

# GENERAL TERMS AND CONDITIONS

## A. General Provisions

### 1. Validity of the General Terms and Conditions

- 1.1. These General Terms and Conditions apply exclusively to all business transactions between eologix sensor technology gmbh, Waagner-Biro-Strasse 124, 8020 Graz, FN 420349k (hereinafter referred to as "eologix") and third parties (natural or legal entities).
- 1.2. The third party, hereinafter also referred to as "Contract Partner" or "Customer", is expressly advised that these General Terms and Conditions serve as the basis for all business transactions between eologix and the respective Contract Partner without exception.
- 1.3. These General Terms and Conditions (hereinafter also referred to as "Terms and Conditions") are binding for all current and future business transactions with eologix, even if they are not expressly referred to. When concluding a contract, the current Terms and Conditions always apply, which can also be seen on the company's website <http://eologix-ping.com/en/gtc>.
- 1.4. Regulations deviating or amending these Terms and Conditions - in particular general business or purchasing conditions of the Customer - only become part of the contract if this is expressly confirmed in writing by eologix and the Customer. The Customer's terms and conditions do not become part of the contract even if eologix does not expressly contradict them.
- 1.5. These General Terms and Conditions apply to all eologix Products and Services. "eologix Products" means hardware ("Hardware"), in particular equipment, parts, materials, supplies and other goods, and software products ("Software") eologix has agreed to sell and/or supply to Customer. "eologix Services" (together with the eologix Products "eologix Products and Services") means services eologix has agreed to perform for Customer.

### 2. Offer and Conclusion of contract

- 2.1. Offers from eologix (hereinafter referred to as "Offer") are subject to change, unless expressly referred as binding. An order from the Contract Partner based on an Offer is only binding on eologix, if eologix has accepted this order with an order confirmation. By signing the binding order, the Contract Partner confirms that they have read and understood these Terms and Conditions and that these General Terms and Conditions are the basis for the contract between eologix and the Customer.
- 2.2. Commitments, assurances and guarantees from eologix as well as agreements deviating from these Terms and Conditions only become binding upon express written order confirmation.

### 3. Technical suitability of the contract products

- 3.1. It is the sole responsibility of the Customer to check the suitability of the eologix Products and Services for their intended purpose.
- 3.2. If no other agreements are made, eologix does not assume any liability for the suitability of the eologix Products and Services for the purpose intended by Customer.
- 3.3. Improper use of the eologix Products and Services and their operation outside of listed standard or norm ranges is not permitted.

### 4. Offers

- 4.1. Offers are made by eologix to the best of its knowledge, but eologix does not assume any liability for the correctness of these Offers. Therefore, Offers are non-binding.
- 4.2. If after the receipt of the order confirmation the production costs increase by more than 10%, eologix will inform the Contract Partner immediately. The Customer acknowledges that such notice triggers eologix's claim for additional costs.
- 4.3. If the additional costs are less than 10%, a separate notification is not required to be delivered by eologix and these additional production costs can be charged.

### 5. Confidentiality

- 5.1. The Contract Partner hereby irrevocably undertakes to keep confidential all trade and business secrets within the meaning of section § 26b UWG (Austrian Law against Unfair Competition) that are made available to him, provided or are otherwise made known to him by eologix in connection with or due to a business relationship or contact with eologix and to protect such confidential information against the unauthorized access by third parties and to comply with the legal and contractual data protection regulations when processing confidential information. This also includes state-of-the-art technical security measures (Art. 32 GDPR) and the obligation of employees to maintain confidentiality and to comply with data protection (Art. 28 Para. 3 lit. b GDPR).
- 5.2. Furthermore, the Contract Partner undertakes to use information only on a "need to know" basis and only within the framework of a concluded contract. This obligation of confidentiality remains valid for three years after the termination of the business relationship with eologix or independently of a business relationship for three years after any offer made by eologix.
- 5.3. The Contract Partner agrees to be used as a reference by eologix. This reference only includes naming the company and the use of the partners logo, unless otherwise agreed. This can be refused at any time, nevertheless eologix can use the data delivered by its provided systems anonymously for case studies.
- 5.4. Eologix has the right to share all information regarding the contract and acquired data with its affiliated companies. These companies are bound to the same confidentiality clauses as eologix itself.

