

# **Terms and Conditions**

**August 1, 2019**

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## Terms and Conditions

Welcome to the PLANET-ROCKLOG website («Site»). All use of this Site is subject to the following terms and conditions («Terms of Use»). By accessing and browsing this Site, you agree to be bound by these Terms of Use.

## PLANET-ROCKLOG Service Agreement

*NOTE: This document represents an exact copy of the SERVICE AGREEMENT as it appears when you launch the application. It is posted here as a reference and/or for your review prior to accepting the Terms of Use.*

This Services Agreement («Agreement») governs the provision by PLANET-ROCKLOG and the access and use by you, its customer («you» or «Customer») of PLANET-ROCKLOG's Logistics Software («Application») as a Service («Service» or «Services») via the Site.

Note: PLANET-ROCKLOG is a software hub, which belongs to Rocklog GmbH (Ltd. liab. Co.) Switzerland.

BY CLICKING ON «I ACCEPT» BELOW OR OTHERWISE, YOU ACKNOWLEDGE HAVING REVIEWED AND ACCEPTED THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS, YOU SHOULD NOT BEGIN USE OF YOUR ACCOUNT OR PLANET-ROCKLOG'S SERVICES, AND YOU SHOULD IMMEDIATELY NOTIFY PLANET-ROCKLOG.

## Application

You will be required to start the Application by using the provided URL on your computer and select the data you wish to upload as master data («Master Data»); thereafter, the container will automatically deploy the Master Data in order to make the Application ready for operation. Operating the Application, you will generate operational data («Operational Data») in addition to the Master Data. Master Data and Operational Data together shall be defined as «Data».

## PLANET-ROCKLOG Editions

PLANET-ROCKLOG offers one Edition for all customers. The provided Edition includes full functionality as specified at <https://rocklog.ch/de/index.html#features-content>.

The pricing, as specified at <https://rocklog.ch/de/index.html#pricing-content>, distinguishes 4 different license bundles (GO!, ONE, TWO & THREE).

## Data Protection and Encryption

PLANET-ROCKLOG understands the critical importance of security and privacy and has taken technically reasonable and or organizational measures to protect your Data, which is stored in «containers» assigned separately to each registered user of the Application on servers accessible via the Internet («Cloud Storage») and may only be accessed in justified cases in line with applicable laws. When you register for the use of the Services we will provide credentials («email») and private encrypted password («password»). Your credentials are required to access your Data in a readable format.

## Privacy

Your privacy is important to us and we want you to feel comfortable visiting our Site to use the Application. We take care to protect your personal data collected, processed and used during visits to the Site and use of the Application. If you do not agree to our Privacy Policy, do not proceed using the Site and Application. You agree and understand that we will use the Data provided by you for

- the purpose of technical administration, research & development as well as use and enhancement of the functionalities of the Site and Application,
- the anonymized calculation of operating and performance figures,
- the anonymized comparison of the performance and establishment of rankings,
- customer and user administration and marketing, and
- such purposes as otherwise specified.

Please review our Privacy Policy at [http://www.rocklog.ch/assets/pdf/rocklog\\_Privacy\\_Policy\\_EN.pdf](http://www.rocklog.ch/assets/pdf/rocklog_Privacy_Policy_EN.pdf), which also governs your use of the Services the purposes for which we may collect, share or disclose Data and your visit to the Site, and is incorporated herein by reference, to understand our practices.

## Sharing of Operational Data

As part of the functionality of our Services, you will be able to share your Operational Data with others («Sharing Function») subject to the terms of this Agreement. Notwithstanding the foregoing, you agree and understand that the Sharing Function is meant for your personal use only and is not intended for widespread dissemination of your Operational Data.

PLANET-ROCKLOG reserves the right to monitor general system usage and performance to identify excessive use of the Sharing Function. The Sharing Function may be deemed excessive if the network traffic greatly exceeds the average usage of the services by customers generally. This safeguard is in place to protect against enormous use of PLANET-ROCKLOG Share Rooms as massive content distribution channels.

## Terms of Application

You agree that PLANET-ROCKLOG reserves the right in its sole discretion to establish general operating practices and procedures to maximize the operation and availability of the Application for the greatest benefit of its customers.

If, in using the PLANET-ROCKLOG application you are deemed to have violated the policies set forth in this Agreement, PLANET-ROCKLOG reserves the right at its own discretion to freeze, cancel and/or purge your account with or without notice. By registering for the PLANET-ROCKLOG application, you acknowledge and agree that your application may not be available at certain intervals in order for PLANET-ROCKLOG to perform performance maintenance on its servers, or other reasons beyond the control of PLANET-ROCKLOG.

