

Terms of Use PROFICLOUD Service

The following terms and conditions shall apply to the use of the PROFICLOUD Services of PHOENIX CONTACT ELECTRONICS GmbH, Dringenuer Straße 30 in 31812 Bad Pyrmont, Germany, hereinafter referred to as "Phoenix Contact Electronics", by the contractual partner, hereinafter referred to as "Customer". The agreement on the use of the PROFICLOUD Services, concluded between the parties on the basis of these terms of use, shall hereinafter be referred to as "PROFICLOUD Agreement".

§ 1 Definition and Service Description

- (1) Altogether, PROFICLOUD is a multi-client capable system which comprises the following components and services:
 1. A cloud coupler that connects the local Profinet network via two Ethernet interfaces with PROFICLOUD. While one interface enables the connection to the local Profinet system, the coupling to the Internet takes place via the second interface.
 2. PROFICLOUD devices which are also connected to the Internet and automatically linked with PROFICLOUD.
 3. A web-based portal application that allows
 - a. to register and administer clients and their authorized employees or representatives as users,
 - b. to register PROFICLOUD devices as well as to configure their connection within the PROFICLOUD.

Subject matter of these terms of use is the use of the web-based portal-application (hereinafter also the "PROFICLOUD Services") by Customer.

- (2) The PROFICLOUD Services enable Customer to use the functions of PROFICLOUD for the devices of Customer under the conditions specified in this PROFICLOUD Agreement. The quality of the PROFICLOUD Services is conclusively stated in the user manual available under <http://www.phoenixcontact.com> by using Article No. 2402990 and these terms of use. Phoenix Contact Electronics shall not be held responsible if the PROFICLOUD Services do not meet the expectations of Customer.
- (3) As part of the PROFICLOUD Services, Phoenix Contact Electronics shall enable Customer to access the web-based portal application in the generally available version provided by Phoenix Contact Electronics under <http://www.proficloud.net>.
- (4) At its discretion, Phoenix Contact Electronics shall be entitled to change or update PROFICLOUD, whereby such modification may not lead to a significant negative deviation from the service description of the PROFICLOUD Services specified in this PROFICLOUD Agreement.
- (5) Phoenix Contact Electronics is obliged to keep the PROFICLOUD Services ready and make them available for Customer for use via the Internet. The PROFICLOUD Services shall be accessible for Customer via the Internet in accordance with these terms of use. The PROFICLOUD Services shall be available to 98% in a monthly average (30 days). Demarcation point with which the availability is measured shall be the WAN-oriented base point of the data center used for the provision of the PROFICLOUD Services. Maintenance time pursuant to § 5 (2) is to be deducted from the "target availability" when calculating the availability. Phoenix Contact Electronics is obliged to monitor the PROFICLOUD Services and the availability of the servers needed for the respective PROFICLOUD use.

- (6) With the PROFICLOUD Services, it is only possible to connect devices with PROFICLOUD; in this respect, the possibility to connect devices among each other is not a feature of performance of the PROFICLOUD Services.
- (7) A cross-customer visibility or accessibility of devices of one customer by other users regarding devices of another customer is also not a performance feature of the PROFICLOUD Services.
- (8) It should be noted that PROFICLOUD is a multi-client system and Customer cannot claim the provision of a dedicated physical PROFICLOUD system for his exclusive personal use.
- (9) This PROFICLOUD Agreement does not include an Internet access for Customer, but only the Internet connection of PROFICLOUD.
- (10) Phoenix Contact Electronics in particular points out that while using PROFICLOUD it may also be possible to access applications that are not subject to this PROFICLOUD Agreement but to own terms of use. Where this is the case, the Customer will be informed about it separately. The use of these other applications shall only be possible after the Customer has confirmed the relevant terms of use.

