

# CONIQ® Cloud: Terms & Conditions

(Edition: 04/2024)

The provisions in Chapter A apply to all CONIQ Cloud related services unless overruled by more specific or deviating provisions in the following chapters B to E applicable to specific CONIQ Cloud services and/or products.

## A. General Provisions

### I. Scope & Order of Precedence

1. The CONIQ Cloud platform provided via the websites [coniq-cloud.com](https://coniq-cloud.com), [test.coniq-cloud.com](https://test.coniq-cloud.com), [int.coniq-cloud.com](https://int.coniq-cloud.com) and [dev.coniq-cloud.com](https://dev.coniq-cloud.com) ("CONIQ Cloud") is operated by Qlar Europe GmbH, Pallaswiesenstrasse 100, 64293 Darmstadt, Germany, ("Qlar"). These Terms & Conditions ("Terms") apply to any subscription and other CONIQ Cloud related contracts concluded between Qlar and the Customer ("Customer").
2. In the event of conflicts, the provisions in a CONIQ Cloud Order Form ("Order Form") take precedence and prevail over the provisions in these Terms.
3. These Terms apply to Customers only who are tradespeople, legal entities under private or public law or public corporations under public law.

### II. Use of CONIQ Products and Services

1. In order to use CONIQ Cloud, the Customer must subscribe. An agreement is concluded if the Customer's order (by signing the Order Form) is accepted by Qlar (countersigning the Order Form). Qlar reserves the right to reject the subscription of a Customer if there is reason to assume that he/she will not act in accordance with the agreement or with applicable statutory regulations.
2. The CONIQ Cloud platform, software and technical documentation is available for use in English language only.
3. Each Customer shall name one user taking over the role of an admin user. This admin user can create additional users with or without admin rights. The number of users per subscription is limited to 5 (five). Additional users (more than 5 [five]) can be added based on an additional subscription fee.

### III. Grant of Usage Rights for CONIQ Cloud

Qlar hereby grants to Customer the non-exclusive, non-transferable, non-sub licensable, worldwide right to access and use the CONIQ Cloud during the term of the agreement in accordance with these Terms.

### IV. Customer Obligations

1. The Customer is obligated to provide truthful information when subscribing for CONIQ Cloud and to notify Qlar without undue delay about all changes to the information requested in the course of the subscription. Login data (including passwords) must be protected by the Customer against disclosure to third parties and in such an event must be replaced with other login data (in particular new and safe passwords) without undue delay. The Customer shall ensure that use only occurs to the contractually agreed extent. Qlar shall be notified immediately of any unauthorised access.
2. Customer is obligated to comply with applicable laws and to consider the rights of third parties when using the CONIQ Cloud. In particular, the Customer may not:
  - a. use offensive or defamatory content, irrespective of whether such content refers to;
  - b. use pornographic, violating, abusive or immoral content or content that violates youth protection laws or promote, offer and/or distribute pornographic, violating, abusive or immoral products or services or products or services that violate youth protection laws;
  - c. unreasonably harass other users;
  - d. conduct or encourage actions that violate competition laws;
  - e. publish or distribute any kind of malware, including viruses and spyware or any other form of program code.
3. The Customer is solely responsible for the accuracy, content and legality of all Customer data. Customer represents and warrants to Qlar that the Customer has all necessary rights, consents and

permissions to collect, share and use all Customer data and that no Customer data will violate or infringe any third party intellectual property, publicity, privacy or other rights.

4. The Customer shall not use the CONIQ Cloud to collect, store, process or transmit any sensitive personal information, e.g. sensitive data in the meaning of Art. 9 GDPR or other provisions applicable
5. The Customer shall be responsible for obtaining and maintaining technical equipment, resources and other requirements needed to access and use the CONIQ Cloud, including but not limited to computer hardware, software, communication devices and internet access. Any costs arising out of or in connection with the equipment shall be borne by the Customer.
6. The Customer shall take adequate measures to avert and reduce damages. In particular, the Customer must regularly create backup copies of data processed via the CONIQ Cloud. Non-compliance with these obligations is deemed as contributory negligence. Further obligations apply as described in the CONIQ Cloud handbook or further documentation as provided by Qlar.

### V. Fees

1. The applicable fees and prices as well as further commercial details (e.g., duration) for the different products and services are set out in the Order Form.
2. The Customer shall only be entitled to assert a right of retention or withholding to the extent that his counterclaim is uncontested, ready for decision or has been finally adjudicated.
3. If the Customer fails to make any payments when due, Qlar shall have the rights under applicable law and these Terms, in particular:
  - a. The Customer shall pay to Qlar default interest at the statutory rate according to Sec. 288 para. 2 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) on the overdue amount; and
  - b. Qlar shall be entitled to temporarily suspend the Customer's access to the CONIQ Cloud after having set an appropriate deadline. The Customer shall continue to incur and owe all applicable fees and prices irrespective of any such suspension due to the Customer's delinquency.

