



GENERAL TERMS AND CONDITIONS FOR ACTYX CLOUD, EDGE AND HYBRID SERVICES

2 May 2019

1. SUBJECT MATTER OF THE TERMS AND CONDITIONS

1.1 The offers and contracts of Actyx AG (hereinafter "**Actyx**") regarding the use of software and provision of hardware products by Actyx are based exclusively on the following General Terms and Conditions of Delivery and Use. The contracting party may exclusively be an entrepreneur within the meaning of § 14 BGB (Bürgerliches Gesetzbuch [German Civil Code]). Actyx reserves the right to request proof of entrepreneurial status prior to the conclusion of the contract.

1.2 General and other terms and conditions of the respective customer only apply if and insofar as their validity is expressly recognised in writing by Actyx.

2. SUBJECT MATTER OF THE CONTRACT

2.1 The respective specific subject matter of the contract shall be determined between Actyx and the customer in separate individual contracts to be concluded together with user documentation and the solution design individually worked out between the parties. Actyx's services include, in particular, the provision of the use of Actyx Software (hereinafter "**Actyx Software**") and the hardware required for this use (hereinafter "**Actyx Devices**") to the extent specified in these provisions and the individual contract. Actyx Software and Actyx Devices hereinafter jointly referred to as "**Actyx Products**". The services to be provided by Actyx include, in particular:

2.1.1 The development and documentation of a solution design individually adapted to the respective customer (hereinafter "**Solution Design**").

2.1.2 Permission for use of Actyx Software

- as cloud-based software as a service or "SaaS" (hereinafter "**Cloud Service**");
- on hardware provided by or to Customer by Actyx (hereinafter "**Edge Service**");

and/or

- both in the form of Cloud Service and Edge Service (hereinafter "**Hybrid Service**").

2.1.3 Configuration and installation of the Actyx Software on the Actyx Devices. If the Actyx Software is used on hardware provided by the customer, Actyx only provides the software and documentation. The installation is carried out by the customer.

2.1.4 Provision of support services to the extent set forth in the SUPPORT SERVICES AND SERVICE LEVEL CONDITIONS FOR ACTYX CLOUD AND HYBRID SERVICES, which form an integral part of these terms.

2.2 The exact nature and functionality of the Actyx Products ordered by the customer can be found in the individual contract plus user documentation and the documentation of the Solution Design.

3. DUTIES AND RESPONSIBILITIES OF THE CUSTOMER

3.1 The customer shall provide Actyx with reasonable support in the provision of the contractual services. The individual cooperation obligations are defined in the individual contracts and the documentation of the Solution Design.

3.2 The customer is responsible for the proper and regular backup of his data. This also applies to documents handed over to Actyx in the course of the execution of the contract.

3.3 In order to use the Actyx Products, the system requirements (e.g. WiFi and firewall configuration) and technical infrastructure (e.g. cabling and other necessary hardware not provided by Actyx) specified in the individual contract together with the user documentation and the documentation of the Solution Design must be fulfilled by the customer.

3.4 The customer is responsible for the provision and maintenance of his network connections and telecommunications connections as well as all problems and delays resulting therefrom.

3.5 The customer is responsible for actions and omissions of its users and of direct and indirect subsidiaries of the customer, as far as these are in effect at the time of the conclusion of the individual contract within the meaning of §§ 15 et seq. of AktG (Aktiengesetz [Companies Act]) ("**Affiliated Companies**") as for its own acts and omissions and obligates them to use the Actyx Products in accordance with the contract. The customer shall establish appropriate security standards for users' access to, and use of, Actyx Products and shall ensure that unauthorised access to, or use of, Actyx Products and/or user documentation is prevented. For this purpose, the customer shall, to the extent necessary, inform its employees and affiliated companies of compliance with copyright law. In the event of such access or use, it shall notify Actyx immediately.

3.6 Without prejudice to Actyx's obligation to back up data, the customer shall be responsible for entering and maintaining the data and information it requires to use Actyx Products.

3.7 The customer is obliged to check its data and information for viruses or other harmful components before entering them and to use state-of-the-art virus protection programmes for this purpose.

3.8 The customer undertakes not to import, store, distribute or transmit, in the course of its use of the Actyx Products, any content the provision, publication or use of which violates any applicable law or agreements with third parties. In the event of a breach of this obligation Actyx shall be entitled to block the customer's access to such content and/or remove such content which Actyx considers to be inappropriate content. The right to terminate the individual contract for good cause remains unaffected.