§ 2 Conclusion of the Agreement and General Provisions

- (1) The PROFICLOUD Agreement comes into force with the registration of Customer on the website <http://www.proficloud.net> for the use of the PROFICLOUD Services. The acquisition of vouchers to fill the usage tier (see para. 7) does not constitute a separate agreement between the parties; it is rather only a payment method within the PROFICLOUD Services. Under the PROFICLOUD Agreement, Customer is entitled to use the PROFICLOUD Services against payment of a fee (see para. § 7) in accordance with these terms of use, and Phoenix Contact Electronics is obliged to provide the PROFICLOUD Services in accordance with these terms as far as the PROFICLOUD account of Customer has sufficient usage tier (see para. 7).
- (2) The PROFICLOUD Services contain the open source software components shown in **Annex 1**. For the use of these open source software components, the open source license provisions mentioned in **Annex 1** for the respective components shall prevail over this PROFICLOUD Agreement.
- (3) The parties agree that no other terms and conditions shall be applicable. This in particular concerns the purchase conditions of Customer. This shall also apply if such conditions are pointed out in the mutual correspondence.

§ 3 Use of the PROFICLOUD Services

- (1) After his registration, Phoenix Contact Electronics shall provide Customer with the data required for the access (user name, password). Customer undertakes to maintain secrecy on his access data and passwords and to immediately notify Phoenix Contact Electronics in writing or by e-mail if the usage data and/or passwords of Customer have become known to third parties. If services of Phoenix Contact Electronics are made use of by unauthorized third parties using the access data of Customer, Customer shall be liable for any fees thereby incurred within the civil liability until the arrival of the order to change the access data or the notification of the loss or theft if a fault is attributable to him regarding the access of the unauthorized third party.
- (2) To use the PROFICLOUD Services for a certain device it is necessary that Customer registers the respective device in the web-based portal application. By means of such registration, the device is activated for the use of the PROFICLOUD Services. All activated devices of Customer shall hereinafter be referred to as "Active Devices".

- (3) Customer shall at any time be entitled to deregister an Active Device and thus deactivate it. All deactivated devices of Customer shall hereinafter be referred to as "Inactive Devices". If the PROFICLOUD account of Customer has no more usage tier (§ 7), all Active Devices shall be automatically deactivated and become Inactive Devices.
- (4) Prerequisite for using the PROFICLOUD Services in a manner correspondent to the performance description is the observance of the technical system requirements by the user. The browsers required for the use of the PROFICLOUD Services are described in the respective updated release notes ("Release Notes") regarding PROFICLOUD.
- (5) Phoenix Contact Electronics shall be entitled to change the Release Notes at its discretion, thereby reliably ensuring that at least two browsers are always supported which are freely available on the market free of charge.
- (6) Customer is obliged to use the PROFICLOUD Services (i) only within the applicable law and any restrictions in the user manual and (ii) not in a manner that endangers the safety or performance of PROFICLOUD.

§ 4 Rights of Use

- (1) Phoenix Contact Electronics shall herewith grant Customer a non-exclusive, worldwide right limited in time to the duration of this PROFICLOUD Agreement to the online use of the PROFICLOUD Services. This includes the right to access the web-based portal application and the creation of copies of the program code in the main memory of Customer generated with such access.
- (2) As far as provided in the PROFICLOUD Services, Customer shall also be entitled to set up third parties as users and allow them the use of the PROFICLOUD Services.
- (3) Customer shall not be entitled (i) to make the PROFICLOUD Services accessible to other third parties beyond what is explicitly permitted in this PROFICLOUD Agreement, (ii) edit the PROFICLOUD Services, or (iii) decompile the PROFICLOUD Services or parts thereof.
- (4) Under the Internet address <http://www.phoenixcontact.com> by using Article No. 2402990, Phoenix Contact Electronics shall at any time keep available a current version of the PROFICLOUD user manual for electronic retrieval by Customer. Phoenix Contact Electronics shall hereby grant Customer a non-exclusive right, limited in time to the duration of this PROFICLOUD Agreement to the electronic retrieval and once-only print of the user manual as well as the production of a backup copy.
- (5) Customer shall grant Phoenix Contact Electronics a non-exclusive, worldwide right limited in time to the duration of this PROFICLOUD Agreement to use content and data uploaded by Customer in PROFICLOUD, in particular copy, edit and make them publicly available as far as this is necessary to provide the PROFICLOUD Services to Customer.

