

Terms of Use for STILL neXXt fleet

(Date: February 2020)

1. General

1. STILL GmbH, Berzeliusstrasse 10, 22113 Hamburg, Germany (hereinafter referred to as "**STILL**"), provides its Customers with a cloud-based software-as-a-service solution (hereinafter referred to as the "**Service**") called "neXXt Fleet" for the purpose of collating, managing and evaluating a range of information about industrial trucks and intralogistics equipment (hereinafter referred to jointly as "**Customer Equipment**"). The Service may be used only on the basis of these Terms of Use.
2. The Service offered is aimed exclusively at Customers classified as entrepreneurs within the meaning of § 14(1) BGB (Bürgerliches Gesetzbuch — German Civil Code). Any party or parties granted access to the Service by a Customer as part of the latter's operations (hereinafter referred to individually and jointly as "**Users**") will be subject to the rights and obligations incumbent upon the Customer vis-à-vis STILL in accordance with these Terms of Use as its representative. In the event that a User's entitlement to exercise these rights and obligations is revoked or modified by the Customer, STILL may terminate this contract with the Customer for good cause and deny access to the Service.
3. The Customer will receive the login details required to use the Service from STILL.
 - 3.1. If the Customer is allowed to grant Users access to the service, it is responsible for creating and managing the login details for the respective Users.
 - 3.2. In all other cases, the Customer must request that STILL activate the Users. STILL will create and manage the login details.
4. The Customer will be responsible vis-à-vis STILL for ensuring that Users comply with the contractual and legal requirements that apply in connection with the Service, and that Users only use the Service for its intended purpose as part of the scope of performance. In addition, the Services may be used only by the Customer itself or its Users, and only for Customer Equipment used in the course of the Customer's operations.
5. The current version of these Terms of Use is available at any time under "STILL neXXt fleet > Settings > Terms of Use". Any amendments to these Terms of Use will be published no later than four weeks before they enter into effect. Amendments can also be notified to the Customer or to the Users as the Customer's receiving agents in the form of a message after the login process for the Service. These amendments will form an integral part of the contract unless the Customer lodges objections against the amendments in good time before the planned date on which the amendments are to take effect.
6. Other terms and conditions of business will not form an integral part of the contract, even if they have not been expressly rejected by STILL.

2. Scope of performance

- 2.1. The scope of performance for the Service is described in detail at <https://www.still.de/en-DE/intralogistics-systems/fleetmanagement/still-nexxt-fleet.html> , specified by the individual offer to the Customer and described together with the term of performance ("**Description of Services**").
- 2.2. Unless otherwise agreed, the services to be performed by STILL in each individual case will be based on the relevant Description of Services, which will form the basis for the performance of services.

Unless otherwise expressly provided for in the Description of Services, services performed by STILL will be deemed non-material services in case of doubt. STILL will only assume liability for successful performance of services on a case-by-case basis where expressly stated in the Description of Services.

- 2.3. Dates and deadlines for the delivery of goods and services will be binding only if STILL expressly confirms their binding nature.
- 2.4. STILL will be entitled to make modifications to its services for good cause, particularly in connection with new technical developments, changes to case law or other equivalent reasons. In the event that a modification significantly interferes with the balance of contractual relations between the parties, STILL will refrain from making the modification. Modifications will furthermore require the Customer's approval.
- 2.5. STILL will provide access via the Internet to the Cloud Services which form the subject of the contract for the entire term of performance. The scope of performance for the Cloud Services which form the subject of the contract (including documentation) will be defined in the relevant Description of Services.
- 2.6. The delivery point for services performed by STILL will be the outgoing Internet connection from the router in the data centre used by STILL. The Customer will be solely responsible for the connection to the Internet, for providing or maintaining the network connection to the data centre, and for procuring and providing network access components for the Internet on the Customer's side. These activities will not be covered by STILL's scope of performance.
- 2.7. STILL will take all reasonable measures required to offer continuous availability. This does not apply to maintenance windows, downtime due to force majeure, downtime due to the Customer's failure to cooperate or to cooperate in accordance with the contract, and downtime otherwise attributable to the Customer. Similarly, stoppages invoked by STILL and deemed necessary by STILL for security reasons will not be taken into account.
- 2.8. When providing or using the Service and other related services, STILL and the Customer will use and comply with state-of-the-art security technologies to an economically reasonable extent.