- The customer shall indemnify Actyx against all damages, costs and other expenses resulting from the customer's breach of this Clause 3.8, unless the customer is not responsible for such breach.
- 3.9 The customer is obliged to keep confidential the "User IDs" and passwords transmitted by Actyx or generated by the customer himself, which are necessary for the use of the Actyx solution, and not to make them accessible to third parties.
- 3.10 The customer is responsible for monitoring the use of the Actyx Products and shall immediately notify Actyx in writing of any use exceeding the contractual agreements. The customer will then sign an extension agreement which will indicate the additional use and the additional remuneration. The corresponding remuneration shall be payable from the day on which the excess exists.
- 3.11 In the event of failure by the customer to perform its obligations, Actyx shall be entitled to terminate the agreement in whole or in part (e.g. in respect of certain Edge Services) after a reasonable period set by Actyx to perform such obligations has expired.
- 4. CONTRACT CONCLUSION AND DURATION, TERMINATION**
- 4.1 The contractual relationship begins with the conclusion of the individual contract. The individual contract comes into effect with the receipt of the order confirmation from Actyx confirming the previous order of the customer, at the latest with the provision of the Actyx Products.
- 4.2 Unless otherwise stipulated in the individual contracts, the individual contracts have an initial term of one year. The respective individual contract shall be extended by a further year if not terminated by either party with a notice period of two months to the end of the respective contract.
- 4.3 The right to termination without notice for good cause remains unaffected. An important reason is in particular if
- 4.3.1 the customer, notwithstanding a written warning by Actyx, continues to use the Actyx solution contrary to the contract, and by doing so does not only slightly violate the rights of Actyx. In particular, if the customer leaves the use of the Actyx solution to a third party in an unauthorised manner;
- 4.3.2 the customer is more than two months in arrears with the payment of a full annual usage fee;
- 4.3.3 the customer otherwise commits a material breach of contract capable of remedy and, despite a written warning, is not willing or able to remedy the breach within 30 (thirty) days after receipt of the warning.
- 4.3.4 Upon termination of an individual contract, the customer's right to use the relevant Actyx Products shall lapse. Furthermore, the customer is obliged, at his option, to surrender or completely and permanently delete the Actyx Software and to surrender or destroy all data carriers containing the Actyx Software and the complete documentation, materials and other documents provided to it.
- 4.4 Actyx Devices provided to the customer shall be returned to Actyx upon termination of an individual contract, unless the hardware in question is still required for the use of Actyx Software under other individual contracts.
- 4.5 Any termination of an individual contract must be in writing.
- 5. REMUNERATION, TERMS OF PAYMENT**
- 5.1 Unless otherwise agreed in writing, remuneration shall be understood as net prices plus statutory value added tax. The remuneration is quoted in Euros.
- 5.2 The customer shall pay the monthly remuneration stipulated in the individual contract, whereby the remuneration shall be paid for twelve (12) months in advance. Unless otherwise agreed in the individual contract, payments are due within 30 days of the invoice date without deduction. Actyx's claims may only be set off against claims which are legally established or undisputed.
- 5.3 Actyx is entitled to adjust the remuneration once every twelve (12) months with effect from the day following the next anniversary of the entry into force of the individual contract. If Actyx increases the remuneration, the increase may not exceed (i) 5% or (ii) the percentage of the increase in the Federal Statistical Office labour cost index in the calendar year preceding the increase. The higher percentage increase is decisive.
- 6. AUDIT**
- 6.1 Actyx has the right, after giving seven (7) days written notice in advance, to check at its own expense the contractual use of the Actyx Products at the customer's place. Actyx may also commission a qualified third party who is obliged to maintain confidentiality to carry out the audit. The customer shall keep complete and accurate records enabling a correct assessment of compliance with its access and use rights based on these terms and the individual contract. The customer guarantees to provide the necessary access, documents, information, employees and other relevant information free of charge and promptly for the performance of such an audit.
- 6.2 If an audit reveals that the customer has used the Actyx Products outside the agreed scope of use, Actyx may, at its discretion, cooperate with the customer to adjust the actual use of the Actyx Products to the contractually agreed scope. The customer has to pay for a use of the Actyx Products exceeding the contractual scope of use on the basis of the current Actyx price list and to reimburse Actyx for the audit costs. Such payment shall be made, without prejudice to any other right of Actyx, on the basis of these terms or on the basis of any legal claim.

