

CLOSE TO OUR CUSTOMERS

WITOS

Terms & Conditions

("#WG-2")

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These terms and conditions govern the use of the WITOS services and, if any, further telematic services that are to be concluded between Customer and WIRTGEN.

WIRTGEN has developed and provides WIRTGEN GROUP Innovative Telematics and On-Site Solutions (hereinafter “**WITOS**”) and Further Telematic Services. These systems consist of telematics hardware, software and telematic services and are provided by WIRTGEN Road Technologies GmbH and, if applicable, through WIRTGEN GROUP subsidiaries, authorized dealers or other commissioned parties.

The use of WITOS in connection with other services and solutions, in particular Telematic Services, requires the conclusion of further separate agreements with WIRTGEN, WIRTGEN GROUP subsidiaries, authorized dealers or other commissioned parties. Unless specified otherwise, Telematic Services are governed – in descending hierarchical order – by (i) a user agreement (hereinafter “**User Agreement**”), (ii) specific subscription terms (hereinafter “**Specific Subscription Terms**”), if any, and (iii) these terms and conditions (hereinafter “**Agreement**”).

1. Contracting Parties

This Agreement is concluded between Wirtgen Road Technologies GmbH, Reinhard-Wirtgen-Str. 2, 53578 Windhagen, Germany (“**WIRTGEN**”) and the Customer (both hereinafter “**Party**” and collectively “**Parties**”).

2. Object of the Agreement

2.1 WITOS and Telematic Services

The telematic services like WITOS FleetView, WITOS HCQ, WITOS PAVING, WITOS WPT each provided by separate Subscription Forms and separate Terms and Conditions (the “**Telematic Service(s)**”) require WITOS which transfers machine data from your machine to a cloud-based server solution, storing and processing your data, including a user interface to access and visualize your data. For a detailed description of the features and data points processed by WITOS please see the WITOS Privacy Notice #WG-4 (European Economic Area [EEA]), #WG-5 (Rest of World). For further details on the individual Telematic Service please see the respective User Agreement, Specific Subscription Terms, if any, and privacy notice.

Depending on the respective Telematic Services, the Services may also include supporting machine operations like WIRTGEN SmartService and services that enable WIRTGEN GROUP subsidiaries, authorized dealers or other commissioned parties through dedicated applications like WITOS FleetView to retrieve machine diagnostics information, perform remote servicing activities, and to provide software updates for various components of a remotely machine. For a detailed description of these additional services please see the respective Specific Subscription Terms, which can be found in the [WIRTGEN GROUP Portal](#) and, if applicable, your corresponding agreement (e.g. WIRTGEN SmartService), which may also be concluded with a different WIRTGEN GROUP subsidiary, authorized dealer or other commissioned party.

WITOS Service and the Telematic Services will be enabled through one or more wireless telecommunications providers duly authorized by WIRTGEN (each an “**Underlying Wireless Provider**”). Customer will use the Products only in a country that is listed as an available country where WITOS Service is provided by WIRTGEN, ([Annex 1](#)). WITOS Service enables only those Telematic Services set forth in the respective User Agreement and expressly exclude any services that may be offered by any Underlying Wireless Provider other than those which WIRTGEN uses to provide the Telematic Services pursuant to the respective User Agreement. The range and signal strength may vary from location to location and depends from the range and signal strength of the local provider. WIRTGEN does not guarantee or assume any liability for certain coverage, range, or signal strength.

WIRTGEN may at its own discretion subcontract services regarding the WITOS Service and the Telematic Services.

CLOSE TO OUR CUSTOMERS

During the Subscription Period WITOS frequently transmits designated data from Customer's machine to the cloud-based servers.

The Customer hereby agrees that the data is processed to fulfil the described WITOS Service and the Telematic Service(s) as described in the User Agreement, these Terms & Conditions, and the relevant privacy notice which can be found in the [WIRTGEN GROUP Portal](#).