§ 5 Service and Support in Setup and Operation

- (1) If Customer wishes support services beyond those specified in para 8, Customer may request the Service Support Department to submit an offer for individual and application-related support. The provision of such further support services shall be subject of a separate agreement between the parties. The prices and provisions specified in the respective agreement shall be applicable.
- (2) Emergency maintenance and scheduled maintenance

During the maintenance times specified by Phoenix Contact Electronics, Phoenix Contact Electronics can perform scheduled maintenances. In addition, Phoenix Contact Electronics shall be

entitled to perform unscheduled maintenance work up to 2 (two) hours per month. During these times, PROFICLOUD will not be available.

§ 6 Content of Customer

- (1) Customer is forbidden to upload content or data in PROFICLOUD that:
 - a. Infringe third party rights;
 - b. Violate applicable law;
 - c. Could lead to an infringement of applicable law by Phoenix Contact Electronics;
 - d. Affect the safety of PROFICLOUD;
 - e. Affect the performance of PROFICLOUD more than just insignificantly;
 - f. Contain personal data within the meaning of para. 3 (1) of the Federal Data Protection Act (“Bundesdatenschutzgesetz”).
- (2) Customer is obliged to delete any content and data from PROFICLOUD that infringe para 6 section 1 upon request by Phoenix Contact Electronics within a reasonable period set by Phoenix Contact Electronics. Depending on the danger posed for PROFICLOUD or Phoenix Contact Electronics by the content and data that infringe para 6 (1), in individual cases a request for immediate deletion may constitute a reasonable period. Phoenix Contact Electronics shall be entitled to remove content and data, which Customer does not delete from PROFICLOUD within the aforementioned period, from PROFICLOUD. A deadline is not required if more than just insignificant damages are threatening Phoenix Contact Electronics should the content not be removed immediately. In this case, Phoenix Contact Electronic shall be entitled to directly delete the content and data in question.
- (3) Should Customer save content or data in PROFICLOUD that violate para 6 (1), Customer shall be obliged to indemnify Phoenix Contact Electronics against all claims therefore asserted against Phoenix Contact Electronics and bear the resulting costs unless it is not his fault. Phoenix Contact Electronics shall inform Customer about such claims by third parties. This shall also include reasonable costs for the legal defense.
- (4) Phoenix Contact Electronics shall not be responsible for the content of the content and data created by Customer. Phoenix Contact Electronics is under no obligation to check the lawfulness of the delivered content and data.

§ 7 Remuneration / Use-Based Fees (Pay as You go)

- (1) No fees are charged to access the web-based portal application. Fees are incurred by Customer for his Active Devices registered in his PROFICLOUD account. Here, a fee of a certain amount is payable for each Active Device. The amount of the fee is indicated to the user once he registers the respective device. For Active Devices, a “usage tier” must be available. Customer acquires this tier in form of vouchers, which he then activates in his PROFICLOUD account (Pre-Paid). Depending on the duration and number of Active Devices, this usage tier is used up. Customer may at any time acquire new vouchers and thus fill the tier again. Should the usage tier of the PROFICLOUD account be used up, all devices of Customer will be automatically deregistered and become Inactive Devices.

§ 8 Warranty

- (1) Phoenix Contact Electronics warrants that the PROFICLOUD Services substantially conform to the quality specified in this PROFICLOUD Agreement.
- (2) In the event of any defect occurring, Customer shall be obliged to provide Phoenix Contact Electronics with understandable and verifiable information on the nature and extent of the defect and support Phoenix Contact Electronics in trouble shooting and error localization to the best of his ability.
- (3) In the event that the PROFICLOUD Services deviate negatively from the quality specified in this PROFICLOUD Agreement, Phoenix Contact Electronics shall remedy this defect within a reasonable period. The remedy may also be the provision of a workaround.
- (4) If Phoenix Contact Electronics fails to remedy the malfunction twice or bypass it within an adequate period in such a way that Customer can use the PROFICLOUD Services substantially as agreed upon, Customer may terminate the respective agreement without notice. In this case, Phoenix Contact shall reimburse Customer for the value of the usage tier related to his PROFICLOUD account. A right to termination due to minor defects does not exist.
- (5) If a defect of the PROFICLOUD Services lies in the infringement of rights of third parties, Phoenix Contact Electronics shall be obliged at its own discretion and at its own expense (i) to provide Customer with sufficient usage rights so Customer can continue using the PROFICLOUD Services substantially as agreed upon, or (ii) adapt the PROFICLOUD Services in such a way that they no longer infringe rights of third parties but nevertheless substantially correspond to the quality specified in this PROFICLOUD Agreement.
- (6) There are no warranty rights if a defect is based on the use of the PROFICLOUD Services by Customer going beyond the explicitly permitted use under this PROFICLOUD Agreement.