7. SOLUTION DESIGN AND REMUNERATION IN CASE OF NO ORDER

- 7.1 As part of the Solution Design process, Actyx will work with the customer to identify which Actyx Products would be useful for the customer.
- 7.2 On this basis, Actyx develops an Actyx Software and device package ("**Solution Design**") individually adapted to the customer. The customer also receives a Solution Design document. This document describes all required Actyx Products and their configuration as well as the technical infrastructure to be provided by the customer.
- 7.3 The work performed by Actyx during the development of the Solution Design is in any case free of charge for the customer.

8. SUPPORT SERVICES

- 8.1 The support services to be provided by Actyx within the scope of the contractual relationship are conclusively described in the SUPPORT SERVICES AND SERVICE LEVEL CONDITIONS FOR ACTYX CLOUD AND HYBRID SERVICES, which are part of these terms.
- 8.2 Actyx may update the SUPPORT SERVICES AND SERVICE LEVEL CONDITIONS FOR ACTYX CLOUD AND HYBRID SERVICES at regular intervals during the term of this agreement and will notify the customer of such changes by email or other appropriate means, at its own discretion. Updates shall take effect no earlier than the date of the notice of the update, otherwise from the date specified in the notice of update. Actyx shall ensure that, as a result of the update, there will be no reduction in the scope of performance or any other change which is – on reasonable consideration – unacceptable to the customer, also taking into account Actyx's reasonable interests. Any termination rights of the parties remain unaffected.
- 8.3 Actyx provides maintenance services only for Actyx Products which are in an unmodified condition.

9. MAINTENANCE

- 9.1 The quality and functionality of the contractual Actyx Products are conclusively agreed in the individual contract together with the user documentation and the documentation of the Solution Design. Product descriptions shall not be deemed a warranty without a separate written agreement.
- 9.2 Actyx warrants that, during the term of the contract, the Actyx Products will meet the quality and functionality agreed in the individual contract together with the user documentation and the documentation of the Solution Design.
- 9.3 Defects in the Actyx Products provided, including user documentation and other documents, will be remedied by Actyx within a reasonable period of time after notification of the defect by the customer.

- 9.4 The removal of defects takes place after Actyx's choice by repair, replacement delivery or replacement performance. If the customer has set Actyx a further reasonable period of grace after an initial period which has lapsed without result and this period of grace has also lapsed without result or if a reasonable number of attempts at repair, replacement delivery or replacement performance have been unsuccessful, the customer may, under the statutory conditions and at his discretion, terminate the contract or reduce the remuneration and claim damages or reimbursement of expenses. The customer's right of termination due to non-granting of use in accordance with § 543 Para. 2 S. 1 No. 1 BGB is excluded, unless the repair, replacement delivery or replacement performance is to be regarded as failed.

- 9.5 Claims for damages shall be subject to the limitations set out in Clause 12.

- 9.6 In the event of a defect in the Actyx Software, the defect can also be remedied by handing over or installing a new programme version or a work-around. If the defect does not or only insignificantly impair the functionality, Actyx shall be entitled to remedy the defect by delivery/provision of a new version or an update as part of its version, update and upgrade planning to the exclusion of further claims for defects.

- 9.7 Defects shall be notified in writing by a comprehensible description of the symptoms of the defect, as far as possible proven by written records, printouts or other documents illustrating the defects. The notice of defects shall enable the reproduction of the defect. Legal obligations of the customer to examine the goods and to give notice of defects remain unaffected.

- 9.8 Changes or extensions to the Actyx Products made by the customer itself or by third parties shall void the warranty claims, unless the customer proves that the change or extension is not the cause of the defect. Actyx is also not responsible for defects caused by improper operation or operating conditions or the use of unsuitable equipment by the customer.

- 9.9 Actyx may refuse to remedy a defect until the customer has paid to Actyx the agreed remuneration less any part corresponding to the economic significance of the defect.

- 9.10 For the purpose of inspecting and rectifying defects, the customer allows Actyx to access the Actyx Products via remote access. The customer shall establish the necessary connections in accordance with Actyx's instructions.

10. INDUSTRIAL PROPERTY RIGHTS AND DEFECTS OF TITLE

- 10.1 All existing registered and unregistered intellectual property rights and know-how about Actyx Products and the services provided by Actyx remain with Actyx.