You may at any point upgrade to any PLANET-ROCKLOG license bundle. If, in using a PLANET-ROCKLOG licence you are deemed to have violated the policies set forth above in this Agreement, PLANET-ROCKLOG reserves the right at its own discretion to freeze your account immediately, and shall provide you with written notice via email of your violation so that you may respond to such determination within thirty (30) days. If no response is received by PLANET-ROCKLOG within thirty (30) days of sending you notice of the violation, PLANET-ROCKLOG reserves the right to cancel your membership. Upon deciding to cancel your membership pursuant to this Section, PLANET-ROCKLOG shall provide you with written notice via email of such cancellation and shall continue to store your Data for a period of sixty (60) days from the date notice of cancellation is sent, after which time your Data shall be purged from the system.

Where appropriate, PLANET-ROCKLOG may suspend at its own discretion repeat infringers of copyright law, and in more serious cases, permanently terminate user accounts.

You may terminate the Application at any time, subject to the regular notice period of one hundred and eighty (180) days to the end of the month.

## Registration

In order to access the Application, you must complete the registration process and obtain your credentials. In connection with your registration, you agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the registration form; and (b) maintain and promptly update such information to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, PLANET-ROCKLOG has the right to suspend or terminate your account and refuse any and all current and future use of the Application. In addition, PLANET-ROCKLOG reserves the right to deny registration to any customer it deems inappropriate to use the Application. You may not register for the Application if you are under 14 years of age. By registering for the Application, you represent to PLANET-ROCKLOG that you are 14 years of age or older, and hereby agree to be legally bound by this Agreement (or, if you are under the age of majority in your state (usually 18), you represent that your parent or legal guardian is hereby agreeing on your behalf to be legally bound by this Agreement).

You are solely responsible for maintaining the strict confidentiality of your Email/Username

and Password and for any charges, costs, expenses, damages, liabilities and losses, you or PLANET-ROCKLOG may suffer as a result of your failure to do so. Furthermore, you are entirely responsible for any and all activities that occur under your Email/Username and Password, including any charges for additional user licenses, etc., or other charges associated with your account, and for ensuring that use of your account complies fully with this Agreement. You agree to immediately notify PLANET-ROCKLOG of any unauthorized use of your account or any other breach of security. You may not use anyone else's account, at any time, without the permission of the account holder.

## Payment; Renewal Notices

To the extent applicable, all payments shall be made in Swiss Francs or Euros by credit card or invoice and are non-refundable. Payments are due upon account activation and future renewal dates. The Application will not be activated until payment is received. The renewal of the Application for any renewal period will not be provided unless and until PLANET-ROCKLOG has received payment for such renewal period. Renewal payments shall be automatically charged to your credit card and your account shall automatically renew unless you provide PLANET-ROCKLOG with notice of termination pursuant to the terms set forth below. Notwithstanding the foregoing, should payment in full of any amount owed to PLANET-ROCKLOG under this Agreement not be received by PLANET-ROCKLOG within thirty (30) days after such payment has become due, such amounts will thereafter bear interest at the rate of 1.5% per month, or the maximum rate permitted by applicable law, whichever is less. If any payment due PLANET-ROCKLOG is collected at law or through an attorney at law or under advice therefrom or through a collection agency, you agree to pay all costs of collection, including, without limitation, all court costs and reasonable attorneys' fees. Accordingly, PLANET-ROCKLOG will not make any refunds of any payments made by you. If you are concerned about whether you will like the Service, please use PLANET-ROCKLOG Test Edition in order to conduct the fourteen days trial to confirm your satisfaction prior to signing up for any PLANET-ROCKLOG application.

## Support & Maintenance

Please note that email support and maintenance are included in the annual license fee. The free email support covers all incidents that occur in the application itself. Each incident will be handled within a maximum response time of 90 minutes. ALL OTHER INCIDENTS THAT OCCUR (e.g. interface) WILL BE FIXED BUT CHARGED ACCORDING TO EFFECTIVE EFFORT (at a rate of 225 Swiss Francs or Euros per hour).

## Non-transferable Membership

PLANET-ROCKLOG grants you a personal, non-exclusive, non-transferable license to use the Application solely for your own internal purposes. Any additional software provided to you as part of the Application shall be subject to a separate end user agreement. All rights not expressly granted by PLANET-ROCKLOG to you are hereby retained by PLANET-ROCKLOG.