### VI. Warranties

1. Qlar shall provide the CONIQ Cloud as a service in the meaning of Sec. 611 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) unless otherwise agreed and in a workmanlike manner.
2. The CONIQ Cloud is primarily not intended to replace the appropriate evaluation and maintenance of the machines / equipment of the Customer or a third party. The Customer shall take adequate measures to confirm and/or validate the data shown on CONIQ Cloud before conducting or omitting maintenance and repair.
3. Qlar neither warrants nor provides guarantee for the accuracy and/or completeness of the data collected by the sensors and processed on CONIQ Cloud.

### VII. Intellectual Property Rights / Feedback

1. Unless otherwise stated in these terms and conditions Qlar and/or its licensors own all legal right, title and interest in and to CONIQ Cloud, and any software made available to the Customer or any other third party as a part of and/or in connection with CONIQ Cloud ("Software"), including any and all intellectual property rights that exist therein, whether registered or not, and wherever in the world they may exist. The CONIQ Cloud and the Software contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Neither the Customer nor any third party shall obtain any express or implied rights in or to any part of CONIQ Cloud.
2. In the event the Customer, in connection with the CONIQ Cloud, communicates to Qlar suggestions for improvements relating to the CONIQ Cloud, Qlar shall be entitled to use such feedback in its discretion and without restriction.

### VIII. Term and Termination

1. The agreement on the use of the CONIQ Cloud, the Service Add-ons as well as Carefree CONIQ Monitor generally have an initial term of 1 (one) year, calculated from the coming into force of the

agreement ("**Initial Term**") if not agreed otherwise in the Order Form.

2. On expiration of the Initial Term, the respective agreement shall automatically renew for additional period(s) ("**Renewal Term**") for the same duration as the Initial Term, unless a party provides the other Party with notice of non-renewal at least 3 (three) months prior to the expiration of the Initial Term or the Renewal Term, as applicable.
3. Either Party may terminate the agreement for cause upon 30 (thirty) days' prior written notice if the other Party is in material breach of the agreement and the material breach remains uncured at the expiration of the 30 (thirty) days period.
4. Qlar reserves the right to temporarily or permanently block and/or revoke access in case of violations of these Terms in accordance with the applicable laws. This applies in particular if the Customer provides wrong information at registration.
5. Technical Data stored within the CONiQ Cloud Service will be stored as long as the Customer has an active subscription. Qlar shall unrecoverably delete all Customer data remaining on its servers 30 days after termination of the contractual relationship unless otherwise stated by the applicable laws. There is no right of retention or lien on the data in favor of Qlar. After termination of the contract Qlar will make it possible for the customer to retransfer or secure the data before it is deleted.

#### **IX. Changes to these Terms**

1. Qlar expressly reserves the right to make reasonable changes to these Terms. The Customer will be notified by Qlar about any changes to these Terms by email message and by publication under coniq-cloud.com test.coniq-cloud.com, int.coniq-cloud.com and dev.coniq-cloud.com. If the Customer does not reject those changes in text form (e.g. email, fax) within four weeks after receipt of the notification, the changes are deemed to be accepted by the Customer. Qlar will expressly notify the Customer about the right to reject and the consequences of being silent. This reservation shall not apply to material contractual obligations (i.e. contractual obligations enabling the fulfilment of the agreement on the subscription and regularly trusted on by the other Party). Relevant for the timeliness of the rejection is the date on which it is received by Qlar.
2. If the Customer rejects, Qlar reserves the right to terminate the agreement on the subscription upon 30 (thirty) days' prior written notice.

#### **X. Backup / Uptime**

1. The CONiQ Cloud is not developed for data backup and does not substitute any backup or storage system for electronic data. The Customer shall be responsible to keep backups of any and all of the Customer's data.
2. The CONiQ Cloud is generally available at least 95% during a contract year (24/365) at the transfer point. The transfer point is the router exit of Qlar' data center. Availability is deemed to be the Customer's ability to use all main functions of the CONiQ Cloud. Maintenance times as well as times of malfunction in compliance with a reasonable remedial time shall be deemed to be times of availability of the CONiQ Cloud. Times of insignificant malfunctions shall not be taken into account in the calculation of availability. Qlar' measuring instruments in the data center shall be decisive for the proof of availability.
3. The Customer shall immediately report any malfunctions to the contact details stated in section XVIII.
4. In case the CONiQ Cloud is not available at least 95% of a contract year (24/365), the following shall apply:
  - a. For each incident (8 hour off time/day) the Customer will receive a service credit equal to 1/30th of the Customer's monthly CONiQ Cloud service fees.
  - b. The service credits will be calculated against the monthly fees associated with the use of the CONiQ Cloud.
  - c. The service credits awarded in any billing month shall not exceed the Customer's monthly CONiQ Cloud fees.
  - d. The service credits are the Customer's sole and exclusive remedy for any violation of the service level.
5. Qlar reserves the right to temporarily or permanently deactivate access to the CONiQ Cloud for security reasons (e.g. in the event

of gaps in security) or other important reasons. Temporary or permanent deactivations of access, which are necessary to protect the Customer's interests, do not count for the calculation of the availability as per A.X.2.

