

IXON INTERNATIONAL TERMS OF USE

Version: 4.0
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1. General

- 1.1 Words like **IXON**, **we**, **us**, or **our** in these Terms of Use, shall refer to:
 - **IXON B.V.**, a Dutch corporation, if your company is located outside of the United States of America and Canada; IXON B.V. has a principal place of business at the Zuster Bloemstraat 20, 5835 DW, in Beugen, the Netherlands, and is registered with the Dutch Chamber of Commerce under file number 62729918.; or
 - **IXON Inc.**, a Delaware corporation, if your company is located within the United States of America or Canada, IXON Inc.; IXON Inc. has a mailing address at 228 E. 45 Street, Suite 9E, New York, NY 100017, USA.
- 1.2 If your company is located outside of the United States of America and Canada, these Terms of Use are an agreement between you and IXON B.V. If your company is located within the United States of America or Canada, these Terms of Use are an agreement between you and IXON Inc.
- 1.3 We offer cloud-based services on our IXON Cloud platform for remote access to, as well as monitoring of, machines and systems connected to the internet via an edge gateway. Prerequisites for the use of our cloud-based services are:
 - Registration of a company account on the IXON Cloud (<https://portal.ixon.cloud>) and the acceptance of these Terms of Use.
 - A device with a modern web browser to access the IXON Cloud and establish VPN secured remote access to a machine or system with an edge gateway. Alternatively, a device installed with the IXagent can be used to establish such a connection and/or to enable a remote connection to your machines or systems with your own engineering software.
 - Please check the information available on <https://www.ixon.cloud> for more detailed information and requirements, such as the device or system requirements to use the edge gateway, IXagent or IXON Cloud. Here you will also find what's included in the IXON Cloud and which extended services may be available for an additional fee. These extended services can include, for example, additional monitoring and evaluation functions for machines and machine data.
- 1.4 You, our customer and/or user of our cloud-based services, acknowledge and agree that **our products and services are solely tailored to, and should exclusively be used by, properly certified or properly licensed industry professionals**. Our products and services are not intended for consumer use.
- 1.5 These Terms of Use apply to all services offered by us, such as but not limited to the IXON Cloud, IXagent and VPN Client. Use of extended services as mentioned under 1.3 (third bullet) may be subject to additional or special Terms of Use. You have the option to view, print and save the Terms of Use in reproducible form during registration and each time you visit our website.
- 1.6 We are entitled to change these Terms of Use unilaterally, unless these changes alter the core of our business or of any agreement between parties. Changes that only refer to grammar, sentence structure, punctuation or factual information may be made by IXON without notification to you. In case of other, substantive, changes, we will notify you of the amendment in writing - which includes email and in-product notifications - at least 14 days before the effective date of the adjusted Terms of Use.
- 1.7 Unless we expressly agree to their validity in writing, your deviating, conflicting or supplementary general terms and conditions shall not become part of any agreement between you and IXON, even if we do not expressly object to their inclusion.

2. Agreement for use of the services

- 2.1 An agreement for the use of our IXON Cloud is concluded between you and IXON when you register an account on the IXON Cloud, or when you install any of our software. All agreements for the use of our IXON Cloud are subject to these Terms of Use.
- 2.2 By registering for the IXON Cloud or by installing our software, we grant you a non-exclusive, non-transferable right to access and use our software and services as made available to you by us, subject to your continuing compliance of these Terms of Use. Your right of use is limited to the use for professional business purposes only, and to the use of software and services we make available free of charge. The right to use additional services can be purchased via our website and may be subject to additional terms and conditions.
- 2.3 You must provide accurate and complete information for the purpose of setting up and maintaining your IXON Cloud account and keep this information up to date. Failure to do so may result in incorrect output of our services and/or suspension of your account for which we cannot be held responsible or liable. If we reasonably suspect that certain information is not correct or outdated, we will notify you and you will be granted a reasonable term to correct or update the account information.
- 2.4 Nothing in these Terms of Use shall be interpreted or construed so as to transfer any right, title, or interest in any intellectual property of one party to another, unless explicitly stated herein or otherwise agreed upon in writing between you and IXON.
- 2.5 We are entitled to wholly or partially have the services be rendered or performed by subcontractors. This applies in particular to data center operations.