## Your Responsibilities

You may use the Application only for lawful purposes and solely in accordance with this Agreement and any other specific terms of use, rules or policies, as may be provided by PLANET-ROCKLOG from time to time that may be applicable to any particular portion of the Application. You may not store, transmit or share through the Application any material, or otherwise engage in any conduct that:

- violates or infringes the rights of others;
- is unlawful, threatening, abusive, hateful, defamatory, slanderous, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, indecent or obscene;
- victimizes, harasses, «stalks», degrades, attacks or intimidates an individual or group of individuals on any basis, including but not limited to religion, gender, sexual orientation, race, ethnicity, age or disability;
- harms minors in any way;
- impersonates any person, business or entity (including but not limited to a PLANET-ROCKLOG official), or in any way falsely states or misrepresents your affiliation with a person or entity;
- contains viruses or any other computer code, files or programs that interrupt, impair, destroy or limit the functionality of any computer software or hardware or telecommunications equipment, or otherwise permit the unauthorized use of a computer or computer network;
- disrupts other customers' use of the Application;
- instigates or encourages others to commit illegal activities or cause injury to any person or property damage;
- encourages conduct that would constitute a criminal offense or that gives rise to civil liability;
- violates this Agreement or any other terms of use, rules or policies applicable to the Services.

You may not use the Application in any manner that could damage, disable, disrupt, overburden, impair or otherwise interfere with the Application or any servers or networks that you may interact with through your use of the Application, or otherwise interferes with the use or enjoyment of the Application by others. You may not attempt to gain unauthorized access to the Services, other user accounts or any computer systems or networks that are connected to the Services through hacking, password mining or any other means. You may not intentionally compromise the security of your account by publicly disclosing you email/username and/or password. PLANET-ROCKLOG may pursue any legal and/or technical remedies to prevent the violation of this provision and to enforce this Agreement.

## No Spam

You are prohibited from using the Services for chain letters, junk mail, spamming, or unauthorized commercial activities of any kind. You may not harvest information about other customers for the purpose of sending, or to facilitate the sending, of unsolicited bulk communications. PLANET-ROCKLOG reserves the right to terminate your access to or use of the Services immediately and take any other legal action if you, or anyone using your



account, violates these provisions. In the event PLANET-ROCKLOG terminates your access to or use of the Services, PLANET-ROCKLOG shall follow the procedures set forth in the Terms of Service above, with regard to purging any of your Data being stored by PLANET-ROCKLOG. PLANET-ROCKLOG may pursue any technical and legal remedies to prevent unsolicited bulk communications from entering, utilizing, or remaining within its systems or communications networks.

## PLANET-ROCKLOG Intellectual Property

PLANET-ROCKLOG grants you a personal, non-exclusive, non-transferable license, exercisable solely during the term of this Agreement, to use applicable PLANET-ROCKLOG technology solely for the purpose of accessing and using the Services. You shall have no right to use the PLANET-ROCKLOG technology for any purpose other than accessing and using the Services. Except for the rights expressly granted above, this Agreement does not transfer from PLANET-ROCKLOG to you any PLANET-ROCKLOG technology, and all rights, titles and interests in and to any PLANET-ROCKLOG technology shall remain solely with PLANET-ROCKLOG. You shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any of the PLANET-ROCKLOG technology if such reverse engineering, decompilation, or disassembly is intended to create, or will be used in, a competitive product.

You acknowledge and agree that PLANET-ROCKLOG's trademarks, trade names, service marks, logos, other names and marks, and related product and service names, design marks and slogans are the sole and exclusive property of PLANET-ROCKLOG. You are not authorized to and shall not use any of the foregoing in any advertising, publicity or in any other commercial manner without the prior written consent of PLANET-ROCKLOG.

## Third Party Content or Data

You acknowledge that PLANET-ROCKLOG does not represent or endorse the accuracy or reliability of any content, advice, opinion, statement, suggestion or other information offered by third parties or other Customers that is shared or distributed through the Services. Any advice, opinions, statements, suggestions, services, offers or other information or content presented or disseminated by third parties via the Services are those of their respective authors who are solely liable for their content. Your reliance upon any such advice, opinion, statement, suggestion or information shall be at your sole risk.