6. The provision and use of the CONiQ Cloud may be subject to restrictions with regard to the current state of the art beyond the scope of Qlar' control. This relates in particular to the availability of the data connections provided by carriers, the network and Internet access. In individual cases, the non-availability of the network can lead to the CONiQ Cloud not being available as the necessary data transfer cannot occur. In addition, short-term capacity bottlenecks can arise from peak loads on the CONiQ Cloud, wireless and fixed networks and on the Internet.
7. Disruptions can also arise due to force majeure, including strikes, lockouts and official orders, and on account of technical and other measures (e.g. repairs, maintenance, software updates, and extensions) necessary on Qlar' systems or those of downstream or upstream providers, content providers and network operators, which are necessary for the proper or improved performance of the CONiQ Cloud.

#### **XI. Access to Customer's Data in the Cloud Services Environment/ Confidentiality**

1. Customer will retain all right, title and interest (including any and all intellectual property rights) in and to the Customer's data as provided or made available to Qlar ("**Customer Data**"). Customer hereby grants to Qlar a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of and display the Customer Data to the extent necessary to provide the CONiQ Cloud and all related functions to the Customer.
2. Qlar is using a third-party infrastructure ("AWS") to provide the CONiQ Cloud. The Customer authorizes Qlar to access the Customer's machine data with such infrastructure for the purposes described in these Terms.
3. The contracting parties agree that separately in an agreement on data processing in accordance with Art. 28 GDPR, in particular, the subject and duration of the processing, the type and purpose of the processing, the type of personal data, the categories of data subjects and the obligations and rights of the Customer existing within the framework of the commissioned processing shall be specified.
4. The customer shall comply with the applicable provisions of data protection law when using the CONiQ Cloud and all CONiQ Cloud related Services. In this respect, Qlar is not the responsible party within the meaning of Art. 4 No. 7 GDPR.
5. Qlar will not access or use the Customer Data except the Customer agrees on support of Qlar or orders a data related service or Customer Data is anonymized (no correspondence to a machine, the Customer or a location). Anonymized data can freely be used by Qlar and is then in the ownership of Qlar. There is no claim by the Customer to works generated by this data.
6. Notwithstanding anything to the contrary herein, Qlar may obtain and aggregate technical data about the Customer's use of the CONiQ Cloud that is non-personally identifiable with respect to the Customer, and Qlar may use the data to analyse, improve, support and operate the CONiQ Cloud and otherwise for any business purpose during and after the term of the agreement.
7. Qlar undertakes to maintain confidentiality about all confidential information (including business secrets) that it learns in connection with this Agreement and its performance and not to disclose, pass on or otherwise use such information to third parties. Confidential information is information which is marked as confidential or the confidentiality of which is evident from the circumstances, irrespective of whether it has been communicated in written, electronic, embodied or oral form. The confidentiality obligation does not apply if Qlar is obligated to disclose the confidential information by law or by virtue of a final or legally binding decision of an authority or court. Qlar undertakes to agree with all employees and subcontractors on a provision similar in content to the preceding paragraph.

#### **XII. Liability**

1. Qlar' contractual and statutory liability for damages caused by slight negligence shall, irrespective of its legal ground, be limited as follows:

- a. Qlar shall be liable up to the amount of the foreseeable damages typical for this type of contract due to a breach of material contractual obligations;
  - b. Qlar shall not be liable for the slightly negligent breach of any other applicable duty of care.
2. The aforesaid limitations of liability shall not apply to any mandatory statutory liability, in particular liability for willful misconduct and gross negligence, liability under the German Product Liability Act (*Produkthaftungsgesetz*), and liability for culpably caused personal injuries. In addition, such limitations of liability shall not apply if and to the extent Qlar has assumed a specific guarantee. Any further liability regardless of fault is excluded to the extent permitted by law. Qlar shall not be liable for the loss of data insofar as the damage is due to the fact that the Customer has failed to carry out data backups and thereby ensure that lost data can be restored with reasonable effort.
  3. Clauses A.XII.1.a apply accordingly for Qlar' liability for wasted expenditures.
  4. The Customer is obliged to take reasonable efforts for the prevention and minimization of damages.

### XIII. Statute of Limitations

1. Customer's claims - irrespective of legal grounds - become time-barred after 12 (twelve) months.
2. For injury to life, body or health, grossly negligent conduct of executive bodies or senior executives, intentional or fraudulent conduct, and claims under the Product Liability Act, the statutory limitation periods shall apply.

### XIV. Export Control

1. Fulfilling contractual obligations (provision of goods, including software and technology as well as the provision of services) is subject to the proviso that this does not contravene national, European or supranational (UN/WTO) foreign trade rules, such as export control regulations, embargoes, sanctions, customs regulations or similar constraints.
2. Supplies and/or services may contain hardware and software that are subject to customs and export control laws and regulations of the United States - regardless of their location - and of the country in which such goods are manufactured and/or received.
3. The Customer shall therefore comply with all applicable national, European or supranational (UN/WTO) foreign trade laws, such as export control regulations or re-export control regulations of the United States, in particular when transferring deliveries (including, but not limited to, software, technology and accompanying documentation) or services to third parties.
4. Should any required license not be issued, or contractual service not be approved by the competent authorities, Qlar expressly reserves the right to rescind the agreement. Claims for damages of any kind, especially due to delay or non-performance, or other rights by the Customer are excluded in this respect.
5. Customer shall defend, indemnify and hold Qlar harmless from and against any and all fines, penalties, claims, lawsuits, demands, liabilities, losses, or costs (including attorneys' fees) for any actual or alleged violation of any national, European or supranational (UN/WTO) foreign trade laws resulting from the sale or delivery, including the provision of software and technology, or from the performance of services.

