TURCK

General Terms and Conditions
Turck Cloud Portal Software

General Terms and Conditions for Use of the
Turck Cloud Portal Software

of Hans Turck GmbH & Co. KG (hereinafter referred to as: („Turck")

Version: March 2019

These general terms and conditions of use apply only to companies, legal persons under public law or special funds under public law as defined in Section 310 Para. 1 German Civil Code (BGB) (hereinafter referred to as: „customer").

1. Subject Matter of the Agreement

The following terms and conditions of use apply to the use of software provided via the Turck Cloud („cloud software") and the storage space („Turck Cloud") made available to customers within the scope of the services offered.

„Cloud software" is licensed software that does not need to be installed on the licensee's servers and instead runs on Turck systems or those operated by third parties on behalf of Turck, which the user accesses via remote data transfer (Internet, VPN, etc.).

The product descriptions for the cloud software as well as for the services offered (scope, nature, purpose and conditions of use) are derived from the respective product description at http://pdb2.turck.de/en/EN/groups/00000044000295b500040023.

Any additional services, such as the development of customer-specific solutions or modifications, shall require a separate agreement.

The licensor is entitled to update and make changes to the licensed software at any time (e.g. infrastructure, security, technical configurations, application functions, etc.) and to change the product descriptions accordingly, provided that said changes do not lead to a substantial restriction in the features and functionality or performance, security or availability of the licensed software that the licensee acquired prior to the changes coming into effect.

Turck will keep customers informed about updates by electronic means and will make these available accordingly.

2. Conclusion of Contracts/Information on the Conclusion of this Agreement

The offering is aimed exclusively at commercial customers who have registered with a VAT No. As part of the registration process, a check is made to determine whether the customer is a commercial customer.

If the result is positive, the customer is granted access and receives an email regarding the activation to the email address they specified.

Only registered users can place orders for projects and the activation of gateways.
The order process is available in German and in English. The German version of the terms and conditions is decisive for conclusion of the agreement. As such, the English version is for information purposes only.

If you want to create a project, enter the project details in the registration area (you can log in once this has been activated by Turck). You will then receive an order overview, which also contains a cost overview, as well as a link to the applicable general terms and conditions, privacy policy and our code of conduct. Use the „Edit" button to change or delete information. If you would like to order the project, confirm by clicking the „Buy now and activate" button.

You will then receive an email with confirmation of your order. You can activate the project as soon as confirmation that the order was successful is displayed.

3. Rights of Use for Cloud Products

When the customer orders cloud products, Turck grants the customer a non-transferable, non-exclusive, global right, which is limited to the term of the respective license agreement, to use the respective cloud products online as defined in the product description via telecommunications (via the Internet) using a browser. The customer is not granted any further rights, especially to the software or to any infrastructure services provided in the respective data center. Any further use requires prior written consent from Turck.

The customer is permitted to access the licensed Turck Cloud Portal software from any number of workstations at the same time. The customer undertakes to treat its login data and passwords as confidential, and to inform the licensor immediately in writing or via email if any third party has gained knowledge of the customer's login data and/or passwords.

To use the cloud software for a specific device, the customer has to register the relevant device in the cloud. Once it has been registered, the device is able to use the cloud software.

To be able to use the cloud software in line with the product description, the licensee must fulfill certain technical system requirements. The browser required to use the cloud products is described in the latest release notes for each cloud product. Turck is not responsible for the consequences of any failure by the customer to comply with these technical system requirements.

Turck is entitled, at its sole discretion, to change the release notes while ensuring that at least two (2) of the browsers available free of charge on the market are always supported.

Turck grants the customer the right, for the term of the agreement, to permit third parties to use the services with respect to the cloud software as defined in the product description as a „user" (hereinafter referred to as „authorized third-party use"). The user's function and access rights are set out in the product description. The customer is not authorized to grant other types of use to third parties than authorized third-party use. However, a party that uses the services free of charge on the customer's behalf, such as an employee of the customer, a freelance employee working on a contractual basis, etc. is not classed a third party. The right to sub-license the software to third parties cannot be transferred to third parties without prior consent from Turck.

The customer is obliged to use the cloud products (i) only within the scope of the applicable law and any restrictions in the product description and (ii) not in a way that endangers the security or performance of the cloud products.

4. Right to Audit

Turck is entitled to implement legally permissible technical measures to monitor and/or ensure the contractually agreed use of the licensed software by the customer, for instance, license keys, dongles, license servers, or logs of the customer's technical usage data. The customer undertakes not to, nor to attempt to, disable, modify and/or circumvent these measures.