## Terms and Termination

The rights and obligations of the parties under these terms and conditions will commence on the date of your order and will continue until terminated pursuant to the terms of this Agreement. In order to terminate the Services, you must email PLANET-ROCKLOG at [support@rocklog.ch](mailto:support@rocklog.ch) of your intention to terminate. Upon receipt of your intention to terminate, PLANET-ROCKLOG shall suspend your account and keep your Data for a period of thirty days, after which point PLANET-ROCKLOG shall purge your Data from its servers.

## Indemnification

You agree to indemnify, defend and hold harmless PLANET-ROCKLOG, its affiliates and their respective directors, officers, employees and agents, licensors, representatives from and against all losses, expenses, damages and costs, including reasonable attorneys' fees, resulting from your use of the Services or any violation of this Agreement by you, including but not limited to any breach or alleged breach of any of your representations, warranties or undertakings hereunder. PLANET-ROCKLOG reserves the right to assume, at its sole expense, the exclusive defense and control of any matter subject to indemnification by you, in which event you will fully cooperate with PLANET-ROCKLOG in asserting any available defenses.

## Warranties, Disclaimers and Limitations of Liability

PLANET-ROCKLOG represents and warrants to you that the services provided hereunder will be performed (i) in a manner consistent with industry standards reasonably applicable to the performance thereof; and (ii) at least at the same level of service as provided by PLANET-ROCKLOG generally to its other customers for the same services.

EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE SERVICES PROVIDED BY PLANET-ROCKLOG PURSUANT TO THIS AGREEMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICES IS AT YOUR SOLE RISK. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, PLANET-ROCKLOG AND ITS AFFILIATES AND SUPPLIERS DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, SYSTEM INTEGRATION AND NON INFRINGEMENT.

PLANET-ROCKLOG CANNOT GUARANTEE UNINTERRUPTED SERVICE, SERVICE AT ANY PARTICULAR TIME, OR INTEGRITY OF DATA, INFORMATION OR CONTENT STORED OR TRANSMITTED VIA THE INTERNET. PLANET-ROCKLOG WILL NOT BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO, OR ANY CORRUPTION, ERASURE, THEFT, DESTRUCTION, ALTERATION OR INADVERTENT DISCLOSURE OF, DATA, INFORMATION OR CONTENT TRANSMITTED, RECEIVED OR STORED ON ITS SYSTEM CAUSED BY CIRCUMSTANCES OUTSIDE OF PLANET-ROCKLOG'S CONTROL. DATA INFORMATION OR CONTENT SENT VIA THE INTERNET MAY BE ACCESSED BY UNAUTHORIZED THIRD PARTIES. WE ACCEPT NO RESPONSIBILITY OR LIABILITY FOR THE SECURITY OF YOUR DATA WHILST IN TRANSIT OVER THE INTERNET TO PLANET-ROCKLOG'S SYSTEM.

IN ADDITION, YOU UNDERSTAND THAT THE SERVICES ARE NOT DESIGNED OR INTENDED TO BE FAIL-SAFE, OR AUTHORIZED BY PLANET-ROCKLOG FOR USE AS CRITICAL COMPONENTS IN LIFE-SUPPORT OR SAFETY DEVICES OR SYSTEMS, OR ANY OTHER APPLICATION THAT INVOKES THE POTENTIAL RISKS OF DEATH, PERSONAL INJURY OR SEVERE PROPERTY OR ENVIRONMENTAL DAMAGE (INDIVIDUALLY AND COLLECTIVELY, "CRITICAL APPLICATIONS"). ANY USE OF THE SERVICES WITH RESPECT TO SUCH CRITICAL APPLICATIONS IS FULLY AT YOUR

OWN RISK, SUBJECT TO APPLICABLE LAWS AND REGULATIONS GOVERNING LIMITATIONS ON PRODUCT LIABILITY.

PLANET-ROCKLOG AND ITS AFFILIATES AND SUPPLIERS WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM OR IN CONNECTION WITH THE USE OF SERVICES, INCLUDING, BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, PUNITIVE AND CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, GOODWILL, DATA OR USE), EVEN IF SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION SHALL APPLY REGARDLESS OF THE FORM OF ACTION AND WHETHER IN CONTRACT, BREACH OF WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, YOU MIGHT HAVE ADDITIONAL RIGHTS. IN ANY EVENT, PLANET-ROCKLOG'S AGGREGATE LIABILITY SHALL NOT EXCEED FEES PAID IN THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