3. Conclusion of the contract

- 3.1. As a basic principle, the contract between STILL and the Customer will be concluded when the Customer requests use of the Service from STILL and provides all of the necessary information, thereby making an offer to conclude a contract of use under the conditions laid down in these Terms of Use, and STILL accepts this offer by making the Service available. The Customer therefore hereby waives the need for a declaration of acceptance by STILL.
- 3.2. The term of the contract will be defined in the individual Description of Services. If no term has been agreed, the term of the contract will be unlimited. The contract may be terminated by either party at any time with a notice period of four weeks, taking effect at the end of the month.
- 3.3. The Customer cannot transfer its rights and obligations under these Terms of Use unless STILL has granted consent thereto.

4. Remuneration, terms of payment and price adjustments

- 4.1. The type and amount of the remuneration for services to be provided by STILL will be defined in the Description of Services. All prices specified will be exclusive of the VAT which applies in each case.
- 4.2. The due date for the payment of remuneration will be stipulated in the relevant Description of Services. Unless otherwise specified, invoices issued by STILL will fall due for payment no later than 14 days after the date on which they are issued. If the Customer defaults on payment, STILL will be entitled to charge interest at a rate of nine percentage points above the current statutory base interest rate from the date of default. This will not affect the right to assert further claims for damages.
- 4.3. In each case, STILL will retain ownership and/or the right to exclude availability in respect of all services until full payment is made of the agreed remuneration.
- 4.4. The parties to the contract are not entitled to offset or retain payments in respect of the other party's claims unless the claims in question are determined by a court of law or recognised in writing.

5. Technical requirements for use

- 5.1. The generation, display and analysis of specific data, such as the measurement of shock events or the automatic recording of operating hours, requires the availability of the corresponding truck equipment for data acquisition and transmission. The Customer will purchase the corresponding truck equipment separately from this contract. In addition, the Customer will provide the cooperation required for the installation and operation of STILL neXXt fleet.
- 5.2. An Internet-enabled device, e.g. a PC or tablet, with an active Internet connection is required to use STILL neXXt fleet. Access is web-based via the Internet using current browsers. The exchange of operating and configuration data between the truck and STILL servers is carried out wirelessly either via mobile radio or via Bluetooth (encrypted, proprietary protocol), depending on the truck equipment selected. Data transfer via mobile radio requires a mobile network with sufficient signal strength at the Customer's truck location. Data transfer via Bluetooth is done via the Customer's PC or laptop. This requires a suitable interface and an Internet connection. To back up data, the Customer must transfer data via Bluetooth at least once a month for each truck. The aforementioned IT infrastructure, i.e. the client, operating system, and data transfer interface and channels, will be provided by the Customer. The Customer will assume the costs and responsibility for this. The software for data transfer via Bluetooth ("Data Shuttle") will be provided free of charge by STILL for selected operating systems. If RFID access media (STILL chip, STILL card or Customer card) are used for access authorisation, the number of the access medium is read by a STILL desktop card reader, which can be purchased separately. STILL will provide free software for selected operating systems to operate this card reader. This software can be downloaded from the Internet. The Customer will install the software for the data transfers. Typically, installing the software on the Customer's PC will require administrator rights.
- 5.3. Instructions and training on the software and its functions and individual adaptations of hardware components can be booked separately for an additional charge.

6. Cooperation on the part of the Customer

The cooperation required in each individual case on the part of the Customer or the individual conditions for the provision of services (actual and technical conditions in accordance with paragraph 5) will be defined in the relevant Description of Services.

