

Terms of the FLEETLINK Data Monitoring Program for Customer

These terms of the FLEETLINK Data Monitoring Program for Customer, together with any other agreements or terms incorporated by reference (“**Customer Terms**”) apply to Connected Devices and your use of the Services. These Customer Terms may be included or be complimentary to any other applicable terms, quotes, purchase orders, service or sales contract issued by Atlas Copco or a Distributor. Any additional or conflicting terms in your request for proposal, purchase order or any other written or oral communication are not binding on Atlas Copco unless separately signed by Atlas Copco. Atlas Copco’s failure to object to Your additional or conflicting terms does not operate as a waiver of the terms contained in this Agreement.

1. Definitions

1. **“Agreement”** means this agreement and/or any other agreement between Atlas Copco or Distributor and You for the supply of Services.
2. **“Atlas Copco”, “We”, “Us” or “Our”** means the Atlas Copco legal entity which is party to the Agreement with You.
3. **“Atlas Copco Group”** means any person or entity belonging to the same company group as Atlas Copco.
4. **“Customer”, “You” or “Your”** means the company or other legal entity, its affiliates and their employees for which you are accepting these Terms.
5. **“Confidential Data”** means Data identified by You in writing to be confidential.
6. **“Distributor”** means the company or legal entity which is an authorised Atlas Copco Group distributor.
7. **“Connected Device”** means the compressor, generator, pump or light-tower or other device that You obtained from Atlas Copco or Distributor.
8. **“Services”** means the services as described in Article 2.
9. **“Software”** means the remote monitoring application software developed by the Atlas Copco Group, embedded in the Hardware or Connected Device.
10. **“Hardware”** means the device installed with your Connected Device to enable the Connected Device being connected and transfer Data to the Platform.
11. **“Platform”** means the FLEETLINK online solution for businesses to perform and manage Connected Devices operations and Services supplied hereunder.
12. **“Account”** means an online account registered for You on the Platform for the purpose of using the Services.
13. **“Data”** means data relating to the Connected Devices, Your use of the Connected Devices, the Services and/or the Platform.
14. **“Personal Data”** means data relation to You including your first and last name, your e-mail address and/or mobile phone.
15. **“Party” or “Parties”** means individually Customer or Atlas Copco and collectively Customer and Atlas Copco.
16. **“Third Party Service Provider”** means a third party that We engage in the operation of the Services including but not limited to cloud infrastructure and hosting services.

2. Services

2.1. Atlas Copco provides remote monitoring services whereby Data are collected and analysed which includes the features and functionalities described in this Agreement.

The Services are provided in 3 Service levels:

(1) “FLEETLINK Connect”: a free-of-charge service retrieving service and machine counters from the Connected Device. This service provides inter alia running hours and GPS details. This service comes with a free-of-charge license from Atlas Copco.

(2) “FLEETLINK Core”: provides access to the Platform to visualize running hours, GPS and battery level data of a Connected Device, a notifications module for scheduling email messages of events, reporting functionalities and possibility to activate API services. FLEETLINK Core requires a license purchased from Atlas Copco or Distributor.

(3) “FLEETLINK Smart”: provides the “FLEETLINK Core” plus energy and performance indicators, consumption evolution, Consumable levels, Connected Device usage, measurement point readings, machine Alarms & Alerts, Connected Device status bars and trend graphs. FLEETLINK Energy requires a license purchased from Atlas Copco or Distributor.

FLEETLINK Core and FLEETLINK Smart paid services. These may also be included in Atlas Copco Maintenance, Optimization or Outcome based Services Plans, Atlas Copco Total Responsibility Service Plans, Distributor Service Plans or similar.

2.2 Trial Licenses

Atlas Copco or Distributor may offer You from time to time free-of-charge trial licenses for “FLEETLINK”. You can get access to those trial licenses upon creation of an Account. If a trial license is not substituted with a license purchase. We may terminate the trial license at any time.

3. Registration and Account

3.1 Your Access to the Services

Following the initial registration of an Account, You will have the ability to access the Platform and use the Services in conjunction with Connected Devices solely for the purpose of Your business activity. Access to the “FLEETLINK Uptime”, “FLEETLINK Energy” and “FLEETLINK SPM” requires in addition the purchase of a license.