§ 9 Liability

- (1) WITHOUT PREJUDICE TO THE FOLLOWING PROVISIONS PHOENIX CONTACT ELECTRONICS SHALL BE LIABLE WITHOUT LIMITATION FOR INTENT, GROSS NEGLIGENCE, FOR PARTICULARLY AGREED QUALITY GUARANTEES AS FAR AS A RISK OF PROCUREMENT PURSUANT TO § 276 BGB (GERMAN CIVIL CODE) WAS ASSUMED, AS WELL AS IN ACCORDANCE WITH THE PRODUCT LIABILITY ACT AND FOR INJURY TO BODY, LIFE OR HEALTH.
- (2) UNLESS OTHERWISE PROVIDED FOR IN THIS AGREEMENT AND THE FOLLOWING PROVISIONS, PHOENIX CONTACT ELECTRONICS SHALL BE LIABLE FOR ANY BREACH OF CONTRACTUAL AND NON-CONTRACTUAL OBLIGATIONS UNDER THE RELEVANT STATUTORY REGULATIONS.
- (3) COMPENSATION FOR DAMAGES FROM THE SLIGHTLY NEGLIGENT BREACH OF CARDINAL OBLIGATIONS SHALL BE LIMITED TO THE AMOUNT OF THE FORESEEABLE AND CONTRACT-TYPICAL DAMAGE. CARDINAL OBLIGATIONS ARE SUCH OBLIGATIONS THE FULFILLMENT OF WHICH ACTUALLY ENABLES THE DUE AND PROPER PERFORMANCE OF THE AGREEMENT AND THE OBSERVANCE OF WHICH CUSTOMER REGULARLY RELIES ON AND MAY RELY ON. ANY FURTHER CLAIMS FOR DAMAGES OF CUSTOMER DUE TO SLIGHT NEGLIGENT BREACHES OF DUTY SHALL BE EXCLUDED. THIS

SHALL APPLY TO ANY DAMAGES CAUSED BY BREACHES OF DUTIES AND DEFECTS, INCLUDING LOSS OF PRODUCTION, LOSS OF PROFIT OR OTHER INDIRECT DAMAGES.

- (4) THE LIABILITY WITHOUT FAULT OF THE SUPPLIER PURSUANT TO PARA. 536A SECTION 1, 1. ALT. GERMAN CIVIL CODE ("BÜRGERLICHES GESETZBUCH") DUE TO DEFECTS THAT ALREADY EXIST AT THE TIME THE AGREEMENT IS CONCLUDED SHALL BE EXCLUDED.
- (5) PHOENIX CONTACT ELECTRONICS SHALL ONLY BE LIABLE FOR THE LOSS OF DATA TO THE AMOUNT OF THE EXPENSES WHICH INCUR IF CUSTOMER REGULARLY AND ADEQUATELY CARRIES OUT BACK UPS, THUS ENSURING THAT LOST DATA CAN BE RETRIEVED AT A JUSTIFIABLE COST.
- (6) AS FAR AS THE LIABILITY OF PHOENIX CONTACT ELECTRONICS IS EXCLUDED OR LIMITED, THIS SHALL ALSO APPLY TO OFFICE WORKERS, EMPLOYEES, REPRESENTATIVES AND VICARIOUS AGENTS OF PHOENIX CONTACT ELECTRONICS.

