

Telematics Data Use Agreement

This Telematics Data Use Agreement ("Agreement") is made between you as the end user, represented by its legal or authorized representative ("User") and Terex Deutschland GmbH ("we" / "us") allowing us to have access to and use Information and Data relating to the Equipment as specified below. The acceptance of this Agreement shall be deemed to constitute a binding agreement between the parties, and User agrees that this Agreement cannot be countermanded or otherwise changed by User thereafter, except as explicitly set forth herein.

- 1. Services and Data.** We may provide to User services as specified by us on this portal or otherwise ("Services"), and updated from time to time, relating to specific Terex equipment used by the User ("Equipment"). Where reasonable business needs require, we may, after reasonable notice to User change, amend, modify or limit the scope of Services. The Services may include collection, management and reporting of non-personal data about the Equipment including, but not limited to, performance, usage, fuel consumption, up /down times, defects, parts replacement, movement and location ("Information and Data"). Such Information and Data may also be used by us for research and development purposes and to monitor, maintain, diagnose, update or repair the Equipment.
- 2. No Warranty; Accessibility; License.** Due to their nature the Services are provided "as is", without any warranty (express or implied), including without limitation as to the duration and availability of the Services, a specific quantity or quality of the Services, any merchantability or the fitness for a particular purpose. As the Services are fully or partially transmitted by an infrastructure of third parties (such as wireless network providers), they may be disrupted or interrupted by events beyond our control. No license or any rights under any patents, copyrights or trademarks are granted to User or implied by the provision of the Services.
- 3. Requirements.** Certain requirements and conditions must be met at all times by User to gain access to and/or receive the Services. Such requirements and conditions are set forth by us and communicated to User on this portal or otherwise ("Requirements"). Minimum requirements and conditions include (without limitation): hardware as authorized or installed by us or a Terex authorized service provider and maintained (and not tampered with or disabled) by User (Teleservices hardware, SIM card), the provision of services of a third party provider (such as wireless network services), the payment of all prices, fees and other charges of User to us and/or the third party provider (such as wireless network provider), the acceptance of this Agreement, the registration of User at this portal and the maintenance of User's data and Equipment's data at this portal, the Equipment being ready for the provision of Services (and being maintained and kept in good shape at all times by User according to Terex manuals and instructions). Additional documentation may be required to be accepted or signed by User to gain access to and/or receive the Services.
- 4. Representations and Warranties of User.** By accepting this Agreement, User warrants and represents that (i) User has all rights and permissions to use the Equipment, (ii) User will use the Services and any hardware or other services or products provided by us or third parties for the Services at all times only as described herein and on this portal, (iii) User will not abuse the Services (e.g. for unlawful purposes), (iv) User will not, directly or indirectly, grant access to the Services to third parties, (v) User will without delay inform us when the Equipment is transferred to third parties and (vi) User will comply at all times during the term of this Agreement with all provisions stated by applicable law relating to the Services and resulting from the use or operation of Equipment.
- 5. Price; Payments.** Prices, fees and other charges for the provision of the Services are specified by us on this portal or otherwise and updated from time to time. We can change the prices, fees and other charges at any time after notice to User. User shall pay all prices, fees and other charges (including all taxes and customs) in accordance with our payment terms as specified by us on this portal or otherwise and updated from time to time. Any non-accessibility of Services caused by defective hardware, defective Equipment, changes or non-accessibility of third party hardware or services (such as defective SIM card or non-accessible wireless network services), any non-performance of User with its obligations under this Agreement, reasons outside of our control (such as reasons caused by User) or any Requirements not being met, shall not be grounds for User's non-payment of prices, fees and other charges or any refund of any payments made by User or any set-off of payments due by User.
- 6. Duration; Termination.** Either party can terminate the Services provided under this Agreement upon at least ninety (90) days prior written notice. Any termination shall not be grounds for a refund of payments made by User or any set-off of due payments by User.
- 7. Data Protection.** Information and Data subject to this Agreement shall be data about the Equipment and not relate to any identifiable individual. User warrants that no User controlled personal data is provided to us through the Services or under this Agreement. At all times during the term of this Agreement the User shall be solely responsible for complying with all applicable data protection, employment and other laws relating to the User's collection and processing of the Information and Data provided under this Agreement. The User shall be solely responsible for the legitimate transfer of any User controlled personal data to us outside the scope of this Agreement.

8. Indemnification; Limitation of Liability

8.1 User hereby agrees to indemnify, release, defend and hold us harmless against any and all suits or actions and from all claims, damages, costs or liabilities from third parties, arising out of the use of the Information and Data under this Agreement, or User's use of the Services.

8.2 Irrespective of its legal grounds our liability shall be limited as follows:

(i) The limitations to our liability set forth in this section 8.2 shall not apply when our liability is directly related to the following: (a) in case of our intent and gross negligence, (b) in case of injuries to life, body, health, (c) pursuant to the terms of the German Product Liability Act, or (d) under an express guarantee granted by us to User in writing.

(ii) Our liability for negligent breaches of Cardinal Duties shall be limited to such damage which was typical for this kind of business and foreseeable upon the execution of this Agreement.

(iii) Force Majeure. Neither we nor the User shall be responsible for any failure to perform its duties under this Agreement due to Acts of God. If an Act of God lasts for more than 3 subsequent months, either Party may terminate this Agreement.

(iv) Irrespective of the legal grounds, we shall not be liable except as expressly set forth in this section 8.2.

(v) Our liability pursuant to section 8.2(i) (a) – (d) above and in case of intent shall be time-barred within the statutory period. In all other cases our liability shall be time-barred after 12 months.

9. **Governing Law and Jurisdiction.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereto and cancels and supersedes any and all terms and conditions relating to the Services previously issued by us to User, and shall be construed and enforced in accordance with the laws of Germany. The United Nations Convention on Contracts for the International Sale of Goods (1980) [C/SG] shall not apply. The parties agree that the proper and exclusive forum and venue in all legal actions brought to enforce or construe any of the provisions of this Agreement shall be in the courts of our business premises. The invalidity or unenforceability of any provisions of this Agreement shall not affect any other provision and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.