3.2 Registration

You must register and establish an Account in order to use the Services. Connected Devices may require installation of necessary Hardware and/or Software or action on Your part, to enable the activation of Services in relation to such Connected Devices. Each Connected Device, through its serial number, may only be registered to one Account at any given time.

3.3 Account and Personal Data

In order to create an Account, some Personal Data might be required, such as Your first and last name, Your company phone number and Your company e-mail address. You may also provide generic information such as info@yourcompany.com or a general company phone number. Personal Data are collected to be able to provide the Services, to support and contact You, to respond to Your requests, to give You quotes or information about our Services or product offering or for the preparation of a new contract or for contract performance. Personal Data are collected in accordance with the Atlas Copco Privacy Policy located at (<https://www.atlascopco.com/privacyportal/en>). The Atlas Copco Privacy Policy governs the collection and use of any Personal Data. By using the Services You agree to the terms of the Atlas Copco Privacy Policy. For further information on the processing of Personal Information or in case of complaints, You can get in touch with Us or with our Group Privacy Officer (privacy.officer@atlascopco.com)

3.4 Account Information

Access to Your Account shall be through a user name and a unique password that will be generated or provided to You. You are solely and fully responsible for keeping Your Account username and password confidential. You must provide accurate and complete information related to the Connected Devices to be linked to Your Account. You agree to keep Your Account information up to date and accurate. You must safeguard and supervise the use of Your Account. You are solely and fully responsible for all activities that occur under the Account. You may authorise additional employees of Your company to access the Services through the same Account. These Customer Terms apply to any user of the Services. You are solely and fully responsible for the such users' compliance with these Customer Terms.

3.5 Suspension of Account

We may suspend access to Your Account upon suspension of the Services or in case of an infringement of the Customer Terms by You or any of Your users. We may suspend your Account upon termination of the Services.

3.6 Deletion of Account

We may delete Your Account upon termination of the Services. You may delete Your Account at any time. Any Personal Data related to Your Account may be permanently deleted if you delete the Account.

4. Licenses

4.1 The Services, Platform and Software constitute or otherwise involve valuable intellectual property rights of Atlas Copco and all right, title and interest in and to the foregoing shall be owned by Atlas Copco. All rights not expressly granted by Us to You under these Customer Terms are reserved by Us. Nothing in these Customer Terms constitutes a waiver of Our intellectual property rights under any law.

4.2 Subject to Your compliance to these Customer Terms, We grant You a limited, non-exclusive, non-transferable, recoverable license to our intellectual property rights to use the Platform and Software for receiving the Services.

4.3 We may suspend or terminate licenses upon suspension or termination of the Services, such as in case of non-payment of license fees, or in the event of an infringement of the Customer Terms by You or any of Your users. In the event You purchased a license through a Distributor, We may terminate your license if Your Distributor ceases to be an authorised distributor of the Atlas Copco Group.

5. Collection of Data

5.1 Data corresponding to the "FLEETLINK Service" is automatically generated by the Connected Device equipped with the Hardware and Software. You have the right to opt out of such automatically generated collection of Data upon simple request to Us or to Your Distributor. You are not allowed to cut wires or disconnect cables as such will not prevent connection attempts being made by the Connected Device which generates unnecessary costs. You are solely and fully responsible for any costs related to the unauthorised cutting of wires or disconnecting of cables.

5.2 Data corresponding to the "FLEETLINK Core" and "FLEETLINK Smart" is collected upon subscription of a license. Collection of Data under such license will terminate upon termination, expiration or suspension of the corresponding Services.

6. Our Use of Data

6.1 We and Distributor may collect and use Data to improve the Platform performance and functionality, to provide and improve products, services and support to You and for other business purposes including responding to Your requests, quotes and to improve Customer's installed base, improving product development process (e.g. to improve for example performance, total life cycle cost, safety and quality of products including Connected Devices), detecting errors and improving the Software, statistical data gathering and diagnostic comparative analysis.

6.2 We and Distributor may use the Data to respond to duly authorised information requests of police, law enforcement, or other governmental authorities, to comply with any applicable law, regulation, subpoena, discovery request or court order, to investigate and help prevent security threats, fraud or other illegal, malicious or inappropriate activity or to enforce/protect Our rights and properties.

6.3 We may use and retain the Data for an undefined period of time in connection with any of the foregoing mentioned purposes.