3. IXON Cloud user access

- 3.1 Your IXON Cloud account is password protected and can be accessed with the login credentials (e.g. username and password) chosen by you or assigned to you. You shall adhere to best industry practices to prevent unauthorized use of your login credentials and data by third parties.
- 3.2 When a company account is opened, an initial user account is automatically created. This user account has all the administrative rights to manage the company account and the other user accounts associated with the company account.
- 3.3 For each company account, additional user accounts can be registered by the initial user within the IXON Cloud. If you are the (initial) user that manages a company account, then you are responsible for the other users you register with the company account, including: (i) managing the rights such users have, (ii) making sure that such users also comply with these Terms of Use, and (iii) making sure such users only use the service for its intended purpose as determined by IXON, which includes remote access and data logging for industrial machines for professional use. Besides such additional users themselves, the user managing the company account shall be liable towards IXON for the acts and omissions of the additional users.

4. No warranty; Indemnification; Use of the services

- 4.1 The IXON Cloud and other services of IXON are provided as is and IXON disclaims all warranties, whether express, implied, statutory, or otherwise. Certain functionalities may be free of charge, while other functionalities are subject to a fee as indicated on our website and/or the IXON Cloud.
- 4.2 You acknowledge and agree that the (level of) services we provide are among other things dependent on the information you provide us with, the information you process with our products and services, and the way you have installed and configured our products and services.
- 4.3 You ensure that your use of our products and services, and the use of any other persons using your company account, complies at all times with the requirements of these Terms of Use, the respective Services Special Terms for additionally booked services (if any) and the applicable laws. You shall

indemnify, hold harmless, and defend us from and against all damages incurred by us, resulting from third party claims because of the non-compliance with the aforementioned obligations. We are entitled to block, suspend or cancel access to our services in whole or in part at any time if there is a suspicion of use in violation of these Terms of Use or applicable law.

4.4 You may not:

- use our products and services for the distribution of malware or other malicious data that may cause damage to us or third-parties;
- circumvent any technical security measures of our products and services or the underlying computer systems;
- attempting to interfere or interfering in any way with our website, platform, services, or our networks or network security, or attempting to use our website or platform to gain unauthorized access to any other computer system;
- make inappropriate or disproportionate use of provided services, at the sole discretion of IXON;
- disassemble, reverse engineer, decompile or otherwise attempt to reconstruct or discover any source code or underlying ideas or algorithms of, or embodied in, our products and services (unless explicitly allowed by us or applicable law);
- use the services for any illegal or fraudulent activities, including but not limited to hacking, phishing, identity theft, and copyright infringement;
- send spam or engage in any other form of unsolicited communication or marketing;
- engage in any activity that may harm or disrupt our network, servers, or other users of our services;
- use the services to conduct any activity that may violate the laws of your country or region;
- harm us in any other way, at our sole discretion.

5. Installation and configuration

You are solely responsible for proper installation and configuration of our products and services, such as the IXON Cloud, in accordance with IXON's manuals and instructions as supplied by IXON or available on our sites (<https://www.ixon.cloud>, <https://support.ixon.cloud>, <https://developer.ixon.cloud> or other sites used by IXON). Any installation, configuration and use of our products and services require that you possess or acquire the necessary knowledge and system requirements at your own expense (e.g. adequate internet access; a personal computer; sufficient user rights on your personal computer; sufficient knowledge of your own industrial equipment).

6. Service availability

6.1 We do not guarantee a certain percentage of uptime, but we strive for a disturbance-free operation of our IXON Cloud platform and services and aim for an annual average availability of 99%. We do not guarantee constant and uninterrupted availability of our IXON Cloud or other services. Particularly for maintenance purposes, we reserve the right to shut down or restrict the availability of our IXON Cloud and other services in whole or in part for a certain time period. We will provide updates of any planned maintenance work that might affect the performance of our IXON Cloud services through <https://status.ixon.cloud>.

6.2 In case you become aware of functional failures and other malfunctions in our services, you should inform us hereof as soon as reasonably possible. You can do so by using the contact information available on our support website (<https://support.ixon.cloud>). If available, please share the following information:

- a description of the malfunction (attach screenshots if possible);
- the time when the malfunction occurred; and
- the effect of the malfunction.

6.3 Reported or noticed malfunctions will be handled by our support team on a commercially reasonable efforts basis during normal business hours in the Netherlands.

- 6.4 We might require you to provide an IXON support technician access to your company account. For this purpose, the holder of the company account must create a user account with the necessary user rights for support technicians from IXON for the desired duration of the support. Without setting up such a user account, it is not possible for IXON to provide certain support services.

7. Remuneration

- 7.1 The remuneration for the provision of products and services, if any, shall be based on the prices agreed upon by mutual written consent. Once per calendar year, IXON is authorized to reasonably increase the applicable and agreed upon prices:
- if your company is located outside of the United States of America and Canada, in accordance with the Dutch Consumer Price Index; or
 - if your company is located within the United States of America or Canada, in accordance with the percentage rate of increase equal to the change in CPI-W (Consumer Price Index, Urban Wage Earners and Clerical Workers, U.S. All Items) available at <http://www.bls.gov/data/> (or its substantial equivalent if this index is not available).