- 6.1. Any cooperation on the part of the Customer must be free of charge. The individual conditions required for performance of the services (technical conditions and required configurations) must be in place when the performance of services commences. The parties to the contract will set deadlines and/or execution periods for other forms of cooperation. If no deadlines and/or execution periods have been agreed for cooperation on the part of the Customer, STILL will submit a request to the Customer in written or electronic format for cooperation in the forms agreed in the Description of Services, allowing sufficient advance notice; this will not apply to technical conditions and required configurations.
- 6.2. If the Customer fails to cooperate as requested within the agreed deadlines and/or execution periods, or fails to do so in accordance with the contract, the deadlines and/or execution periods which apply to STILL will be extended accordingly. The extension will be calculated based on the length of time during which the Customer failed to cooperate in accordance with the contract. STILL will notify the Customer of the specific failure to cooperate or to cooperate in accordance with the contract, and provide information about any change to the deadlines and/or execution periods.
- 6.3. STILL may ask the Customer to cover any additional expenses incurred as a result of the failure to cooperate or to cooperate properly, on the basis of the hourly rates currently applicable at STILL.
- 6.4. If the performance of services by STILL is made considerably more difficult by the Customer's failure to cooperate, STILL will also be entitled to provide the Customer with a reasonable grace period for cooperation in accordance with the contract. If the failure to cooperate has not been remedied by the end of this grace period, STILL will be entitled to cease performance of the relevant service on an extraordinary basis.
- 6.5. The Customer must take appropriate technical and organisational measures to prevent unauthorised third parties from accessing the Service and the login details.
- 6.6. In the event that the Customer transfers to third parties the Customer Equipment for which the Services are provided, the third parties must be notified of the functional scopes, and it must be ensured that the third party's use of the Customer Equipment in respect of the Services complies with these Terms of Use and the legal requirements. In the event that the Customer sells the Customer Equipment for which the Services are provided, the Customer must ensure that the Services are deactivated by disabling the communication capabilities of the Customer Equipment in the software.

7. STILL's property rights in connection with the Service

- 7.1. STILL will retain all rights to the Service, including configuration and parameterisation, and in particular copyright, rights to inventions, databases and technical property rights. The same applies to the rights to data ("**Usage Data**") that is transferred to STILL via the Customer Equipment (e.g. sensor data) and to documentation made available to the Customer by STILL.
- 7.2. STILL will use and process any such Usage Data in anonymised or pseudonymised form for its own purposes.

8. Usage rights

- 8.1. Usage rights to third-party standard software will be determined exclusively on the basis of the relevant software manufacturer's licence conditions, and will be granted to the Customer on the basis of end-user licence agreements (EULA) or comparable provisions. The Customer must ensure that any party that uses the standard software complies with these provisions.
- 8.2. Unless otherwise specified in the individual Description of Services, the Customer will be granted a non-exclusive and non-transferable right to use the service and the compiled STILL software (not including the source code) as described under 5.2., as part of the contractual agreements, upon payment of the full remuneration for the relevant term.
- 8.3. In the event that STILL uses open source software for the performance of services, separately agreed licence conditions may apply, which may contain supplementary or differing provisions, particularly as regards usage rights and liability.

9. Customer usage rights to usage data

STILL hereby grants the Customer a non-exclusive and non-transferable right to use the analytical findings generated on the basis of the Usage Data in accordance with the Description of Services for the relevant term pursuant to the Description of Services. The Customer is not entitled to disseminate these analytical findings to third parties, either free of charge or against payment, or to disclose them in any way, unless it has written consent for this from STILL. This provision will not apply to third parties that provide consulting services to the Customer and that must therefore access the Usage Data on a "need-to-know" basis.

10. Confidentiality and privacy

- 10.1. The Customer and its Users must treat all information made available to them as confidential if it is identified as confidential or if it is reasonably considered confidential in view of the nature of the information and the circumstances of its disclosure. The Customer and its Users are not entitled to disseminate or copy this information made available to them unless STILL has expressly consented thereto. Information previously known to the Customer and its Users will not be deemed confidential for the purposes of these provisions.
- 10.2. If the Customer and its Users are legally obliged to disclose confidential information, either by courts, authorities or similar bodies or institutions with special powers or otherwise, the Customer and its Users must immediately notify STILL thereof so that STILL can either take action to prevent the disclosure or release the Customer and its Users from their duty of confidentiality under this confidentiality agreement. If STILL is unable to prevent the disclosure, the Customer and its Users will be entitled to disclose the confidential information to the extent deemed necessary by their legal counsel, even if they have not been released from their duty of confidentiality.