Turck is authorized to audit the customer for the sole purpose of reviewing the customer's use of the licensed software (no more than once every twelve [12] months), provided that Turck has no other reasonable but equally effective measures that make it possible to review the customer's use of the licensed software. Turck shall bear the costs of any such audit unless the audit indicates that the customer has violated Turck's intellectual property rights in a more than insignificant way; in the latter case, the customer shall bear the costs of the audit.

The customer is obliged to cooperate with Turck in this respect; in particular, the customer shall (a) create a license report at Turck's request, (b) enable visits and/or on-site audits, during normal business hours and with sufficient lead time, carried out by the auditor to monitor, evaluate, and review use of the licensed software. Both parties must comply with the applicable data protection laws when audits are performed. The customer must ensure that the auditor and/or Turck is not provided with any personal data in the course of the audit. If and to the extent that the audit cannot be performed without providing the auditor with personal data, the customer must take the necessary steps to ensure that only the personal data required to complete the audit is made available.

5. Support (Point of Contact)

Turck shall set up a point of contact for the customer (Support). This department handles the customer's queries in connection with the technical prerequisites and conditions of use for the provided software, as well as specific functional aspects.

Before queries can be accepted and processed, the customer must first inform Turck of the names of professionally and technically qualified personnel who are tasked with processing user queries about the provided software internally for the customer. The customer is obliged to direct queries to Turck Support only through these personnel who have been nominated to Turck, and to do so using the forms provided by Turck. Support is available to answer queries via email and telephone during Turck's normal business hours.

Support will process queries submitted in the proper manner in the usual course of business and to the best of its abilities. In its responses, Support can refer to documentation that is accessible to the customer as well as other training resources for the provided software. Where Support are unable to provide an answer or cannot do so in a timely manner, Turck will – where expressly agreed – forward the request for processing, in particular requests concerning software that has not been developed by Turck.

6. Data Protection

Where Turck is able to access the customer's personal data or data from the customer's area, Turck will only act as a processor and will only process and use the data for the purposes of implementing the agreement. Turck will follow the customer's instructions on how to handle this data. The customer shall bear any adverse consequences of such instructions for the performance of the agreement. The customer will agree with Turck the details for handling the customer's data in line with data protection legislation.

The customer remains the controller, both generally as per the contractual relationship and pursuant to data protection legislation. If the customer processes personal data in connection with the agreement (including the collection and use of data), then they confirm that they are authorized to do so under the applicable provisions, particularly those of data protection law, and in the event of an infringement shall release Turck from all claims by third parties.

The following applies to the relationship between Turck and the customer: With regard to the data subject, the customer is responsible for processing personal data (including collection and use) except to the extent that Turck is obliged to assert any claims by the data subject due to a breach of obligations for which it is at fault. The customer is responsible for checking, processing and responding to any and all queries, requests and claims from the data subject. This also applies in the event of claims asserted by the data subject against Turck. Turck will support the customer within the scope of its obligations.

Unless otherwise agreed, Turck will ensure that the customer's data is stored solely within the territory of the Federal Republic of Germany, a member state of the European Union or another state that is party to the Agreement on the European Economic Area.

7. Data Release

At the customer's request, Turck will immediately release a copy of the data stored on the disk space allocated to the customer at any time during Turck's normal business hours. The data will be released taking into account the wishes of the customer, either on a storage medium or via remote data transfer in a format to be agreed between Turck and the customer. If the customer requests a copy of the data more than once within a period of six months, they shall be charged a fee calculated based on the effort involved and hourly rates.

Turck is not granted a right of retention or the statutory lessor's lien (Section 562 BGB) with regard to the customer's data.

Turck will delete the storage space, and all of the customer data stored there, from the portal server 14 days following termination of the agreement unless the customer requests, in writing, a copy of the existing customer data from Turck within this timeframe as set out in paragraph 1. Failure to submit such a request shall be deemed to be consent to the data being erased. At least one week prior to the end of the agreement, Turck shall remind the customer about the erasure of data and also the importance of the customer taking action.

8. Customer Data

Between Turck and the customer, the customer is the sole owner of all property rights, ownership rights and entitlements to the customer data. The customer grants Turck and its vicarious agents a non-exclusive right to use the customer data for the provision of cloud products. In addition, Turck is authorized to analyze copies of customer data in anonymized form (i.e. without reference to the customer) and this anonymized data together with anonymized data from other customers, e.g. for statistical purposes and for the improvement and development of cloud products. In terms of personal data, the provisions outlined in the section on data protection and the agreement concerning the processing of order data shall remain unaffected.