2.2 Access to the WITOS and Telematic Services

Customer will have access to the user interface available over WITOS FleetView, a website managed by WIRTGEN, or other Telematic Services. For accessing Telematics Data the Customer must request a WITOS FleetView Account. With WITOS FleetView the Customer gets an admin account for WITOS User Control to create additional users. Each WITOS gateway is linked to a specific organization as defined in the WITOS User Agreement #WG-1. If Customer wishes to link WITOS to a different organization, Customer has to contact its supporting dealer, its WIRTGEN GROUP subsidiary or WIRTGEN Customer Support team (e-mail: support@witos.com).

2.3 WITOS and Telematic Services activation

If the Customer wants to get access to telematic data on its individual machine, he must accept a binding WITOS User Agreement #WG-1 accepting these underlying terms and conditions.

The WIRTGEN GROUP subsidiary, authorized dealer or other commissioned party will be specified on the User Agreement to which WITOS is assigned to. WIRTGEN retains its right to refuse an activation request in case of export restrictions or technical constraints.

At the time of their respective activation, WITOS Service and any Telematic Services will be available and will continue in effect until the end of the Subscription Period. WITOS and the Telematic Services automatically renew.

2.4 SIM Card

WITOS includes a subscriber identity module card ("SIM Card"). The SIM Card may be used exclusively for WITOS and Telematic Services communication and is already installed on WIRTGEN machines or can be purchased from authorized WIRTGEN GROUP subsidiaries or dealers. The Customer does not acquire any ownership of the SIM Card. All rights, including the granting of rights to use the software installed on the SIM Cards shall remain with WIRTGEN. In the event of service disruptions, WIRTGEN shall be entitled to replace or modify the SIM Card. WIRTGEN reserves the right to deactivate the SIM Card, and to bill Customer for the reimbursement of any additional expenses incurred by WIRTGEN, if Customer uses the SIM Card for any purpose other than utilizing WITOS or Telematic Services. The Customer must promptly inform WIRTGEN in the event that part of the System Hardware becomes lost or stolen, or becomes inoperative due to damage, or if it has been misused in any way. The Customer is not allowed to transfer the SIM Card provided by WIRTGEN to a third party or to modify the SIM Card without WIRTGEN's express prior consent.

2.5 Abuse or fraudulent use of WITOS and Telematic Services

Customer will safeguard and ensure that all users safeguard any access credentials. Customer will be responsible for all acts and omissions of users. Customer will notify WIRTGEN promptly if it learns of any unauthorized use of any access credentials or any other known or suspected breach of security.

WIRTGEN may restrict or cancel, at its sole discretion, Customer's WITOS and/or Telematic Services under this Agreement if there is a reasonable suspicion of Abuse or Fraudulent Use. Customer will not abuse or make

CLOSE TO OUR CUSTOMERS

fraudulent use of WITOS or the Telematic Services, and agrees (a) not to engage or participate in, or permit, any Abuse or Fraudulent Use of WITOS or Telematic Services, (b) to promptly report to WIRTGEN or WIRTGEN GROUP subsidiaries or dealers any such Abuse or Fraudulent Use of which Customer becomes aware, and (c) to cooperate in any investigation or prosecution relating to any Abuse or Fraudulent Use initiated by WIRTGEN, legal representatives of WIRTGEN, or any Underlying Wireless Provider. Customer is solely liable for charges, costs or damages resulting from Abuse or Fraudulent Use. “**Abuse or Fraudulent Use**” of WITOS or Telematic Services includes, but is not limited to:

- (I) Accessing, altering, or interfering with the communications of and/or information about another customer of WIRTGEN, any Dealer, or any Underlying Wireless Provider or attempting or assisting another person or entity to do or attempt any of the foregoing;
- (II) Rearranging, tampering with or making an unauthorized connection to any Underlying Wireless Provider’s network;
- (III) Installing any amplifiers, enhancers, repeaters, or other devices that modify the radio signals or frequencies upon which WITOS or Telematic Services are provided or operating the System Hardware in a manner that violates applicable law or governmental regulation;
- (IV) Using WITOS or Telematic Services in such a manner so as to interfere unreasonably with the use of service by one or more other customers or end users or to interfere unreasonably with WIRTGEN’s or any Underlying Wireless Provider’s ability to provide service;
- (V) Using WITOS or Telematic Services to convey obscene, prurient, defamatory, salacious, or unlawful information or copyrighted content that is not the property of Customer;
- (VI) Using WITOS or Telematic Services without permission on a stolen or lost device;
- (VII) Unauthorized access to WITOS or Telematic Services or any Underlying Wireless Provider’s service;
- (VIII) Using WITOS or Telematic Services to provide voice over IP services, or tethering or tapping into WITOS or Telematic Services to provide telematic services other than the Telematic Services;
- (IX) Using any scheme, false representation or false credit device, with the intent to avoid payment, in whole or in part, for WITOS or Telematic Services;
- (X) Unauthorized modification of System Hardware, Terminal, System Hardware settings, or System Software;
- (XI) Causing the System Hardware to be installed by any person or entity other than a WIRTGEN service technician or other WIRTGEN certified System Hardware installer qualified by WIRTGEN;
- (XII) Unauthorized access to, use of, alteration of, or destruction of the System Data files, programs, procedures, or information related to Customer or any other WIRTGEN customer
- (XIII) Use with the intent to reverse engineer or clone the System, or any attempt to create a substitute or similar service through use of, or access to, WITOS or Telematic Services;
- (XIV) Use for any unlawful, illegal or fraudulent purpose;
- (XV) Tracking the location, or performance and behavior of any natural person without a legal basis or otherwise in violation of applicable laws and regulations (in particular GDPR);
- (XVI) provide the use or allow the use of the service of persons located or connected with embargo countries or in countries where the service is not allowed. In case one or more of such abuse or fraudulent use WIRTGEN will be allowed to interrupt immediately the service and withdraw from the service contract. In this case the Customer will not be credited or refunded any charges for WITOS or Telematic Services interruptions resulting from any restriction or cancellation of WITOS or Telematic Services under this Section.
- (XVII) adapt, alter, modify, improve, translate or create derivative works of the System Software, WITOS or the Telematic Services, or reverse engineer, decompile, disassemble or otherwise attempt to reconstruct or obtain the source code to all or any portion of the System Software, WITOS or the Telematic Services; applicable statutory rights according to the German Copyright Act (*Urheberrechtsgesetz*), in particular Sections 69d (2), (3) and 69e German Copyright Act, shall remain unaffected by aforementioned provisions. This restriction does not apply to open source software as specified in Section 3.2.

CLOSE TO OUR CUSTOMERS**3. Hardware and Software****3.1 Hardware**

In this agreement, the telematic control unit together with accessories such as cables, cable harnesses and antenna shall be referred to as “**System Hardware**”. If the System Hardware has not already been pre-installed in the WIRTGEN machine that the Customer has purchased, it must be purchased and installed separately by a WIRTGEN GROUP subsidiary or authorized dealer. The use of the System Hardware by the Customer is subject to all the terms and conditions of this Agreement as well as all other terms and conditions agreed upon with the Customer at the time of purchasing the System Hardware.

3.2 Software

The services software, modem software, and other software and/or firmware (“**System Software**”) are resident on the System Hardware. The System Software contains proprietary code of WIRTGEN or third parties. The System Software is licensed under the terms of this section and may include third party code which is separately licensed as specified in [Annex 2](#). Third-party license terms may apply as indicated. With respect to any third-party software components that WIRTGEN makes available to the Customer, the licensing terms of the respective software manufacturer supersede these Terms and Conditions, unless otherwise agreed. With respect to any open source software that WIRTGEN provides to the Customer, the granting of a license to use such software and the Customer’s relationship with the third-party developers of such software are only governed by the respective applicable open source licensing terms. WIRTGEN will provide the Customer with such licensing terms and the respective source code upon request (e-mail: opensource@wirtgen-group.com). The licensing terms are also provided in [Annex 2](#).

Unless specified otherwise WIRTGEN grants to Customer a non-exclusive, non-transferable, non-sublicensable, license to use the System Software resident on the System Hardware in accordance with the User Agreement and these Terms & Conditions solely (i) in conjunction with use of the intended System, and (ii) with the intended System Hardware. Unless otherwise provided, the Customer has no right to retrieve or use the source code. The use of the System Software for or together with another system or other hardware requires the prior written consent of WIRTGEN. WIRTGEN further grants Customer the right to transfer its license to use the System Software, which does not include the Services, during the useful life of the System Hardware in conjunction with the transfer of the ownership of the System Hardware. Customer agrees that WIRTGEN may update the System Software on any of Customer’s System Hardware during the term of this Agreement as often as is deemed appropriate. WIRTGEN is not liable for any data loss due to the update of the service.