## 6. Intellectual property

- 6.1. “Intellectual Property Rights” for the purposes of these Terms and Conditions mean unpatented inventions, patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, and any other intangible property rights (except rights in trademarks, trade names and service marks) including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired as well as renewals thereto as well as other forms of protection of a similar nature anywhere in the world..
- 6.2. The Customer acknowledges that, unless and to the extent stipulated to the contrary in these Terms and Conditions, eologix and its affiliated companies are the sole owners of and retain all Intellectual Property Rights associated with the eologix Products and Services (including any updates, enhancements and new features eologix may provide) and all pre-existing materials which are incorporated into the eologix Products, such as eologix specific processes, systems and methods. The Customer must not without eologix prior written consent copy, alter, modify or reproduce, reverse engineer or assemble or reverse compile or permit (or do anything that may assist or allow) another to reverse engineer or assemble or reverse compile, any of the eologix Products and Services in whole or in part.
- 6.3. The Customer owns all rights to and shall have access to use and export results generated (“Generated Data”). The Customer grants eologix and its affiliated companies a non-exclusive, worldwide, royalty-free, perpetual and irrevocable licence (including the right to sublicense) to download, export, access, use, store, compile and adapt the Generated Data to improve the eologix Products and Services.
- 6.4. Unless specifically agreed in writing between eologix and the Customer, all Intellectual Property Rights in any works created by eologix on behalf of the Customer vest in and remain the property of eologix.

## 7. Prices and terms of payment

- 7.1. The prices of eologix are stated plus statutory value added tax, if any, in the applicable amount. Any taxes, duties, fees or other costs have to be borne by the Customer.
- 7.2. The following payment terms apply:  
Upon receipt of invoice within 30 days net. Unjustified cash deductions will be invoiced. If the Customer does not object to the order confirmation, partial billing in accordance with the percentage of completion method is deemed to be accepted by Customer. Unless otherwise stated in the offer, the quoted prices apply.
- 7.3. eologix Services, including training and introduction of the Customer's employees, will be invoiced additionally at cost, unless explicitly included in the Offer.
- 7.4. In the event of payment default, even if only one instalment is not paid in full and timely by Customer, the full outstanding amount at the time of default shall become due and payable. In this case, eologix has the right to store the goods that are delivered subject to retention of title without rescinding the purchase contract until the outstanding claim is fully paid.
- 7.5. Access to, and use of, the eologix Products and Services or any part or feature of the eologix Products and Services is subject to the Customer paying certain fees, as set out by eologix in the relevant Offer (“Fees”). The Customer acknowledges that the continued availability of any part or feature of the eologix Software may be conditional upon continued payment of such Fees.

## 8. Limitation of liability

- 8.1.1. In all possible cases, eologix is only obliged to pay compensation in the case of intent or crass gross negligence. eologix is not liable for slight and gross negligence. eologix is only liable to the Customer for positive damages. eologix is not liable for indirect damages, loss of profit, loss of interest, failed savings, consequential and pecuniary damage, damage from claims by third parties, and for the loss of data and programs and their recovery.
- 8.1.2. If, in whatever case, a penalty has been agreed, such penalty is subject to the judge's right of mitigation. Damages exceeding the agreed penalty, if any, are excluded.
- 8.1.3. Any liability by eologix is excluded, if the damages result from any improper or inappropriate handling and / or improper or inappropriate use of the contractual products, non-compliance with operating and installation instructions, incorrect assembly by third parties, commissioning by third parties, unsuitable maintenance and / or servicing by the Customer or his agents.
- 8.1.4. It is stated that the Customer waives, except for the legal remedies mentioned in these Terms and Conditions, any other legal remedies (such as in particular, but not only, error *laesio enormis*, loss of the business basis).

## 9. Place of jurisdiction and applicable law

- 9.1. All disputes arising from this contract - including any questions regarding its existence – shall be exclusively decided by the competent court where eologix has its headquarters.
- 9.2. The contract is subject to the laws of the Republic of Austria, excluding its conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods.

## 10. Miscellaneous

- 10.1. Should provisions of these Terms and Conditions be or become wholly or partially ineffective or unenforceable, this does not affect the legal effectiveness of all other provisions. The contracting parties will replace the ineffective or unenforceable provision with an

- effective and feasible provision that comes as close as possible to the ineffective or unenforceable provision according to the content and purpose.
- 10.2. Changes amendments to this contract must always be made in writing. This also applies to changes to this written form requirement.
  - 10.3. Claims of whatever nature must not be offset against claims of eologix.
  - 10.4. With regard to the processing of the Customer's personal data reference is made to the [Privacy Policy](#).

