

Terms of Contract and Use

WeldCube Air

Valid from 1st of January 2023

1 General

- 1.1 FRONIUS INTERNATIONAL GmbH (hereinafter referred to as "Fronius") enables the provision of the web application "WeldCube Air" (hereinafter also referred to as "Software" or "WeldCube Air") via the website air.weldcube.com, for which the following terms apply. In the registration process, you accept their exclusive validity by clicking on the corresponding checkbox. The Customer's general terms and conditions shall not apply.
- 1.2 WeldCubeAir is operated and maintained by and on the servers of Fronius or a third party. Access to and use of WeldCubeAir by the Customer shall be via the Internet using a browser.
- 1.3 It is noted that the parties are entrepreneurs within the meaning of § 1 Austrian Commercial Code (UGB) and that there is no founding transaction within the meaning of § 1 para 3 Austrian Consumer Protection Act (KSchG).

2 Subject matter of the Contract and Scope of Services

- 2.1 The subject matter of this Contract is providing the web-based application WeldCube Air for use of its functionalities, the granting or procurement of rights of use to the software, if applicable, against payment of the agreed fee.
- 2.2 The modules and their mode of operation as well as the technical requirements are described in more detail at air.weldcube.com.
- 2.3 Access to WeldCube Air shall be browser-based via the Internet. For this purpose, the Customer shall create an account via which it can use WeldCube Air to the agreed extent. The Customer may allow third party WeldCube Air users to access its organization.
- 2.4 Unless otherwise specified in the specifications, Fronius shall ensure that WeldCube Air can be accessed during the term within the availability according to Clause 7, and that the relevant infrastructure and WeldCube Air are dimensioned in such a way that they are available with an appropriate response and execution speed with regard to the expected / agreed accesses.
- 2.5 Fronius will ensure that during the runtime, within the availabilities, if the hardware is correctly connected and functioning on site, there is an ongoing transmission of the data. The data will be made available to the Customer via the account on his dashboard for analysis and monitoring purposes. The customer shall ensure that the welding equipment, including the firmware versions installed on it, is compatible

with WeldCube Air. The current compatibility list is made available under the link air.weldcube.com on the Fronius Website.

- 2.6 The transfer point for the services contractually owed by Fronius is the router output of the data center used by Fronius to the Internet. The Customer is responsible for the condition of the required hardware on the part of the customer as well as for the Internet connection between the customer and the handover point.
- 2.7 Fronius will provide updates as well as patches and bug fixes that bring WeldCube Air up to date in order to solve errors and security deficiencies known to Fronius. Furthermore, Fronius shall, at its own discretion, provide updates or upgrades of WeldCube Air that optimize and improve its functionality. However, the Customer is not entitled to this.
- 2.8 The Customer is responsible for the Internet connection between the customer and the data center and the hardware and software required for this (e.g. PC, network connection, browser). Any system requirements for hardware and software at the customer's premises are regulated in the documentation, which is available on the Fronius website.
- 2.9 If WeldCubeAir is provided free of charge, Fronius shall have the discretion to determine the storage period of the data provided to the Customer. Otherwise, the storage period shall be determined by the Performance specification. Irrespective of any data storage, Customer shall be responsible for regularly saving of the data entered and created by analysis.

3 Granting of Rights of Use

- 3.1 Fronius grants the customer a simple, non-exclusive, non-transferable, non-sublicensable and revocable right to use the Software for the agreed term in accordance with and to the extent of the services ordered and as described below.
- 3.2 Fronius provides WeldCube Air via Internet. WeldCube Air therefore not provided to the Customer for his own permanent storage, nor is the customer authorized to make it accessible himself or to operate a data center.
- 3.3 If Fronius provides new versions, updates, upgrades or modifications of WeldCube Air or makes other changes during the term of the Contract, the provisions of this Clause shall also apply to these.
- 3.4 The customer shall not be entitled to receive, use or examine WeldCubeAir's machine or source code or any development documentation.