The customer is not permitted to upload customer data to the cloud products that:
- Violates the rights of third parties
- Violates any applicable law
- Can lead to Turck violating applicable laws
- Jeopardizes the security of the cloud products
- Can significantly impair the performance of the cloud products

At the request of Turck, the customer shall delete all customer data that violates the previous clause from the cloud products within a reasonable period of time as specified by Turck. Depending on the risk to Turck or to the cloud products arising from the violation, a demand for direct deletion can also represent appropriate notice in certain cases. Turck is authorized to delete or otherwise block customer data in the cloud products that the customer does not delete from the cloud products within the aforementioned time period. There is no need for a deadline if Turck would suffer more than just non-material damages if the relevant customer data is not immediately deleted or blocked. In these cases, Turck is permitted to immediately delete or block the relevant customer data.

If the customer stores customer data in cloud products that violates the aforementioned clause, then the customer shall release Turck from any and all resulting claims against Turck and the customer shall bear the resulting costs, unless the customer is not at fault. This also includes adequate legal costs for the defense of such claims. Turck will inform the customer about such claims by third parties.

The customer (i) is solely responsible for the accuracy, quality, integrity and legality of the customer data and the methods through which the customer data is acquired, (ii) will make commercially reasonable efforts to prevent any unauthorized access to or unauthorized use of cloud products, and will notify Turck immediately of any such unauthorized access or any unauthorized use, and (iii) will use the services solely in accordance with the product description. Turck is not obliged to check the legality of the customer data.
The customer explicitly acknowledges that Turck does not monitor or check the content of communications or the data from the customer or its users that is uploaded to the cloud products or transmitted via the cloud products, and that Turck shall not be liable for the content of communications or transfers.

9. Data Backup

Turck will back up all data on multiple redundant servers. The customer also has the option to configure its own retention periods for individual data points.

The duties of the customer to cooperate regarding data backup shall remain unaffected.

10. Cooperation Services Provided by the Customer

The customer shall protect the access authorizations and identification and authentication information assigned to it and its users against access by third parties and shall not pass these details on to unauthorized parties.
The customer is obliged to release Turck from all claims by third parties on the basis of rights infringements resulting from the illegal use of the services rendered, by the customer or with its approval. If the customer detects or would be expected to detect that there is a risk of such an infringement, they are obliged to notify Turck immediately.

The customer must take advantage of the options provided by Turck to secure its data in its original area of responsibility.

The customer undertakes to establish a data connection, in accordance with the provisions of these terms and conditions, between the workstations and Turck Cloud devices that will use the services and the data transfer point defined by Turck. Turck is entitled to redefine the data transfer point at any time, where this is required to ensure seamless delivery of the services to the customer. In this case, the customer shall establish a connection with the newly defined transfer point.

The contractual use of the services provided from Turck is conditional upon the customer using hardware and software, including desktop computers, routers, data communication systems, etc., that meets the minimum technical requirements set out in the product description for the use of the currently available software version, and upon the users authorized by the customer to use the Turck Cloud Portal software being familiar with how to work with the software, and upon the customer installing the standard web browser(s) stated in the product description on each desktop computer via which they want to legitimately access the Turck Cloud Portal software. Configuration of the customer's IT system is the responsibility of the customer.

The customer is responsible for the proper configuration and use of the service offerings and must also take appropriate steps to safeguard, to protect and to back up its accounts and content, which can include the use of encryption technology to protect content against unauthorized access, as well as regular archiving.

In the event of a complete failure of the services to be provided by Turck or of a significant disruption to said services that impairs operations, the customer shall reach out to its regional contact, see www.turck.com.

11. Payment

Where Turck does not provide the licensed software to the customer free of charge (e.g. for testing purposes), the customer shall pay the appropriate price for the Turck Cloud Portal software in the form of license fees or a one-time setup fee as stated in the quote provided. If there is no individual price agreement in place, the prices shall apply as stated on the licensor's price list at the time of entry into force of the license agreement or its successor.

All prices are listed exclusive of statutory value-added tax, customs duties, and other taxes or fees. These are to be paid by the licensee.

Where the licensor provides the licensed software in return for payment, the licensor calculates the purchase price on delivery or on provision of access to the licensed software, unless otherwise agreed.
Unless otherwise agreed, payment must be submitted within fourteen (14) days net from the invoice date without deductions.

