

General terms and conditions of eologix sensor technology gmbh

1. Validity of the general terms and conditions

- 1.1. These general terms and conditions apply exclusively for the entire business transactions between eologix sensor technology gmbh, Kratkystraße 2, 8020 Graz, Company Register No. 420349k (hereinafter referred to as eologix).
- 1.2. The third party, hereinafter referred to as “contractual partner” or “customer”, is informed explicitly that these general terms and conditions serve as the basis for any business transaction between eologix and the contractual partner.
- 1.3. These general terms and conditions (in future called GTC) are binding for the entire present and future business transactions with **eologix**, even without any explicit reference. On conclusion of the agreement the respective prevailing GTC can be seen on our company website www.eologix.com/de/gtc-imprint/.
- 1.4. Deviating or supplementary regulations from these general term and conditions – in particular general terms and conditions for purchase by the contractual partner – are an integral part of the agreement, only if this is expressly confirmed by eologix in writing. Terms and conditions of the customer will not become an integral part of the contact, even if it is not explicitly contradicted by eologix.

2. Offer and conclusion of the agreement

- 2.1. Offers from **eologix** are non-binding, unless explicitly described as binding. An order of the contractual partner is considered by **eologix** binding only when **eologix** has confirmed the acceptance of this order in writing.
- 2.2. Acceptances, assurances and guarantees by **eologix** as well as agreements deviating from these GTC will be binding only after the order is confirmed in writing.

3. Technical suitability of the contractual products

- 3.1. The customer is obliged exclusively to verify the suitability of the contractual object for the intended purpose of utilization.
- 3.2. Unless agreed otherwise **eologix** does not accept any liability for the suitability of the contractual products for the purpose of utilization planned by the customer.

4. Cost estimates

- 4.1. A cost estimate will be prepared by **eologix** to the best of their knowledge, however no guarantee is accepted for the correctness of these preliminary estimates.
- 4.2. If cost increases to an extent of more than 10% after receipt of the order confirmation, then **eologix** will inform the contractual partner immediately. If there are increases in costs of less than 10%, a separate understanding is not necessary and these additional costs can be added to the invoice.

5. Non-disclosure

- 5.1. The partners to the agreement undertake herewith irrevocably to maintain silence about all trade and business secrets which have been made accessible to them, provided to them by **eologix**, or in connection or on the basis of a business relationship or on contact with **eologix** made known to them and not to make these accessible without the approval of **eologix** to third parties in any manner without the approval of **eologix**.
- 5.2. Furthermore the partners to the contract undertake to use the information only on a "need to know basis" and only within the framework of a concluded agreement. This non-disclosure agreement is valid for three years after the termination of the business relationship with **eologix** or independent of a business relationship for three years after the offer was submitted by **eologix**.

6. Intellectual property

- 6.1. All contractual objects and related execution documentation, plans, sketches, cost estimates, other documentation as well as software, which were provided by **eologix**, remain the intellectual property of **eologix**.
- 6.2. The use, in particular the forwarding, reproduction, publication and making available including even partial copying, as also the imitation, processing or utilization requires the explicit written approval of **eologix**.

7. Prices and payment terms

- 7.1. The prices of **eologix** will be charged in EURO as indicated plus the statutory VAT at its prevailing rate. Any levies, fees or other costs are to be borne by the partners to the agreement.
- 7.2. The following payment terms apply:
20 % (twenty percent) of the purchase price 14 days net after receipt of the order confirmation, 80 % (eighty percent) of the purchase price 14 days net after successful provision of the objects of the agreement.
- 7.3. The listed prices apply "ex works" in accordance with INCOTERMS 2010.
- 7.4. Services, including the training and familiarization of the partners to the agreement, will be calculated separately according to the expenses.
- 7.5. Part-invoices are permitted in the case of part-deliveries.
- 7.6. In the case of delayed payment, loss of time occurs, even if only a part payment is delayed or not paid in full. **eologix** has the right in case of loss of time to take possession of the goods delivered under retention of title without withdrawing from the contract, till the entire outstanding demand is completely covered.

8. Place of performance, transport and assumption of risk

- 8.1. The place of performance is the registered office of the company **eologix sensor technology gmbh**.
- 8.1.1. The customer approves any appropriate form of shipment.
In the case of data the risk of loss and/or modification of the data during download and through dispatch via Internet shall pass on to the customer when it has crossed the **eologix** network interface.

9. Assembly

- 9.1 The assembly of the delivered contractual objects will not be carried out by **eologix**.
- 9.2 eologix** will inform the customer in detail how the delivered contractual objects are to be assembled and operated.
- 9.3 The assembly of the delivered contractual objects has to be undertaken by relevant trained staff.
- 9.4 The assembly of the contractual objects is carried out at the risk and costs of the customer.

10. Availability of data

- 10.1 The data generated through the contractual objects will be made available to the customer through its own data interface.
- 10.2 eologix** does not guarantee any minimum availability of the data.
- 10.3 Over and beyond that the availability of the data depends on the ability to retrieve data as well as the transmission rate and speed of the communication module selected by the customer and the respective network coverage. **eologix** does not assume any guarantees and/or liabilities in this connection for the availability, ability to retrieve and transmission rate of the data.