3.3 Telematic Services

WIRTGEN grants to Customer a non-exclusive, non-transferable, non-sublicensable, revocable license to access and use the Telematic Services specified in the User Agreement. Further restrictions specified in the Specific Terms and Conditions may apply.

4. New services

WIRTGEN may make available to the Customer new features to enhance existing Telematic Services (“**New Services**”). New Services may be subject to additional terms and conditions (including additional remuneration) or even require a separate agreement or consent.

5. Data Collection, Data Privacy and Compliance

All data collected under this Agreement are collected for the purpose of fulfilling the services provided under this Agreement or for further purposes cited in this Agreement.

CLOSE TO OUR CUSTOMERS**5.1 Collection of data to activate WITOS**

WIRTGEN collects and processes data like customer number, customer, address, zip code, country, name, first name, phone, e-mail address, language and WIRTGEN GROUP subsidiaries and authorized dealers' information for the fulfillment of your activation request of the WITOS User Agreement. As far as personal data is affected, further details are provided in the WITOS Privacy Notice #WG-4 (EEA) and #WG-5 (Rest of World).

5.2 Collection of data to provide WITOS and Telematic Services

WIRTGEN will host, manage, and use the machine data pursuant to the terms of this Agreement in order to provide WITOS and Telematic Services. Furthermore, depending on the machine type and service levels, the data may include operational data provided by Customer's machine.

5.3 Access to and Use of Data

By default, all WIRTGEN GROUP subsidiaries and authorized dealers connected to the Customer have access to the machine diagnostic data through WITOS FleetView until the Customer restricts this via WITOS User Control (please contact support@witos.com). Customer may also authorize or restrict WIRTGEN GROUP subsidiaries or authorized dealers and other partner organizations' access via WIRTGEN GROUP subsidiaries or authorized dealers or WITOS User to the data collected. In addition, the WIRTGEN Customer Support can create an automatically approved partnership between a WIRTGEN GROUP Dealer and the Customer's organization granting access to machine data. To remove dealer access to Machine Data from machines, Customer has to contact the WIRTGEN Customer Support (e-mail to support@witos.com).

5.4 Call data records

In addition, the Underlying Wireless Providers may generate call data records ("CDRs") for billing and invoicing purposes, and the Underlying Wireless Providers may retain the CDRs for longer than a ninety (90) day period, in accordance with applicable law.

5.5 WIRTGEN usage of data

WIRTGEN is entitled to access the data to provide the contractually defined WITOS and Telematic Services. Customer agrees that WIRTGEN may access and use the data in anonymized or pseudonymized form for statistical purposes as well as to improve or enhance the services provided under this Agreement, develop additional or new WIRTGEN products and services, and/or identify new usage types of equipment.

5.6 Data Privacy and Compliance

WIRTGEN will process all data and provide underlying WITOS and Telematic Services in line with applicable laws and regulations e.g. Regulation (EU) 2016/679 (EU General Data Protection Regulation – "GDPR"). Generally, WIRTGEN acts as a data controller, unless expressly agreed otherwise with Customer. Further details are provided in the WITOS Privacy Notice #WG-4 (EEA) and #WG-5 (Rest of World).

The Customer shall in its operation of WITOS also ensure compliance with all applicable laws and regulations (including GDPR). If Customer machine is used by third parties including natural persons (e.g. employees, drivers) on behalf of the Customer, Customer is obliged to secure that all applicable laws and regulations (e.g. GDPR, employment law), are met.

In particular, Customer shall

- **provide all relevant WIRTGEN privacy notices to the user and other affected data subjects,**

CLOSE TO OUR CUSTOMERS

- ensure an adequate legal basis for the data provided to WIRTGEN (e.g. contact data of the user) and the data processed by WIRTGEN as a data controller as described in this Agreement and the relevant privacy notices (e.g. via works council agreements, employment contracts, legitimate interest or individual consent), and
- provide as a data controller of its own corresponding data privacy information to the user and other affected data subjects.