Turck is authorized to increase the prices agreed in the ongoing agreement with effect for the future once per contract year starting from the second year of the contract with a notice period of three (3) months, as a means to adapt the price structure to take account of changes in the costs of procuring and providing the licensed software and support services, including price increases by third-parties or service providers, higher wage costs and increases in the taxes paid for procurement; however, said increases shall not be more than ten percent (10 %) of the price valid at this point in time.
If the customer is in default, Turck is permitted to charge interest on late payments (i) of the maximum amount permitted under applicable law or (ii) in the amount of nine percent (9 %) p.a., whichever amount is less. All other rights to which Turck is entitled, particularly claims for damages, shall remain unaffected.

12. Use Contrary to the Terms of the Agreement, Damages

For each case where a contractual service is used without authorization within the customer's area of responsibility, the customer shall pay damages in the amount of the payment that would be due for the contractual use of this service for the minimum contract term for said service. The customer reserves to right to provide proof that the customer is not responsible for the unauthorized use or that no or substantially less damage has been incurred. Turck reserves the right to assert further damages.

13. Material Defects

The functionality of the cloud products and the availability of the services provided is defined in the product description and/or in the attached Service Level Agreement (SLA). Technical data, specifications and performance figures given in other public statements, in particular in Turck advertising materials, shall not be considered to be quality specifications. In addition, the software must be suitable for the use as set out in this agreement and must otherwise demonstrate a level of quality that is typical for software of this type.

If the services provided by Turck to enable the customer to use the cloud products are defective because they are not suitable for use as set out in this agreement by more than an insubstantial degree, Turck shall be held liable for material defects as the contract partner in accordance with applicable statutory provisions.

Where there is only an insignificant reduction in the suitability of the services for the use as set out in this agreement, the customer is not entitled to assert claims due to defects.

Turck's strict liability regardless of fault due to defects is excluded where said defects were already present at the time the contract was concluded.

The customer must inform Turck immediately of any defects. The limitation period for claims based on material defects is one year from commencement of the statutory limitation period.

14. Legal Defects

Turck is liable for infringements of third-party rights by its service only to the extent that the service is used in accordance with the agreement and in particular in the contractually agreed manner.

Turck is liable for infringements of third-party rights only within the European Union and the European Economic Area, as well as at the location of the contractually agreed use of the service.

If a third party asserts a claim to the customer that a service rendered by Turck infringes its rights, the customer shall notify Turck immediately. Turck and, if applicable, its upstream suppliers are entitled, but not obliged, to defend against the asserted claims to the extent permitted and at their own expense.

The customer is not authorized to recognize the claims of a third party before giving Turck a reasonable opportunity to avert the rights of third parties in a different way.

If a service rendered by Turck infringes the rights of any third party, Turck will, at its own discretion and at its own expense
- Grant the customer the right to use the service or
- Enable use of the service without infringing any rights or
- Withdraw the service and reimburse any payment for said service made by the customer (less a reasonable charge for use) if Turck is unable to deliver any other remedy at reasonable expense. The customer's interests will be adequately taken into account.

The limitation period for claims based on legal defects is one year from commencement of the statutory limitation period.

15. Liability, Damages

Turck is always liable to the customer
- For damage caused to the customer and its legal representatives or vicarious agents caused intentionally or through gross negligence,
- Pursuant to the German Product Liability Act and
- For damages arising from fatalities, bodily injuries or impaired health for which Turck, its legal representatives or vicarious agents are at fault.

Turck is not liable in the event of minor negligence, except in so far as it has violated an essential contractual obligation, the fulfillment of which enables the proper implementation of the agreement or the violation of which jeopardizes the attainment of the contract purpose and where the customer regularly relies on the obligation being fulfilled.

For damage to property and pecuniary loss, this liability is limited to contractually typical and foreseeable damage. This also applies to lost profits and lost savings. The liability for other remote consequential damages is excluded.

The liability for a single case of damage is limited to the value of the contract, for ongoing payments to the amount payable per contract year, but never less than €50,000.00.

The limitation period is one year from commencement of the statutory limitation period. At the conclusion of the agreement, the contracting partners can agree in writing to further liability, usually in return for separate remuneration. The priority is an individually agreed liability amount. The liability referred to in paragraph 1 remains unaffected by this paragraph.

Additionally and most importantly, Turck's liability for damages and reimbursement of expenses due to minor negligence – irrespective of the legal basis – is limited to two times the payment agreed at the time the contract is concluded. The liability referred to in paragraph 1 remains unaffected by this paragraph.

