

General Terms and Conditions for *easymon*

I.

Scope of Application/Contract Conclusion/Subject of the Contract

1. In the absence of other agreements made in individual cases, the following Terms and Conditions shall exclusively apply to the acquisition and use of *easymon*. These Terms and Conditions shall form an integral part of the Contract concluded between us and the Customer. Any deviating terms of the Customer or amendments and/or supplements to the T&C by the Customer shall not be binding to us and shall not be valid unless we expressly agree to their validity in writing.
2. We offer our Customer a plug&play remote monitoring software solution called *easymon* (hereinafter referred to as "***easymon***" or "**the App**") which enables rule-based monitoring of industrial controllers . First, *easymon* consists of a web interface and a smartphone app. Using the simple configuration interface of the web application, *easymon* can be configured by the User/Customer according to individual data points. These data points can then be visualized remotely and thus also be monitored on mobile devices with the help of the mobile App that can be obtained in the Apple App Store or Google Play Store.
3. By downloading the App, a license agreement on the use of *easymon* shall be concluded between the Customer and in-tech GmbH, Parkring 32, 85748 Garching (hereinafter referred to as "**in-tech**" or "**we**"). By downloading, you agree to the following Terms and Conditions.
4. Depending on the respective industrial controller, which is to be monitored with *easymon*, deviating contractual conditions of the controller manufacturer may apply. In-tech has no influence on the content of such contractual conditions. In such a case, the Customer shall be informed of the deviating contractual terms and conditions when using the App.
5. The Customer has a four-week test phase after first obtaining the App. The test phase begins with the download of the App. During the test phase, the Customer can extensively test *easymon*. After the end of the specified test phase, the Customer can choose a subscription model specified in the App. As soon as the Customer signs up for a subscription, a license fee shall become due in accordance with Section III of these T&C. If the Customer does not sign up for a subscription, the license agreement shall expire and the Customer shall no longer be entitled to use *easymon*.

II.

Using the App

1. Please note that the use of certain functionalities of *easymon* requires an existing data connection of your smartphone, tablet, computer or industrial controller or that this connection is established by the use of these functionalities. We therefore recommend using *easymon* only if a data flat rate or a WLAN hotspot is available in order to avoid being charged with connection costs.
2. By downloading the App, in-tech grants you the non-exclusive, non-transferable right to use the App on any device that the software can be used on according to the system requirements, which you can view in the PLCnext Store or in the Apple App Store or in the Google Play Store before concluding these Terms and Conditions.
3. The App is constantly being developed and new functions and services are offered on a regular basis. Additional functions and services within the App may be associated with renewed costs. If that is the case, in-tech will inform you about the new prices and features in advance.

4. You may not copy, distribute or otherwise make the App available to any third party (including renting, leasing, lending or sublicensing). You may not modify, reverse engineer, decompile, disassemble or otherwise determine the source code of the App or any part thereof, or create derivative works thereof. The provisions of the Sections 69d and 69e of the German Act on Copyright and Related Rights (*Urheberrechtsgesetz*) shall remain unaffected.
5. These Terms and Conditions shall also apply to all updates/upgrades and program supplements for the App that are made available to you by in-tech for download, insofar as these are not the subject of a separate license agreement. In that case, only the provisions of the license agreement valid for the respective update/upgrade or program supplement shall apply.
6. in-tech reserves all rights to the App.

III.

Price/Payment Conditions

1. You agree to pay a monthly license fee ("**subscription**") for the use of *easymon*. The amount of the fee will be displayed to you once you subscribe. Unless otherwise stated, the prices indicated in the respective Store do not yet include value-added tax. This will be charged to you by the payment service provider.
2. Payment processing will take place on a monthly basis by the payment provider based on the payment information entered in the subscription.
3. We will provide you with a monthly invoice that you can access in your user account.
4. You are not entitled to withhold payments unless you have a statutory right of retention arising from the same contractual relationship. Offsetting is only permitted insofar as the counterclaims are undisputed or have been deemed legally final and absolute. You shall be responsible for bearing the costs for unauthorized charge backs.

IV.