Depending on the individual constellation, purposes and use of the respective Telematic Services the Parties may conclude specific data protection agreements, which precede this Agreement.

With regard to data protection matters affecting this Agreement the Parties shall use reasonable efforts to cooperate with each other.

6. Term and Termination

6.1 Term

The term of this Agreement (the “**Subscription Period**”) shall commence on the date of activation of the terminal by WIRTGEN and will continue for a period of three years except the agreement is terminated earlier as set forth below. This Agreement automatically renews.

6.2 Termination

Customer may terminate this Agreement for convenience without prior notification by contacting WIRTGEN Customer Support team (e-mail to support@witos.com). Your termination of this Agreement may result in termination of other WIRTGEN Service Agreements. Please review the terms for your other WIRTGEN Service Agreements to understand how termination of this Agreement may impact them.

Upon termination WITOS and Telematic Services will cease. Customer will not be entitled to any refund of any fees paid by Customer for the Services or System Hardware.

WIRTGEN may terminate this Agreement upon thirty (30) days’ notice in writing or e-mail. The statutory provisions regarding termination for cause upon immediate notification remain unaffected. Following the termination, the terminal will remain inactive in Customer’s organization.

6.3 WITOS Transfer

Customer shall indicate any transfer of WITOS. Transfer of WITOS to a different organization may result in an automatic termination of this Agreement.

7. Limitation of Liability

1. In case WIRTGEN performs services under this Agreement free of charge, it is only responsible for intent and gross negligence.
2. In all other respects WIRTGEN shall be liable for damages, regardless of the legal reason, also due to impossibility or delay with a performance obligation and in defects and tort, only to the following extent:
 - (a) in case of intent, gross negligence and the absence of a quality for which WIRTGEN has given a guarantee expressly designated as such, in the full amount;
 - (b) in case of simple negligence only in case and to the extent of a violation of an obligation essential for the execution of the Agreement, i.e. where the obligation itself is a necessary prerequisite for the contractual performance or where the violation of the relevant obligation jeopardizes the purpose of the

CLOSE TO OUR CUSTOMERS

- Agreement and where Customer could legitimately rely upon its fulfillment, limited to typical and foreseeable damages in connection with the Agreement.
3. In the cases of Section 7.2 (b), WIRTGEN's total liability (for each individual damage event and for the aggregate of all damages) shall be limited to EUR 12,500.00.
 4. In the event of loss of data, WIRTGEN shall only be liable, subject to the limits of this Section 7, for such culpably caused damages, which would also have occurred if the Customer had made a proper, i.e. state-of-the-art and risk-adequate, data backup.
 5. No-fault liability for defects that existed at the time of contract execution is excluded.
 6. The limitations of liability of this Section 7 shall also apply to breaches of the provisions of data protection agreements between the Parties or other breaches of applicable data protection law.
 7. The limitations of liability of this Section 7 shall also apply to the benefit of WIRTGEN GROUP Affiliates and the governing bodies, legal representatives, employees and vicarious agents of WIRTGEN as well as to claims for reimbursement of futile expenses.
 8. Nothing in this Agreement limits or excludes WIRTGEN's liability for damages resulting from injury to life, body or health as well as its liability under the German Product Liability Act (*Produkthaftungsgesetz*).

8. Indemnification

Customer will indemnify, defend and hold harmless WIRTGEN and WIRTGEN GROUP subsidiaries or authorized dealers from and against any and all claims or sanctions of third parties and losses (including reasonable attorney fees) arising out of or in connection with (a) a violation of Customer or one of its users against this Agreement, including but not limited to violations resulting in claims for damages from data subjects or fines from supervisory or regulatory authorities, (b) a use or modification of WITOS, the Telematic Services or the System Software by Customer or any user in a manner outside the scope of any right granted or in breach of this Agreement, (c) a combination, operation or use of WITOS, the Telematic Services or System Software with other software, hardware or technology not provided by WIRTGEN if the claim otherwise would not have arisen.