## **B. Special Provisions for HaaS (Hardware as a Service) and SaaS (Software as a Service)**

### **1. General Provisions**

If the Offer for eologix Products and/ or Services is based on HaaS and SaaS the following additional points come in to place:

- 1.1. Access to, and use of, the eologix Services or any part or feature of the eologix Services is subject to the Customer paying certain fees, as set out by eologix in the relevant offer ("Fees"). The Customer acknowledges that the continued availability of any part or feature of the eologix Software may be conditional upon continued payment of such Fees.
- 1.2. If not stated otherwise on the Offer or order confirmation the contract for the eologix Services is valid for 12 months. To terminate the contract the customer needs to send a written cancellation notice to eologix 90 days prior the end of the 12-month period. Otherwise, the contract will be automatically prolonged for another 12-month period, whereupon the same termination rules as described above are valid. This automatic prolongation will be in place until the customer terminates the contract in accordance to the rules described above.
- 1.3. In case of a prolongation of the contract eologix is entitled to increase the price of the services based on the overall Service Producer Price Index provided by Eurostat (<https://ec.europa.eu/eurostat/>). The increase is based in the yearly change of the SPPI last published prior to the first month of the contract prolongation.
- 1.4. After the contract has ended, the customer is obliged to return the provided hardware to eologix within 14 days.
- 1.5. Subject to the Customer complying with these Terms, if eologix supplies the eologix Software, eologix grants the Customer a revocable, against payment, non-exclusive, non-transferrable and non-assignable right and licence to use the eologix Software and use the eologix Software strictly in accordance with these Terms.
- 1.6. The eologix Software licence may be terminated by eologix if the Customer is in breach of these Terms.

### **2. Location, Use of Hardware, Delivery and Inspection**

- 2.1. The Hardware shall at all times be located at the Customer's locations as agreed between eologix and the Customer, and shall be used by Customer in furtherance of Customer's business at the location(s).
- 2.2. Any use of the Hardware must be: (a) consistent with the use and function of the Hardware according to the eologix's design and instructions and consistent with eologix's standards; (b) consistent with the terms of this Terms and Conditions; and (c) in accordance with all applicable government laws, rules and regulations.
- 2.3. eologix shall ship and/or deliver the Hardware and be responsible for installation of the Hardware at the location(s) within twenty (20) business days upon signing of the contract. Customer shall provide a suitable installation and environment for the use of the Hardware, consistent with any applicable specifications. eologix or its agents may, after providing Customer with reasonable notice thereof, enter the location for the purpose of inspecting the Hardware and the manner in which it is being used

### **3. Title & Risk HaaS & SaaS**

- 3.1. The Customer must not interfere with or dispute eologix title or interest in and to the eologix Hardware or represent that anyone other than eologix owns the eologix Hardware.
- 3.2. Except to the extent expressly stated otherwise in these terms, the Customer has no right or claim to any right, title or interest in the eologix Hardware and cannot claim any lien or security interest over the eologix Hardware.
- 3.3. The Customer must not, and must not attempt to, sell, mortgage, encumber, charge or grant a security interest over or allow any third party to mortgage, encumber, charge or grant a security interest over any part of the eologix Hardware at any time.
- 3.4. Risk in the eologix Hardware passes to the Customer upon delivery. The Customer agrees to indemnify eologix against any loss damage to the eologix Hardware that occurs after delivery of the eologix Hardware to the Customer and prior to return of the eologix Hardware to eologix.

### **4. Customer obligations**

The Customer must:

- 4.1. not copy, reproduce, translate, adapt, vary, modify, reverse engineer or reverse compile the eologix Software (or permit another person to do so) without the express consent of eologix, except as expressly authorised by these Terms and Conditions;
- 4.2. supervise and control the use of the eologix Products and Services in accordance with these Terms and Conditions;
- 4.3. ensure its employees, sub-contractors and other agents who have authorised access to the eologix Products and Services are made aware of and comply with these Terms ("Authorised Users");
- 4.4. not provide or otherwise make available the eologix Products and Services in any form to any person other than the Authorised Users without the written consent of eologix; and
- 4.5. only use of the eologix Products and Services in compliance with all applicable laws and not use, or allow any other person to use, the eologix Software or eologix Hardware for any illegal purpose.