Additionally, we are authorized to increase the prices of our products and services because of increases in costs of vendors, parts or raw materials that could not reasonably have been foreseen at the time of the order.

- 7.2 All prices are exclusive of, and you shall pay, all taxes, duties, levies or fees, or other similar charges imposed on IXON or yourself by any taxing authority (other than taxes imposed on IXON's income), related to your order, including, if applicable, value-added tax, sales or usage tax. In case of changes in law such that a tax is levied that is or becomes irrevocable with a consequent increase of IXON's costs for the delivering of the products and/or services, IXON is entitled to increase its prices accordingly and retroactively. IXON may demand immediate payment via credit card or bank transfer. IXON may send any invoices electronically, including through email.
- 7.3 The standard payment term for IXON's invoices is 30 days after the date stated thereon, unless otherwise agreed upon in writing. IXON shall be entitled to restrict, suspend, or block services partly or in full, if payments are not received when due.

8. Termination

- 8.1 If you're using our services free of charge, and don't have an additional agreement with IXON, the use of our services may be terminated at any time by deleting your account. If, however, you have purchased additional services with a certain subscription period or for a certain term, then the agreement for such services may only be terminated by the parties at the end of such period or term, taking into account a notice period of 60 days. Parties' legal right to termination for good cause based on applicable law remains unaffected.
- 8.2 If the latter aforementioned agreement is not terminated in a timely manner, it will each time be tacitly renewed for a one-year period. Upon automatic extension, IXON has the right to uplift the price(s) by 5%.
- 8.3 Upon termination, your right to use our paid services expire. IXON will keep your company account including the associated user accounts and related data for at least three months. After these three months, IXON has the right to delete all related data irrevocably. Until this time, you can still access your account and export and download the recorded component data as an Excel or CSV file. If you wish to remove your account altogether, you can remove your account via our site.
- 8.4 IXON in its own discretion is entitled to stop offering or providing (certain) services or to amend configurations of any products and services. If you have subscribed and prepaid fees for canceled products or services, IXON will proportionally refund these fees, which will be the only remedy available to you in case of amendments or cancellation of products and/or services.
- 8.5 If Customer fails to make payment of any amount due on the due date or Customer otherwise fails to perform its obligations under the Agreement, these terms or any other agreement between IXON and Customer, IXON may in its sole and absolute discretion suspend performance under the

- Agreement with Customer and/or terminate the Agreement - in whole or part -, with immediate effect, without being liable for any damages to Customer.
- 8.6 Notwithstanding the above and without any obligation to return any prepaid sums, IXON may terminate its relationship with Customer at any time:
- (i) if Customer is in breach of the agreement or these terms;
 - (ii) if Customer fails to pay any amounts due to IXON, under this agreement or other agreements with IXON;
 - (iii) for a force majeure event that continues for more than thirty (30) days;
 - (iv) if required due to change in laws/regulation by a regulator or authority with a lawful mandate;
 - (v) if the bankruptcy of the Customer has been applied for or has been declared;
 - (vi) if Customer is liquidated or discontinued;
 - (vii) if Customer is in violation of any applicable laws or regulations.
- 8.7 Upon suspension and/or termination of the Agreement, all invoiced sums will become immediately due and payable.
- 8.8 Upon termination due to grounds i, ii, v, vi and vii, Customer is immediately due all sums that would have been due during the term of the Agreement.
- 8.9 IXON reserves the right to delete inactive user accounts, and all of its data, without further notice. An inactive account is an account that has not been signed in to within a 2-year period.

9. Liability and force majeure

- 9.1 In no event will IXON be liable under or in connection with this agreement under any legal or equitable theory, including breach of contract, tort - including negligence -, strict liability, and otherwise, for any: (a) consequential, incidental, indirect, exemplary, special, enhanced, or punitive damages; (b) increased costs, diminution in value or lost business, production, revenues, or profits; (c) loss of goodwill or reputation; (d) use, inability to use, loss, interruption, delay, or recovery of any data, or breach of data or system security; or (e) cost of replacement goods or services, in each case regardless of whether IXON was advised of the possibility of such losses or damages or such losses or damages were otherwise foreseeable.
- 9.2 Unless explicitly agreed upon otherwise in writing by IXON, our liability towards you for direct damages sustained by you on any ground whatsoever is limited per event - whereby a series of related events counts as one event - to the amounts you paid to IXON during the twelve months prior to the event that caused the damage, subject to a maximum of EUR 10,000.00 (ten thousand euros) if your company is located outside of the United States of America and Canada, or US\$ 10,000.00 (ten thousand US dollars) if your company is located within the United States of America or Canada. We are not liable for direct damages resulting from data loss, if you failed to perform proper and frequent data backups.
- 9.3 In no event shall either party be liable to the other party, or be deemed to have breached these Terms of Use and any other agreement between you and IXON, for any failure or delay in performing its obligations - except for any obligations to make payments -, if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, pandemic, including Covid19, related causes, such as governmental measures or supply chain disruptions, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo. Furthermore, we are not liable whatsoever if we are prevented from or delayed in performing our obligations by acts, events, omissions or accidents because of (i) the failure to properly fulfill obligations on the part of suppliers that were prescribed to us by you, (ii) defects in items, equipment, software or materials of third parties, (iii) power failures, (iv) internet, data network or telecommunication facilities failures, and/or (v) network attacks.