### XV. Miscellaneous

1. The Order Form, together with these Terms, is the entire agreement ("the Agreement") of the Parties with respect to the subject matter of the agreement and supersedes all prior agreements, written or oral, between the Parties with respect to the subject matter thereof.
2. Deviating, conflicting or supplementing terms and conditions of the Customer shall only become part of the agreement if explicitly accepted by Qlar in writing. Qlar's mere knowledge of the Customer's terms and conditions does not make them part of the agreement.
3. Any amendments and additions to the agreement as well as notifications necessary for its execution require written form. The requirement of written form within the meaning of these terms and conditions is also met by fax, electronic form or text form, unless otherwise agreed in individual contracts. The written form

requirement can only be overruled in written form. Section IX remains unaffected.

4. Customer may not assign, sublicense or otherwise transfer the agreement, or any of its rights or obligations under the agreement, to any third party without Qlar' prior written consent, which consent must not be unreasonably withheld, delayed or conditioned. In the event of such a permitted transfer by Customer, the rights granted under these Terms shall continue to be subject to the same usage limitations that applied under applicable Order Forms prior to the transfer.

### XVI. Marketing

Subject to the Customer's prior approval and its logo and trademark usage guide, the Customer shall participate in reasonable marketing activities that promote the benefits of the CONiQ Cloud to other potential Customers and to use the Customer's name and logo on the Qlar web site and in promotional materials. Qlar may disclose the Customer as a customer of Qlar.

### XVII. Applicable Law and Jurisdiction

1. German law shall apply under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The exclusive place of jurisdiction for all disputes arising from or in connection with these Terms shall be Darmstadt, Germany.
3. If one of the provisions of these Terms should be or become invalid, this shall not affect the validity of all other provisions or agreements.

### XVIII. Customer Service / Complaints

1. The Customer may use the contact details below in case of questions or complaints.
2. <https://www.qlar.com/contact-support/office-contacts> Beyond that, Qlar does not and is not obligated to participate in alternative dispute resolution procedures before an alternative dispute resolution entity for consumers.

### B. Subscription "Dashboard Access free subscription" (free of charge) or other services free of charge for time-limited test purposes

For „Dashboard Access free subscription“, Chapter A and the following provisions of this Chapter B. apply. For any gratuitous temporary provision of hardware and embedded software and ancillary component(s) for testing purposes ("Hardware for testing purposes"), Chapters C. I., II. and III. additionally apply. The provisions in Chapter B. supersede any conflicting provisions in Chapter A and C.

- I. Qlar will make one or more services available to the Customer on a free of charge basis, specified in the Order Form. The services are provided "as-is" without any warranty or guarantee.

Additionally, the provision of hardware for the use of CONiQ Monitor or Upgrade legacy CONiQ monitoring system may be agreed upon for a limited period of time (testing period) for testing purposes, specified in the Order Form.

- II. Each Party may terminate the "Dashboard Access free subscription" or any other contract for **services free of charge for time-limited test purposes** including contracts for provision of Hardware for testing purposes at any time for no reason with immediate effect.
- III. Qlar shall mark the Hardware for testing purposes as its property by means of reasonable labeling. Neither this marking nor manufacturer's notes, serial numbers, seals, software license notes, etc. may be removed or changed by the Customer without the prior consent of Qlar. The handover to any third party shall be prohibited.
- IV. The Customer is obliged to maintain the Hardware for testing purposes in working condition and free from any defect by Qlar or a qualified third party on its own cost.

The Customer shall notify Qlar without undue delay of any defects or damage to the Hardware for testing purposes.

The Hardware for testing purposes shall be used only in accordance to the instruction.

The Customer shall adequately insure the Hardware for testing purposes against damage, destruction and theft and provide Qlar with evidence of the conclusion and existence of insurance cover on request.

The Customer shall be obligated to make any change to the place of assembly and commissioning or any other changes to the Hardware for testing purposes only with the prior consent of Qlar.

- V. The Customer operates the Hardware for testing purposes on its own liability and costs. The Customer shall be liable for any loss, damage or destruction of the Hardware for testing purposes in the case of chance as well. The Customer shall indemnify Qlar against all costs, expenses, damage(s), and other claim(s) arising out of or in connection with the operation of the Hardware for testing purposes outside the application environment.
- VI. In deviation from Section A.XII. Qlar' entire liability for any claims arising out of or in connection with the agreement is excluded. The aforesaid limitations of liability shall not apply to any mandatory statutory liability, in particular liability for willful misconduct and gross negligence, liability under the German Product Liability Act (*Produkthaftungsgesetz*), and liability for culpably caused personal injuries. In addition, such limitations of liability shall not apply if and to the extent Qlar has assumed a specific guarantee. Any further liability regardless of fault is excluded to the extent permitted by law. Qlar shall not be liable for the loss of data.
- VII. Qlar undertakes no warranty for material defects and defects of title, except in cases in which Qlar has fraudulently concealed the respective material defect or defect of title.
- VIII. In deviation from Section C.III. the rights described therein are granted only for the duration of the testing period.
- IX. At the end of the testing period, the Customer shall return the Hardware for testing purposes, including the manuals and any connection cables and other accessories provided, to Qlar in accordance with the provisioning documentation in a duly and free of defect(s) condition without undue delay at the Client's risk, unless otherwise agreed. The Customer shall return the Hardware for testing purposes at the place of assembly and commissioning. Any rights of retention to which the Client might be entitled shall be excluded