- 10.2 The Actyx Products made available to the customer by Actyx for use are free from rights of third parties that conflict with contractual use. Excluded from this is customary retention of title.
- 10.3 If, after the effective conclusion of the contract between Actyx and the customer, third party claims are made against the customer for infringement of industrial property rights, Actyx shall do everything in its power to defend the Actyx Products against the asserted rights of third parties at its own expense. The customer shall notify Actyx immediately in writing of the assertion of such rights by third parties and shall grant Actyx all powers and authorities necessary to defend the Actyx Products against the asserted rights of third parties.
- 10.4 To the extent that defects in title exist, Actyx shall (a) be entitled, at its option, (i) to remedy, by lawful means, the rights of third parties which impair the proper use of the software or (ii) to remedy the assertion thereof, or (iii) to modify or replace the software in such a way that it no longer infringes the rights of third parties if and to the extent that the functionality of the software owed is not significantly impaired, and (b) reimburse the licensee for any necessary recoverable costs incurred by the licensee in legal proceedings. The customer shall leave to Actyx the sole decision on the conduct of any disputes arising therefrom. In particular, the customer may not enter into any settlement or make any other concession without the prior written consent of Actyx. Actyx shall bear the entire costs of any legal dispute that may become necessary.
- 10.5 If the indemnity pursuant to Clause 10.4 fails within a reasonable period of grace set by the customer, the customer may, under the statutory conditions and at his discretion, terminate the contract or reduce the agreed remuneration and claim damages.
- 10.6 Actyx shall be entitled, instead of the procedure set out in Clause 10.4, to reverse the contract concluded with the customer and to reclaim the Actyx Products against reimbursement of the remuneration paid by the customer after deduction of a reasonable usage fee for the period during which the customer had possession of the Actyx Products.
- 10.7 Actyx shall not be liable for infringements of industrial property rights if Actyx Products have not been used in a form authorised by Actyx and the infringement of industrial property rights is attributable to this.
- 10.8 Otherwise, Clauses 9.6 and 9.10 shall apply accordingly.
- 11. SERVICE LEVEL AT CLOUD SERVICES**
- 11.1 Actyx will make all commercially reasonable efforts to comply with the SUPPORT SERVICES AND SERVICE LEVEL CONDITIONS FOR ACTYX CLOUD AND HYBRID SERVICES agreed cloud service uptime during the term of the agreement. If the monthly measured cloud service uptime
- 11.1.1 in four (4) consecutive calendar months; or
- 11.1.2 in five (5) or more calendar months within a continuous period of twelve months
- reaches less than 95%, the customer may terminate the affected Cloud or Hybrid Service by giving thirty (30) days written notice to Actyx after the occurrence of the non-compliance. The termination shall take effect at the end of the calendar month in which Actyx received the termination.
- 11.2 Subject to any claims for damages pursuant to Clause 12, in the event of a breach of the SUPPORT SERVICES AND SERVICE LEVEL CONDITIONS FOR ACTYX CLOUD AND HYBRID SERVICES, any further claims of the customer in addition to the right to termination shall be excluded.
- 12. LIABILITY**
- 12.1 Actyx has unlimited liability for damages due to lack of warranted qualities. The same applies to damages resulting from injury to life, body or health which are based on a negligent breach of duty by Actyx or an intentional or negligent breach of duty by a legal representative or vicarious agent of Actyx.
- 12.2 Actyx is otherwise only liable for intent and gross negligence on the part of its legal representatives and executive employees, unless an obligation is breached, the observance of which is of particular importance for achieving the purpose of the contract (cardinal obligation). Cardinal obligations are those contractual obligations, the fulfilment of which is essential for the proper execution of the contract and on the observance of which the customer could rely. Actyx is liable for the fault of other vicarious agents only to the extent of the liability for the breach of cardinal obligations.
- 12.3 In case of breach of a cardinal obligation, Actyx shall also be liable for slight negligence. Liability is, however, limited to such damages as may typically be expected to occur in connection with the use of Actyx Products.
- 12.4 Actyx's liability for data loss shall be limited to the typical recovery costs that would have been incurred if backup copies had been made on a regular basis and in accordance with the risks involved.
- 12.5 The liability according to the product liability act remains unaffected (§ 14 ProdHG (Produkthaftungsgesetz [Product Liability Act])).
- 12.6 The strict liability of Actyx for errors according to § 536 a Para. 1 BGB already existing at the time of conclusion of the contract is expressly excluded.
- 12.7 Actyx shall not be liable for failures and malfunctions and damage resulting from unsuitable, improper or otherwise unanticipated use, incorrect operation, failure or non-existence of the internet connection, incorrect or negligent handling, chemical/electrochemical or electronic influences, changes or repairs by the customer or third parties without the prior authorisation of Actyx. Furthermore, Actyx is not liable for network bottlenecks, failures and malfunctions caused by the network provider and its private branch exchanges used in the respective case.