10. Data & data protection

- 10.1 All data and information you provide to us or generated through the IXON Cloud will be owned by you. You grant IXON a non-exclusive, non-transferable license to use this data and information for enabling our service and for our internal use only, for example for improving our services. IXON has no other right or authority over the data.
- 10.2 You are solely responsible for the data and indemnify IXON from all damages resulting from the data. IXON can not be held responsible for any loss or damage from you or third parties, resulting from the data provided or generated by you.
- 10.3 If IXON believes that any of the data provided by you or generated by you through the IXON Cloud violates these Terms of Use, applicable law or could harm other users, third parties or IXON itself, IXON reserves the right to take down some or all of that data. IXON can not be held responsible for any resulting damages.
- 10.4 If you process the personal data of end users or other identifiable individuals in your use of a service, you are responsible for providing legally adequate privacy notices and obtaining necessary consents for the processing of such data. You represent to us that you have provided all necessary privacy notices and obtained all necessary consents. You are responsible for processing such data in accordance with applicable law.
- 10.5 We process personal data exclusively in accordance with the applicable data protection laws in the jurisdictions in which we operate.
- 10.6 We process the user data collected during the registration of the company account and the use of our services for the purpose of contract fulfillment, as well as for customer relation purposes. This data processing is based on our legitimate interests in improving our products and services, developing new products and services, and in order to be able to provide contact persons with information regarding our (new) products and services. You have the right to object at any time, on grounds relating to your particular situation, to the processing of your personal data which is carried out on the basis of legitimate interests. For further information on privacy, please refer to our most recent privacy statement, which can be found at <https://www.ixon.cloud/privacy-and-cookie-policy>.
- 10.7 The parties hereby conclude that the data processing agreement in Appendix I: Data Processing Agreement, forms an integral part to these Terms of Use. In this case you are the 'data controller' and responsible for the personal data you choose to process with our services. You indemnify and hold us harmless from and against claims of third parties whose personal data is processed by you as a data controller in any way that does not comply with applicable law. If your company is located in the European Union and insofar we process data as a 'processor', this data processing will also be governed by Article 28 GDPR.

11. Final provisions

- 11.1 If your company is located outside of the United States of America and Canada:
 - These Terms of Use and any agreement between you and IXON shall be governed by Dutch law.
 - The parties shall try to solve any dispute between them amicably. In case either party wishes to take a dispute to court, then such dispute shall exclusively be submitted to the competent Dutch court in the district where IXON has its registered office.
- 11.2 If your company is located in the United States of America or Canada:
 - These Terms of Use and any agreement between you and IXON shall be governed by the laws of the State of New York, USA.
 - The parties shall try to solve any dispute between them amicably. All disputes and controversies arising out of or relating to these Terms of Use and any agreement between you and IXON shall be finally and bindingly resolved under the Commercial Arbitration Rules of the American Arbitration Association in front of a sole arbitrator. The place of arbitration shall be New York, New York. The language of the arbitration shall be English. Any award,

verdict or settlement issued under such arbitration may be entered by any party for order of enforcement by any court of competent jurisdiction.

- 11.3 ANY CAUSE OF ACTION AGAINST A PARTY, REGARDLESS WHETHER IN CONTRACT, TORT OR OTHERWISE, MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.
- 11.4 Should provisions of these Terms of Use be or become invalid in whole or in part, then this shall not affect the validity of the remaining provisions. The parties shall agree to new provisions that follow the purpose of the invalidated provisions as closely as possible.
- 11.5 Each party represents and warrants that (a) it has full power and authority to enter into these terms,, and (b) it will comply with all laws applicable to its provision, receipt, or use of the services, as applicable.
- 11.6 Changes to management or legal form of a party will not affect an agreement between the parties. We may transfer an agreement or any rights and obligations resulting from an agreement or these Terms of Use to a third party. All rights granted hereunder are personal to you and your company. Your rights and obligations may not be assigned to third parties without our prior written consent.