## 5. Representations with respect to the eologix Software and the HaaS & SaaS Services

- 5.1. The eologix Software (including associated user documentation) is free of third-party rights worldwide (in particular Intellectual Property Rights) and may be used free of third-party rights in accordance with the user documentation.
- 5.2. Eologix warrants pursuant to section 922 et seq. Austrian Civil Code (ABGB) to exclusion of section 924 ABGB that the HaaS and SaaS Services are provided in a quality that is in line with the general technical standard, to the extent applicable to these Services and that the Services are delivered as described in the services description for regular use and under regular conditions.
- 5.3. eologix warrants pursuant to section 922 et seq. Austrian Civil Code (ABGB) to exclusion of section 924 ABGB that eologix does not violate IP or copyrights of third parties in connection with the delivery of the Software or the eologix Services.
- 5.4. If the delivery of the eologix Services to be provided by eologix is defective, eologix will at the choice of the Customer and after receipt of a written complaint in due time rectify the defect. If Licensor fails to deliver the eologix Services free of defects for reasons that are attributable to eologix within a reasonable time set by the Customer, which shall not be less than 4 weeks from receipt of the written complaint, the Customer is entitled to price reduction. The right of price reduction is limited to the Fees paid for the defective part of the eologix Services.

## C. Special Provisions for the Sale of Hardware

### 1. Place of performance, transport and risk transfer

- 1.1. The place of performance is the company seat of eologix. The Customer approves of any appropriate shipping method chosen by eologix.
- 1.2. Unless otherwise agreed in writing, deliveries and thus the transfer of risk and costs are deemed to have taken place as soon as the contractual products are available at eologix location or warehouse (ex works (EXW), ICC Incoterms as applicable at the time of order) or upon notification of readiness for shipment.
- 1.3. If the shipment or acceptance is delayed or does not take place due to circumstances that are not attributable to eologix, the risk transfers to the Customer on the day he is informed about the shipment or acceptance readiness by eologix. eologix undertakes to take out transport insurance upon request of Customer at the Customer's expense.
- 1.4. Unless otherwise agreed, the risk of loss or corruption of data passes to the Customer as soon as downloaded or if sent via internet as soon as the data crosses eologix network interface.

### 2. Retention of title, rights of use

eologix retains ownership in the item(s) delivered under the contract concluded with the Customer until all payments including for additional services have been made in full. The Customer may neither sell, pledge nor assign the delivered contractual products until they have been fully paid. In the event of seizures, confiscation or other dispositions by third parties, the Customer must immediately inform eologix thereof.

### 3. Installation

- 3.1. The assembly of the delivered eologix Products is carried out either by eologix, its agents or by third parties acting on behalf of the Customer.
- 3.2. eologix will inform the Customer in detail in the form of assembly instructions, in case the delivered eologix Products are assembled by a third-party retained by Customer.
- 3.3. The assembly of the delivered contractual products by third parties must be carried out by a trained specialist.
- 3.4. The installation and assembly of the eologix Products by third parties are made at the Customer's risk and expense.

### 4. Acceptance and partial delivery

- 4.1. The Contract Partner is obliged to accept the deliveries made available by eologix, including partial deliveries and services.
- 4.2. If installation services are included, the service shall be deemed accepted at the earliest occurrence of the following events: If the Customer accepts the delivery (confirmation of acceptance), if the installed product is being operated by the Customer or end customer, but in no case longer than four weeks after installation by eologix or its agents.
- 4.3. Other services (e.g. training) are deemed to be accepted upon delivery.

### 5. Delay in delivery

- 5.1. Unless expressly agreed as binding, the delivery times and dates are non-binding and are always meant as expected time of provision and transfer to the Customer.
- 5.2. In case of delay in delivery Customer shall only entitled to rescind or withdraw from the contract, if the Customer provides eologix with a reasonable - at least four weeks - grace period.
- 5.3. Any withdrawal from the contract has to be made by registered letter. The right of withdrawal relates only to the delivery and / or service part that has not been delivered timely.