11. Security, safety-related liability

- 11.1 It is exclusively up to the customer to comply with all statutory, official and safety-related regulations.
- 11.2 The contractual objects delivered by **eologix** and/or the data generated through them can never replace the statutorily prescribed controls. This applies without exception for the restarting of a wind energy plant, after the contractual objects delivered by **eologix** do not suggest any icing of the rotor blades.
- 11.3 Any liability of **eologix** for damages of any kind, which arose from an incomplete de-icing of a wind energy plant, which was put into operation again by an operator or a vicarious agent, is ruled out.

12. Retention of title, rights of usage

The goods remain the property of **eologix** till they are paid in full.

13. Acceptance and partial delivery

- 13.1 The partner to the agreement undertakes to accept even partial deliveries and services for the deliveries made available by **eologix**.
- 13.2 As far as installation services have been agreed on, the service is considered accepted at the earliest at the following points of time: when the acceptance is made by the customer (acceptance confirmation); when the installed delivery is used operatively by the customer or the final customer; at the latest however four weeks after the successful installation by **eologix** or its vicarious agent.
- 13.3 Other services (e.g. training) are considered accepted with actual provision of the services.
- 13.4 If the contractual partner should ascertain significant defects after acceptance, then he is entitled to have these rectified by **eologix** within the framework of the warranty.

14. Delay in delivery

- 14.1 The delivery time-limits and deadlines, unless stated as expressly binding, are non-binding and are understood to be as provisional point of time of provision and transfer to the customer.
- 14.2 A withdrawal by the customer from the agreement on account of delay in delivery is possible only after setting an appropriate – at least four week – grace period.
- 14.3 The withdrawal is to be as asserted by means of a letter by registered mail. The right of withdrawal refers only to the part of the delivery and/or service, which is behind schedule.

15. Trials

- 15.1 It can be agreed upon that **eologix** makes the delivery and performance scopes as so-called “trials” available to the customer. This means that the delivery and services remain in the possession of eologix, but these could however be mounted and/or provided at the wind energy plants of the customer and/or final customers. Data will be available to the customers/final customers only for a defined period. The deliveries provided will be removed at the end of the defined period and/or no more data will be made available to the customer.
- 15.2 If necessary it will be agreed with the customer, whether and when a purchase of the delivery and performance scope will take place. The right of retention of the customer and/or final customer is ruled out.
- 15.3 It is strictly forbidden for the customer to open the delivered components, in particular the delivered sensors, as also the base station and/or to dismantle it into individual pieces.
- 15.4 If **eologix** should obtain knowledge of corresponding activities of the customer, the customer undertakes to pay to **eologix** at the first request a penalty not subject to a judicial right of reduction of € 50,000.00 (Euro fifty thousand) for each case of violation. Over and above that **eologix** retains the right to assert claims for compensation against the customer.

16. Warranty

- 16.1. The notice period for the warranty is 24 (twenty-four) months from acceptance.
- 16.2. The partner to the agreement has to give proof of the defects. § 924 ABGB [*The Austrian Civil Code*] is not applicable here.
- 16.3. The partner to the agreement has to report defects that become evident in writing immediately and specified.
- 16.4. **eologix** is in case of the warranty entitled to determine by itself the nature of the warranty (repair, exchange, reduction in price or change).
- 16.5. Rectification of defects (e.g. exchange of individual sensors) may be carried out exclusively during routine control and/or routine switch-off of the wind energy plants by the corresponding staff. The exchange of sensors in the rotor blades will not be carried out by **eologix** itself, but has to be carried out by relevant trained staff. Should the customer arrange for a switch-off of the wind energy plants on his own for the exchange of the sensors, then eologix is in no way liable for consequential damages or loss of profit.
- 16.6. If notice of defects by the customer are unjustified, then eologix is entitled to bill the additional costs arising through this.

17. Compensation

- 17.1. **eologix** is obliged to pay compensation in all cases that come under consideration only in case of intent or extremely gross negligence. In the case of slight and gross negligence eologix is liable exclusively for those damages, which are not excluded by legislation. **eologix** is not liable for indirect damages, loss of profit, loss of interest, lost savings, consequential and pecuniary losses, damages from claims of third parties as well as for the loss of data and programmes and their restoration.
- 17.2. In so far a penalty has been agreed on, in whatsoever case, this is subject to judicial right of reduction. The assertion of compensation beyond the penalty is ruled out.
- 17.3. Any liability through eologix is ruled out, if damages are caused through improper handling and/or improper use of the contractual objects, non-pursuance of the operation and installation regulations, erroneous assembly, commissioning, maintenance and/or repair by the customer or its vicarious agents.

18. Place of jurisdiction and choice of law

- 18.1. It is agreed that the exclusive jurisdiction of the local and competent Court at the registered office of **eologix** is competent for all disputes arising from the agreement – including about its existence or non-existence.
- 18.2. The agreement is subject exclusively to the law of the Republic of Austria with the exclusion of the UN Sales Convention.

19. Further clauses

- 19.1. Should clauses of these terms and conditions be or become wholly or partly invalid or unenforceable, this does not affect the validity of all other business clauses. The parties to the agreement will replace the invalid or unenforceable clause by a valid and enforceable clause, which according to its content and purpose comes closes to the invalid or unenforceable clause.
- 19.2. Amendments or additions to an agreement or a contract always require the written form. This applies also to the amendment of the requirement of the written form.
- 19.3. An offset of claims of **eologix** with counterclaims of any kind whatsoever is ruled out.