

I. General terms and conditions

These supplementary conditions for Embedded Software shall apply in addition to the general terms and conditions of sale of WIKAI Mobile Control GmbH & Co. KG, that are available on the following website <https://www.wika-mc.com/en/general-terms-conditions>.

II. Software/Embedded Software

1. The Purchaser has the non-exclusive and – provided there is nothing to the contrary in the provisions of this Section – non-transferrable and non-sublicensable rights to use the Software (machine-readable computer programs (including updates) and the associated media, printed materials and documentation in electronic format) and firmware supplied or made available by WIKAI Mobile Control GmbH & Co. KG (hereinafter referred to as “WIKAI Mobile Control”), with the agreed performance features, in unmodified form, on the agreed equipment, subject to the application of the paperwork and documentation needed for the use thereof.
2. This includes in particular the use of WIKAI Mobile Control software products in the form of embedded codes as a component of one of the products, systems or units, e.g. an Industrial Ethernet Switch (hereinafter referred to as “Embedded Software”). In this case the user rights granted in accordance with this Section are limited to use with the specifically-intended product, system or unit. The fees for the use of the assigned Embedded Software are – provided nothing is agreed to the contrary – included as a one-off licence fee in the purchase price of the products, systems or units in which the Embedded Software is installed.

Embedded Software may only be used on the specific part supplied by us of the intended products, systems or units. All additional use of the Embedded Software on further products, systems, units or hardware must be the subject of a separate agreement and is only permissible after payment of the relevant fee for use. Copies may only be made for archiving purposes, as a replacement or for troubleshooting purposes.

3. To the extent that Software/Embedded Software is designated an update, a licence is required for use with a product that WIKAI Mobile Control has designated appropriate for the update (hereinafter referred to as “Appropriate Product”). A software product designated as an update replaces and/or supplements the initial product. The Purchaser may only use the resultant updated product in accordance with the provisions of this Section. Insofar as the Software/Embedded Software is an update of a component of a software program package that the Purchaser has licensed as a complete product, the Software/Embedded Product may only be used as part of this complete product package and may not be separated out for use on more than one computer.
4. The Purchaser must ensure that Software/Embedded Software and documentation are not made accessible to third parties in contravention of the provisions below:

The Purchaser may only transfer the user rights to Embedded Software together with the product, system or unit for which it is intended. In addition the Purchaser undertakes only to transfer to a third party (e.g. by means of a resale contract) the user rights to Software, provided the third party acknowledges the provisions of this Section and signs an End User Licence Agreement (“EULA”), the provisions of which may not be less strict than those of this Section. The Purchaser is obliged to prove to WIKAI Mobile Control unasked-for that all tangible and intangible duplications of the software (including all components, media and printed materials, and all updates) have been transferred to the third party, deleted, destroyed or otherwise made unusable. Insofar as the Software to be transferred is an update, the proved transfer, deletion, destruction or rendering unusable must also include all earlier versions of the Software. On transfer, all user rights of the Purchaser expire, including those to any copies. The Purchaser may not transfer the Software to third parties if there is reason to suspect that the third party will infringe the provisions of this Section or of the EULA; this means in particular the production of inadmissible duplications. This also applies to employees of the Purchaser.

5. As far as necessary and provided nothing to the contrary is expressly agreed between the parties to the contract, the installation of Software/Embedded Software shall be undertaken by the Purchaser under its own responsibility, in accordance with the installation instructions. The scope of performance and functions of the programs transferred is determined in accordance with the product descriptions valid at the time of conclusion of the contract.
6. In the case of a breach of these conditions of use, or if the Software is modified by the Purchaser, WIKAI Mobile Control may withdraw the user rights from the Purchaser and – without prejudice to any other rights – demand the return or destruction of the Software and any copies in their entirety. The right to use Software may be terminated by WIKAI Mobile Control without notice in the case of a compelling reason. A compelling reason means in particular if the Purchaser is in breach of conditions of this contract and continues to act in breach of these, or maintains the situation that is in breach of the contract, despite a warning by WIKAI Mobile Control. The user rights are granted subject to payment in full of the one-off licence fee.
7. Regardless of the user rights granted in this Section, WIKAI Mobile Control remains the owner of all rights, in particular the exploitation rights under copyright law, including those relating to the reproduction, distribution and translation of the transferred program, to the associated documentation, etc., and to all backup copies, whole or partial, made by the Purchaser in the course of use of the product. The Purchaser may produce a backup copy of the Software without express agreement. The copyright notice pertaining to the original also applies to all copies. If the program is transferred to the Purchaser only in the form of machine code, no access to the source code may be gained. The Purchaser is obliged to take appropriate measures to prevent unauthorised access by third parties to the Software and to the documentation. The original data carriers provided and the backup copies must be kept in a location that is secured against unauthorised access by third parties. The Purchaser shall inform its employees in an appropriate manner of our intellectual property rights.