## C. CONiQ Monitor (purchase) system

For the purchase of the „CONiQ Monitor“ as well as the "Upgrade legacy CONiQ monitoring system", Chapter A. and the following provisions of this Chapter C. apply. The provisions in Chapter C. supersede any conflicting provisions in Chapter A.

### I. Scope, Transfer of Risk, Delivery

- 1. Qlar will supply hardware according to the Order Form and the datasheet BVD10100 in the application specific version.
- 2. The Customer is responsible for: power connection, space for the floor unit, e.g. wall or stand due to radio communication of the devices some spaces around the machine cannot be used) and one of the two: network connection with free internet access or a SIM card with at least 16 GB / month data volume (min. 4G mobile network coverage at machine obligatory), and if fieldbus integration is to be used, connecting the corresponding fieldbus cable.
- 3. The risk of loss and damage shall transfer to the Customer once the delivery item has left the Qlar premises, including where partial deliveries are made or where Qlar have assumed other services, such as transport costs, or delivery and erection.
- 4. In case dispatch is delayed or fails to occur due to circumstances not attributable to Qlar, the risk of loss and damage shall transfer to the Customer upon notification of readiness for dispatch.

### II. Assembly and Commissioning by Customer and Maintenance

- 1. The Customer is responsible for the initial assembly and commissioning of the CONiQ Monitor, unless otherwise agreed.
- 2. Maintenance of the CONiQ Monitor is the responsibility of Customer. The Customer must ensure that the system is maintained in accordance with the BVH10101 manual. If for this application there are any battery powered devices, the Customer must

regularly change the batteries. . The battery status is indicated in the CONiQ Cloud. Qlar has technically the option to remotely access the floor unit and change the floor unit's software for maintenance and update purposes. Qlar may not remotely access the floor unit without the Customer's prior approval (email). Remote access is only possible with secured VPN by selected Qlar employees and password.

### III. Embedded Software

The Customer shall be granted a perpetual, non-exclusive, non-transferable, worldwide right to use the software embedded in the CONiQ Monitor and the related documentation. It is not permitted to sub-license the software. The customer receives a software parts list.

To the extent that the embedded software contains separate open source software (OSS) components that are clearly distinguishable from the proprietary software components, the applicable open source license conditions apply exclusively to these OSS components.

### IV. Retention of Title

- 1. Title to delivery items shall not transfer to the Customer until payment has been made in full. If the validity of the retention of title in the country of destination is linked to special conditions or special formal requirements, the Customer shall ensure that these are fulfilled.
- 2. The Customer may not pledge, sell or assign as security the delivery item prior to the transfer of title. In the event of attachments, and seizures, or other dispositions by third parties, the Customer shall point out Qlar' proprietary rights and promptly notify Qlar in writing.
- 3. In case the Customer is in breach of the agreement, e.g. in case of payment default, Qlar shall be entitled to repossess the delivery item following a notice of default, and the Customer shall be obliged to surrender possession. Neither the enforcement of the retention of title nor the seizure of the delivery item by Qlar shall be deemed to constitute a rescission of the agreement.
- 4. An application for the initiation of insolvency proceedings concerning the Customer's assets shall entitle Qlar to rescind the agreement and to demand immediate return of the delivery items.

### V. Delays in Delivery and Impossibility

- 1. In the event of partial impossibility, the Customer may only rescind the agreement if the Customer can prove that partial performance is of no interest to the Customer. Where this is not the case, the Customer shall pay the agreed price relating to the partial delivery.
- 2. If the impossibility is not attributable to either Party, Qlar shall be entitled to that part of the remuneration relating to the work performed previously.
- 3. The liability of Qlar for damages caused by delay is limited to a maximum of 5% of the order value. This limitation does not affect the liability for intent and gross negligence. The customer must provide evidence of any damage caused by delay.
- 4. The Customer shall be entitled to rescind the agreement in accordance with the statutory provisions if - with due regard to the statutory exceptions - a reasonable grace period granted to Qlar during default expires to no avail. Upon written request, the Customer is obliged within a reasonable time period to notify Qlar as to whether it will exercise its right to rescind the agreement.
- 5. Any further claims arising in connection with default shall be exclusively subject to Section C.V.

### VI. Defective Goods and Warranty

- 1. Any asserted claim for defects requires that the Customer has duly complied with its obligations to inspect and notify of defects.
- 2. For defects in material and title, the Customer shall have the following claims:
  - a. At Qlar' discretion, Qlar shall deliver a defect-free item or remedy the defect, provided the delivery item was already evidently defective at the time of transfer of risk.
  - b. Claims for defects may not arise as a result of factors which are not within Qlar' sphere of responsibility, such as: natural wear and tear, harmful environmental conditions unknown to

Qlar, chemical, electrochemical or electrical influences, or changes made to the delivery item without Qlar' consent.