4 Restrictions on Use

- 4.1 Fronius shall hold all rights of use and exploitation to WeldCube Air, all software components, all further developments, improvements and adaptations, as well as all

copies thereof, and otherwise all works arising from the provision of the other services.

- 4.2 The Customer shall not be permitted to use WeldCube Air for purposes other than those described in the order, to modify, adapt, combine with other programs, translate, convert to another programming language, reverse engineer or disassemble, decompile or create derivative works. In particular, the customer is not permitted to use WeldCube Air other than only within the contractual model.

5 Access Data; Access Rights

- 5.1 The Customer warrants that access to its WeldCubeAir organization is restricted to persons authorized by the customer. The customer shall be responsible for identifying and authenticating all users defined by the customer, for controlling against unauthorized access by users and for maintaining the confidentiality of user names, passwords and account information, regardless of whether they are users at the customer's premises or at a third party named by the customer. If the customer becomes aware that unauthorized third parties are aware of the access data or if misuse of the WeldCubeAir account has already taken place, the customer shall inform Fronius immediately.
- 5.2 User accounts and access data are not transferable and are limited to the agreed contract period. Unless otherwise agreed in writing, maintenance (e.g. change of rights) and deactivation shall be carried out by the Customer. If a user leaves the company, the user account in question must be deactivated.
- 5.3 The Customer undertakes to use WeldCube Air exclusively for the contractual purpose and only during the term of the contract. The customer shall bear the sole risk for all actions taken by the user authorized by it via WeldCube Air, irrespective of whether these are actions by its employees or third parties.
- 5.4 Fronius is not responsible for damage caused by authorized users or persons who have gained access to WeldCube Air unlawfully or even by accident. The risk of economic disadvantage or damage of whatever nature caused by the use of WeldCube Air by such persons shall be borne by the Customer.

6 Fee

- 6.1 The fee shall be agreed as part of the order process and shall depend in particular on the scope of the services ordered. If Fronius provides WeldCube Air (e.g. temporarily or in the form of a test version) free of charge, Fronius shall be entitled to charge the customer a reasonable fee for the further provision of the software in the future; section 5.3 shall apply accordingly.
- 6.2 The Customer is not entitled to withhold payments or to offset them against claims that have not been confirmed by a Court. All fees and taxes (e.g. value added tax)

incurred on the fee shall be paid by the Customer in addition to the fee. Unless otherwise agreed in the order form, all payments are due 30 days after the invoice date without deduction or set-off.

- 6.3 Fronius reserves the right to make a change to the cost structure and a resulting adjustment to the fee during the term of the Contract. Such a change will be announced in writing no later than three months before it takes effect. In the event of a significant disadvantageous change to the Customer, Customer shall have an Extraordinary Right of Termination, which entitles the Customer to terminate the parts affected by the price increase with two months' notice to take effect on the date on which such a change in charges comes into force. If the customer does not exercise this right, the changed price shall be deemed agreed.

7 Availability of WeldCube Air

- 7.1 Fronius shall endeavor to make WeldCube Air available and accessible on a continuous basis, in each case in accordance with the existing technical, economic, operational and organizational possibilities. However, Fronius accepts no responsibility for the uninterrupted availability of WeldCube Air. The use of WeldCube Air may be impossible or limited primarily for system-related reasons, in particular technical reasons, disruptions in the communication network, security measures, capacities, maintenance and circumstances arising from force majeure. Due to the nature of the Internet, transmission times and transmission quality of data depend on the load on the Internet. In addition, it is not possible at the current state of the art to develop and operate software completely free of errors and to exclude all uncertainties in connection with the Internet. Claims for damages and warranty claims of any kind arising from this are excluded.
- 7.2 Fronius is entitled to temporarily restrict or interrupt access to WeldCube Air for important reasons, such as for service and maintenance work, or if this is necessary, for example, with regard to capacity limits, the security or integrity of the server, or to implement other technical measures.
- 7.3 The unavailability of WeldCube Air in accordance with Clauses 7.1 and 7.2 shall not establish any liability of Fronius to the Customer for any costs, damages or other disadvantages arising therefrom.
- 7.4 With exception of the rights expressly granted in this Clause and the other rights granted in accordance with this Contract, claims due to performance failures are excluded to the extent permitted by law. Also excluded is a challenge of this Contract due to error and omission of the business basis.