- 13. PROVISION OF ACTYX SOFTWARE AND GRANTING OF RIGHTS FOR CLOUD SERVICES**
- 13.1 Actyx shall provide the customer electronically, e.g. by email, or in an otherwise appropriate manner, with the information which the customer requires to access and use the Cloud Service for the first time. Actyx may instead allow the customer to access the Cloud Services through another format or delivery method, provided that this does not unreasonably interfere with the access to, and use of, the Cloud Services.
- 13.2 Actyx grants the customer the non-exclusive, non-transferable and worldwide right to access and use the Cloud Service and user documentation during the term of this agreement in accordance with the provisions of these terms and the individual contract.
- 13.3 The right to use the Cloud Service is limited to the use for own internal purposes (in particular an evaluation of data of third parties is not permitted). Any further exploitation or use for other companies/organisations is not permitted. This does not apply to the use of the Cloud Service for Affiliated Companies.
- 13.4 The right to use the Cloud Service exists only to the extent agreed in each individual contract. The definitions of metrics are set out in the appendix, "Overview of Metrics", which forms part of these terms.
- 13.5 By using the Cloud Service, the customer is prohibited from: (a) copy, translate, or otherwise modify the documentation in whole or in part (except to the extent permitted by mandatory law), or create derivative works based thereon, provided that the documentation may be copied for internal use to the extent necessary; (b) use the Cloud Service in a manner that violates any applicable law, including, without limitation, transmitting unlawful information or data that infringes the intellectual property rights of others; (c) jeopardise or circumvent the operation or security of the Cloud Service; and (d) access the Cloud Services or user documentation to create a product or service that is in competition therewith.
- 14. PROVISION OF ACTYX SOFTWARE AND GRANTING OF RIGHTS FOR EDGE SERVICES**
- 14.1 Actyx provides the customer with the respective Actyx Software fully installed together with the respective edge device.
- 14.2 In addition, Actyx carries out the integration, parameterisation and adaptation of the Actyx Software to the needs of the customer necessary for the contractually agreed use of the software.
- 14.3 Unless otherwise agreed, the customer receives a simple (non-exclusive) right to use the Actyx Software, limited in time to the term of the contract, non-transferable and limited in content to the purpose of the Actyx Software as defined in the individual contract together with the user documentation. The customer has no right to grant sublicenses.
- 14.4 The right to use the Actyx Software exists only to the extent agreed in the individual contract. The definitions of metrics are set out in the Appendix, "Overview of Metrics", which forms part of these terms.
- 14.5 The customer may make copies of the Actyx Software as far as the respective copy is necessary for the use of the programme. The necessary copies include, in particular, the installation of the programme on the mass memory of the hardware used and the loading of the programme into the working memory.
- 14.6 If, for reasons of data security or to ensure a rapid reactivation of the computer system after a total failure, the regular backup of the entire database including the computer programmes used is indispensable, the customer may make the necessary number of backup copies. The data carriers concerned shall be marked accordingly. The backup copies may only be used for archival purposes.
- 14.7 The customer may not make any further copies, including the output of the programme code on a printer and the photocopying of the user documentation or essential parts thereof.
- 14.8 The customer may not sell the Actyx Software, including the user documentation and other accompanying material, to third parties, nor may it be temporarily transferred, especially not rented or lent. However, the transfer to third parties who are not granted an independent right of use and who have to submit to the will of the customer with regard to the manner of use is permissible. This is usually the case in particular with the customer's employees.
- 14.9 A modification of the Actyx Software by the customer is not permitted, as long as it does not serve elimination of a defect and Actyx is in default with elimination of this defect. In the latter case, the customer may only commission a commercially operating third party to remedy the error, who is not in a potentially competitive relationship with Actyx, if the performance of the remedy is likely to lead a disclosure of important programme functions and working methods.
- 14.10 The retranslation of the provided programme code into other code forms (de-compilation) as well as other types of reverse engineering of the different production stages of the Actyx Software are only permitted insofar as they are carried out in order to obtain the information necessary to achieve the interoperability of an independently created computer programme and this information is not otherwise available. The customer must first request the required information from Actyx against payment of an expense allowance.

14.11 A further condition for permissible de-compilation is that the reverse engineering or programme observation is only carried out by those actions to which the customer is entitled according to Clauses 14.3 to 14.5 of these terms. In particular, the programme code must not be output to a printer.