- c. The Customer shall grant Qlar reasonable time and opportunity required for supplementary performance.
  - d. Qlar shall - provided that the complaint proves to be justified - bear expenses necessary for the supplementary performance, unless where this may lead to a disproportionate burden.
  - e. If the Customer has culpably contributed to the cause of defect, in particular due to the Customer's failure to comply with its obligation to prevent and mitigate damage, Qlar is, following its remedial performance, entitled to claim damages corresponding to the Customer's contributory cause.
  - f. If a reasonable grace period provided to Qlar for supplementary performance expires without result, the Customer shall - subject to statutory exceptions - be entitled to rescind the agreement. If, however, only an immaterial defect is given, the Customer shall solely be entitled to a reduction of the purchase price. Otherwise, the right to a reduction of the purchase price shall be excluded.
  - g. All other claims for defects (including, but not limited to, compensation for damage not occurring to the delivery item itself) are exclusively subject to Section A.VI.
3. Customer's claims for defects - irrespective of legal grounds - become time-barred after 12 (twelve) months
  4. In case of a sale of used products - unless statutory liability stipulates otherwise - claims for defects shall be excluded.

#### **D. Carefree CONiQ Monitor rent system**

For „Carefree CONiQ Monitor“ rent system Chapter A. and the following provisions under Chapter D. apply. The provisions in Chapter D. supersede any conflicting provisions in Chapter A.

##### **I. Allocation**

1. The rental equipment as specified in the Order Form ("Rental Equipment") shall be delivered to the Customer's site in accordance with the Order Form.
- II. The rental equipment shall be provided as new or refurbished and tested, pre-installed with operating system software, standard drivers and application software (summarized as "Embedded Software") as specified in the specification.
1. Qlar is responsible for the initial assembly and commissioning of the rental equipment. The Customer shall ensure the screen is idle during this time and that the Qlar service technicians have access. Assembly and commissioning may cause extra costs depending on the contractual agreement. The Customer shall grant Qlar access to the premises at the place of assembly and commissioning and to the workstations in accordance with the agreed schedule for delivery and provision in operational condition. The Customer shall establish the spatial and technical prerequisites for the assembly and commissioning in good time in accordance with the operating manual. When granting access to the premises, Qlar shall comply with the Customer's security and access guidelines as well as any instructions issued in this regard in individual cases.

##### **III. Rental Period**

The term of rent and its termination shall be governed by Chapter A. Section VIII unless otherwise agreed in the Order Form. Sec. 545 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) is excluded.

##### **IV. Assembly and Commissioning, Operational Readiness**

1. Qlar shall set up the rental equipment at the specified place of assembly and commission and connect it to the power and data network.
2. Qlar shall make the rental equipment, including the system and application software, ready for operation and shall set up the users individually in accordance with the rights regime and the Customer's other specifications.
3. Qlar shall only be obliged to provide instruction and training on the basis of an express supplementary agreement.
4. The Customer shall confirm readiness for operation by signing a protocol.

##### **V. Embedded Software**

The Customer shall be granted a non-exclusive, non-transferable, worldwide right to use the software embedded in the CONiQ Monitor and the related documentation during the term of the Agreement in accordance with these Terms.

It is not permitted to sub-license the software. The customer receives a software parts list.

To the extent that the embedded software contains separate open source software (OSS) components that are clearly distinguishable from the proprietary software components, the applicable open source license conditions apply exclusively to these OSS components.

##### **VI. Rental fee**

The rental fee to be paid by the Customer for the rental equipment is set out in the Order Form and includes the provision of the rental equipment for the rental period as well as the repair and maintenance in accordance with the agreement.

##### **VII. Obligations of the Customer**

1. The Customer shall handle the rental equipment with the care of a prudent businessman, which he is accustomed to applying in his own affairs. The Customer shall provide sufficient instruction and training or otherwise ensure that its subcontractors use and operate the rental equipment in accordance with its normal use.
2. The Customer is responsible for: power connection, space for the floor unit, e.g. wall or stand (due to radio communication of the devices some spaces around the machine cannot be used) and one of the two: network connection with free internet access or a SIM card with at least 16 GB / month data volume (min. 4G mobile network coverage at machine obligatory), and if fieldbus integration is to be used, the corresponding fieldbus cable.
3. Qlar shall mark the rental equipment as its property by means of reasonable labeling. Neither this marking nor manufacturer's notes, serial numbers, seals, software license notes, etc. may be removed or changed by the Customer without the prior consent of Qlar.
4. The Customer shall grant Qlar access to the rental equipment in accordance with its security and access guidelines for the purpose of repair and maintenance work and care services, which must be carried out at the place of assembly and commissioning. The Customer is responsible for ensuring that no one except Qlar has access to the floor unit, not even the Customer's employees, unless Qlar explicitly requests the Customer to work on the floor unit as part of remote maintenance.
5. The Customer shall notify Qlar without undue delay of any defects or damage to the rental equipment.
6. The Customer shall adequately insure the rental equipment against damage, destruction and theft and provide Qlar with evidence of the conclusion and existence of insurance cover on request.
7. The Customer shall be obligated to make any change to the place of assembly and commissioning or any other changes to the rental equipment only with the prior consent of Qlar.