6.4. We may share the Data within the Atlas Copco Group. We will not share the Data to any third party except to Your Distributor, a Third Party Service Provider, to comply with legal obligations including but not limited to, in a response to a legitimate legal request from law enforcement authorities or other government regulations, to respond to a legal claim or to prevent damage or loss.

6.5 We may locate the Connected Device geographically to the nearest mobile phone antenna. We may use this functionality to optimize the Services offering and planning.

7. Data availability

7.1 Data are available to You on the Platform during the relevant license period and while Your Account is active ("Availability Period").

7.2 The Services are not intended to be used as storage, backup or archiving services. We do not keep Data or backups available to You outside the Availability Period. We do not keep Data or backups available to You off line. It is Your responsibility to back up Data e.g. by extracting the Data from the Platform during the Availability Period. You are responsible for any lost or unrecoverable Data.

8. Data Confidentiality, Integrity and Security

8.1 You must inform us in writing if You consider Data to be confidential ("Confidential Data") and to what extent You allow us to apply or customise proper confidentiality measures. You agree that we may anonymise or pseudonymise Confidential Data prior to use. We may implement policies (eg. Role Base Access Control) to limit access of Our employees to Confidential Data. We shall use reasonable efforts to keep Confidential Data confidential and to avoid disclosure, dissemination or unauthorised use of confidential Data to third parties. Confidential Data shall be adequately protected by You. Data are not confidential if they (i) are or become publicly known (other than through unauthorised disclosure), (ii) are disclosed by the owner of such Data to a third party free of any obligation of confidentiality, (iii) are already known by the receiving party at the time of disclosure, (iv) are rightfully received by the receiving party free of any obligation of confidentiality, or (v) are independently developed by the receiving party. Data that correspond to the "FLEETLINK Service" are by default not confidential.

If We are requested by a governmental authority to disclose Confidential Data, We may notify You, to the extent permitted by law, to permit You to seek a protective order or take other appropriate action,

and shall assist in such activities. We shall only disclose that part of the confidential Data as is required by law to be disclosed and We shall use commercially reasonable efforts to obtain confidential treatment therefor.

8.2 We shall use reasonable efforts to keep Data integer and secure. Atlas Copco will use commercially reasonable efforts to IT protect Data from unauthorized access, use, alteration or disclosure. Third Party Service Providers and Distributors are required to commit to the same undertakings as Ours.

8.3 You must notify Us immediately of any unauthorised use of Your Account or any other breach of security that You become aware of.

9. Your obligations and restrictions

9.1 You agree to do each of the following in connection with Your use of the Services and the Platform: (i) comply with all applicable laws, rules and regulations, including those regarding data privacy, intellectual property rights and export control; (ii) pay the license fees for the Services, if applicable, when due, (iii) use reasonable security precautions for providing access to the Services and Platform by Your users to whom You provide access.

9.2 You may not misuse the Services. For example, You may not, whether by yourself or anyone on your behalf, (i) attempt to interfere with, compromise the Hardware and Software integrity or security or decipher any transmissions to or from the servers running the Service, (ii) take any action that imposes or may impose an unreasonable or disproportionately large load on Atlas Copco's infrastructure, (iii) knowingly upload invalid data, viruses, worms or other software agents through the Service, (iv) modify or create any derivative work based upon the Service or Software; (v) engage in, permit or suffer to continue any copying, selling or distribution of the Services or Software, (vi) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code of the Software, (vii) access the Service in order to build a competitive solution or to assist any third party to build a competitive solution, (viii) remove, obscure or alter any proprietary notice related to the Service or Software, (ix) engage in, permit or suffer to continue in any use of other activity that is not expressly authorised under this Agreement by any person or entity within Your control, all to the extent as permitted by the applicable law.

9.3 You may not deactivate the FLEETLINK Connected Device yourself or by an unauthorised person. Any deactivation of collection of Data needs to be done in accordance with article 5.1 of this Agreement. Any use of the SMARTLINK Connected Device with your own software or with a third party software, or any tampering with the parameters set up provided by Us, is at your own risk and We shall not be liable for any damage and/or loss arising from such, to the extent permitted by applicable law.

10. Changes

We may make changes to the Services, Software and Platform which We deem necessary to conform to any applicable safety, statutory or regulatory requirement or added functionality. We may make necessary unscheduled deployments of changes, updates or enhancements to the FLEETLINK Services, Software and Platform at any time.