Obligation to cooperate

1. When using the App, you must comply with the obligation of due diligence required for use, and to check any results generated by the App to a reasonable extent before use. in-tech assumes no liability for the quality of the data or content you enter or submit.
2. You are responsible for keeping your login data such as your password and username safe and secure.
3. You agree to updates, such as for debugging purposes, to be run automatically. In case any updates require additional permissions, you will be notified of this fact before they are installed. In case you do not agree to these extended permissions, no update is carried out, and this might negatively affect the App's operation.
4. Insofar as you have acquired the App as an entrepreneur against payment in the sense of Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch*), the obligation to notify defects in accordance with Section 377 of the German Commercial Code (*Handelsgesetzbuch*) shall apply.
5. Any other technical preconditions for the use of this App are listed in the application description in the Apple App store or Google Play Store, in particular operating systems/versions and end devices such as controllers, smartphones and tablet PCs.

V.

Availability

We strive to offer unlimited availability of the App within the scope of what is technically feasible and economically reasonable. However, we do not assume any warranty for this. In particular, maintenance work, security and capacity reasons, technical circumstances and events outside our control may lead to

temporary unavailability of the App.

VI.

Data Use, Data Accuracy and Data Security

1. The Customer shall retain the ownership and intellectual property rights to the data entered by the Customer into *easymon* or stored therein.
2. The data provided by the Customer may be protected by copyright. The Customer hereby grants in-tech, limited in time according to the duration of the Contract, all non-transferable and non-exclusive rights of use necessary for the performance of this Contract to the data provided and the information retrievable therein, in particular the data provided and the information retrievable therein for the purposes of this Contract.
3. in-tech shall protect any data entered by the Customer into *easymon* or stored therein against loss and unauthorized access, modification, falsification and destruction by applying appropriate technical and organizational measures that correspond to the state-of-the-art technology available at the given time.
4. The Customer shall be fully responsible for all data and information entered into *easymon*, including its accuracy and completeness. in-tech does not assume or accept any liability for errors or omissions in data entries.

VII.

Warranty and Liability

1. **Warranty and liability for free software.** If you have obtained the App free of charge on a permanent, semi-permanent, limited use or test basis, in-tech shall only be liable for material defects and defects in title, irrespective of their legal grounds, to the extent that it has maliciously concealed them. In all other respects, in-tech, its legal representatives and vicarious agents shall solely be liable based on the free-of-charge provision of the software in case of any intentional or grossly negligent misconduct or in case of damage caused culpably, arising from injury to life, body or health with regard to compensation for any potential damage caused. Any claims in accordance with the Product Liability Act shall remain unaffected.
2. **Limitation of liability for paid software.** Insofar as you have obtained the App against payment, in-tech shall solely be liable in accordance with the following regulations, irrespective of legal basis:
 - a. for damages caused intentionally or by gross negligence,
 - b. for damage arising from breach of any warranties provided in writing to the extent of the purposes covered by such warranty,
 - c. in the case of malice,
 - d. in the case of bodily or personal damage.
 - e. in cases subject to product liability under the Product Liability Act
 - f. insofar as the scope of applicability under Section 44a of the German Telecommunications Act (*Telekommunikationsgesetz*) has taken effect (liability by publicly accessible telecommunication service providers).

Insofar as liability does not go by statutory provisions in accordance with the list above, the following applies: In case of a slight negligent breach of merely minor contractual duties, in-tech shall not be liable for compensation. Apart from that, liability for damage caused by slight negligence is limited to such damage which must typically be expected to occur in the context of the respective contractual relationship (contract-typical foreseeable damage). Damage occurring due to using the App on devices with full administrative access (such as rooting with Android/jailbreaking with iOS) is considered to be non-foreseeable.

This also applies to negligent breaches of duty by legal representatives, executives or simple vicarious agents. **In case you are an entrepreneur in the sense of Section 14 of the German Civil Code, the Parties agree that any contract-typical foreseeable damage from breaches of duty pertaining to this Agreement shall correspond to the value of payments made under this Agreement as a maximum.** The above liability limitations also apply to claims for reimbursement of expenses.