##### **VIII. Maintenance of Usability**

1. Qlar shall maintain the rental equipment in a condition suitable for the contractually agreed use throughout the rental period. To this end, Qlar shall carry out the necessary maintenance and repair work itself or have it carried out by third parties commissioned by it. Qlar shall inform the Customer of the intervals at which routine inspections of the rental equipment are to be carried out and shall give separate notice of such inspections in good time remedial time
2. Defects shall be remedied on a regular basis by means of rectification, i.e. telephone support for the avoidance of defects or repair at the place of assembly and commissioning. In this context, Qlar shall have the choice of attempting to rectify the defect by telephone or by remote maintenance as a first step. The Parties shall conclude a separate data processing agreement for remote maintenance if required. If rectification also fails at the place of assembly and commissioning, for example by replacing individual components of the rental equipment in question, Qlar may remove the rental equipment for the purpose of subsequent performance.
3. Qlar shall in each case be obliged to restore the contractually agreed fitness for use within a reasonable period. If the

rectification fails or was uneconomical for Qlar, it may demand the Customer's consent to the provision of a new rental equipment of the same or similar type, quality, configuration and individual setting.

4. The Customer must make regular backups. Qlar shall not be liable for loss of data in the course of maintenance or repair work. The regular changing of batteries in battery powered equipment must be carried out by the Customer; Qlar will request the change of batteries.
5. Qlar warrants an uptime of the hardware system of 95% during the contract year (up to 25% of the screen motion sensors may be "down" without this counting as the downtime of the system). Maintenance times as well as times of malfunction in compliance with a reasonable remedial time shall be deemed to be times of availability. Times of insignificant malfunctions shall not be taken into account in the calculation of availability. Qlar' measuring instruments in the data center shall be decisive for the proof of availability. Downtime for which Qlar is not responsible (e.g. external damage, no internet access, etc.) will be treated as uptime (the rental fees must still be paid).
6. If Qlar does not remedy the restriction of usability after a second reasonable deadline has been set, the Customer shall be entitled, at its option, to remedy the defect or to terminate the rental agreement with respect to the defective rental equipment. The Customer is only entitled to terminate the entire rental agreement if a significant part of the rental equipment is not available for the contractually agreed use.

#### **IX. Warranty for defects**

1. With regard to the granting of the use of the Rental Equipment, the Embedded software as well as the provision of storage space, the warranty provisions of tenancy law (Sec. 535 et seq. of the German Civil Code (Bürgerliches Gesetzbuch – BGB)) shall apply.
2. The Customer shall notify Qlar of any defects without delay.
3. The warranty for only insignificant reductions in the suitability of the service is excluded. The strict liability according to Sec. 536a para. 1 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) for defects that already existed at the time of the conclusion of the contract is excluded. The right of remedy the defect by the Customer and reimbursement of expenses according to Sec. 536a para. 2 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) is excluded.

#### **X. Return**

At the end of the rental period, the Customer shall return the rental equipment, including the manuals and any connection cables and other accessories provided, to Qlar in accordance with the provisioning documentation. The Customer shall return the rental equipment at the place of assembly and commissioning unless otherwise agreed.

#### **E. Provision of further Services**

When providing services (e.g., Dashboard Access CONiQ Cloud, Remote Support, Remote Monitoring/Data Analysis and other services in connection with the aforementioned like assemblies, repairs, commissioning and assessments) the following provisions shall apply in supplement:

##### **I. Scope**

1. Qlar shall provide the services agreed in the Order Form in accordance with the service description agreed therein.
2. Qlar shall provide its services in accordance with the current state of the art at the time of conclusion of the contract, insofar as no deviating requirements have been agreed within the scope of the service description.
3. Qlar is free to choose the persons he employs to perform the services and shall ensure that the persons employed are sufficiently qualified to perform the services. If and to the extent that Qlar has named persons to the Customer whom Qlar intends to deploy for the performance of the service, this shall correspond to the planning status at the time of the naming. The Customer has no claim to the deployment of the named persons.
4. Qlar shall be entitled to use subcontractors for the performance of services. The Customer agrees to the use of companies affiliated

with the Qlar within the meaning of section 15 et seq. of the German Stock Corporation Act (AktG) (hereinafter referred to as "affiliated companies") as subcontractors.