Turck is only liable for damages arising from a warranty if this has been expressly incorporated in the warranty. In the event of minor negligence, this liability is subject to the restrictions as described previously.

Where it is necessary to restore data, Turck is liable only for the work required for recovery where the customer has implemented the proper data backups and failsafe measures. In the case of minor negligence on the part of the Turck, this liability only applies if the customer had implemented reasonable data backup and failsafe measures before the fault occurred.

Claims for compensation and other liability claims by the customer against Turck are subject to the aforementioned provisions.

16. Term and Termination of the Agreement

The provision of the contractually agreed services shall start at the time of activation and run initially for a minimum period of 12 months.

The agreement can be terminated with a notice period of one month, no earlier than at the end of the minimum term. If this is not done, the agreement shall be extended for a further year, provided that it has not been terminated with a notice period of one month to the end of the respective extension period.

This shall not affect either contractual party's right to terminate for good cause.

The customer is responsible for backing up its own data in good time before the agreement ends (by downloading the data, for example). On request, Turck can support the customer in this. Turck can charge an appropriate fee for this work. The customer will generally no longer have access to its data once the agreement ends, not least for reasons of data protection.

17. Final Provisions

The assignment of claims is only permitted with the prior written consent of the other party to the agreement. Consent may not be unreasonably withheld. The regulation stated in Section 354 a of the German Commercial Law (HGB) remains unaffected.

A right of retention can only be asserted for counterclaims arising from the contractual relationship. The parties to the agreement can only offset claims that are legally determined or undisputed.

All amendments or supplements to, and terminations of, contractual agreements must be made in writing, as must any agreement to forgo the written form requirement, where the written form is not otherwise mandated in this agreement.

Should individual provisions of the agreement between the parties be or become wholly or partially invalid, the effectiveness of the remaining provisions shall not be affected. In such a case, the parties undertake to replace the invalid provision with a valid provision that comes as close as possible to the economic purpose of the invalid provision. The same applies to any gaps in the agreements.

The law of the Federal Republic of Germany applies, with the exception of the UN Convention on Contracts for the International Sale of Goods.

The sole court of jurisdiction for all disputes arising from or related to this agreement is the location where Turck has its headquarters.

Attachment

Service Level Agreement of Hans Turck GmbH & Co. KG

– hereinafter referred to as „Turck" –

Version: March 2019

These general terms and conditions for the Service Level Agreement apply only to companies, legal persons under public law or special funds under public law as defined in Section 310, Para. 1 of the German Civil Code (BGB) (hereinafter referred to as „customer").

Fault Management

1. Turck will accept fault notifications from the customer, assign them to the agreed fault categories (item 3) and, on the basis of this assignment, initiate the agreed measures to analyze and eliminate faults.

2. Turck will be available to receive proper fault notifications from the customer during its normal business hours and will assign a ticket number for each notification. At the request of the customer, Turck will confirm receipt of a fault notification by sharing the assigned ticket number.

3. Unless otherwise agreed, Turck will assign received fault notifications to one of the following categories following an initial review:
   - **Serious fault**
   - The fault is caused by an error in the contractual services that renders use of the subject matter of the contract and, in particular, of the software impossible, or such that it can be used only with serious restrictions. The customer cannot reasonably circumvent this problem and so is unable to complete urgent tasks.
   - **Other fault**
   - The fault is caused by an error in the contractual services that restricts the use of the subject matter of the agreement and, in particular, of the software, by the customer more than only marginally, without the existence of a serious fault.
   - **Other reports**
   - Fault notifications that do not fall within categories (a) and (b) shall be assigned as other reports. Turck will only deal with other reports in accordance with the relevant agreements.

4. Following reports of serious faults and other faults, Turck will immediately take appropriate action based on the circumstances outlined by the customer, in order to first identify the cause of the problem.

5. If, following this initial analysis, the reported fault is revealed not to be caused by an error in the contractual services, in particular the provided software, then Turck shall immediately inform the customer.

6. Otherwise, Turck will take appropriate steps to further analyze and resolve the reported fault or – in the case of third-party software – will transmit the fault notification and its analysis findings to the distributor or manufacturer of the third-party software along with a request to remedy the situation.

7. Turck will immediately provide the customer with any available means of circumventing or resolving an error in the contractual services, in particular the provided software, such as operating instructions or corrections to the software provided. The customer shall immediately adopt such measures to circumvent or resolve faults, and will without delay send a second report to Turck if there are any faults remaining once said measures have been implemented