11. Feedback

To the extent You provide us any feedback, comments or suggestions ("Feedback"), You grant Us a royalty-free, worldwide, perpetual and irrevocable license to incorporate Feedback into the Services or any of our current or future products or services.

12. Warranty

12.1 We provide the Services with reasonable care and skill on an “as is” and “as available” basis without any other warranty provided express or implied. We do not give any guarantee or warranty that the Services and Platform will be 100% active and accessible all the time. We will not be liable in case of any downtime. Atlas Copco will not be liable for any failure of a Third Party Service Provider to supply services in connection with the Services. Other than as expressly stated in the Customer Terms We do not warrant that the Services will be secure, uninterrupted, without error or free from defects.

12.2 The Hardware and Software warranties are in accordance with the terms of sale or lease of the Connected Device or as agreed upon with You in writing.

12.3 No warranty shall be due if the Hardware, Software, Platform or Services are misused by You or in the event You misuse passwords.

13. Limitations of Liability

13.1 In no event, will Atlas Copco be liable (whether in contract, tort, negligence, statute or otherwise) for any incidental, special, indirect or consequential damages or loss of profits or revenue, loss of data, business interruption, or loss of goodwill, in each case arising out of or related to Your use of or inability to use the Services, however caused, regardless of the theory of liability (contract, tort, or otherwise) and even if Atlas Copco has been advised of the possibility of such damages.

13.2 Atlas Copco’s total liability to You for all damages arising out of or related to these Customer Terms or to the Services will be limited to the total value of the Agreement or the license fee paid under the Agreement in the twelve months period preceding the event giving rise to the claim, whichever is lower.

13.3 The limitations will not apply to the extent prohibited by law.

14. Term and Termination

14.1 These Customer Terms commence on the date you first accept them and will remain in effect until your subscription to the Services expires or terminates, or until these Customer Terms are terminated.

14.2 You may stop using the Services at any time and you may delete your Account. We may suspend or terminate your access to the Services at any time at our discretion if You do not comply with these Customer Terms, including non-payment of license fees when due. Notice of thirty days shall be given if breach of these Terms is capable of remedy. In case of non-remedial of any breach of the Customer Terms in such notice period, the Services may be terminated with immediate effect.

14.3 Either Party may by written notice to the other party terminate the Agreement immediately if the other party enters into insolvency, bankruptcy, or any arrangement with its creditors or situation which has a like effect.

14.3 Upon termination of the Services, the license and the Account will be terminated, and from the date of termination You will no longer be able to access your Account. The provisions of these Customer Terms that by their nature and content must survive the termination of these Terms, shall so survive.

15. Force Majeure

Atlas Copco will not be liable to the Customer for any failure or delay or for the consequences of any failure or delay in performance of the Agreement, if it is due to any event beyond the reasonable control and contemplation of Atlas Copco including, without limitation, third party service providers, acts of God, war, industrial disputes, protests, fire, tempest, explosion, an act of terrorism and national emergencies. In the event of force majeure Atlas Copco will be entitled to a reasonable extension of time for performing such obligations.

16. General

16.1 If any condition or part of the Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Agreement and will be ineffective, without, as far as is possible, modifying any other provision or part of the Agreement and this will not affect any other provisions of the Agreement which will remain in full force and effect.

16.2 No failure or delay by Atlas Copco to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.

16.3 Atlas Copco may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Agreement.

16.4 The Agreement is personal to the Customer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Agreement without Atlas Copco's prior written consent.

16.5 This Agreement contains all the terms which Atlas Copco and the Customer have agreed in relation to the Services and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Services. Nothing in this paragraph 16.5 will exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

16.6 Any notice in connection with the Agreement will be in writing addressed to the other Party at its registered office, or principal place of business and will be delivered by hand, or first class or special delivery post. The notice to the Customer will always be deemed to have been duly served, if delivered by hand, when left at the proper address for service or if made by pre-paid, first class post or special delivery post, 48 hours after being posted.

16.7 The formation, existence, construction, performance, validity and all aspects whatsoever of the Agreement shall be governed by Swedish law. Any dispute, controversy or claim arising out of or in connection with this Agreement, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The place of arbitration shall be Stockholm, Sweden. The language to be used in the arbitral proceedings shall be English. The decision of the arbitrators shall be final and binding upon the parties hereto.