8 Liability and Limitations of Liability:

- 8.1 To the extent permitted by law, any liability of Fronius for damages incurred during the use of the services within the scope of a free trial access, regardless of the legal reason, is excluded. The same applies to any other free use of WeldCube Air.
- 8.2 Fronius shall be liable to the Customer in the event of liability, and therefore for damages demonstrably caused by Fronius in connection with this Contract, only in the event of intent or gross negligence. Liability for slight negligence, loss of profit, loss of savings, compensation for consequential damages, lost or altered data, indirect damages, as well as damages arising from third party claims are excluded, unless contrary to mandatory law. Without limiting the foregoing provisions, Fronius shall be liable per liability case only up to the amount of the annual fee payable by the customer.
- 8.3 The Client is responsible for the Internet connection between the IT systems at the Client's premises and the data center and the hardware and software required for this purpose (e.g. PC, network connection, browser). The Client therefore acknowledges that Fronius does not control the transmission of data via communication facilities, including the Internet, and that the Services may be subject to limitations, delays and other problems associated with the use of such communication facilities. Fronius is not responsible for any delays, delivery failures or other damages resulting from such problems. Fronius is not responsible for any problems related to the performance, operation or security of the Services resulting from the Customer's content, systems, applications or interfaces. Furthermore, Fronius is not liable for any damage caused by vagaries of online use, in particular malware, viruses, malicious software or other sources of error and damage caused by Internet use.
- 8.4 Fronius is also not liable for damages caused by misuse or improper use of the account, by incomplete or incorrect information, or by failure of the contractual partner/customer or a user to comply with the duties of care set forth in the Contract.
- 8.5 Claims under this provision may only be asserted by the Customer within one year after the claim has arisen and the Customer has possibly become aware of the claim arising.
- 8.6 The limitations of liability shall apply in the same way for the benefit of Fronius' bodies, other representatives, employees, sub-processors and vicarious agents.

9 Access Blocking

- 9.1 Fronius is entitled to immediately block access to WeldCube Air for good cause. Good cause shall be deemed to exist in particular in the event of a breach of the Terms of Use, in particular also in the event of failure to pay the agreed fee on time, in the event of orders issued by authorities or courts, in the event of loss of access data

(user name, password) and in the event of the existence of other circumstances indicating unlawful use of WeldCube Air by the Customer or its users.

9.2 The Customer shall be notified in writing of the blocking of access to WeldCube Air.

10 Remedies for infringements of Third Party Rights

10.1 To the extent that third parties enforce claims against the Customer within the limitation period set forth in Clause 8.5 for infringement of copyrights, patents or other intellectual property rights ("Proprietary Rights Infringement") in the Software used by the Customer under the Contract, Fronius shall defend the Customer against all asserted claims for such Proprietary Rights Infringement and indemnify the Customer against all legally established claims for Proprietary Rights Infringement by the Software subject to the limitations of liability set forth in Clause 8. These obligations of Fronius shall not apply if (i) Fronius is not promptly notified in writing of all details of such claims for infringement of proprietary rights, (ii) the Customer fails to provide Fronius with reasonable assistance in the event of Fronius' ancillary intervention, or (iii) the claims for infringement of proprietary rights were caused by the Software or other services being used together with other products not approved by Fronius, or updates not being adopted by the Customer, or WeldCube Air not being used in accordance with the specifications of the Agreement and the Terms of Use.

10.2 If Fronius decides that WeldCube Air should be (partially) discontinued due to infringement of property rights, or if the use of WeldCube Air is prohibited by a court, Fronius may choose to proceed as follows: (i) modify the software so that third party rights are no longer infringed; (ii) acquire a license for the customer to enable continued use, in which case an additional fee may also be charged to the customer; or (iii) withdraw from the order in question and, at Fronius' discretion, refund or grant a credit for the fee already paid by the customer for the use of WeldCube Air beyond the date of withdrawal.