## Dispute Resolution

Any dispute, controversy or claim arising out of or relating to this Agreement or breach hereof, or otherwise relating to the Services (with the exception of injunctive relief sought by PLANET-ROCKLOG for any violation of PLANET-ROCKLOG's proprietary rights or collection of payment), including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules and without recourse to the ordinary courts of law. The number of arbitrators shall be one; the seat of the arbitration shall be Zurich, Switzerland; the arbitral proceedings shall be conducted in German. The arbitrator may award to the prevailing party, if any, as determined by the arbitrator, its costs and expenses, including reasonable attorneys' fees. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of both parties. To the fullest extent permitted by applicable law, no such arbitration shall be joined to an arbitration involving any other party subject to this Agreement, whether through class arbitration proceedings or otherwise. Each party hereby waives its right to a trial by jury for any disputes between the parties. Any amounts paid by PLANET-ROCKLOG to you, if made by physical check, will only be mailed to the billing address of the cardholder who signed up for the account at issue.

## Applicable Laws; Exclusive Jurisdiction

PLANET-ROCKLOG provides the Services in Switzerland. PLANET-ROCKLOG makes no representation that the Services or any content on or accessed through the Services is appropriate or available for use in other jurisdictions. You are responsible for compliance with all local laws and regulations, as applicable. Use of the Services and any dispute arising therefrom shall be governed, construed, interpreted, and enforced in accordance with the material LAWS OF SWITZERLAND. Without regard to principles of conflict of laws. SUBJECT TO THE DISPUTE RESOLUTION PROCEDURES SET FORTH ABOVE, ANY

LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR YOUR ACCESS TO OR USE OF THE SERVICES SHALL BE INSTITUTED ONLY IN THE COMMERCIAL COURT OF THE CANTON OF ZURICH LOCATED IN ZURICH, SWITZERLAND AND YOU EXPRESSLY CONSENT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT.

## Modifications

PLANET-ROCKLOG reserves the right to modify the pricing and this Agreement at any time upon posting and providing notice, whether directly to you or posting a notice of a change to the homepage of the PLANET-ROCKLOG site. By continuing to use the Services after any changes are posted and notice is issued, you are signifying your acceptance of the revised terms and conditions.

## Entire Agreement

This Agreement, together with the PLANET-ROCKLOG's privacy policy constitutes the entire agreement between you and PLANET-ROCKLOG governing your use of the Services and supersedes any prior and contemporaneous agreements between you and PLANET-ROCKLOG with respect to the subject matter hereof. Notwithstanding the foregoing, as stated above, you also may be subject to additional or separate terms of use, rules and/or policies that may apply when you use certain features made available through the Services.

## Consent to Electronic Delivery of Notices

You consent to receive communications from PLANET-ROCKLOG electronically, including without limitation by email or by posting notices on the Site. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. To withdraw your consent to receive notices electronically, you must notify us of your withdrawal of such consent and discontinue your use of the Services.

## Force Majeure

Neither party shall be liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments due hereunder) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for a party to perform its obligations under this Agreement.

## Government Regulations

You agree that you shall not export, re-export, transfer or make available, whether directly or indirectly, any regulated item or information to anyone outside your country of origin and/or domicile, e.g. the United States, in connection with the Services or this Agreement without first complying with all export control laws and regulations which may be imposed by the government of your country of origin and/or domicile, e.g. the United States government, and any country or organization of nations within whose jurisdiction Customer operates or does business.

## Headings

The headings as to contents of particular sections and paragraphs are inserted only for convenience and are in no way to be construed as part of this Agreement.

## Assignment; Successors

You may not assign or transfer this Agreement, or any of your rights or obligations hereunder, without the prior written consent of PLANET-ROCKLOG. Any attempted assignment in violation of the foregoing provision shall be null and void and of no force or effect whatsoever. PLANET-ROCKLOG may assign its rights and obligations under this Agreement, and may engage subcontractors or agents in performing its duties and exercising its rights hereunder, without your consent. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors and permitted assigns.

## Miscellaneous

If there is a determination that any provision of this Agreement is invalid or unenforceable under applicable law, that determination will not affect the rest of this Agreement, and this Agreement shall be deemed amended to the minimum extent necessary to make them valid and enforceable. The failure of PLANET-ROCKLOG to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. Regardless of any statute or law to the contrary, any claim or cause of action against PLANET-ROCKLOG arising out of or related to use of the Services or under this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

Rocklog GmbH, Dorfstrasse 15a, 6300 Zug, Switzerland

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