraph 10.4.

11. Limitation of Liability

- 11.1 Within the scope of this Agreement, 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 this Agreement and on the fulfilment of which the End Customer regularly relies and may rely (cardinal obligation).
- 11.2 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 agreement. The Parties agree that a maximum damage of 1,000,000 EUR per claim is a foreseeable damage typical for this type of agreement. If the End Customer is faced with damages that may exceed this amount, End Customer is obliged to notify the Provider of this immediately,

- 11.3 In cases other than those referred to in Paragraph 1, the Provider's liability is excluded, regardless of the cause in law.
- 11.4 The liability provisions in the preceding paragraphs also apply to the personal liability of the Provider's bodies, employees and vicarious agents.
- 11.5 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.

12. Miscellaneous

- 12.1 This Agreement regulates the agreements between the Parties in a final and complete manner. 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.
- 12.2 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.
- 12.3 All disputes arising out of or in connection with this Agreement (including those concerning its validity) shall be subject to the exclusive jurisdiction of the courts of Munich.
- 12.4 The Provider is entitled to amend the GTC insofar as the changes are reasonable for the End Customer. Changes to the GTC will be notified to the End 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 End Customer does not object in writing or by e-mail within one month of receipt of the notification of change. The End Customer will be specifically informed of this consequence with the notification of change.
- 12.5 Changes and additions to this Agreement as well as a waiver of any right under this Agreement must be made in text form in order to be effective. This also applies to the waiver of the text form requirement.
- 12.6 If any provision of this Agreement 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 this Agreement 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.