11. Data protection

- 11.1. STILL complies with all applicable data protection laws; in particular, it processes all personal data made available to STILL in accordance with these laws. If third parties are involved in rendering the service, they will be contractually obliged to comply with the same standards as STILL.
- 11.2. If the customer and its Users transfer or make personal data available to STILL for further targeted processing, then STILL—acting as the processor in accordance with Article 4 of Regulation (EU) 2016/679 (General Data Protection Regulation, "**GDPR**")—will process this personal data exclusively

in accordance with an order processing agreement ("**Processing Agreement**") to be concluded between STILL and the Customer with respect to the Service.

- 11.3. The Customer must comply with all data protection laws that apply to its activities as controller (pursuant to Article 4 GDPR) in accordance with the Terms of Use and the Processing Agreement, in particular as regards the User's access to the Service, and must ensure that any personal data made available to STILL in connection with the Service is processed lawfully.

12. Liability

- 12.1. STILL will be liable to an unlimited amount for damages caused by STILL or one of its vicarious agents or legal representatives intentionally or through gross negligence or for damages involving death, personal injury or harm to health.
- 12.2. In the event that STILL infringes its contractual obligations and a) these obligations must be fulfilled in order to allow proper performance of the specification of services, b) the infringement jeopardises attainment of the purpose of the contract, and c) the Customer can typically rely on said obligations being met, the sum for which STILL is liable will be limited to the foreseeable damages provided for as standard in contracts, provided that damages of the sort referred to in the previous paragraph are not present.
- 12.3. Any further liability on the part of STILL is hereby excluded.
- 12.4. In cases where STILL is to be held liable for loss of data within the scope of the above provisions, any such liability will be limited in terms of amount to the loss that would have been incurred by the Customer had the data been backed up regularly and properly.

13. Unauthorised use

The Customer must refrain from the following while using the Service: (1) copying, translating, disassembling, decompiling, reverse engineering or otherwise modifying any part of the Service, where this is not permitted by law (2) transmitting content, data or information that is unlawful, harmful, threatening, abusive, harassing, illegal or slanderous, that violates a third party's right of privacy or personal rights, that can be deemed hate speech or discrimination against particular races or ethnicities, or that is otherwise offensive, (3) violating the rights of a natural or legal person to the relevant intellectual property, (4) disrupting or interrupting the Service or the systems via which the Service is hosted by STILL or its service providers, or other devices or networks connected to the Service being offered, or failing to comply with requirements, procedures, policies or regulations in respect of the networks connected to the Service, (5) bypassing user authentication or security features of the Service or a connected host, network or account, (6) using a different application programming interface to access the Service, unless authorised to do so by STILL, (7) using the Service in a way which infringes applicable legislation, or (8) authorising a third party to use the user IDs, codes, passwords, procedures and user keys issued to or selected by the Customer for access to the Service, with the exception of the rights for defined Users under this agreement.

14. Termination

The contract may be terminated by either party at any time with a notice period of four weeks, taking effect at the end of the month. This will not affect the option of extraordinary termination for good cause.

15. Subsidiary agreements, applicable law and jurisdiction

There are no verbal subsidiary agreements. Any amendments or additions must be in writing; this also applies to the written form requirement. This contract is governed exclusively by German law. The United Nations Convention on Contracts for the International Sale of Goods is hereby excluded. In the event of disputes between STILL and the Customer in connection with the object of performance, the place of jurisdiction will be Hamburg. In the event that individual provisions of this contract are found to be invalid, this will not affect the validity of its remaining parts. The parties hereby undertake to replace any invalid provision with a provision which comes as close as possible to the intended purpose.