### 6. Test set-up

- 6.1. It can be agreed that eologix will make available the scope of its deliveries and services as so-called "test set-up" to the Customer. This means that deliveries and services remain the property of eologix, but are attached to the Customer's and / or end customer's

- wind turbines. Data is only made available to the Customer / end customer over a defined period. At the end of the defined period, the deliveries are removed and / or no more data is made available to the Customer.
- 6.2. It may be agreed with the Customer whether and when the contractual products will be purchased. A right of purchase of the Customer and or end customer is excluded.
  - 6.3. The Customer is strictly prohibited from opening the delivered components, in particular the sensors as well as the base stations, or disassemble the delivered goods into individual parts.
  - 6.4. Should eologix become aware of such activities, the Customer is obliged to pay a penalty of € 50,000 (fifty thousand Euros) per breach to eologix upon first request. In addition, eologix right to assert additional damages claims shall remain unaffected.

## 7. Representation

- 7.1. In accordance with § 922ff ABGB eologix represents that its systems are functional in accordance with the certificates valid at the time of order. Among other things, these certificates define a certain number of sensors, depending on the respective application (e.g. ice shutdown, automatic restart of the system after icing, etc.), which are necessary for the certificate-compliant operation of the system. eologix represents for this certificate-compliant operation of its systems for a period of 24 months after installation of the system.
- 7.2. The failure of individual sensors during the warranty period, which have not the effect on the operation of the system in accordance with the certificate, does not result in a warranty claim of Customer. The additional provision of sensors compared to the sensors required for operation according to the certificate serves to increase redundancy and is normally not required for fault-free operation of the system.
- 7.3. The Contract Partner must provide evidence of defects. Section § 924 ABGB (Austrian Civil Code) does not apply.
- 7.4. The Customer must report any defects immediately, in writing and in detail. The notice of defects (§ 378 UGB (Austrian Entrepreneurial Code)) must be made within a period of 14 days from delivery of the contractual products.
- 7.5. In the case of a warranty breach, eologix is entitled to determine the type of remedy (rectification, exchange, price reduction or change).
- 7.6. The replacement of sensors on the rotor blade is not carried out by eologix itself, but must be carried out by a trained, relevant specialist. If the Customer initiates the shutdown of the wind turbines specifically for the replacement of the sensors, eologix is not liable for any consequential damages, such as profit loss, etc.
- 7.7. If the Customer's notice of defects is unjustified, eologix is entitled to invoice all resulting additional expenses.

## D. Provisions on the use of non-personal data and safety measures

### 1. Availability and use of technical data by the Customer and eologix

- 1.1. The contractual products generate technical and non-personal data that are not subject to the provisions of the General Data Protection Regulation (GDPR). Ice detection and temperature data are transmitted directly to the Customer via the contractual products and also to eologix ("**Primary Data**"). The provision of this Primary Data is part of eologix scope of services. The contractual products collect further information about the wind turbine(s) operated by the Customer, which are sent directly to eologix on their server or IT system, and subsequently saved and processed by eologix ("Secondary Data"). The Primary Data and Secondary Data are recorded and processed by eologix on an anonymous basis, so that no assignment to a location of the Customer or the Customer himself is possible. For the duration of the contractual relationship, the Customer grants eologix the exclusive, irrevocable and free right to record, use and process both the Primary and Secondary data. In this context, the parties note that the Secondary Data without the technical processing and linkage with other data by eologix are of no economic value. The generated Primary and Secondary data are used by eologix for further product development. Upon written request, the Customer will be provided with the Secondary Data through a separate agreement.
- 1.2. eologix does not guarantee a minimum availability of the Primary Data.
- 1.3. In addition, the availability of data, the availability and the transmission rate and speed depend on the communication module chosen by the Customer and the respective network coverage on site. Also, in this context, eologix assumes no guarantees or liability for the availability, accessibility and transmission rates of Primary Data.

### 2. Safety, safety-related liability

- 2.1. It is the sole responsibility of the Customer to comply with all legal, official and safety-relevant regulations.
- 2.2. The contractual products supplied by eologix and the data generated by these products never replace legally required controls. This also applies to the restarting of a wind turbine after the contract products supplied by eologix indicate that the rotor blades are no longer icing up.
- 2.3. All and any liability on the part of eologix for damages of any kind that arises due to incomplete defrosting of a wind turbine, which is put back into operation by the operator or its agent, is excluded.