§ 10 Secrecy

- (1) The parties undertake to not impart or disclose any confidential information to third parties obtained from the respective other party, entrusted to them during the term of this Agreement in connection with the Cloud Computing Services ("Purpose") or made known to them in any other way, without the prior written consent of the other party.

The parties undertake insofar to commit their employees and any third parties who legitimately obtain knowledge in the course of the implementation to the same level of secrecy unless a fundamental obligation to secrecy has already taken place within the employment relationship.

- (2) Confidential are all information, documentation, data and/or knowledge, in particular technical and/or economic information; design documents, specifications, drawings, samples, prototypes, test results and/or any other know-how (hereinafter referred to as "Confidential Information"), which are provided by one party to the other in the context of the aforementioned Purpose and which for this Purpose refer to previous, current or future activities of the party or its affiliated companies in the field of research, development, manufacturing methods, procedures, technologies, products, operations management and trade, and are explicitly designated as confidential. Confidential Information may be provided in oral or written form, as samples, prototypes, electronic or visual data formats of any kind or any other embodiment or submitted for inspection. Confidential Information shall also include any copies made thereof, self-created materials and summaries.
- (3) Confidential Information is not the information that
 - a. is or becomes state-of-the-art technology accessible to the general public without the assistance of the contractual party receiving the information, or
 - b. is already known to the receiving party or is made known by a third party entitled to the transmission, or
 - c. is developed by the receiving party without the assistance of the other party and without using any other information of knowledge obtained due to the contractual relation, or
 - d. was developed by the receiving party independently and without recourse to the Confidential Information or in accordance with the exceptions regulated in para 10 lit. a.-c.
- (4) The parties may disclose Confidential Information of the other party as far as the receiving party is obliged to do so owing to an official or judicial ruling or mandatory legal provisions, provided that the party obliged to disclosure promptly notifies the other party in writing and in advance for the

purpose of asserting its rights, and the party obliged to disclosure undertakes actions reasonable to it to ensure that the Confidential Information is treated as confidential. Confidential Information so disclosed must be marked as “confidential” by the party obliged to disclosure.

- (5) The obligation to secrecy shall remain effective for the duration of another three years after the expiry of this PROFICLOUD Agreement.

§ 11 Data Protection

Within the execution of the Agreement, Phoenix Contact Electronics shall not process personal data of Customer.

§ 12 Period of Agreement and Termination

- (1) The PROFICLOUD Agreement begins with the registration of Customer by accepting these terms of use (see § 2) and shall run for an indefinite period of time. Customer shall be entitled to terminate the PROFICLOUD Agreement at any time with a period of one month. Phoenix Contact Electronics shall be entitled to terminate the PROFICLOUD Agreement at any time with a period of 12 months. An ordinary termination by Phoenix Contact Electronics, however, shall at the earliest be effective if (i) Customer has used up the whole use tier that existed in his PROFICLOUD account upon receipt of the notice of termination, (ii) Customer has not longer connected any Active Devices with his PROFICLOUD account or (iii) Phoenix Contact Electronics has refunded Customer the value of the remaining use tier. For the avoidance of doubt: There is no self-standing obligation of Phoenix Contact Electronics to refund the value of the use tier.
- (2) In the event of an ordinary termination by Customer, the use tier still existing at the time of the termination shall expire.
- (3) A termination for good cause shall be possible for both parties under the legal conditions. The right of termination for good cause shall in particular exist for Phoenix Contact Electronics if
 - a. Customer violates para 7 (1) in a manner that could lead to a not only insignificant damage to Phoenix Contact Electronics or could affect the safety or operability of PROFICLOUD more than just insignificantly, and Customer does not remedy the violation – possibly within the request pursuant to para 6 (2) – upon request within thirty (30) days or fails to do so;
 - b. an immediate termination is necessary to comply with applicable law or mandatory requirements of government authorities;
 - c. a provision of PROFICLOUD Services to Customer is not (more) possible for regulatory reasons without changing PROFICLOUD.
- (4) All rights granted to Customer under this PROFICLOUD Agreement shall no longer apply once it is terminated. Upon termination of the Agreement, Phoenix Contact Electronics shall remove all content and data of Customer from PROFICLOUD. It is the responsibility of Customer to make sure before that a backup of his data from PROFICLOUD is created.