14.12 Copyright notices, serial numbers and other features serving to identify the programme may under no circumstances be removed or changed. The same applies to the suppression of the screen display of corresponding features.

14.13 If the customer violates any of the above provisions, all rights of use shall immediately become ineffective and shall automatically revert to Actyx. In this case, the customer must immediately and completely stop using the Actyx Software, remove all copies of the software installed on his systems and delete the backup copy, if any, or hand it over to Actyx.

15. PROVISION OF THE ACTYX DEVICES

15.1 Actyx Devices are made available to the customer for the duration of the contract and exclusively for the use of the Actyx Software.

15.2 The installation of the contractually agreed Actyx Software on the Actyx Devices and their configuration is carried out by Actyx.

15.3 The right to use the Actyx Devices exists only to the extent agreed in the individual contract. The definitions of metrics are set out in the Appendix, "Overview of Metrics", which forms part of these terms.

15.4 The customer is not allowed to sell the Actyx Devices to third parties or to let them for a limited time, especially not to rent or lend them.

16. PROVISION OF THE ACTYX PRODUCTS AND RIGHTS CLASSIFICATION WITH HYBRID SERVICES

Clauses 13, 14 and 15 apply mutatis mutandis to the Hybrid Services.

17. DATA PROTECTION AND PARTY RESPONSIBILITIES FOR DATA IN CLOUD SERVICES

17.1 Actyx operates order data processing in relation to the customer. In this respect, the parties have concluded an agreement on order data processing as an appendix to the individual contract which describes the technical and organisational measures to be complied with by Actyx.

17.2 The customer shall be the controlling party and responsible in relation to Actyx for all (i) data entered by the customer or transmitted to Actyx by or on behalf of the customer for the purpose of using the Cloud Services and (ii) data generated, stored and otherwise processed (hereinafter "User Data") by the customer in connection with the customer's use of the Cloud Services.

17.3 The customer is solely responsible for (i) the legality of the User Data; (ii) the accuracy and completeness of the User Data; (iii) obtaining and maintaining all necessary authorisations and licenses for the use of the User Data under the Cloud Services; and (iv) entering the User Data into the Cloud. Actyx is not responsible for any infringement of any intellectual property or other rights of any third party or any breach of any law relating to the User Data and the communication thereof. In particular, the customer collects, updates and processes all personal data contained in the User Data in accordance with the applicable data protection

law.

17.4 Actyx will comply with your internal requirements when archiving User Data and will make it available to the customer on request. Actyx shall be entitled to update these internal rules taking into account the reasonable interests of the customer.

17.5 Subject to the provisions of Clause 19, the customer grants Actyx (and its Affiliates and Subcontractors) a non-exclusive, worldwide, transferable right to store, transmit, display, edit and otherwise use User Data as necessary (i) for the purpose of providing the Cloud Service (including but not limited to making back-up copies and performing penetration tests) and (ii) to store, transmit, display, process and otherwise use the data for the purpose of verifying the customer's compliance with the provisions of Clause 13.

17.6 During the term of the Cloud Service, the customer has the option of accessing the User Data at any time, extracting it and exporting it in a standard format. Retrieval and export may be subject to technical restrictions and requirements (as described, for example, in the documentation). In this case, Actyx and the customer will agree on a reasonable method to enable the customer to access the User Data. Before the contract expires, the customer can use Actyx's available self-service extraction tools to perform a final export of the User Data from the Cloud Service. Before the contract expires, the customer can use Actyx's available self-service extraction tools to perform a final export of the User Data from the Cloud Service. The stored data are subject to the agreed confidentiality rules.

18. USE OF DATA FOR THE DEVELOPMENT OF CLOUD SERVICES

Actyx and its Affiliates, subcontractors and external service providers may collect, use and disclose data for the purpose of benchmarking studies, marketing or other business purposes, and may perform analyses using (in part) User Data and information resulting from the use of the Cloud Service by Customer and Users. All data and analyses collected, used and passed on in this way are anonymous and will not identify the customer and his users or other third parties included in this data. Examples of how to use analyses include: Resource and support optimisation, research and development; process automation for continuous improvement; performance improvements, development of new Actyx products and services, verification of data security and integrity; internal demand planning and data products such as industry trends and developments, indices and anonymous benchmarking.