9. Other provisions**9.1 Reassignment of the Agreement - Affiliates and connected companies**

WIRTGEN may reassign this Agreement to another affiliated company with all rights and obligations or claims arising thereof. Any rights and privileges granted to WIRTGEN in accordance with the provisions of this Agreement shall also be granted to affiliates and connected companies. Affiliates and/or connected companies are companies or other legal entities who directly or indirectly control WIRTGEN or respectively, together with WIRTGEN are either directly or indirectly controlled with a significant participation by more than fifty percent (50%).

9.2 Choice of Law and Venue

This Agreement will be governed by and construed in accordance with the substantive laws in force in the Federal Republic of Germany. The respective courts of Wirtgen Road Technologies GmbHs' place of business will have exclusive jurisdiction over any cause of action or dispute relating to this Agreement, if the Customer is a merchant, a legal entity under public law or a special fund under public law, or if the Customer has no general place of jurisdiction in Germany. This Agreement will not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

9.3 Severance clause; waiver clause

In the event that a provision of this Agreement proves to be unenforceable, this shall not affect the enforceability of the other provisions; the Parties shall replace the provision concerned with an enforceable provision which reflects, as closely as possible, the intention and economic effect of the provision concerned. A waiver to

CLOSE TO OUR CUSTOMERS

prosecute a breach of a provision of this Agreement by one of the Parties, shall not be interpreted as a waiver to prosecute subsequent breaches.

9.4 Notifications

All notifications must be in writing and shall be deemed to have been made when they have been received by Wirtgen Road Technologies GmbH, Reinhard-Wirtgen-Str. 2, 53578 Windhagen, GERMANY.

9.5 Force majeure

None of the Parties shall be liable to the others for the non-performance or delayed performance of a mandatory obligation if this non-performance or delay is attributable to a case of *force majeure*, natural disasters, strikes, acts of terrorism, civil unrest, epidemics and pandemics (e.g. Ebola, measles, SARS, MERS, Covid 19, or similar serious viral diseases, cholera, etc.), compliance with laws or official orders or other events, which are outside the sphere of influence of this Party, provided that this Party gives immediate written notification of this circumstance and resumes performance as quickly as possible, and provided that the other Party can terminate this Agreement if this circumstance persists for longer than a period of ninety (90) days and the delayed Party has not indicated that it will be in a position to resume performance of its obligations within a reasonable time frame.

9.6 Import and export restrictions

Customer acknowledges that WITOS, all Telematic Services, System Hardware, System Software, proprietary data, know-how, or other data or information (herein referred to as “**Products**”) obtained from WIRTGEN may be subject to the import and/or export control laws of one or more countries and, accordingly, their import, export and re-export, may be restricted or prohibited. Customer, therefore, agrees not to directly or indirectly import, export, re-export, or cause to be imported, exported or re-exported, any such Products to any destination, entity, or persons prohibited or restricted under any law or regulation, unless it shall have first obtained prior written consent of WIRTGEN and any applicable governmental entity, either in writing or as provided by applicable regulation, as the same may be amended from time to time. Customer agrees that no Products received from WIRTGEN will be directly employed in missile technology, sensitive nuclear, or chemical biological weapons end uses or in any manner transferred to any party for any such end use. Customer will use the Products only in a country that is listed as an available country ([Annex 1](#)).

9.7 Entire Agreement

The conditions for use of services, all arrangements, agreements and assurances between the Parties are object of this Agreement. The User Agreement together with these Terms & Conditions and, if any, Specific Terms reflect the full agreement of the Parties with respect to its subject matter and replaces all previous documents, discussions, and arrangements with respect to the object of the agreement. In addition to this Agreement, the WITOS Privacy Notice #WG-4 (EEA) and #WG-5 (Rest of World) contains information regarding data protection and data security. All additional or conflicting terms and conditions proposed by the Customer or contained in an order will be rejected and shall only be effective following the express written approval by WIRTGEN.

9.8 Changes to this Agreement

Changes to this Agreement shall be communicated to the Customer in text form (e.g. by announcement within the WIRTGEN GROUP Portal or via email provided for such notifications) and shall become an integral part of this Agreement unless the Customer expressly objects to the new version of this Agreement in text form within one (1) month of receipt of the notification of change. The Customer will be informed of this effect with each notification. If the Customer objects to the new version, it may no longer use WITOS and/or Telematic Services. In this case, WIRTGEN may suspend Customer access and/or terminate the contractual relationship.