11 Confidentiality

11.1 The Parties acknowledge that all confidential information entrusted and disclosed or otherwise made accessible prior to the conclusion of the Contract, at the conclusion of the Contract and otherwise in the ordinary course of the contractual relationship must be kept secret and treated as strictly confidential or may only be disclosed to third parties with prior written consent. Confidential Information includes information that is marked confidential or is to be considered confidential based on the nature of the information or the circumstances surrounding the transmission of the information.

11.2 The Customer shall in particular also ensure that Confidential Information cannot come to the knowledge of unauthorized third parties by chance, unauthorized access, other unlawful acts, or otherwise without its doing or omitting to do so.

11.3 The confidentiality obligation under this Agreement does not apply to information (1) that was known or generally available to the public prior to the communication to the Recipient, (2) was already known to the Recipient at the time the information was received, (3) was disclosed or made available to the Recipient at any time by a third party without the imposition of a confidentiality obligation, or (4) was or will be developed independently by the Recipient without the use of the Confidential Information.

11.4 The confidentiality obligations agreed here shall continue to exist for a further 3 years beyond the end of the contract.

12 Privacy

12.1 Our Privacy Policy can be viewed at any time at <https://www.fronius.com>.

12.2 Insofar as Fronius acts as a Data Processor (within the meaning of Art. 28 GDPR) within the scope of WeldCube Air, the personal data shall be processed in accordance with the Data Processing Agreement, [here](#), which shall be deemed to have been agreed simultaneously with the conclusion of this Contract.

13 Contract Duration and Termination

13.1 A term of the Contract shall be agreed in the order, if applicable. If no term has been agreed in the order process, the Contract shall be deemed concluded for an indefinite term.

13.2 Ordinary termination of the Contract, which was concluded for an indefinite term shall generally be permitted subject to a notice period of 3 months to the end of a contractual year. If the contract is concluded for a definite period of time, the term shall be extended by the same period of time, unless the Contract is terminated by giving 3 months' notice prior to the expiry of the contract term. If WeldCube Air is provided free of charge, ordinary termination shall be possible at any time subject to a notice period of 14 days. The right to terminate for good cause shall remain unaffected.

13.3 To terminate the Contract, it is sufficient to send a notice of termination by e-mail to the contact address provided in each case.

13.4 Upon termination of the Contract, for whatever reason, the Customer shall have the obligations to immediately cease using WeldCube Air. By means of clarification, it is stated that after the end of the Contract, all rights of use granted shall revert to Fronius without any further legal action.

14 Applicable Law

14.1 This Agreement shall be governed by Austrian law to the exclusion of the rules of private international law. The application of the Austrian IPRG and other conflict of laws rules is expressly excluded.

15 Place of Jurisdiction

15.1 The place of jurisdiction for all disputes arising from and in connection with the contractual relationship shall be Wels, Austria.

16 Final Provisions

16.1 Should any provision of the contract be or become invalid or unenforceable in whole or in part, this shall not affect the validity or enforceability of the remaining provisions. The invalid or unenforceable provision shall be replaced by a valid or enforceable provision that comes as close as possible to the invalid or unenforceable provision in terms of its economic content; the same shall apply mutatis mutandis to loopholes in this contract.

16.2 The Client shall comply with the applicable export and import control regulations of the Republic of Austria, the European Union and the United States of America, as well as all other relevant regulations.

16.3 Fronius' performance of the contract is subject to the proviso that there are no obstacles to performance based on national and international regulations of export and import law and no other statutory regulation

16.4 Any rights not expressly set forth in these contractual terms are reserved by Fronius.

16.5 Fronius reserves the right to change these contractual conditions at any time. It is the responsibility of the Customer to regularly inform himself about the latest version of the Contract (see link [...]). In addition, contractual changes will be announced at least 1 month before coming into force. In the sense of a dynamic reference, reference is always made to the most recent descriptions. The referenced documents and links are an integral part of the Contract.