19. CONFIDENTIALITY

- 19.1 Each party reserves all rights to its confidential information. Subject to Clause 19.3, each party undertakes to treat as confidential all confidential information of the other party provided or made available to it prior to conclusion or in connection with an individual contract and to use such confidential information only for the execution of the individual contract. Confidential information may only be reproduced to fulfil the purpose of the contract. Any duplication of the confidential information shall bear the appropriate confidentiality notice of the original. With respect to the confidential information of the other party, each party undertakes (a) to keep such confidential information with reasonable care; and (b) to disclose such confidential information only to agents whose knowledge of the confidential information is necessary for the performance of the individual contract and who are required to maintain confidentiality to at least the same extent as under these terms. Each party shall be responsible for compliance with the provisions of this Clause 19 by its agents as for its own actions.
- 19.2 Each party undertakes to notify the other party in writing of any actual or suspected misuse, unlawful use or unauthorised disclosure of confidential information of the notifying party of which the receiving party becomes aware.
- 19.3 The provisions in Clause 19.1 shall not apply to confidential information of which the recipient can prove that (a) it has been developed independently by the recipient and without use of the confidential information; (b) the recipient becomes fully aware of it from an authorised source other than the disclosing party; (c) without fault of the recipient, it was already publicly known or became publicly known at the time of disclosure; (d) the recipient was already fully aware of such information at the time of such notification; (e) such information is disclosed with the prior written consent of the notifying party; or (f) such information is required to be disclosed by law or by a judicial, regulatory or supervisory order or instruction. In such a case, the receiving party shall, to the extent permitted by law, promptly notify the notifying party of the relevant court order or requirement in order to enable it to seek redress or otherwise prevent or restrict disclosure.
- 19.4 The provisions of this Clause 19 shall each apply for 5 (five) years after the respective confidential information has been provided. They shall continue to apply even after termination of the individual contract.

20. FEEDBACK

- 20.1 During the term of the agreement, the customer may provide to Actyx, on its own initiative or at Actyx's request, information relating to Actyx Products and services, business or technology plans, in particular comments or suggestions relating to the possible creation, modification, adaptation, correction or improvement of Actyx Products and/or services or, for example, whether the Actyx development direction meets the customer's IT needs (collectively "**Feedback**"). The customer provides all Feedback on a voluntary basis. In order to ensure Actyx's unrestricted right to use the Feedback, the customer grants Actyx a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, transferable and freely sublicensable right to use the Feedback without restriction in all possible forms of exploitation. This includes, but is not limited to, the right to incorporate the Feedback into all Actyx Products and services and to reproduce, adapt, translate, distribute to customers, partners, distributors and other third parties in any form, publicly reproduce and permit all such acts to be performed by licensees, customers and other third parties as part of Actyx Products and services or alone. The customer waives the right to name.
- 20.2 The customer acknowledges that the information provided to the customer by Actyx under an individual contract in relation to future Actyx Products and services and business technology plans is to be understood only as an indication of possible strategies, developments and functionalities and is not binding on Actyx in relation to its future business development and product strategy and development.

21. INSTRUCTION AND TRAINING

Actyx instructs the personnel designated by the customer in the use of the Actyx Products and in the handling of the associated work equipment. Unless otherwise agreed between the parties, Actyx's services shall be covered by the contractually agreed remuneration to the extent of 40 hours per contract year. Place, time and type of instruction shall be agreed separately between the parties.

22. FURTHER REGULATIONS

- 22.1 Actyx has the right to use subcontractors to perform the contract.
- 22.2 Except as otherwise provided in the individual contract or these terms, neither party shall be entitled to assign, subcontract or otherwise transfer its rights and obligations under any individual contract without prior written consent. However, Actyx may at any time assign its rights and obligations under an individual contract to an Affiliate by written notice to the customer. The scope of application of § 354a HGB (Handelsgesetzbuch [Commercial Code]) remains unaffected.
- 22.3 In case of doubt, the terms shall remain binding in their remaining parts even if individual provisions are legally ineffective. The parties undertake to replace ineffective provisions with provisions that come as close as possible to the desired economic success. The same applies for any gaps in the contract that may exist.

22.4 Amendments or supplements to these General Terms and Conditions of Sale and Delivery as well as confirmed orders must be made in writing. This also applies to any changes to this written form clause.

22.5 The contract concluded between the parties is subject exclusively to the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

22.6 The parties agree that Actyx's registered office shall be the exclusive place of jurisdiction for all disputes arising out of or in connection with this agreement, provided that the customer is a merchant within the meaning of the German Commercial Code or that the customer is not domiciled in the Federal Republic of Germany at the time of filing an action. Notwithstanding the foregoing, Actyx shall remain entitled to bring an action at the place of general jurisdiction of the customer.