§ 13 Subject to Amendment

- (1) Phoenix Contact Electronics reserves the right to change these terms of use in the future. Phoenix Contact Electronics shall inform Customer at least six (6) weeks before the changed terms come into force and send Customer the modified version of the terms of use to the e-mail address provided during registration by highlighting the changes.

- (2) If Customer does not agree to the amendment or supplement, he shall be entitled to object within six (6) weeks after having been notified of the amendment. If Customer does not object to the changed terms and continues to use the PROFICLOUD Services after expiry of the objection period, the new terms of use shall be deemed agreed to be effective upon expiry of the period. If Customer objects within the period, the Agreement shall remain in force unchanged. Phoenix Contact Electronics shall point this out in the notification.
- (3) If the amendments or supplements are reasonable for Customer by considering the interests of Phoenix Contact Electronics, para 13 (2) shall not apply and the new terms of use shall apply immediately upon expiry of the period in accordance with para 13 (1).
- (4) The provisions of this para 13 shall also apply to any modifications of the PROFICLOUD Services themselves unless they are already covered by para § 1 (4). However, in case of modifications of the PROFICLOUD Services themselves Customer shall not be entitled to an objection right pursuant to para 13 (2), but to a special right of termination which he may exercise within the specified period with immediate effect. If such special termination is exercised, Phoenix Contact Electronics shall reimburse Customer for the value of the use tier still in his PROFICLOUD account at the time of the termination.
- (5) The provisions of the preceding para 13 (4) shall apply accordingly if amendments or supplements of these terms of use are obligatory to Phoenix Contact Electronics for mandatory statutory reasons.

§ 14 Miscellaneous

- (1) The deliveries and services (fulfillment of the agreement) are subject to the condition that the fulfillment is not being restricted by national or international regulations, in particular export control regulations as well as embargoes or any other sanctions. The contractual partners undertake to furnish any information and documentation required for the export/domestic shipment/import. Any delays caused by export checks or licensing procedures shall override any lead times and deadlines stipulated in this respect. If required approvals are not granted, the Agreement shall be deemed not concluded with respect to the affected parts; claims for damages shall be excluded insofar and due to the aforementioned non-observance of deadlines.
- (2) Phoenix Contact Electronics shall assume no guarantee ("Garantie"). Customer can only refer to a guarantee promise if this was confirmed in writing by Phoenix Contact Electronics itself or its legal representative.

§ 15 Applicable law / Arbitration

- (1) For this Agreement, the law of the Federal Republic of Germany shall apply exclusively. The provisions of the Vienna UN Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG) shall be excluded.
- (2) Any disputes arising in connection with this Agreement or its validity shall be finally settled in accordance with the rules of arbitration of the German Institution for Arbitration ("Deutsches Institut für Schiedsgerichtsbarkeit") without recourse to the ordinary courts of law. The arbitration court may also decide on the validity of this arbitration agreement with binding effect for the state-run courts. The seat of the arbitration shall be Paderborn, Germany. The arbitration court shall consist of three arbitrators. The applicable law is the German law. German law shall also apply to current and future debt obligations covered by Regulation (EC) No. 864/2007 (Rome II) on the law applicable to non-contractual debt obligations. The language of the arbitration shall be German.

The fees of the arbitrators and the processing fee shall be borne by the non-prevailing party. The arbitrators shall also decide upon the distribution of attorney costs among the parties.

§ 16 Severability clause

Should individual provisions of this PROFICLOUD Agreement be invalid or unenforceable or should this PROFICLOUD Agreement contain an omission, then this shall not affect the validity of the PROFICLOUD Agreement in all other respects. In such a case, the parties shall replace the invalid/unenforceable provision by a valid/enforceable provision that most closely approximates the economic purpose of the invalid/unenforceable provision. The same shall apply to any regulatory omissions.

The following Annexes shall be an integral part of this Agreement:

Annex 1 Open Source Software

Annex 1

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2016-03-01