#### **II. Assistance of the Customer**

1. The Customer shall provide the agreed cooperation services. In addition to the cooperation services expressly mentioned, the Customer shall provide the cooperation services which are necessary and generally customary for Qlar to provide the services in accordance with the contract and shall in particular:
  - a) provide all necessary information,
  - b) provide software, if applicable, and grant Qlar the rights of use necessary for the performance of its services,
  - c) grant access to its IT systems,
  - d) provide technical assistance,
  - e) providing the necessary functional devices, tools and lifting equipment as well as the necessary commodities and materials at the site,
  - f) ensure necessary special arrangements for the protection of individuals and goods at the site. If necessary, the Customer shall provide special protective clothing,
  - g) inform the service personnel about existing special safety regulations at the site, as far as these are of importance for the service personnel and the services to be performed. In the event of violations of such safety regulations by the service personnel the Customer shall inform the Qlar. In the event of serious violations, the Customer may refuse the offender access to the site in agreement with the Qlar. If a service is to be performed abroad, for which the service personnel require a residence and/or work permit, the Customer shall assist the Qlar towards the local authorities in obtaining, prolonging or adjusting of the permit required for the execution of the services.
  - h) provide heating, light, energy, compressed air, water, operating force as well as the required operational connections,

insofar as these services have not been contractually assigned to Qlar' scope of duties.

2. Insofar as cooperation services are owed and the necessary specification has not already been made contractually, Qlar shall request these services from the Customer in writing with a reasonable lead time, stating the relevant framework conditions. Qlar shall immediately inform the Customer in writing of any cooperation services that it considers to be insufficient. Qlar shall check the plausibility of information provided by the Customer and inform the Customer of any errors detected. Qlar shall not be subject to any further obligation to check and inform.
3. Unless otherwise agreed in individual cases, all cooperation services shall be provided to Qlar free of charge.
4. The services to be rendered by the Customer constitute real obligations and not merely mere duties. If and to the extent that the Customer does not render the services owed by it, does not render them on time or does not render them as agreed and this has an effect on performance of Qlar of the services, the Qlar shall be released from rendering the services concerned. Corresponding performance deadlines shall be postponed by a reasonable period of time. Additional expenses incurred and proven by Qlar shall be remunerated separately on the basis of the agreed conditions, without prejudice to further rights of Qlar.

#### **III. Work performance**

1. In case of work performances, these shall be deemed accepted 2 weeks after the notification of readiness for acceptance by Qlar, unless the Customer complains in writing within this period existing major defects.
2. The Customer is only entitled to refuse acceptance if the defect abolishes or significantly reduces the normal and/or the contractually presumed use of the work and/or its value. If the work is subject to defects which do not entitle to refuse acceptance, the acceptance must be made subject to the removal of the defects.

3. Refusals of acceptance or reservations towards the acceptance must be made immediately in writing stating and describing the complained defect.
4. The unconditional use of the performance object by the Customer for production purposes shall be deemed acceptance.
5. If the performance object is lost or impaired before acceptance without responsibility of Qlar, then the Customer has to reimburse the price minus saved expenditures to Qlar.

#### **IV. Warranty**

In case of work performances, the Customer has the following warranty rights:

1. Qlar must, at his own discretion, repair or re-deliver faulty parts, even in the case of major faults, if the performance object was demonstrably defective at the time of passing of risk (acceptance). In doing so, Qlar must bear all related costs of the spare part, the transport as well as for the removal and the mounting, as far as these are not increased by the fact that the performance object was moved to a place other than the place of performance.
2. The Customer must notify Qlar of any defects immediately in writing and precisely specify the nature of the defects as well as the possible cause. In cases of culpable co-causation of the defects by the Customer, especially due to non-compliance of his obligation to avoidance and reduction of damages, the Qlar is entitled after the supplementary performance to damages in accordance with the co-causation.
3. Replaced parts become the property of Qlar.
4. Warranty claims do not arise as a result of causes that are beyond Qlar' area of responsibility, such as: (non exhaustive enumeration): natural wear and tear (wear parts), unsuitable subsoil, adverse environmental conditions unknown to Qlar, chemical, electrochemical or electrical influences, changes to the performance object without the consent of Qlar.
5. If the Customer or an hired third party inexpertly reworks, there is no liability of the Qlar for consequences arising from that. The same applies to changes to the performance object without the prior consent of Qlar. The right to self-performance is excluded.
6. If the performance object is lost or impaired before acceptance without responsibility of Qlar, then the Customer has to reimburse the price minus saved expenditures to Qlar.
7. The period of the warranty is 12 months from acceptance.

#### **V. Supplementary conditions**

1. If a service can not be performed for reasons the Qlar is not responsible for, services already performed in this context by the Qlar as well as incurred expenditures are to be reimbursed by the Customer to Qlar.
2. Within the scope of the statutory regulations, the Customer is entitled to a reduction if – taking into account the statutory exceptions – a reasonable period for performance set for the Qlar during delay has been allowed to expire. The right to reduction also exists in other cases of failure of remedy of defects. The Customer is only entitled to withdraw if, despite the reduction, the services are demonstrably of no interest for the Customer.
3. Documents and information delivered and made by the Qlar in the course of the services such as, pictures, drawings, weights and measures are only binding, as far as the Qlar expressly specified them as an element of contract or expressly refers to them. These documents are no guaranteed characteristics, unless otherwise agreed in writing, but descriptions and identifications of the services. Customary deviations and deviations, which are made due to legal regulations or represent technical improvements, as well as the replacement of components by equivalent parts is permissible, as far as the usability of the contractually agreed purpose is not affected.
4. The Qlar reserves all rights to all information and documents delivered (such as samples, drawings, documentations) – even in electronic form; they may not be made available to third parties without prior written consent.