Appendix Overview of Metrics

The purchase of a subscription by a customer gives him certain rights to use certain Actyx *Edge Services*, *Cloud Services* and *Hybrid Services*. The following table describes for each service and each device which rights of use the customer acquires with the purchase of the subscription. Note: the column *Rights* describes rights acquired with the purchase of an item (service or device)

Services/Devices	Type	Rights (if 1 subscription is purchased for a service or device)
<i>Apps / Applications</i>		
Manual Work Logging	<i>Edge Service</i>	Operation and use of the application on one edge device at any time
Digital Workbook	<i>Edge Service</i>	Operation and use of the application on one edge device at any time
Step-by-Step Work Instructions	<i>Edge Service</i>	Operation and use of the application on one edge device at any time
Digital Quality Inspections	<i>Edge Service</i>	Operation and use of the application on one edge device at any time
Machine Data Collection	<i>Edge Service</i>	Operation and use of the application on one edge device at any time
Mobile Material Tracking	<i>Cloud Service</i>	Operation and use of the application on one edge device at any time
Visual Management Dashboards	<i>Cloud Service</i>	Operation and use of the application on one edge device at any time
Mobile Team Collaboration	<i>Hybrid Service</i>	Operation and use of the application on one edge device at any time
Reporting & Analytics	<i>Cloud Service</i>	Use of the application by one user (identification by user name and password)
Material Labelling	<i>Cloud Service</i>	Operation and use of the application on one edge device at any time
<i>Apps / Connector Apps / Software Integrations</i>		
SAP ECC 6.0 Integration	<i>Edge Service</i>	Use of integration on one <i>edge device</i> to connect to one entity of the third-party system.
Microsoft NAV 2013 Integration	<i>Edge Service</i>	Use of integration on one <i>edge device</i> to connect to one entity of the third-party system.
proALPHA 5.x Integration	<i>Edge Service</i>	Use of integration on one <i>edge device</i> to connect to one entity of the third-party system.
proALPHA 6.x Integration	<i>Edge Service</i>	Use of integration on one <i>edge device</i> to connect to one entity of the third-party system.
Microsoft File Server Integration	<i>Edge Service</i>	Use of integration on one <i>edge device</i> to connect to one entity of the third-party system.
Microsoft Power BI integration	<i>Cloud Service</i>	Connection of the integration with one Power BI <i>Organisation</i> .
<i>Machine integration</i>		
OPC UA integration	<i>Edge Service</i>	Use of integration on one <i>edge device</i> to connect to one OPC UA server.
OPC DA (Classic) integration	<i>Edge Service</i>	Use of integration on one <i>edge device</i> to connect to one OPC DE server.
EUROMAP 12/67 integration	<i>Edge Service</i>	Use of integration on one <i>edge device</i> to connect to one machine.
EUROMAP 63 integration	<i>Edge Service</i>	Use of integration on one <i>edge device</i> to connect to one machine.
MTConnect integration	<i>Edge Service</i>	Use of integration on one <i>edge device</i> to connect to one machine.
Digital I/O integration	<i>Edge Service</i>	Use of integration on one <i>edge device</i> to connect to one machine.
<i>Devices (and accessories)</i>		
T10S Industry Tablet	<i>Edge device</i>	Exclusive use of the device for accessing Actyx <i>Cloud Services</i> , <i>Edge Service</i> or <i>Hybrid Services</i> .

T10S LTE Industry Tablet	<i>Edge device</i>	Exclusive use of the device for accessing Actyx <i>Cloud Services, Edge Service or Hybrid Services.</i>
MS4 Industry scanner	<i>Edge device</i>	Exclusive use of the device for accessing Actyx <i>Cloud Services, Edge Service or Hybrid Services.</i>
X10 Industry Gateway	<i>Edge device</i>	Exclusive use of the device for accessing Actyx <i>Cloud Services, Edge Service or Hybrid Services.</i>
SM55 Smart Monitor	<i>Edge device</i>	Exclusive use of the device for accessing Actyx <i>Cloud Services, Edge Service or Hybrid Services.</i>
SM65 Smart Monitor	<i>Edge device</i>	Exclusive use of the device for accessing Actyx <i>Cloud Services, Edge Service or Hybrid Services.</i>
SM75 Smart Monitor	<i>Edge device</i>	Exclusive use of the device for accessing Actyx <i>Cloud Services, Edge Service or Hybrid Services.</i>
<i>Any accessories for edge devices</i>	-	Exclusive use of accessories with compatible Actyx <i>edge devices.</i>