3. Insofar as liability by in-tech has been excluded or limited in accordance with these stipulations, this also applies to the liability of their bodies, representatives and vicarious agents, including any employees of in-tech.
4. The warranty period for material defects and defects of title for software that you as an entrepreneur have obtained against payment amounts to 12 months. This does not apply insofar as liability goes by Section VI.2 in accordance with statutory provisions.

VIII.

Violations of these Terms and Conditions

1. You undertake towards in-tech to use our offer solely for purposes that don't infringe these Terms and Conditions or applicable German laws or third-party rights. If you permit another person to use *easymon* on your mobile device, your due diligence requires you to inform them of the Terms and Conditions and to check that they are being adhered to to a reasonable extent. in-tech is permitted to block access to the App if you are in breach of your duties arising from these Terms and Conditions.
2. By downloading the App, you confirm that you neither are permanently resident in a state subject to US embargo regulations nor one which was declared a state supporting terrorist activities, nor that you are personally mentioned on any US government list citing prohibited or limited parties.

IX.

Amendments to these Terms and Conditions

1. Should in-tech intend to change these Terms and Conditions or individual sections and/or amend them, in-tech will explicitly notify you of the new version and provide you with access to the amended text.
2. You have the right to appeal against such amendments. In this case, the user relationship will be continued providing the current scope of service under the existing Terms and Conditions. If this is not technically possible, in-tech shall be entitled to terminate its user relationship with you and to prohibit any further use of the App. This will not affect your legal warranty rights.
3. Unless you appeal against these amendments within six weeks after being notified, this shall be deemed to be your consent to the new Terms and Conditions.

X.

Duration and Termination of the Contract

1. The Contract is concluded for an indefinite period and begins with the download of the App.
2. The Contract ends by termination or dissolution. Either Party may terminate the Contract with a notice period of four (4) weeks to the end of the month, unless otherwise agreed.
3. We are entitled to terminate the Contract without notice, especially in case of a breach of Section IV by the Customer. Furthermore, we are entitled to block the Customer's access to the App if the Customer does not pay the due fees.
4. The right to terminate the Contract without notice for good cause shall remain unaffected.
5. Termination requires the written form.
6. Upon termination of the Contract, you must cease all use of the App and delete all copies of the App from your mobile device or desktop.

**XI.
Data Protection**

1. We collect, process and use personal data within the scope of what is necessary in accordance with our Privacy Policy.
2. We take state of the art measures to keep personal data confidential and to protect the data against unauthorized access.
3. We use non-personal data for market and opinion research purposes.

**XII.
Place of Jurisdiction/Applicable Law/Final Provisions**

1. Any oral agreements, supplements and amendments to the Contract require our written confirmation.
2. In commercial business transactions, Munich/Garching is agreed as the place of jurisdiction, as well as in cases where the Customer does not have a domestic general place of jurisdiction, has moved his or her domicile or habitual residence abroad after conclusion of the Contract or neither the domicile nor habitual residence of the Customer are known at the time.
3. We are entitled to transfer the rights and obligations arising from this Contract to a legal successor or a third party. The transfer shall only become effective if the Customer consents. Consent shall be deemed to have been given if the Customer does not object to the transfer of rights and obligations in written form within eight weeks of being notified about it in writing. The Customer shall be separately informed of these consequences in the notification. Consent shall not be required if the third party is an affiliated company within the meaning of Sections 15 et seq. of the German Stock Corporation Act (*Aktiengesetz*). A change in the person of the Customer brought about by legal succession shall be notified to us immediately in writing. A transfer of the Customer's rights and obligations under the Contract by legal succession is possible with our consent. We will not refuse such consent without a substantial reason. If the Contract is entered into during a billing period without interim billing, the previous Customer and the new Customer shall be jointly and severally liable for the liabilities arising from this billing period.
4. It is agreed that German law shall apply exclusively, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
5. Should one of these provisions be or become invalid, this shall not affect the validity of the remaining provisions herein. In the event of the invalidity of one or more provisions, the Parties are obliged to agree on a provision the effects of which come closest to the economic objective of the invalid provision.

in-tech GmbH

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